

Decision 09-12-005 December 3, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider the
Annual Revenue Requirement Determination of
the California Department of Water Resources.

Rulemaking 09-06-018
(Filed June 18, 2009)

**DECISION ALLOCATING THE REVISED 2010 REVENUE
REQUIREMENT DETERMINATION
OF THE CALIFORNIA DEPARTMENT OF WATER RESOURCES**

Summary

In accordance with the Rate Agreement between the California Department of Water Resources (DWR) and this Commission, DWR submitted its 2010 revenue requirement determination of \$3.185 billion to this Commission on August 6, 2009. DWR then updated and made some changes to its revenue requirement and submitted a revised 2010 revenue requirement determination on October 27, 2009. The revised determination is for a revenue requirement of \$3.022 billion, a decrease of \$162 million as compared to the August 6, 2009 submission.

In today's decision, we allocate DWR's revised 2010 revenue requirement determination of \$3.022 billion to the electricity customers of Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) using the allocation methodology

adopted in Decision (D.) 05-06-060, as modified by D.08-11-056.¹ The allocation will result in DWR recovering its electric power costs and bond-related financing costs for 2010 from the electric customers of these three utilities. As shown in Appendix A of this decision, the Power Charges of \$2.126 billion, to provide the necessary funds to cover DWR's 2010 energy costs, are allocated to the customers of PG&E, SDG&E, and SCE at \$0.23139, \$0.06112, and \$0.03763 per kilowatt hour (kWh), respectively. The Bond Charge of \$896 million is allocated to the customers of all three utilities at \$0.00515 per kWh.

1. Background

The California Department of Water Resources (DWR) submitted its 2010 revenue requirement determination to the Commission on August 6, 2009. This submission consisted of the August 6, 2009 "Determination of Revenue Requirements for the Period January 1, 2010 Through December 31, 2010," the August 6, 2009 "Notice of Determination of Revenue Requirements," and an August 6, 2009 memorandum from Timothy J. Haines of DWR to President Peevey of the Commission. The memorandum notified the Commission of DWR's 2010 revenue requirement determination, and requested "that the Commission calculate, revise and impose Bond Charges in accordance with Article V of the Rate Agreement..." and "that the Commission calculate, revise and impose Power Charges in accordance with Article VI of the Rate Agreement..."²

¹ See D.08-12-006, pp. 7-8.

² The terms "Bond Charge" and "Power Charges" are defined in Article I of the Rate Agreement that was adopted in Decision (D.) 02-02-051.

On September 9, 2009, the Commission held a prehearing conference (PHC) to discuss the processing of DWR's 2010 revenue requirement determination. At the PHC, DWR informed the Administrative Law Judge (ALJ), as explained in DWR's 2010 revenue requirement determination, that it was planning to submit a revised 2010 revenue requirement determination to the Commission about October 27, 2009.

DWR initiated its revision of the 2010 revenue requirement by issuing a "Proposed Revision to the Determination of Revenue Requirements" on October 15, 2009. The deadline for submitting comments with DWR through its administrative process was October 22, 2009. DWR did not receive any comments on its proposed revision, and DWR found the revised 2010 revenue requirement to be just and reasonable.

On October 27, 2009, DWR submitted its revised 2010 revenue requirement determination to the Commission. This submission consists of the October 27, 2009 "Revision to the Determination of Revenue Requirements for the Period January 1, 2010 Through December 31, 2010," and the October 27, 2010 "Notice of 2010 Revised Revenue Requirement Determination."

At the September 9, 2009 PHC, the ALJ announced the procedure for the filing of a protest or objection to the allocation of the revised 2010 revenue requirement determination. That procedure was also set forth in the September 28, 2009 scoping memo and ruling (scoping memo). In accordance with this procedure, protests or objections were to be filed within three days of DWR's submission of the revised 2010 revenue requirement determination to the Commission. Shortly after DWR submitted and served its revised determination, the ALJ reminded the service list by e-mail of this procedure and directed that

any protest or objection to the allocation of the revised 2010 revenue requirement determination be filed by October 30, 2009.

No protests or objections to the revised 2010 revenue requirement determination were filed. Since no one protested or objected to the revised 2010 revenue requirement determination, we conclude that there are no contested issues concerning DWR's request to allocate its revised determination.

