Decision **DRAFT DECISION OF ALJ LONG (Mailed 8/9/2005)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application Of Pacific Gas And Electric Company For Current Cost Recovery During The Rate Freeze Period. (U 39 E)	Application 00-03-038 (Filed March 20, 2000)
Application Of Southern California Edison Company Requesting Modification Of Its Transition Revenue Account (TRA) And Transition Cost Balancing Account (TCBA) Mechanisms To Allow For The Transfer And Recovery Of Costs And Return Of Revenues Recorded In Various Previously-Authorized Regulatory Accounts During The Rate Freeze Period, And Related Relief.	Application 00-03-047 (Filed March 22, 2000)

(See Appendix A for List of Appearances.)

OPINION RESOLVING RATE FREEZE ERA BALANCING ACCOUNTS AND MEMORANDUM ACCOUNTS FOR PACIFIC GAS AND ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY

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I. Summary

This decision resolves the requests of Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison) to recover reasonable costs that were incurred during the rate freeze period under Assembly Bill (AB) 1890.[1] When AB 1890 was enacted, the vision of the electric industry was for a competitive market structure for electric generation where the electric utility companies were primarily distribution companies. When these applications were filed during the rate freeze, the California Power Exchange (PX) appeared to be operating efficiently, and the competitive monthly wholesale price of energy was about three cents a kilowatt-hour (kWh). However, during the period from the summer of 2000 through the spring of 2001, California experienced an energy crisis in which the wholesale price of electric power skyrocketed. By March of 2001, it was about 25 cents/kWh.[2] Resolution of these applications has been delayed by the crisis in the wholesale markets that irrevocably altered the vision of AB 1890.

In its First Extraordinary Session in January, 2000, the Legislature responded to the crisis by, among other things, adopting AB 6X.[3] AB 6X effectively cancelled the AB 1890 transition of utility generation from regulated

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[1] Stats. 1996, Ch. 854.

[2] Source: *Comments of the California ISO on Staff's Recommendation on Prospective Market Monitoring and Mitigation for the California Wholesale Electric Power Market*, Docket No. EL00-95-012, in Attachment A.

[3] Assembly Bill No. 6 (Stats. 2001, First Extraordinary Session, Ch. 2).

to unregulated status, and instead continued Commission regulation of utility-owned assets.

By this order, we find that rate recovery of the costs in the balancing and memorandum accounts at issue in the present proceedings are consistent with AB 6X, decisions of the California Supreme Court, and the Commission addressing AB 6X. For PG&E the majority of the accounts have been dealt with in other proceedings. For Edison, all of the balances recorded in the accounts originally at issue in this proceeding, except for two, were disposed of (1) when Edison credited a net overcollection from the accounts of $55.745 million to its ratepayers as of September 1, 2001 pursuant to Resolution E-3765, or (2) after review in other Commission proceedings. Even though all but two of Edison's account balances have been disposed of, we will nevertheless discuss Edison's proposed disposition of its accounts here.

II. Background

The Commission made the preliminary finding in resolution ALJ 176-3036, issued on April 6, 2000, that the category for these proceedings is ratesetting and determined that the matter requires hearings. We have considered our preliminary determinations and find that a hearing is not necessary for these proceedings.

In Decision (D.) 99-10-057, we had determined that PG&E and Edison may not recover costs incurred during the rate freeze in the post-rate-freeze period.[4]

[4] In the context of electric industry restructuring, the term "rate freeze" referred at the time these applications were filed to the provision in Pub. Util. Code § 368 that sets customer electric rates equal to those in effect on June 10, 1996, until the end of a "transition period." Pub. Util. Code §§ 367 and 368 provided for the termination of each electric utility's rate freeze period as soon as that utility recovered its uneconomic generation-related costs (known as "transition costs"), or on March 31, 2002, whichever was earliest. These transition costs were above-market generation-related costs (e.g.,

We had held that deferring recovery of costs incurred during the rate freeze until afterward is unlawful under § 367(a).[5]

In response to D.99-10-057, both utilities filed applications seeking to recover certain costs while the freeze was still in place.[6] On March 20, 2000, PG&E filed Application (A.) 00-03-038, and on March 22, 2000, Edison filed A.00-03-047. Both companies requested authority to modify their Transition Revenue Accounts (TRAs) and Transition Cost Balancing Accounts (TCBAs) accounting mechanisms. They wanted authority to transfer and recover costs, and return of revenues recorded in various previously-authorized regulatory accounts during the rate freeze. They asserted that nothing in our prior decisions precluded such recovery even though they both acknowledged that allowing recovery was anticipated to postpone the end of the rate freeze. This was argued because the rate freeze could not end until either the utility had recovered its transition costs, or until the statutory deadline was reached. These applications were vigorously protested. The parties' positions, as argued in 2000, are discussed briefly in this decision.

In the summer of 2000, wholesale electric power prices rose drastically. PG&E and Edison incurred huge debts buying electricity through the California Power Exchange (CalPX). In an extraordinary session in January 2001, the Legislature enacted AB 6X, which amended several provisions of AB 1890,

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nuclear power generation costs) considered to be uneconomic in a market-based rate context. In contrast, under cost-of-service rates, these costs were recoverable, so long as they were reasonably incurred.

[5] We denied, in relevant part, PG&E's Application for Rehearing of D.99-10-057 in D.00-03-058.

