

Decision 10-12-037 December 16, 2010

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company  
Proposing Cost of Service and Rates for Gas  
Transmission and Storage Services for the period  
2011-2014 (U39G).

Application 09-09-013  
(Filed September 18, 2009)

(See Appendix A for List of Appearances.)

**INTERIM DECISION CONCERNING THE MAKING OF RATES  
EFFECTIVE JANUARY 1, 2011**

**1. Summary**

Pacific Gas and Electric Company (PG&E) filed a motion requesting an order allowing the proposed Gas Accord V Settlement revenue requirements and rates to go into effect on January 1, 2011, or in the alternative, to make the revenue requirements resulting from a subsequent final decision in this proceeding effective as of January 1, 2011.

Today's decision grants the alternative request of PG&E to make the revenue requirements (and related elements) resulting from a subsequent final decision, which will address the motion to adopt the Gas Accord V Settlement and the contested issues which were litigated in this proceeding, to become effective as of January 1, 2011.

## **2. Procedural Background**

Pacific Gas and Electric Company (PG&E) filed its motion on October 8, 2010 requesting that the Commission issue a decision addressing the requests in its motion before the end of 2010.

A response in support of PG&E's motion was filed on October 25, 2010 by Dynegy Moss Landing, LLC, Dynegy Morro Bay, LLC,<sup>1</sup> and the Northern California Generation Coalition (NCGC). A response in opposition to PG&E's motion was filed on October 25, 2010 by Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E).

## **3. Discussion**

### **3.1. Introduction**

PG&E requests that a Commission decision be adopted prior to December 31, 2010, which will either: (1) allow the revenue requirements and rates agreed to by the settlement parties in the Gas Accord V Settlement<sup>2</sup> to go into effect on January 1, 2011, subject to possible adjustment; or (2) allow the revenue requirements (and related elements) that the Commission ultimately determines through a final decision to be made effective on January 1, 2011, regardless of whether the Commission's final decision is issued after that date. PG&E prefers that the Commission adopt the first method.

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<sup>1</sup> These two companies are referred to collectively as "Dynegy."

<sup>2</sup> The Gas Accord V Settlement was entered into by the settlement parties. In an August 20, 2010 motion, the settlement parties request that the proposed Gas Accord V Settlement be adopted by the Commission for the four-year period beginning January 1, 2011. SoCalGas and SDG&E filed a response in opposition to the settlement parties' motion. The four issues raised by SoCalGas and SDG&E were litigated in evidentiary hearings that were held on October 25 and 26, 2010.

PG&E filed its October 8, 2010 motion because the extensions in the procedural schedule that resulted from the settlement parties' negotiation of the proposed Gas Accord V Settlement, and the evidentiary hearings that were held in October 2010, on the issues raised by SoCalGas and SDG&E, make it unlikely that a Commission decision on these issues will be adopted before the end of 2010. Depending on the outcome of the litigated issues, the rates in the proposed settlement could be affected. In accordance with the schedule that the parties previously agreed to, a proposed decision on the motion to adopt the proposed settlement and the litigated issues will not be issued until early February 2011. (See 12 R.T. 1222.)

PG&E's October 8, 2010 motion points out that the settlement parties to the Gas Accord V Settlement acknowledged that backbone and local transmission rates may need to be adjusted as a result of the litigated issues. The settlement parties, however, prefer to have the proposed Gas Accord V Settlement revenue requirements and rates in place on January 1, 2011. In anticipation that approval of the Gas Accord V Settlement might be delayed, section 1.9 of the proposed settlement provides for the filing of a motion by PG&E to seek "Commission approval to implement the Settlement Rates on January 1, 2011, subject to refund or adjustment...."

### **3.2. PG&E's Preferred Method**

PG&E's preferred method is for the Commission to issue a decision before December 31, 2010, that allows the revenue requirements and rates agreed to by the settlement parties in the proposed Gas Accord V Settlement to go into effect on January 1, 2011, subject to possible adjustment. PG&E and the settlement parties prefer this method because of the series of compromises that they reached concerning the revenue requirements and rates for PG&E's backbone, local

transmission and storage services. According to the motion, the settlement parties reached a proposed settlement after analyzing and vetting all aspects of this rate case, including the proposed capital expenditures, and operating and maintenance expenditures. Each of the settlement parties made compromises on many of the issues “including revenue requirements, throughput, local transmission bill credits, and backbone rate path differentials.” (PG&E Motion at 4.) The settlement parties also agreed to a revenue sharing mechanism that shares over-collections and under-collections in some instances. In order to reflect the settlement parties’ compromises and agreements that are embodied in the proposed Gas Accord V Settlement, the settlement parties strongly prefer to have the settled revenue requirements and rates in place on January 1, 2011.