In accordance with the procedure set forth at the September 9, 2009 PHC, and as explained in the scoping memo, the ALJ then prepared the proposed decision.

2. Allocation of the Revised 2010 Revenue Requirement Determination

2.1. Background

The revised 2010 revenue requirement determination updated the information contained in the August 6, 2009 submission by incorporating DWR's preliminary actual operating results through September 30, 2009 and projected operating results through the end of 2009. In addition, the revised determination used an updated natural gas price forecast and related assumptions, updated the modeling assumptions and operational considerations that are incorporated in the PROMOD IV market simulation model, updated the interest rate on all unhedged variable rate bonds based on data through September 30, 2009, updated the projections of interest earnings on all account balances, and increased the projection of administrative and general expenses. The revised determination also updated the projection of Power Charges for 2010.

According to DWR, the revised 2010 revenue requirement determination results in a total decrease of \$162 million as compared to the original determination that was submitted on August 6, 2009. This decrease is made up of two components. The first component is a \$122 million decrease in DWR's

Power Charge Revenue Requirement. This \$122 million decrease is due primarily to a decrease in contract costs as a result of a decrease in the gas price forecast for 2009. The second component of the total decrease is due to a \$40 million decrease in the Bond Charge Revenue Requirement because of the net effect of a decrease in the projected interest rates for the unhedged variable rate portion of DWR's bond portfolio, and a higher than projected beginning 2010 balance in the Bond Charge account.

DWR's revised 2010 revenue requirement determination contains the information needed to recover the revenue requirement from the utilities' customers for calendar year 2010. The revised 2010 revenue requirement determination is based on the assumptions contained in Section D of DWR's revised determination. These assumptions include retail customer electric load, demand side management and conservation, power supply, natural gas prices, administrative and general expenses, and other considerations that affect DWR's revenues and expenses.

The Commission's obligation is to calculate, revise, and impose the Bond Charge and Power Charges on the customers of the three electric utilities. This obligation is contained in the Rate Agreement that was adopted by the Commission in D.02-02-051, and Water Code §§ 80110 and 80134. We perform these calculations using the allocation methodology that we adopted in D.05-06-060, as modified by D.08-11-056, the results of which appear in Appendix A of this decision.

2.2. Bond Charge

DWR requests that the Commission calculate, revise, and impose the Bond Charge on the three utilities so as to satisfy the Rate Covenant in Article V of the Rate Agreement between DWR and the Commission. The Bond Charge is

designed to recover DWR's costs associated with its bond financing activities from the utilities' customers.

DWR's revised 2010 revenue requirement determination states that its 2010 revenue requirement for bond-related costs is \$896 million. DWR's modeling in support of its revised determination indicates that it will receive the required \$896 million if the Commission sets the Bond Charge at \$0.00515 per kilowatt hour (kWh). We adopt DWR's requested 2010 Bond Charge, and the Bond Charge rate of \$0.00515 per kWh shall be allocated to the electric customers of Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE).

2.3. Power Charges

DWR requests that the Commission calculate, revise, and impose Power Charges on the three utilities. The Power Charges are designed to provide the funds necessary to satisfy DWR's revised 2010 revenue requirement determination for the cost of electric power sold to the utilities' customers.

DWR's revised determination states that its 2010 revenue requirement for the Power Charges is \$2.126 billion. We adopt DWR's requested 2010 Power Charges, and the Power Charges shall be calculated and allocated to the customers of PG&E, SDG&E, and SCE as shown in Appendix A of this decision. The Power Charges allocated to the customers of PG&E, SDG&E, and SCE are \$0.23139, \$0.06112, and \$0.03763 per kWh, respectively.

3. Treatment of Reductions in the Operating Reserves

One of the issues identified at the PHC and in the scoping memo is how the Commission should allocate to customers the 2010 reduction and future reductions in DWR's operating reserves. This issue arose because of the concern of the Alliance for Retail Energy Markets (AReM) that any reduction in DWR's

operating reserves resulting from the expiration of the DWR power contracts should be returned on a pro rata basis to all customers, including direct access customers. At the PHC, DWR and the parties agreed to meet to discuss how the Commission should treat reductions in DWR's operating reserves.

