

Decision 02-09-045 September 19, 2002

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

Application of Southern California Edison Company (U 338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.

Application 00-11-038  
(Filed November 16, 2000)

Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan.  
(U 39 E)

Application 00-11-056  
(Filed November 22, 2000)

Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.

Application 00-10-028  
(Filed October 17, 2000)

**ORDER CLARIFYING DECISION 02-02-052**

In Decision (D.) 02-02-052, the Commission implemented the California Department of Water Resources' (DWR) revenue requirement for the period January 17, 2001 through December 21, 2002. That Decision, as modified by D.02-03-062,<sup>1</sup> established charges to recover that revenue requirement. Ordering Paragraph 4 of the Decision states:

<sup>1</sup> "Order Modifying Decision (D.) 02-02-052 and Decision (D.) 02-03-003 and Denying Rehearing of These Decisions, as Modified."

The cents per kWh charges referenced in Ordering Paragraph 3 above shall remain in effect for each utility through December 31, 2002 (unless DWR indicates an earlier adjustment is needed), and shall provide recovery of the DWR revenue requirement applicable through that period. Updated DWR charges shall be scheduled to take effect for customers in each of the utilities' service territories beginning on January 1, 2003, covering the DWR revenue requirement for the forecast period from January 1, 2003 through December 31, 2003.

The Decision contemplated that DWR would submit its revenue requirement for 2003 on June 1, 2002. (D.02-02-052 at 77-78.) In fact, DWR submitted its 2003 revenue requirement to the Commission on August 19, 2002. The Rate Agreement between DWR and the Commission requires the Commission to "calculate and impose Power Charges no later than 120 days following the delivery to the Commission by the Department of a statement of . . . Retail Revenue Requirements that complies with Article IV [of the Rate Agreement]." (Rate Agreement section 6.1(d).) Thus, despite the late filing of DWR's revenue requirement for 2003, the Commission remains obligated to impose Power Charges for 2003 in time for them to go into effect on January 1, 2003.<sup>2</sup> Furthermore, the Commission has already commenced consideration of DWR's Bond Charges in this proceeding. Evidentiary hearings have been convened, briefs have been submitted, and a proposed decision addressing the bond charges for 2003 is targeted to be issued on or before September 24, 2002. Thus, the Commission fully expects that both DWR Power Charges and DWR

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<sup>2</sup> It is more than 120 days from August 19 to December 31, so the Commission can use the 120 days available to it, and still render a decision shortly before the end of 2002.

Bond Charges for 2003 will be in effect on January 1, 2003, as originally contemplated.

Nevertheless, the language of Ordering Paragraph 4 differs from the Commission's typical practice, under which Commission-ordered rates and charges remain in effect until further order of the Commission. In other words, once the Commission sets rates or charges, they normally remain in effect until expressly changed or superseded by the Commission. This has been the Commission's practice even when the Commission expects to re-set rates or charges at a definite time in the future. Ordering Paragraph 4, however, only states that the 2002 DWR charges are to "remain in effect . . . through December 31, 2002."

Because of this particular language, the California State Treasurer's Office sent the Commission a letter, dated September 9, 2002, conveying concerns about a possible gap in the ongoing revenue flow if the previously set charges could be considered to expire on January 1, 2003, if the Commission does not set new DWR charges prior to that date. Specifically, the letter recommended that "the Commission amend the current Rate Order or take other appropriate action to make clear that DWR's charges do remain in effect until replacement Power and Bond Charges are effective and to alleviate any uncertainty surrounding a potential DWR funding gap."<sup>3</sup>

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<sup>3</sup> While it is not clear that the DWR charges would actually expire, we understand how the language of Ordering Paragraph 4 could create such a concern. The State Treasurer's Office has indicated that this concern is sufficient to cause confusion and uncertainty in the financial markets. The letter from the State Treasurer's Office is attached as Appendix A.