PG&E contends that the issues raised by SDG&E and SoCalGas regarding on-system delivery rights for its Schedule G-XF contract, and participation in the revenue sharing mechanism, will not impact the revenue requirements that the settlement parties have agreed to for 2011. However, if SDG&E and SoCalGas prevail on these issues, the allocation of the revenue requirements may need to be adjusted which may result in higher rates for on-system PG&E customers. Since the revenue requirements agreed to by the settlement parties will not change, PG&E contends that it is reasonable for the Commission to allow the 2011 settled revenue requirements to go into effect and to be collected in rates beginning January 1, 2011.

PG&E further contends that even if SDG&E and SoCalGas prevail on the Schedule G-XF and revenue sharing issues, the Gas Accord V Settlement’s backbone and local transmission rates should still be allowed to go into effect on January 1, 2011. That is because the backbone rates under the Gas Accord V Settlement for 2011 are in some instances lower than the current 2010 backbone

rates. According to PG&E's motion, in those instances in which the settlement rates are higher than the current rates, the settlement parties would prefer to begin paying those rates on January 1, 2011, rather than to delay the impact of the increases and to make up the shortfall through even higher rates later.

PG&E points to the Commission's decision in Decision (D.) 93-10-069 (51 CPUC2d 674) in which the Commission authorized temporary interim rates before a final decision was issued. In that decision, the Commission granted PG&E's motion requesting temporary interim rates for PG&E's Line 401 expansion service, and determined that such relief did not prejudice or compromise the outcome of issues to be determined by the final decision in the proceeding.

PG&E also cites to several decisions of the Federal Energy Regulatory Commission (FERC) where the FERC has permitted settlement rates to go into effect prior to a final decision.

PG&E further contends that granting the request to implement the 2011 Gas Accord V Settlement revenue requirements and rates on January 1, 2011 will not prejudice or compromise the ultimate outcome of this proceeding. That is because section 12.1 of the Gas Accord V Settlement provides for the possibility that the rates reflected in the settlement may be adjusted should SoCalGas prevail on its claim to on-system delivery rights.

Dynegy and NCGC support PG&E's motion, and point out that the proposed Gas Accord V Settlement provides for local transmission bill credits for Units 1 and 2 of the Moss Landing Power Plant, and for four members of NCGC (Modesto Irrigation District, Turlock Irrigation District, City of Redding, and City of Santa Clara). They point out that the calculation of the revenue requirements and local transmission rates in the Gas Accord V Settlement reflects

the effect of these bill credits. If the Commission authorizes the revenue requirements and local transmission rates to go into effect on January 1, 2011, Dynegy and NCGC recommend that the Commission also authorize these local transmission bill credits to take effect on January 1, 2011, subject to adjustment if the revenue requirements or rates that are ultimately authorized by the Commission differ from the revenue requirements or rates adopted in the Gas Accord V Settlement.

SoCalGas and SDG&E oppose PG&E's motion because if the motion is granted, it will result in the adoption of rates which SoCalGas and SDG&E are disputing. SoCalGas and SDG&E contend that the settlement parties have only requested that the proposed Gas Accord V Settlement be adopted, and that the settlement parties have not yet met their burden of proof. SoCalGas and SDG&E contend that granting PG&E's motion will result in PG&E's customers being charged rates that the Commission has not yet determined to be just and reasonable in light of the whole record, and in the public interest.

SoCalGas and SDG&E contend that PG&E's references to its general rate cases as examples of where the Commission allowed rates to be implemented on an interim basis are factually distinguishable from this proceeding. SoCalGas and SDG&E contend that the Commission authorized the interim rates in the PG&E examples because of unavoidable procedural delays that were not primarily attributable to any one party. In the situation at hand, SoCalGas and SDG&E contend that the procedural delay was primarily attributable to PG&E, who requested in a May 12, 2010, motion that the procedural schedule be extended to allow for additional time for PG&E to engage in settlement negotiations, and for an amended procedural schedule that moved the date for a proposed decision to February 7, 2011.