An informal workshop was held on October 5, 2009 to discuss this issue. DWR presented an accounting of how its operating reserves work.

AReM, and the other parties interested in this issue "now agree that the current operating reserves have solely been funded through the power charge," and "stipulate that any reduction (including reductions caused by contract novation) in the operating reserves should be returned to utility customers through a reduction in the power charge consistent with the same percentage share as they contributed (i.e., 47.5% to SCE's customers, 42.2% to PG&E's customers, and 10.3% to SDG&E's customers)." This agreement and stipulation was included in the October 19, 2009 motion for official notice that was filed by SCE, PG&E, SDG&E, AReM, The Utility Reform Network, and the Division of Ratepayer Advocates (joint parties). The motion requests that official notice be taken of the joint parties' stipulation as to the allocation of reductions to DWR's operating reserves for 2010 and beyond.³

We will grant the motion to take official notice of the joint parties' stipulation.

³ When the Proposed Decision was issued, the time for responding to this motion had not yet expired. However, since AReM and the other joint parties agreed to how the reduction to the operating reserves should be allocated, and because the parties have an opportunity to comment on the Proposed Decision, there is no need to delay action on this issue.

4. The Electric Service Provider Deposit and Reentry Fee

The September 28, 2009 scoping memo stated that this proceeding would determine where the issue of the deposit and reentry fee requirement for an electric service provider (ESP) should be addressed. This issue was raised in Assembly Bill (AB) 117, which was enacted into law in Chapter 838 of the Statutes of 2002, and addressed in D.03-12-015. In D.03-12-015, the Commission solicited comments about the size and form of the deposit requirement an ESP should have, and whether the deposit requirement should be used to cover the ESP's financial responsibility for any reentry fee. Although comments on this issue were filed, the Commission did not resolve this issue because direct access of electricity by end-use customers was suspended on February 1, 2001 as a result of Water Code § 80110.

Senate Bill (SB) 695 was recently signed by the Governor. (Stats. 2009, Ch. 337.) Section 2 of SB 695 added Pub. Util. Code § 365.1, while Section 9 of SB 695 eliminated subdivision (f) of Water Code § 80110. By eliminating subdivision (f) of Water Code § 80110, the suspension of direct access was eliminated from that code section. The addition of Pub. Util. Code § 365.1 allows limited direct access of electricity by nonresidential end-use customers up to a maximum allowable total annual limit that is to be determined by the Commission, and phased in over a period of not less than three years but no more than five years. Pursuant to Pub. Util. Code § 365.1(b), the Commission is to adopt and implement a reopening schedule by April 11, 2010.

We anticipate implementing the direct access provision of SB 695 in Rulemaking (R.) 07-05-025 or another appropriate proceeding. The ESP deposit and reentry fee requirement should also be addressed in that proceeding, and therefore will not be addressed in this proceeding.

5. Rehearing and Judicial Review

This decision construes, applies, implements, and interprets the provisions of AB1X (Chapter 4 of the Statutes of 2001-2002 First Extraordinary Session), and relates to the implementation of DWR's revenue requirement and the establishment and implementation of the Bond Charge and Power Charges necessary to recover that revenue requirement. Therefore, pursuant to Pub. Util. Code §1731(c), any application for rehearing of this decision is due within 10 days after the date of issuance of this decision. The procedures contained in Pub. Util. Code § 1768 apply to the judicial review of a Commission order or decision that interprets, implements, or applies the provisions of AB1X.

6. Comments on Proposed Decision

The proposed decision of ALJ John S. Wong in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed.

7. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner, and John S. Wong is the assigned ALJ in this proceeding.

This proceeding will remain open for possible changes to the operating and servicing order and agreements as a result of the California Independent System Operator's implementation of the Market Redesign and Technology Upgrade (MRTU), and to resolve future revenue requirement determinations if they are submitted within 18 months of the date the scoping memo was issued. If the MRTU changes or DWR's new revenue requirement determination is not submitted to us before the expiration of the 18 months, we may close this proceeding and initiate a new rulemaking to address these items.