We agree that there is an ambiguity that should be clarified. Since it has never been the intention of the Commission to create any gap between DWR's 2002 and 2003 charges, and since it would make no sense for DWR not to recover charges from ratepayers while continuing to incur expenses,<sup>4</sup> on our own motion we will modify, for the limited purpose of clarification, the language of Ordering Paragraph 4 of D.02-02-052.

Accordingly, although we fully expect DWR's charges for 2003 to be in place on January 1, 2003, we will revise our prior order to make it clear that there will not be any period at the end of 2002 or beginning of 2003 during which DWR charges are not in effect. We are issuing this clarification in consideration of the concern that there could be a perceived gap in DWR's revenue recovery, and in light of our commitment to ensure an expeditious and favorable financing of the DWR Bonds. This clarification will also conform the wording of the Decision to the Commission's general practice.

We will therefore order that the DWR charges referenced in Ordering Paragraphs 3 and 4 of D.02-02-052 (as modified by D.02-03-062)<sup>5</sup> are to remain in effect until further order of the Commission. When we establish DWR's charges for 2003 (which we fully intend to do before January 1, 2003), we will then set a cut-off date for DWR's 2002 charges. Consistent with our original intent, this will ensure that there cannot be any inadvertent gap in the DWR charges.

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<sup>4</sup> Indeed, Ordering Paragraph 4 expressly contemplates that DWR's 2003 charges will go into effect immediately upon expiration of its 2002 charges, without any gap.

<sup>5</sup> D.02-03-062 modified Ordering Paragraph 3 and directed the utilities to remit to DWR charges in cents-per-kilowatt-hour (kWh) of 9.211 for Pacific Gas & Electric, 9.706 for Southern California Edison and 7.742 for San Diego Gas & Electric. (D.02-03-062, Ordering Paragraph 1.hh.)

The purpose of the Commission in modifying the language of Ordering Paragraph 4 of D.02-02-052 is solely to clarify the identified language to make it consistent with the Commission's prior (and continued) intent. This limited clarification does not give rise to any material disputed issues of fact. Accordingly, no evidentiary hearings are necessary, and this Decision is being distributed for comment pursuant to Public Utilities Code § 311(g) and Rule 77.7 et seq.

Furthermore, we will shorten the review-and-comment period pursuant to Rule 77.7(f)(9). Rule 77.7(f)(9) of the Commission's Rules of Practice and Procedure provides in relevant part that:

"...the Commission may reduce or waive the period for public comment under this rule...for a decision where the Commission determines, on the motion of the party or on its own motion, that public necessity requires reduction or waiver of the 30-day period for public review and comment. For purposes of this subsection, "public necessity" refers to circumstances in which the public interest in the Commission adopting a decision before expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day period for review and comment. "Public necessity" includes, without limitation, circumstances where failure to adopt a decision before expiration of the 30-day review and comment period...would cause significant harm to public health or welfare. When acting pursuant to this subsection, the Commission will provide such reduced period for public review and comment as is consistent with the public necessity requiring reduction or waiver."

The public interest in quickly addressing the need to expedite bond financing outweighs the need for an extended comment period on a limited clarification that merely carries out the Commission's original intent. By providing a reduced period for review and comment we balance the need for parties' input with the need for timely action. Comments were filed on

September 17, 2002, by Pacific Gas & Electric. We have considered those comments and given them the appropriate weight.

### **Findings of Fact**

1. The language of Ordering Paragraph 4 of D.02-02-052 could be interpreted to mean that DWR charges could expire at the end of 2002 if the Commission has not set DWR charges for 2003 by January 1, 2003.

2. This interpretation of Ordering Paragraph 4 is inconsistent with the Commission's intent at the time it issued D.02-02-052.

3. The public interest in quickly addressing the need to expedite bond financing outweighs the need for an extended comment period on a limited clarification that merely carries out the Commission's original intent.

### **Conclusions of Law**

1. The Commission should clarify the language of Ordering Paragraph 4 of D.02-02-052 to be consistent with the Commission's intent.