We decline to adopt PG&E's request to make the revenue requirements and rates set forth in the proposed Gas Accord V Settlement effective as of January 1, 2011 because we have not had the time to fully evaluate whether the proposed Gas Accord V Settlement should be adopted by the Commission. Two of the four issues that SoCalGas and SDG&E raised in opposition to the August 20, 2010 motion to adopt the settlement, and which were litigated in October 2010, could affect some of the rates in the proposed Gas Accord V Settlement. However, before the revenue requirements and rates in this proposed settlement are made effective, the Commission should first determine whether the proposed Gas Accord V Settlement is reasonable in light of the whole record, consistent with the law, and in the public interest. (See Commission's Rules of Practice and Procedure (Rules), Rule 12.1(d).) This becomes even more important when some of the rates agreed to in the proposed settlement have been contested by non-settlement parties. Due to the extensions that were granted to allow the settlement parties more time to negotiate the proposed settlement and to allow SoCalGas and SDG&E to raise and litigate their contested issues, that has prevented the Commission from issuing a decision on the issues in this proceeding before the end of 2010.<sup>3</sup> A thorough review and analysis of the proposed Gas Accord V Settlement is warranted before the revenue requirements and rates in that proposed settlement are adopted and made effective by this Commission. Accordingly, PG&E's request in its October 8, 2010 motion for an order before the end of December 2010, to

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<sup>3</sup> See the written rulings in this proceeding for May 19, 2010, August 23, 2010, September 15, 2010, and October 15, 2010.

make the revenue requirements and rates in the proposed Gas Accord V Settlement effective as of January 1, 2011, is denied.

### **3.3. PG&E's Alternative Method**

If the Commission decides not to grant PG&E's preferred approach, then PG&E requests that the "Commission issue an order making the revenue requirements that the Commission ultimately determines through a final decision in Gas Accord V effective January 1, 2011, regardless of whether the Commission's final decision issues after that date." (PG&E Motion at 10.) Thus, under this alternative method, the final decision would make the 2011 revenue requirements effective as of January 1, 2011 and would be fully collected in rates over the remaining months of 2011.

PG&E's motion points out that the Commission adopted this approach in two decisions that involved PG&E's general rate cases. In those two decisions, "unavoidable procedural delays not primarily attributable to any one party," and "good faith settlement efforts" justified allowing the test year revenue requirements to become effective on January 1. (See D.02-12-073 and D.06-10-033.)

The proposed Gas Accord V Settlement was agreed to by the settlement parties, and the August 20, 2010 motion requests the approval and adoption of that proposed settlement. The two issues that SoCalGas and SDG&E raised, which are pertinent to the proposed settlement, make up a small portion of the other issues that the settlement parties have agreed to. In addition, the compromises that the settlement parties reached on the various issues reflect a give and take by those parties, as well as a desire to have the agreed-upon revenue requirements in effect on January 1, 2011.



We also note that as part of the proposed Gas Accord V Settlement, the operations and maintenance (O&M) expenses and the capital expenditures contain agreements as to the level of expenditures for pipeline integrity management during the four-year rate cycle. In a September 15, 2010 ruling, which was issued after the pipeline explosion and fire involving the PG&E pipeline in San Bruno, the parties were asked to comment on whether the proposed Gas Accord V Settlement provides sufficient funds to address pipeline safety, integrity, and reliability concerns. In PG&E's September 20, 2010 response to the September 15, 2010 ruling, PG&E made clear that it is committed to spending the full amount that has been agreed to in the proposed settlement for the O&M and capital expenditures related to pipeline safety, integrity, and reliability efforts. In the September 30, 2010 reply comments to the ruling, the non-PG&E settlement parties stated that the proposed settlement "provides PG&E with virtually all of the funding that it requested for integrity management, safety and reliability work on its transmission system." The non-PG&E settlement parties also stated that the Commission should proceed to consider the proposed Gas Accord V Settlement in accordance with the procedural schedule, while PG&E recommended that the Commission issue a decision on the proposed settlement and the contested issues by December 31, 2010 since the O&M and capital expenditures "contemplated by the settlement are necessary for PG&E to operate its gas transmission and storage business beginning January 1, 2011...." (PG&E September 20, 2010 Response at 3.)