Findings of Fact

1. DWR submitted its 2010 revenue requirement determination to the Commission on August 6, 2009.
2. A PHC was held on September 9, 2009 to discuss the processing of DWR's 2010 revenue requirement determination.
3. DWR's revised 2010 revenue requirement determination was submitted to the Commission on October 27, 2009.
4. No protests or objections to the allocation of DWR's revised 2010 revenue requirement determination were filed.
5. The main differences between the August 6, 2009 determination of \$3.185 billion and the October 27, 2009 revised 2010 revenue requirement determination of \$3.022 billion are due to a decrease in contract costs as a result of the decrease in the gas price forecast for 2009, and a decrease in the Bond Charge costs due to the net effect of a decrease in the projected interest rates for the unhedged variable rate portion of DWR's bond portfolio and a higher than projected beginning 2010 balance in the Bond Charge account.
6. DWR's revised 2010 revenue requirement determination contains the information needed to recover the revenue requirement from the utilities' customers for calendar year 2010.
7. The Bond Charge is designed to recover DWR's costs associated with its bond financing activities from the utilities' customers.
8. DWR's revised 2010 revenue requirement for bond-related costs is \$896 million, which results in a Bond Charge of \$0.00515 per kWh.
9. The Power Charges are designed to provide the funds necessary to satisfy DWR's revised 2010 revenue requirement for the cost of electric power sold to the utilities' customers.

10. DWR's revised 2010 revenue requirement for the Power Charge is \$2.126 billion, which results in the allocated Power Charges to the customers of the three electric utilities as shown in Appendix A.

11. Following an informal workshop of how DWR's operating reserves work, the joint parties agreed to a stipulation as to how reductions in the operating reserves should be returned to utility customers.

12. SB 695 allows limited direct access of electricity by nonresidential end-use customers, and requires the Commission to implement a plan by April 11, 2010 to carry out Pub. Util. Code § 365.1.

Conclusions of Law

1. There are no contested issues concerning DWR's request to allocate the revised 2010 revenue requirement determination.

2. The Commission's obligation is to calculate, revise, and impose the Bond Charge and Power Charges on the customers of the three electric utilities.

3. DWR's requested 2010 Bond Charge and Power Charges should be adopted and allocated to the customers of PG&E, SDG&E, and SCE.

4. The joint parties' motion for official notice of their stipulation as to the allocation of reductions to DWR's operating reserves for 2010 and beyond should be granted.

5. The ESP deposit and reentry fee requirement should be addressed in the Commission proceeding which implements Pub. Util. Code § 365.1, and should not be addressed in this proceeding.

6. This decision construes, applies, implements, and interprets the provisions of AB1X, and relates to the implementation of DWR's revenue requirement and the establishment and implementation of the Bond Charge and Power Charges necessary to recover that revenue requirement.

O R D E R

IT IS ORDERED that:

1. The allocation to the customers of Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE), as shown in Appendix A of this decision, of the California Department of Water Resources' 2010 revenue requirement determination as revised on October 27, 2009, is adopted.
 - a. As shown in Appendix A of this decision, the 2010 Power Charges allocated to the electric customers of PG&E, SDG&E, and SCE are set at \$0.23139, \$0.06112, and \$0.03763 per kilowatt hour (kWh), respectively, and shall go into effect on January 1, 2010.
 - b. The 2010 Bond Charge allocated to the electric customers of PG&E, SDG&E, and SCE is set at \$0.00515 per kWh, and shall go into effect on January 1, 2010.
2. Within 10 days of today's date, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company shall file Tier 1 advice letters, as provided for in General Order 96-B, with revised tariffs that reflect the adopted Bond Charge and Power Charges. These new tariffs shall be effective beginning January 1, 2010.
3. The October 19, 2009 motion for official notice of the joint parties' stipulation as to how the allocation of reductions to the California Department of Water Resources' operating reserves for 2010 and beyond should be treated is granted.

4. The issue of the deposit and reentry fee requirement for electric service providers shall be addressed in the Commission proceeding which implements Pub. Util. Code § 365.1.

5. Pub. Util. Code § 1731(c) (applications for rehearing are due within 10 days after the date of issuance of the order or decision) and Pub. Util. Code § 1768 (procedures applicable to judicial review) are applicable to this decision.

6. Rulemaking 09-06-018 remains open.

This order is effective today.

Dated December 3, 2009, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners