Decision 24-11-025 November 7, 2024

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Energy Producers and Users Coalition, Indication Shippers, California Large Energy Consumers Association, Agricultural Energy Consumers Association, Federal Executive Agencies, and Small Business Utility Advocates for Rehearing of Resolution E-5306.	Application 24-08-007

ORDER DENYING REHEARING OF RESOLUTION E-5306

In this order, we dispose of the application for rehearing of Resolution E-5306,[1] filed by the Energy Producers and Users Coalition (EPUC), Indicated Shippers, California Large Energy Consumers Association (CLECA), Agricultural Energy Consumers Association (AECA), Federal Executive Agencies (FEA), and Small Business Utility Advocates (collectively, Applicants). The allegations raised in the application for rehearing lack merit and furthermore are barred by Public Utilities Code sections 1708, 1709 and 1731.[2]

I. BACKGROUND

Resolution E-5306 approved Energy Division's disposition letter approving the Tier 2 advice letters of Pacific Gas and Electric Co. (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Co. (SDG&E), and Southern

[1] Unless otherwise noted, citations to Commission Resolutions and Decisions issued since July 1, 2000 are to the official pdf versions, which are available on the Commission's website at: https://docs.cpuc.ca.gov/ResolutionSearchForm.aspx for Resolutions and http://docs.cpuc.ca.govDecisionsSearchForm.asps for Decisions.

[2] Unless otherwise noted, all section references are to the Public Utilities Code.

California Gas Company (SoCalGas) (collectively, Utilities) implementing the Cost of Capital Formula Adjustment Mechanism (CCM) for 2024.

Commission Decision (D.) 08-05-035 adopted a uniform CCM for PG&E, SCE, and SDG&E for the purpose of streamlining the major energy utilities' cost of capital process and to enable "the utilities, interested parties, and Commission staff to reduce and reallocate their respective workload requirements for litigating annual cost of capital proceedings." (D.08-05-035, p. 16.) D.13-03-015 adopted the CCM for SoCalGas.

The CCM is a mechanism for the Commission-adopted cost of capital to reasonably adjust, either upwards or downwards, if market conditions change significantly between cost of capital test year cycles, depending on the movement of interest rates. For the years in between full cost of capital proceedings, D.08-05-035 established initial benchmark interest rates to be compared with the October through September 12-month average Moody's utility bond interest rates. If the difference between the benchmark and the 12-month average Moody's interest rate exceeds 100 basis points, an automatic adjustment ratio of half the basis points difference would be applied to either increase or decrease the return on equity (ROE) of applicable utilities beginning January 1st of the following year.

In D.22-12-031, the Commission established the 2023 ratemaking cost of capital for the Utilities and decided to "continue[] the previously authorized cost of capital mechanism through the 2023 test year cycle." (D.22-12-031, p. 2.)

The Utilities' advice letters submitted on October 13, 2023 showed that the average Moody's utility bond index increased 141 basis points during the 12-month measurement period from October 1, 2022 through September 30, 2023. As a result, pursuant to D.08-05-035, Ordering Paragraph 2, the Utilities' Tier 2 advice letters requested to increase their respective ROEs by half the 141-basis point difference, which is approximately a 70-basis point increase to the Utilities' ROEs, to be effective January 1, 2024. In addition, the Utilities' advice letters requested updates to increase the cost of

debt and preferred equity, pursuant to D.08-05-035, Ordering Paragraph 2. The advice letters were protested by several entities.

On December 14, 2023, EPUC, Indicated Shippers, FEA, The Utility Reform Network (TURN), Environmental Defense Fund (EDF), Wild Tree Foundation (Wild Tree), and Walmart, filed a Petition for Modification of the Test Year 2023 cost of capital decision, D.22-12-031, as modified by D.23-01-002.

On December 22, 2023, Energy Division issued a non-standard disposition approving PG&E Advice Letter 4813-G/7046-E, SCE Advice Letter 5120-E, SDG&E Advice Letter 4300-E/3239-G and SoCalGas Advice Letter 6207-G requesting implementation of the Cost of Capital Formula Adjustment Mechanism for 2024. On January 12, 2024, a request for Commission review of Energy Division's disposition was submitted by AECA, CLECA, California Farm Bureau (Farm Bureau), EPUC, Energy Users Forum (EUF), EDF, FEA, the Indicated Shippers, SBUA, TURN, Public Advocates Office at the California Public Utilities Commission (Cal Advocates), and Wild Tree.

On May 9, 2024, the Commission issued D.24-05-005 denying the Petition for Modification of D.22-12-031, as modified by D.23-01-002. An application for rehearing was filed by EPUC, TURN and Indicated Shippers and denied by D.24-10-031.

On July 16, 2024, the Commission issued Resolution E-5306, approving the non-standard disposition issued by Energy Division on December 22, 2023, which in turn approved the Utilities' advice letters. On August 15, 2024, Applicants filed an application for rehearing. On August 30, 2024, PG&E, SDG&E, SCE and SoCalGas filed a response to the application for rehearing.

We have carefully considered the arguments raised in the application for rehearing of Resolution E-5306 and have determined that the claims of legal error have no merit. Rehearing of Resolution E-5306 is denied.

II. DISCUSSION

Applicants allege that the Commission: (1) failed to proceed in the manner required by law and violated General Order (GO) 96-B by approving Energy Division's

disposition letter and (2) abused its discretion by declining to consider the advice letters in a formal proceeding. Applicants are wrong on both claims as discussed below. In addition, in claiming the Commission erred in approving Energy Division's disposition, Applicants collaterally attack final Commission decisions approving and continuing the automatic CCM for approving increases or decreases in utility ROE based on the formula adopted in D.08-05-035 and continued in D.22-12-031.

A. Applicants' Allegation that the Commission Failed to Proceed in the Manner Required by Law Lacks Merit

Applicants allege that the Commission failed to proceed in the manner required by law by upholding Energy Division's disposition and by not ordering a "more careful examination of the requests in Phase 2 of the Cost of Capital proceeding." (Rehg. App., p. 5.) Applicants contend that GO 96-B provides that staff disposition of advice letters is only appropriate for non-controversial, ministerial requests. Applicants rely on GO 96-B, Section 5.1, which provides that the "advice letter process provides a quick and simplified review of the types of utility requests that are expected neither to be controversial nor to raise important policy questions." (GO 96-B, p. 8.)

There are several reasons why Applicants' arguments are not correct. First, the only reason the utility advice letters are controversial in this case is because Applicants ignore the automatic nature of the CCM. Second, while it is true that GO 96-B, Section 5.1 sets forth the expectation that the advice letter process will deal with requests that are noncontroversial and do not raise important policy issues, later, more specific provisions apply here. Section 7.6.1 provides that where Commission orders have specifically authorized the action proposed so that the industry division can determine as a technical matter that the proposed action has been previously authorized, then the industry division's action in approving the advice letters is ministerial. Further, Section 7.4.2 prohibits a protest from relying on policy objections where the utilities rely on statute or Commission order in filing advice letters. (Resolution E-5306, p. 10.) Section 7.4.2 states in part that "a protest may not rely on policy objections to an advice

letter where the relief required in the advice letter follows rules or directions established by statute or Commission order applicable to the utility."

Applicants also argue that Section 7.4.2 should not be rigidly applied here. (Rehg. App., pp. 13-14.) However, Applicants provide no persuasive reason why section 7.4.2 should not apply. We find that Section 7.4.2 not only applies but is key to disposing of both the request for review of the disposition and the instant application for rehearing, because the CCM adopted in D.08-05-035 and continued in D.22-12-031 authorized the automatic implementation of ROE adjustments. Thus, it was appropriate that the Commission declined to consider questions of controversy and public policy where prior decisions have dictated the process to be followed by the Utilities in this case. Applicants' argument that the Commission failed to proceed in the manner required by law therefore lacks merit.

To bolster the argument that the Commission failed to proceed in the manner required by law, Applicants rely on D.05-01-032. (Rehg. App., p. 7.) This decision is unavailing. D.05-01-032 discussed two instances where the Commission may decide to reject the advice letters and instead review the request in a formal hearing; one, where there are material factual issues to be resolved and two, where Commission interpretation of a statute or Commission order is required. (D.05-01-032, p. 9.) Applicants add the phrase "and other important policy questions" to the two instances given, but the 2015 decision does not include that language. Thus, this decision does not support Applicants' argument that due to important policy questions, Commission review of the rate increase requests in a formal proceeding was required.