[6] Because both Applications raise the same issues, the then-assigned Administrative Law Judge (ALJ) consolidated the proceedings in a Ruling issued on May 26, 2000.

halting the transition to a competitive electricity market with market-based rates for the utilities' electric generation. *See Southern California Edison Company v. Peevey* (2003) 31 Cal.4th 781, 790. Due to the press of the energy crisis, these proceedings were not processed in a sufficiently timely fashion to authorize cost recovery before the expiration of the statutory freeze period. Since that deadline passed, the Commission has dealt elsewhere with many of the ratemaking aspects of the end of the freeze period. On January 8, 2004 in D.04-01-026, the Commission determined that the rate freeze for PG&E and Edison ended on January 18, 2001; the date that AB 6X went into effect. (*Mimeo.*, p. 2.)

III. Affected Accounts

A. PG&E Accounts

PG&E's application included 28 separate accounts; it proposed based on the accounting mechanisms then in place to transfer 21 of those accounts to the TRA[7] and 7 accounts to the TCBA.[8] The total undercollection PG&E reflected in those accounts as of November 30, 1999, the last date it made the calculation, was $17.4 million.

B. Edison Accounts

Edison sought to transfer 35 accounts in total: 22 to the TRA and 13 to the TCBA. The total undercollection Edison reflected in those accounts as of

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[7] The TRA was an accounting mechanism designed to facilitate the calculation of the revenues available to offset uneconomic generation costs entered into the TCBA. The TRA was credited with all billed revenues. From that total, the utilities subtracted authorized revenue requirements for distribution, transmission, public benefits programs, and nuclear decommissioning. Then the utility subtracted payments to the CalPX and Independent System Operator (ISO). The remaining balance determined "headroom," the amount available to offset uneconomic generation costs entered into the TCBA.

[8] The Commission created the TCBA to track recovery of authorized costs related to uneconomic generation.

December 31, 1999, was $48.2 million. The fact that the balance at that time showed an undercollection means that Edison had costs that it desired to recover with an offset to headroom. Subsequently, Edison updated its request in testimony dated February 19, 2002 to exclude balances that were under review by the Commission in other proceedings. This update resulted in Edison changing its request in this proceeding to show that as of September 1, 2001 its accounts reflected that a net overcollection of $55.745 million to be returned to its ratepayers.

IV. Positions of the Parties - Briefs

In this proceeding, the sole issue is whether the utilities may recover costs or refund overcollections that they incurred while the rate freeze was pending. The Office of Ratepayer Advocates (ORA), and Aglet Consumer Alliance (Aglet), opposed the applications. As discussed below, we reject their arguments and find that PG&E and Edison should have had the opportunity to recover these costs or refund overcollections (subject to reasonableness review) in their retail rates.

A. PG&E and Edison

PG&E and Edison asserted in their applications and briefs that recovery was entirely consistent with AB 1890. While they disagreed with the Commission's conclusion in D.99-10-057 that post-freeze recovery of such costs was unlawful, that issue was not presented in this proceeding. The utilities claimed that the Commission did not preclude them from recovering transition costs incurred during the rate freeze before the end of the freeze. The utilities therefore contended that these applications were necessary in order to allow them to use revenues from frozen rates to recover these costs. Indeed, the utilities claimed we authorized the recovery they sought in D.99-10-057. There,

we quoted with approval a prior decision holding that, "Consistent with AB 1890, costs incurred during the rate freeze period must be recovered during that period by changing the 'headroom' available to draw down transition costs."[9]

As proposed by both PG&E and Edison, the utilities should have been allowed, during the rate freeze period only, to transfer reasonable recorded costs and revenues in the various balancing and memorandum accounts at issue to the TRA or TCBA for rate recovery purposes. After the initial transfer, incremental transfers would continue on a monthly basis. Upon the termination of the companies' respective rate freezes, these transfers were to end. All amounts in the TRA and TCBA—including the transferred account balances—were to undergo reasonableness reviews, verification or Commission audit in the companies' Revenue Allocation Proceeding and ATCP proceedings.[10] Any costs found unreasonable were to be returned to ratepayers with interest.

In addition, Edison proposed that we authorize similar transfers of accounts created subsequent to its application or this decision.[11]

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[9] D.99-10-057, *mimeo.* at 15-16, quoting D.97-11-073.

[10] Edison appeared to contemplate something less than a full reasonableness review for some affected accounts. *Prepared Testimony of Chris C. Dominski,* dated March 22, 2000 (Dominski Testimony), at 5 n.9 ("[Edison] is not proposing to change the level of Commission review that has already been adopted for the balancing and memorandum accounts at issue in this application (certain accounts are subject to reasonableness review and others are subject to verification or Commission audit"). The assigned ALJ marked and received the Dominski Testimony into evidence as Exhibit 4 at the September 7, 2000 PHC.

[11] *Id.* at 7 ("[Edison] proposes that any new balancing and memorandum accounts established during the rate freeze period after this application has been filed should receive the same ratemaking treatment as that proposed by [Edison] . . . for currently authorized balancing and memorandum accounts.").

B. ORA

ORA protested both applications. ORA asserted that the utilities' proposal would lengthen the rate freeze by offsetting against headroom the net undercollection from the memorandum and balancing accounts at issue. If the headroom available to recover transition costs was reduced in this way, it would take longer to recover those costs. The longer it takes to recover transition costs, the longer the rate freeze would last. ORA claimed that lengthening the rate freeze in this way was no different philosophically from allowing applicants to recover costs after the freeze, which D.99-10-057 had precluded.

Superseding developments have overtaken the theory of ORA's and Aglet's arguments, and subsequently, neither company ended their rate freeze by fully recovering eligible transition costs. In fact, the precise date the rate freeze ended was the subject of rehearing, as provided by D.02-01-001. Ratepayer representatives had once sought to hasten the end of the rate freeze on the assumption rates would go down thereafter. Subsequent steep increases in generation costs caused post-freeze rates to rise for the one large investor owned utility—SDG&E—that had already ended its rate freeze in July 1999.[12] After the parties filed their briefs, PG&E filed for reorganization in federal bankruptcy

[12] D.99-05-051. The Commission approved, with certain conditions, a settlement filed on April 15, 1999 in Application 99-02-029, which established accounting, ratemaking, and customer information requirements for SDG&E to end the transition period enacted by AB 1890. The end of SDG&E's transition period signified that pursuant to AB 1890, SDG&E has recovered all uneconomic generation costs, thus ending SDG&E's rate freeze on July 1, 1999.

court[13] and Edison narrowly averted bankruptcy and settled a federal lawsuit[14] with the Commission.

At the time parties were filing their briefs, however, ORA took a middle ground approach on the appropriateness of potentially extending the rate freeze and argued:

- ORA takes no position here as to whether the Commission is empowered to extend the rate freeze (by granting the applications) as a Commission policy goal . . . . In theory, a lengthening of the rate freeze period may give the Commission additional time to develop measures to eliminate or reduce the problem.
- In this instance, no evidence exists to show the increased length of the rate freeze if the applications are granted. For that reason, no evidence exists to demonstrate whether the increased time to deal with high rate issues would be material or useful.
- Also, random bad luck in timing might extend the rate freeze to the peak electric period, and thus possibly increase the high post rate-freeze problem. Again, it is now impossible to judge whether this will occur.
- In summary, there *may* be valid policy reasons to grant the applications and thus extend the rate freeze. However, no evidence exists to demonstrate whether an extension of the rate freeze will be material or useful.[15]

ORA also asserted that the Commission should not allow PG&E and Edison to reflect the account balances in rates before a reasonableness review

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[13] PG&E filed for bankruptcy reorganization pursuant to Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Northern District of California, Case No. 01-30928-DM ("the Bankruptcy Proceeding").

[14] *Edison* vs. *Lynch, et al.*, U.S. Dist Ct., Cent. Dist. Cal., Case No. 00-12056-RSWL (Mcx). A Settlement was entered on October 5, 2001.

[15] *Id.* at 10 (emphasis in original).

occurs. The Commission has never passed final judgment on the recoverability of the amounts held in many of the accounts.[16] ORA opposed allowing applicants to transfer the balances to the TRA and TCBA (the applicants' proposal in March 2000) subject only to a post-freeze reasonableness review. Rather, ORA asserted at the time, the Commission should first determine the appropriateness of the accounts' establishment and then the reasonableness of individual account entries.

ORA did not take a position on individual accounts included in the applications. It focused instead on the larger legal and policy question of whether applicants may recover certain costs during the rate freeze. The assigned administrative law judge (ALJ) granted ORA's request to perform a spot audit of some of the accounts at issue. In its audit report, ORA concluded, "audit issues which must be addressed before a decision are minimal, and may be addressed fully during later reasonableness review."[17]

C. Aglet Consumer Alliance

Aglet asserted that applicants' interpretation of D.99-10-057 was incorrect. While the utilities believe that D.99-10-057 allowed any "during-the-freeze" recovery of costs, Aglet took a narrower view:

> The portion of the decision on which applicants rely about "costs incurred during the rate freeze" related to "costs entered into the TRA and the TCBA that would have been recoverable if the rate freeze had not ended." [Citation

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[16] Memorandum accounts are set up simply to track revenues and expenses. The utility is not guaranteed recovery of amounts in the account at all until the Commission passes on an application for such recovery.

[17] *Report—Current Cost Recovery During the Rate Freeze Period, A.00-08-038 [sic; should be A.00-03-038] and A.00-03-047 (*ORA Report*),* at 1. The assigned ALJ marked and received the ORA Report into evidence as Exhibit 7 at the September 7, 2000 PHC.

> omitted.] . . . . The amounts booked into the many balancing and memorandum accounts cited by PG&E and Edison do not qualify as costs that "would have been recoverable" if the rate freeze had not ended. Instead, the amounts are recorded into ratemaking accounts to preserve utility opportunities to recover costs if the Commission eventually determines that rate recovery is appropriate.[18]

Thus, Aglet asserted that the kinds of costs recovered during the rate freeze differ from those at issue in this proceeding. While PG&E and Edison would have had the accounts at issue transferred to the TRA and TCBA in order to fit within D.99-10-057's rubric, the accounts did not – and should not according to Aglet – reside there. Only accounts and amounts that undergo rigorous prior Commission review should be allowed recovery during the freeze period. Since under the utilities' proposal the Commission would not conduct a reasonableness review of the accounts at issue until after the transfer, the accounts are not among those eligible for "during-the-freeze" recovery. "The proposals of Edison and PG&E to review the costs for recoverability after the end of the rate freeze amounts to circumvention of the prohibition against post-freeze recovery of costs incurred during the freeze."[19]

Aglet, like ORA, disputed the applicants' assertion that AB 1890 permitted an extension of the rate freeze by offsetting the accounts against headroom. The only basis for postponing the end of the rate freeze, Aglet asserted, was set forth in D.99-10-057: "on the date the utility has recovered 'commission-authorized costs for utility generation-related assets and obligations,' as set forth in § 368."[20]

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[18] Aglet Opening Brief at 2-3.

[19] *Id.* at 3.

[20] D.99-10-057, *mimeo.* at 16.