2. No material disputed issues of fact are present.

3. Evidentiary hearings are not necessary.

4. It is reasonable to shorten the time for comment.

## **O R D E R**

### **IT IS ORDERED** that:

1. The DWR charges referenced in Ordering Paragraphs 3 and 4 of Decision 02-02-052 (as modified by D.02-03-062) are to remain in effect until further order of the Commission.

2. The language of Ordering Paragraph 4 is modified to read:

The cents per kWh charges referenced in Ordering Paragraph 3 above shall remain in effect for each utility until further order of the

Commission. Updated DWR charges shall be scheduled to take effect for customers in each of the utilities' service territories beginning on January 1, 2003, covering the DWR revenue requirement for the forecast period from January 1, 2003 through December 31, 2003.

This order is effective today.

Dated September 19, 2002, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
CARL W. WOOD  
GEOFFREY F. BROWN  
MICHAEL R. PEEVEY  
Commissioners

**APPENDIX A**

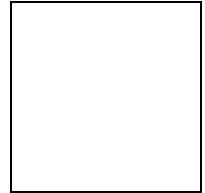
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STATE OF CALIFORNIA

*Philip Angelides, Treasurer*

**OFFICE OF THE TREASURER**

P. O. BOX 942809  
SACRAMENTO, CA 94209-0001



September 9, 2002

Loretta M. Lynch, President  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, California 94102

Re: State of California Department of Water Resources Power Supply Revenue Bonds

Dear President Lynch:

This letter is submitted to the California Public Utilities Commission (the "Commission") by the California State Treasurer's Office (the "STO") in response to concerns raised by credit analysts approving the upcoming Power Supply Revenue Bonds (the "Bonds") of the Department of Water Resources ("DWR"). These concerns regard the provision in the Commission's February 21, 2002, Rate Order (which decision was corrected on March 21, 2002) (D. 02-02-052) (the "Rate Order") referencing a period running through December 31, 2002, for DWR charges established by the Commission pursuant to the Rate Order to recover DWR's Revenue Requirement for 2001-02. These key credit analysts have expressed concern that if, for whatever reason, the Commission is not able to approve Power and Bond Charges that take effect on or before January 1, 2003, the reference to December 31, 2002, in the Rate Order makes it unclear whether there will be an ongoing, uninterrupted source of revenue to fund DWR's power supply program, including to make payments on the Bonds, subsequent to such date.

We recognize that under the terms of the Rate Agreement, the Commission is obligated to act within 120 days of its receipt of a new DWR Revenue Requirement submittal to establish new Power Charges and Bond Charges and thus must act prior to December 31, 2002. Moreover, we are confident that the Commission will do so. However, in order to avoid confusion and concern in the financial markets, we respectfully request that the Commission amend the current Rate Order or take other appropriate action to make clear that DWR's charges do remain in effect until replacement Power and Bond Charges are effective and to alleviate any uncertainty surrounding a potential DWR funding gap.

To enable the financing team to alleviate the concerns prior to publication and distribution of the offering documents for the Bonds in the coming weeks, we further request that this matter be considered by the Commission at its September 19 meeting.



**APPENDIX A**

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We greatly appreciate the willingness of the Commission to consider this request on short notice. We believe it is essential that the Commission approve the recommended action expeditiously in order to permit issuance of the DWR Bonds at the earliest possible date and at the most favorable interest rates, to protect the interests of ratepayers and facilitate the repayment of the State's General Fund as soon as practicable.

Thank you for your assistance and attention to this important matter.

Sincerely,

/s/ BARBARA LLOYD

Barbara Lloyd

Deputy Treasurer

cc: Geoff Brown, CPUC Commissioner  
Henry Duque, CPUC Commissioner  
Michael Peevey, CPUC Commissioner  
Carl Wood, CPUC Commissioner  
Carol Brown, CPUC Interim Chief Administrative Law Judge  
Paul Clanon, CPUC Director, Energy Division  
Gary Cohen, CPUC General Counsel

**(END OF APPENDIX A)**