B. Applicants' Allegation that the Commission Abused its Discretion Lacks Merit

Applicants note that GO 96-B, Section 1.3, allows the Commission to authorize an exception to the operation of the GO rules where appropriate and contend that the Commission should have authorized an exception here. (Rehg. App., p. 13.) Applicants then argue that it was an abuse of the Commission's discretion not to consider

the CCM adjustments in the formal cost of capital proceedings. (Rehg. App., p. 14.) Applicants are not correct.

Applicants fail to explain what discretion the Commission would have to consider the rate increases requested in the advice letters in a formal proceeding when doing so would conflict with prior decisions making the CCM automatic. (See §§ 1708 and 1709.) Further, the general language in GO 96-B providing for an exception to the operation of the GO rules does not overrule the more specific language in sections 7.4.1 and 7.4.2, or the Commission's specific holdings in D.08-05-035 and D.22-12-031 setting forth the automatic operation of the CCM and outlining the advice letter process to implement rate increases or decreases when triggering conditions are met. It is established that the more specific provisions of a statute prevail over the general. (*Rose v. State* (1942) 19 Cal.2d 713, 723-24; see *New Cingular Wireless v. Public Utilities Com.* (2016) 246 Cal.App.4th 784, 808 [quasi-legislative rules such as general orders have the dignity of statutes].)

Moreover, even if the Commission had discretion to use a process to set the Utilities' ROEs for 2024 that is contrary to the process authorized in D.08-05-035 and D.22-12-031, Applicants fail to explain why the Commission would abuse this discretion by declining to exercise it. No authority is given for the claim that the Commission may prejudicially abuse its discretion by declining to consider the rate increase requests in a formal proceeding.

Applicants further argue that the approach in Resolution E-5306 violates the Commission's intent behind adopting the CCM, its prior handling of CCM suspensions, and the controlling legal standards set by *Bluefield* and *Hope*. (Rehg. App., p. 14, citing *Bluefield Water Works & Improvement Co. v. Public Serv. Com.* (1923) 262 U.S. 679 and *Federal Power Com. v. Hope Natural Gas Co.* (1944) 320 U.S. 591.) Applicants' arguments lack merit. The Resolution is consistent with the Commission's intent in adopting the CCM. As the Commission stated in the original CCM decision, the CCM balances the interests of shareholders and ratepayers as well as simplifying and reducing ROE proceedings, workload requirements and regulatory costs. (D.08-05-035,

p. 5.) That is exactly the balance struck by the Commission in continuing the 2023 test year cycle in D.22-12-031. D.08-05-035 and D.22-12-031 are final and nonappealable per section 1731.

Moreover, Applicants provide a general citation to *Bluefield* and *Hope* as "controlling legal standards" without explaining what particular standards were violated by the Resolution. It is similarly unclear how the Resolution is inconsistent with prior decisions because no citations or explanation are provided. Section 1732 requires rehearing applicants to specify legal error so that the Commission may correct it expeditiously. (Rule 16.1(c) of the Commission's Rules of Practice and Procedure.) "Simply identifying a legal principle or argument, without explaining why it applies in the current circumstances does not meet the requirements of Section 1732." (D.18-09-052, p. 5, citing D.10-07-050, p. 19.) The Commission is not required to guess what the legal error is by extrapolating from a general claim, or otherwise attempt to articulate applicants' arguments for them. Without specification of legal error, the Commission has no opportunity to correct its decisions. (Ibid., citing D.10-07-050, p.20.)

Thus, the claim that the Commission committed prejudicial abuse of discretion lacks merit. To claim now that the Commission has not proceeded in the manner required by law and that the Commission has abused its discretion by not considering the rate increases in a formal proceeding ignores the ministerial and non-discretionary nature of the CCM and collaterally attacks final and nonappealable Commission decisions adopting and affirming the automatic CCM, in violation of sections 1708, 1709 and 1731.

III. CONCLUSION

For the reasons discussed above, rehearing of Resolution E-5306 is denied.

THEREFORE, IT IS ORDERED that:

1. Rehearing of Resolution E-5306 is denied.
2. This proceeding, Application 24-08-007, is closed.

This order is effective today.

Dated November 7, 2024, at Bakersfield, California.

ALICE REYNOLDS
President
DARCIE L. HOUCK
JOHN REYNOLDS
KAREN DOUGLAS
Commissioners

Commissioner Matthew Baker recused himself from this agenda item and was not part of the quorum in its consideration.