Finally, Aglet questioned applicants' motives for seeking the account balance transfer:

> Edison argues that consumers will not be negatively impacted by the requested relief. (Edison opening brief, p. 7.) This position is ludicrous. Allowing Edison to circumvent cost recovery risks at the end of the rate freeze would favor shareholders at ratepayer expense. Why would the utilities file the instant applications if not to protect shareholders? There is a zero sum element to this proceeding. Shareholder gains will equal ratepayer losses. Under current ratemaking, the utilities might lose the opportunity to recover certain account balances before the end of the rate freeze. Customers will benefit. Under the utility proposals, utilities will recover their account balances before they are tested for reasonableness. The rate freeze will be extended, and customers will pay. Relative to current ratemaking, customers will be harmed.

Aglet did not take issue with the individual accounts included in the application. It focused solely on legal and policy issues germane to the applications, rather than on the utilities' factual basis for including specific accounts.

V. Discussion

A. Summary

The sole issue presented here is whether PG&E and Edison are entitled to recover reasonably incurred costs or refund overcollections during their respective rate freeze periods. We conclude they are entitled to recover or refund such costs in light of the return to cost-of-service rates for the utilities' generation-related costs pursuant to AB 6X. The enactment of AB 6X has superseded AB 1890, its rate freeze and its market-based rates for the utilities' sales from their generation plants. Under cost-of-service rates, the utilities are not at risk for these reasonably incurred costs recorded in authorized balancing

and memorandum accounts and may collect undercollections or refund overcollections.

B. Right to Recover "During-the-Freeze" Costs in Balancing and Memorandum Accounts

In D.04-01-026, the Commission decided that the rate freeze ended as of January 18, 2001.[21] The reason the Commission decided that the rate freeze ended was because AB 6X went into effect on January 18, 2001, and ended the transition of utility generation from regulated to unregulated status. Thus, there were no longer any uneconomic costs (i.e., "costs for generation-related assets and obligations…that may become uneconomic as a result of a competitive market…" § 367), because AB 6X provided for the Commission's regulation of the rates of the utilities such that they could recover generation-related costs as part of their cost of service and were not left to market-based rates for recovery. *See* D.04-01-026, *mimeo.* at 12-13.

In *Southern California Edison Co. v. Peevey*, 31 Cal. 4th at 793, the California Supreme Court held that AB 6X "constituted a major retrenchment from the competitive price-reduction approach of Assembly Bill 1890, reemphasizing instead PUC's duty and authority to guarantee that the electric utilities would have the capacity and financial viability to provide power to California consumers." In this regard, the Court agreed with the Commission that by restoring the Commission's cost-of-service ratemaking over the utilities'

[21] This issue is decided in A.00-11-038 et al. See D.04-01-026. "We agree with SCE, (Edison) TURN, (The Utility Reform Network) CMTA (California Manufacturing & Technology Association) and CLECA (California Large Energy Consumers' Association) that the rate control period [*rate freeze*] became ineffective, was mooted and ended in early 2001. In particular, we find that the rate control period ended on January 18, 2001, the effective date of AB 6X." *Mimeo.*, p. 9.

generation-related costs, AB 6X had largely eliminated the category of "uneconomic" generating asset costs, which were at risk under AB 1890. *Id.* at 795. Consequently, the rate freeze and risks under AB 1890 are no longer relevant to the issues at hand in light of the enactment of AB 6X.

C. Different Treatment of Memorandum and Balancing Accounts—Scope of Review

The assigned ALJ observed—and the parties did not dispute—that memorandum and balancing accounts have different regulatory status. As the ALJ stated:

> [B]alancing accounts have an associated expectation of recovery, they have been, so to speak, pre-authorized by the Commission, and it's the amounts that are reviewed for reasonableness; memorandum accounts, in contrast, are accounts wherein amounts are booked for tracking purposes and the utilities then later ask for recovery. Recovery is not a given. Does anyone else have a different understanding of balancing and memorandum accounts? (No response.)[22]

Because of this distinction, the Commission must still rule on the recoverability of any of the memorandum accounts PG&E and Edison included in these applications. We find (or have found in other decisions discussed elsewhere as subsequent events) that these memorandum accounts contained costs incurred for reasonable purposes necessary to provide retail electric service at the time.

D. Interest Rate on Refunded Amounts

PG&E and Edison propose that in the event of refunds with interest to ratepayers, the interest rate should be a short-term rate tied to the rate for three-month commercial paper. Neither ORA nor Aglet address the

[22] Statements made by ALJ Minkin at the June 22, 2000 PHC.

appropriateness of this rate; they simply object to any account transfers prior to a reasonableness review. The utilities' interest proposal is entirely consistent with our treatment of all balancing and memorandum accounts regardless of the rate freeze or other distractions to the timely adjudication of a pending issue before the Commission.

VI. The Failure of the AB 1890 Industry Restructuring Affects the Recovery Mechanism

A. PG&E

A March 3, 2005 Ruling[23] required PG&E to comment on the specific impacts of several specific events that transpired in the five years since A.00-03-038 was originally filed. The Ruling noted that:

(1) PG&E has emerged from Chapter 11 bankruptcy proceedings;[24]

(2) PG&E filed Advice Letter (AL) 2510-G / 2460-E for authority to revise electric and gas tariffs and establish various balancing and memorandum accounts to implement the Modified Settlement Agreement (MSA) adopted by D.03-12-035[25] and in compliance with D.04-02-062;[26]

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[23] ALJ Long's *Ruling Calling for Further Comments by Applicants and Other Interested Parties.*

[24] United States Bankruptcy Court for the Northern District of California Case No. 01-30923 DM, (Bankruptcy Court).