Based on the compromises that the settlement parties reached in the proposed Gas Accord V Settlement, the relatively small impact that the contested issues raised by SoCalGas and SDG&E will have in relationship to the other issues that have been agreed upon in the proposed settlement, and the need to

ensure that there are sufficient funds for pipeline safety, integrity, and reliability efforts beginning on January 1, 2011, the Commission should allow the subsequent decision in this application, which will address the August 20, 2010 motion to adopt the Gas Accord V Settlement and the issues raised and litigated by SoCalGas and SDG&E, to make the revenue requirements effective as of January 1, 2011. Accordingly, PG&E's alternative in its October 8, 2010 motion to allow the revenue requirements (and other elements of the Gas Accord V Settlement that are inextricably linked to the revenue requirements), which are to be decided in a subsequent decision, to become effective as of January 1, 2011, is granted.

Today's decision does not prejudice the Commission's decision on the motion to adopt the Gas Accord V Settlement issues or on the contested issues raised by SoCalGas and SDG&E.

#### **4. Comments of Proposed Decision**

The proposed decision of Administrative Law Judge (ALJ) John S. Wong in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3. Opening Comments were filed on December 6, 2010 by PG&E. No reply comments were filed. PG&E's comments have been considered and incorporated into this decision.

#### **5. Assignment of Proceeding**

Timothy Alan Simon is the assigned Commissioner and John S. Wong is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. PG&E's October 8, 2010 motion requests that the Commission issue a decision before December 31, 2010, which either allows the revenue requirements and rates agreed to in the proposed Gas Accord V Settlement to go into effect on

January 1, 2011, or to allow the revenue requirements in a subsequent decision that addresses the motion to adopt the Gas Accord V Settlement and the contested issues that were litigated, to become effective as of January 1, 2011.

2. The transmission revenue requirements and local transmission rates in the proposed Gas Accord V Settlement reflect the effect of the bill credits that the settlement parties agreed to.

3. SoCalGas and SDG&E oppose the October 8, 2010 motion because, if granted, it will result in the adoption of rates which SoCalGas and SDG&E are disputing.

4. Two of the four issues that SoCalGas and SDG&E raised in opposition to the August 20, 2010 motion to adopt the settlement, and which were litigated in October 2010, could affect some of the rates in the proposed Gas Accord V Settlement.

5. The Commission has been prevented from issuing a decision on the issues in this proceeding before the end of 2010 due to the extensions that were granted to allow the settlement parties more time to negotiate the proposed settlement and to allow SoCalGas and SDG&E to raise and litigate their contested issues.

6. Under PG&E's alternative request in its October 8, 2010 motion, the final decision would make PG&E's 2011 revenue requirements effective as of January 1, 2011 and would be fully collected in rates over the remaining months of 2011.

7. The two issues that SoCalGas and SDG&E raised, which are pertinent to the proposed Gas Accord V Settlement, make up a small portion of the other issues that the settlement parties have agreed to.

8. The compromises that the settlement parties reached on the various issues reflect a give and take by those parties, as well as a desire to have the agreed-upon revenue requirements and rates in effect on January 1, 2011.

9. The proposed Gas Accord V Settlement contains agreements as to the level of O&M expenses and capital expenditures for pipeline integrity management during the four-year rate cycle.

### **Conclusions of Law**

1. A thorough review and analysis of the proposed Gas Accord V Settlement is warranted before the revenue requirements and rates in that proposed settlement are adopted and made effective by this Commission.

2. PG&E's request in its October 8, 2010 motion for an order before the end of December 2010, to make the revenue requirements and rates in the proposed Gas Accord V Settlement effective as of January 1, 2011, should be denied.

3. PG&E's alternative request in its October 8, 2010 motion to allow the revenue requirements (and other elements of the Gas Accord V Settlement that are inextricably linked to the revenue requirements), which are to be decided in a subsequent decision, to become effective as of January 1, 2011, should be granted.

4. Today's decision does not prejudice the Commission's decision on the motion to adopt the Gas Accord V Settlement issues or on the contested issues raised by SoCalGas and SDG&E.

### **INTERIM ORDER**

1. The October 8, 2010 motion of Pacific Gas and Electric Company is granted insofar as to allow the revenue requirements (and other elements of the Gas Accord V Settlement that are inextricably linked to the revenue requirements), which are to be decided in a subsequent decision addressing the August 20, 2010 motion to adopt the Gas Accord V Settlement and the contested issues that were litigated, to become effective as of January 1, 2011. The first request in Pacific Gas and Electric Company's motion to make the revenue requirements and rates contained in the Gas Accord V Settlement effective as of January 1, 2011, is denied.

2. Application 09-09-013 remains open.

This order is effective today.

Dated December 16, 2010, at San Francisco, California.

MICHAEL R. PEEVEY

President

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**(END OF APPENDIX A)**