[25] D.12-035 dated December 18, 2003 in Investigation (I.) 02-04-026 Filed April 22, 2002. *Order Instituting Investigation into the ratemaking implications for Pacific Gas and Electric Company (PG&E) pursuant to the Commission's Alternative Plan of Reorganization under Chapter 11 of the Bankruptcy Code for PG&E, in the United States Bankruptcy Court, Northern District of California, San Francisco Division, In re Pacific Gas and Electric Company, Case No. 01-30923 DM.*

[26] D.04-02-062 dated February 26, 2004 in I.02-04-026. This decision adopted a Rate Design Settlement which implemented an overall rate reduction of about $799 million.

(3) The Advice Letter was approved by Resolution E-3862, dated April 1, 2004 eliminating numerous accounts[27] including seven accounts included in this application.

(4) Resolution E-3862, dated April 1, 2004, approved with modifications PG&E's proposed tariff revisions, its request to establish various Revenue Adjustment Mechanisms (RAM) balancing accounts, to modify certain regulatory accounts, and withdraw several electric regulatory accounts that are no longer applicable or needed; and (5) at least one other account, the Electric Restructuring Costs Account, was addressed in D.04-12-017.[28]

PG&E was directed to explain the impact of Resolution E-3862 and D.04-12-017, or any other regulatory decision or actions that may have altered the status of A.00-03-038 since parties filed briefs.

PG&E filed a timely response to the Ruling on April 1, 2005 and asserted that "subsequent events have completely mooted PG&E's A.00-03-038. Therefore, PG&E requests that the application be dismissed as moot."[29] We will

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[27] These were:

1. Power Exchange Memorandum Account
2. Applicant Installation Trench Inspection Memorandum Account
3. Power Exchange Credit Audit Memorandum Account
4. Schedule E-BID Memorandum Account
5. Diablo Canyon Property Tax Balancing Account
6. Arbitration Memorandum Account
7. Reduced Return on Equity Memorandum Account

[28] D.04-12-017 dated December 2, 2004 in A.00-07-013 filed July 11, 2000. *Application of Pacific Gas and Electric Company for Review and Recovery of Costs Recorded in the Electric Restructuring Costs Account (ERCA) for 1999 and Forecast for 2000 and 2001*.

[29] Response, p. 2.

close PG&E's application because there are no pending actions required here except to affirm the action taken by PG&E pursuant to Resolution E-3862.

1. Active PG&E Accounts

The 11 active accounts are:

1. California Alternate Rates for Energy Account
2. Affiliate Transfer Fee Account
3. Hazardous Substance Mechanism (Non Generation Related Portion)
4. Electric Vehicle Balancing Account
5. Streamlining Residual Account
6. Transmission Revenue Requirement Reclassification Memorandum Account
7. Real Property Gain/Loss on Sale Memorandum Account
8. Qualifying Facility Contribution in Aid of Construction Memorandum Account
9. Transition Cost Audit Memorandum Account
10. Diablo Canyon Property Tax Balancing Account
11. Catastrophic Event Memorandum Account (CEMA).

We agree with PG&E that these accounts (1-11) are still active and as such, do not require action in this proceeding at this time.

2. PG&E Accounts Eliminated by Resolution E-3862

Five accounts, as cited in the March 3, 2005 Ruling, were eliminated by Resolution E-3862:

12. Power Exchange Memorandum Account
13. PX Credit Audit Memorandum Account
14. Schedule E BID Memorandum Account
15. Arbitration Memorandum Account

16. Reduced Return on Equity Memorandum Account.

PG&E filed Advice Letter 2510/G and 2460-E on December 31, 2003. On March 1, 2004 it filed a supplement, Advice Letter 2460-E-A. The first two advice letters were filed to implement the ratemaking provisions of the settlement agreement adopted in D.03-12-035. The supplement was in compliance with D.04-02-062. The adopted settlement agreement was the bankruptcy-solution proposed by the Commission staff, PG&E and PG&E Corp., the parent company of PG&E. We agree with PG&E that these five accounts (12-16) are no longer subject to review in A.00-03-038.

3. PG&E Inactive Accounts

Two accounts (17 and 18) are inactive, one was authorized for elimination but has not yet been eliminated, and the other was never authorized.

17. Applicant Installed Trench Inspection Memorandum Account. This account was authorized for elimination by Resolution E-3862 but PG&E indicated it has yet to do so.[30]

18. Electric Supply Cost Memorandum Account

PG&E indicated that while it had requested authority for this account in Advice Letter 1972-E, in response to D.00-02-046, it withdrew the request in Advice Letter 1972-E-A and therefore it has never been authorized even though PG&E included it for transfer in A.00-03-038.

4. PG&E Accounts Eliminated by Other Decisions

Five accounts have been eliminated in other Commission decisions while A.00-03-038 was pending:

19. The Demand Side Management Tax Charge Memorandum Account by D.02-10-019

[30] Pg. 2, April 1, 2005 Response by PG&E.

20. The Industry Restructuring Memorandum Account by D.02-10-019
21. The Workforce Reduction Revenue Mechanism Memorandum account by D.01-01-020
22. The Divestiture Bonus Return on Equity Memorandum Account by D.02-10-019
23. Electric restructuring Costs Account by D.04-12-017.

We agree with PG&E that these decisions have mooted PG&E's request in A.00-03-038 and these five accounts (19-23) are no longer subject to review in A.00-03-038.

5. Close PG&E's A.00-03-037

PG&E did not file a motion in this proceeding to withdraw the application. In the April 1, 2005 response PG&E states that there are no longer any accounts that require current action by the Commission and therefore the application should be deemed moot. We agree: all accounts have been properly addressed by the Commission to either eliminate the accounts or to authorize the continued operation of the eleven accounts listed above. We will therefore close PG&E's A.00-03-037.

B. Edison

In the same March 3, 2005 Ruling discussed above, Edison was required to comment on the specific impacts of several specific events that transpired in the five years since A.00-03-047 was originally filed. The Ruling cited:

(1) On October 2, 2001, Edison entered into a Settlement Agreement with the Commission in Case No. 00-12056-RSWL (Mcx). On October 5, 2001, the Settlement Agreement was approved by the United States (U.S) District Court.

(2) As a consequence of the Settlement Agreement, Edison filed AL 1586-E on November 14, 2001 to establish the

> Procurement Related Obligations Account (PROACT) and the associated ratemaking structure to be effective on September 1, 2001. The Settlement Agreement defined PROACT as "the Account for Recovery of Procurement Related Obligations established pursuant to Section 2.1(a)."
>
> (3) On January 23, 2002, the Commission adopted Resolution E-3765 and granted "SCE's (Edison's) request with several modifications in order to avoid judging other issues pending in proceedings before the Commission, and to ensure adherence to the language of the Settlement." Resolution E-3765 cited A.00-03-047 several times and, in particular, noted that many of the accounts addressed in the AL were already the subject of A.00-03-047. Edison was directed to address the status of all pending accounts, include up-dated account balances, an up-date of the proposed ratemaking treatment for any recoverable account balances, and finally, include any other pertinent information concerning A.00 03-047. Edison was also directed to explain the impact of any other regulatory decision or action that may have altered the status of A.00-03-047 since parties filed briefs.

Edison responded to the Ruling on March 18, 2005, and indicated that it had filed an up-date after the settlement between the Commission and Edison was approved by the court.[31] By a Ruling dated April 9, 2002, the assigned ALJ admitted three exhibits including Ex. 8, P*repared Testimony of Chris C. Dominski Pursuant to Commission Resolution E-3765*(Late-Filed Exhibit). Edison stated the net overcollection of $55.745 million in its various accounts, as reflected in Appendix B of its Ex. 8, was included in the calculation of Recoverable Cost in

[31] February 19, 2002, *Petition of Southern California Edison Company (U-338-E) to set aside submission of proceeding, for leave to file additional exhibit, and for entry of exhibit into the evidentiary record; Declaration of Chris C. Dominski.* See, March 18, 2005, *Comments of Southern California Edison Company (U-338-E) on the Ruling of Administrative Law Judge Long.*

the September 2001 balance of its PROACT account. Since the overcollection had already been credited to its ratepayers, Edison did not update the account balances in its response to the March 3, 2005 ALJ Ruling.

1. Edison's Late-Filed Exhibit

After these applications were filed, Edison closed its TRA and TCBA accounts as a result of the previously noted settlement adopted by the Court in *Edison v Lynch, et al.*[32] In short, the Settlement ended the electric industry restructuring transition accounting system that relied upon the TRA and TCBA process as detailed herein. On February 19, 2002, Edison filed a motion for leave to file an additional exhibit after the submittal of A.00-03-047. This decision grants the motion.

Edison proposed to directly substitute the new post-settlement accounting mechanisms for the TRA and TCBA, which had been litigated in the proceeding. Because the solution we adopt does not rely upon the TRA or TCBA for either PG&E or Edison, the foregoing discussion of parties' positions, and the rationale for the adopted solution, do not need to be expanded to address in detail the proposed substitution as filed by Edison. We have found the costs to be recoverable. Edison has already disposed of the balances at issue in this proceeding (with the exception of two of these accounts), the only remaining issues are to determine which accounts should be eliminated and where recovery of the remaining two account balances should take place.

[32] *See* footnote 14.

2. Edison Accounts to be Eliminated

Edison proposes in Ex-8 to eliminate the following six accounts,[33] all of which have a zero balance:

1. Reduced Return on Equity Memorandum Account
2. Risk Management Tools Memorandum Account
3. Transition Cost Audit Memorandum Account
4. Flexible Pricing Options / Competitive Transition Cost Memorandum Account
5. Independent System Operator Memorandum Account
6. Power Exchange Memorandum Account

It is reasonable to eliminate these six (1-6) unnecessary accounts that have a zero balance, and therefore there is no ratepayer impact to consider.

There are two other accounts (7-8), with sub-accounts, which Edison proposes to eliminate because of other Commission authority.

7. Secondary Land Use Revenue Memorandum Account

Resolution E-3765[34] authorized the transfer of the balance in this account to the Performance Based Ratemaking Exclusions Distribution Adjustment Mechanism (PBR EDAM). Edison has already transferred the balance and now proposes elimination of the account.

8. Streamlining Residual Memorandum Account

This memorandum account has six sub-accounts. Beginning with the September 1, 2001 balances, Edison proposes to transfer several sub-accounts

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[33] Ex. 8, pp. 7-10.

[34] Resolution E-3765 was adopted on January 23, 2002, addressing Advice Letter 1586-E, filed on November 14, 2001 to establish the Procurement Related Obligations Account (PROACT) and associated ratemaking structure.

to new accounts established as a result of D.99-10-057,[35] which authorized the framework for *Post Transition Ratemaking*, and Resolution E-3765 which implement PROACT.

Edison has returned the outstanding balance in two sub-accounts to ratepayers by transferring the balance to the PBR EDAM and then to the PROACT and now proposes to eliminate them.

9. Non-Utility Affiliate Credits Memorandum Account

10. DSM Earned Incentives Memorandum Account

Edison has transferred two other sub-accounts to the Nuclear Decommissioning Adjustment Mechanism (NDAM) Balancing Account, which was authorized by Resolution E-3756:

11. Spent Nuclear Fuel Storage Costs Memorandum Account

12. Department of Energy (DOE) Decommissioning & Decontamination Fees Memorandum Account

We agree with Edison that it is a reasonable outcome for these sub-accounts to be transferred to the NDAM where they can be addressed in our ongoing oversight of that mechanism.

Edison has transferred one sub-account to the Public Purpose Programs Adjustment Mechanism (PPPAM) Balancing Account, which was authorized by Resolution E-3756:

13. Intervenor Compensation Memorandum Account

Finally, Edison proposes to eliminate one sub-account that was never used:

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[35] D.99-10-057, dated October 21, 1999, in A.99-01-034, filed on January 15, 1999 by Edison, as well as PG&E's A.99-01-016 and SDG&E's A.99-01-019.

14. Commission Consultant and Advisory Costs Memorandum Account

One other account is now unnecessary and Edison has already transferred it to the PBR EDAM as well:

15. Telecommunications Lease Revenue Memorandum Account.

This account is redundant because its purpose, to track revenues received from third-parties that used Edison facilities for fiber optic cable space, has been replaced by the Gross Revenue Sharing Mechanism adopted in D.99-09-070.

3. Edison Accounts to be Retained

Edison proposes in Ex. 8 that many accounts should simply remain open and the ongoing balances and activities will be addressed in a wide array of regular Commission proceedings.[36]

Distribution-Related Accounts, which will flow through the PBR EDAM mechanism, in compliance with Post-Transition ratemaking authorized in D.99-10-057[37]:

15. Affiliate Transfer Fee Memorandum Account
16. Demand Side Management Earnings Memorandum Account
17. Hazardous Substance Cleanup and Litigation Costs
18. PBR Distribution Rate Performance Memorandum Account
19. PBR Distribution Revenue Sharing Account

[36] Ex. 8, pp. 16 ff.

[37] Ex. 8, p. 17, at footnote 41.

Public Purpose Program-Related Accounts, which will flow through the Public Purpose Programs Adjustment Mechanism (PPPAM), except for the CARE account, which no longer requires modification here.[38]

20. California Alternate Rates for Energy (CARE) Adjustment Account
21. Electric Vehicle Adjustment Clause Balancing Account and Electric Vehicle Memorandum Account
22. RD&D Royalties Memorandum Account

There are eight Generation-Related Accounts that Edison now proposes should be "transferred to an appropriate ratemaking account after Commission review in an appropriate ratemaking proceeding such as the Annual Transition Cost Proceeding (ATCP)".[39] The balances in the following four accounts have been reviewed by the Commission in an ATCP while this proceeding (A.03-10-022 and D.05-01-054) was pending and therefore no further action is required and these accounts can be eliminated.

23. Fuel Oil Inventory Memorandum Account
24. Increased Return on Equity on Divestiture Memorandum Account
25. Non-Nuclear Generation Capital Additions Memorandum Account
26. Unavoidable Fuel Contract Costs Memorandum Account

The balances in the following two accounts have been reviewed by the Commission in a recent general rate case, (A.02-05-004 and D.04-07-022) and were subsequently eliminated while this proceeding was pending; therefore, no further action is required:

[38] Ex. 8, p. 22.

[39] Ex. 8, p. 24.

25. Non-Nuclear Generation Capital Additions Memorandum Account (A repeat reference to item 25, above, this account was eliminated by D.04-07-022.)

27. SONGS 2 and 3 Property tax Memorandum Account

The three remaining generation-related accounts have zero balances:

28. Income Tax Component of Contribution Memorandum Account

29. Palo Verde Permanent Closure Memorandum Account

30. SONGS 2 and 3 Permanent Closure Memorandum Account

We will direct Edison to include those accounts with future recoverable / refundable balances in its Energy Resource recovery Account (ERRA) that was established pursuant to D.02-10-062. The Commission directed in D.04-01-0048 and D.04-03-023 that the recorded operations of the ERRA for the described record period is to be reviewed by the Commission in an annual ERRA application to ensure that the entries made in the ERRA are stated correctly and are consistent with Commission decisions.

4. Other Accounts

31. Block Forward Market Memorandum Account

Edison proposed (Ex. 8) to transfer the balance in the Block Forward Market Memorandum Account[40] to the Settlement Rates Balancing Account, which was for the settlement discussed elsewhere, and is now closed. Block Forwards were energy purchases in the now-defunct California Power Exchange. Therefore the most appropriate active account to address these costs is the previously discussed ERRA. We will direct Edison to transfer the Block Forward

[40] $0.626 million undercollected as of February 28, 2005.

Market Memorandum Account balance to this active account, where it can be reviewed as a part of the next annual review of the ERRA.

32. Kramer-Victor Memorandum Account

Edison's Kramer-Victor Account has already been closed by D.00-06-054.[41]

33. Catastrophic Event Memorandum Account

The Catastrophic Event Memorandum Account is an ongoing mechanism activated when there is a declared state or federal disaster to allow a utility to recover the reasonable costs to promptly restore service. This account should remain open and is subject to specific applications, e.g., Edison's currently pending A.04-12-003.

34. Optional Pricing Adjustment Clause Balancing Account

Edison proposes to transfer the balance in the Optional Pricing Adjustment Clause Balancing Account to the previously discussed PBR EDAM. The balance in this account was included in the net overcollection returned to ratepayers through the PROACT, there is no need for further action with regard to this account here, and the account should remain open.

35. PX Credit Audit Memorandum Account

Edison and others shared the costs for an audit of transactions with the California Power Exchange. Edison proposed (Ex. 8) to transfer this account to the now closed Settlement Rates Balancing Account. Again, the ERRA is the most appropriate active account. We will direct Edison to transfer the PX Credit

[41] Although the Kramer Victor Memorandum Account was included in the application, it was promptly dealt with in D.00-06-054 and is moot. It would otherwise be one of 36 accounts in Edison's application. The ordering paragraphs address the outstanding 35 accounts at issue in A. 00-03-047.

Audit Memorandum Account balance to this active account, where it can be reviewed as a part of the next annual review of the ERRA.

36. Transmission Revenue Requirement Reclassification Memorandum Account

The Commission addressed this account in D.03-08-062, dated August 21, 2003 in another proceeding; A.01-02-030, filed February 28, 2001.[42] No further action is required.

C. Subsequent Events – Other Parties' Positions

Neither ORA nor Aglet filed a response to the March 3, 2005 Ruling. We therefore have no up-date of their opinions subsequent to filing briefs on October 23, 2000. No party responded to Edison's February 2002 Late-Filed Exhibit.

VII. Conclusion

AB 1890 had allowed PG&E and Edison to recover generation-related costs incurred during the freeze while the rate freeze was still pending, but put them at risk for the recovery of such costs in market-based rates after the rate freeze ended. Subsequently, the enactment of AB 6X superseded AB 1890 and restored the Commission's ratemaking authority over these generation-related costs. Therefore, PG&E and Edison were no longer at risk for the recovery of these costs.

PG&E's A.00-03-038 is moot: the relief sought has been effectively granted elsewhere and the application should be closed.

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[42] Edison's response to the March 3 2005 Ruling was wrong; there were several significant events subsequent to late-filed Ex. 8, including the closure of the Settlement Rates Balancing Account, the filing of A.01-02-030 and its decision, D. 03-08-062.

Edison is still entitled to the relief it originally sought in A.00-03-047 and subsequent events have not rendered its application moot. Edison has already disposed of all but two of the account at issue. This decision allows Edison to recover the current balance in these remaining two accounts, the Block Forward Market memorandum Account and the PX Credit Audit Memorandum Account. This decision allows Edison to close the various accounts and transfer the accumulated account balances to the most appropriate active account where the balances will be subject to reasonableness review as a part of those accounts' ongoing regulatory oversight.

VIII. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on August 29, 2005 by Edison, no reply comments were filed. After reviewing the comments appropriate changes have been made in this decision.

IX. Assignment of Proceeding

Geoffrey Brown is the Assigned Commissioner and Douglas Long is the assigned ALJ in this proceeding.

Findings of Fact

1. Balancing accounts have an associated expectation of recovery. They have been pre-authorized by the Commission, and it is the amounts – and not the creation of the accounts themselves – that the Commission reviews for reasonableness.

2. Memorandum accounts are accounts in which the utilities book amounts for tracking purposes. While the utilities may later ask for recovery of the amounts in those accounts, recovery is not a given.

3. The reasonable costs recorded in these Balancing and Memorandum Accounts were eligible for recovery during the rate freeze period.

4. The Commission did not conclude these proceedings in a timely fashion during the rate freeze.

5. The applicable ratemaking mechanisms as originally proposed by PG&E and Edison are not longer in existence. There are, however, new and other still-functioning mechanisms that may be used to close the now-defunct balancing and memorandum accounts.

6. Admission of Edison's additional late-filed exhibit on the accounting treatment for the *Edison* v. *Lynch* Settlement does not adversely affect the outcome of this proceeding.

7. Edison credited a $55.745 million net overcollection to ratepayers in its PROACT account consistent with the settlement in *Edison v. Lynch* and Resolution E.-3765.

8. Edison's cost recovery for certain accounts can be made in currently effective balancing accounts and other ratemaking mechanisms including the PBR EDAM, PPPAM, NDAM, and the ERRA as a part of the ongoing regulatory oversight applicable to those mechanisms.

9. Use of the three-month commercial paper interest rate to calculate interest on refunds to ratepayers is consistent with established Commission ratemaking practices.

10. Edison's Kramer-Victor account has already been closed by D.00-06-054 and further action is not required in this decision.

Conclusions of Law

1. AB 6X has superseded the provisions of AB 1890, which would have put PG&E and Edison at risk for uneconomic generation-related costs.

2. The Commission may lawfully authorize recovery.

3. PG&E and Edison are entitled to recover their reasonable costs.

4. PG&E has shown its costs have been recovered in other proceedings that closed certain accounts and by the continuation of eleven other accounts. PG&E's application is therefore moot.

5. Edison can reasonably recover the outstanding balances in defunct accounts by transferring the balances to currently active accounts including the PBR EDAM, PPPAM, NDAM, and the ERRA in lieu of the now closed TRA, TCBA, and other transitional ratemaking mechanisms from the AB 1890 industry restructuring.

6. Edison reasonably refunded a $55.745 million net overcollection to ratepayers.

O R D E R

IT IS ORDERED that:

1. Application (A.) 00-03-038 filed by Pacific Gas and Electric Company is moot and is closed, except for intervenor compensation requests.

2. Southern California Edison Company (Edison) shall file an advice letter revising its preliminary statement in conformance with this decision and as prescribed in General Order 96-A. The advice letter shall eliminate accounts modify the Edison's Preliminary Statement as approved in this decision. The advice letter shall be effective when approved by the Energy Division.

3. Hearings are not necessary.

4. Edison's A.00-03-047 is closed, except for intervenor compensation requests.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A
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(END OF APPENDIX A)