Decision 05-12-046 December 15, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority, Among other things, to Increase Revenue Requirements for Electric and Gas Service and to Increase Rates and Charges for Gas Service Effective on January 1, 2003. (U 39 M)	Application 02-11-017 (Filed November 8, 2002)
Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and facilities of Pacific Gas and Electric Company. (U 39 M)	Investigation 03-01-012 (Filed January 16, 2003)
Application of Pacific Gas and Electric Company Pursuant to resolution E-3770 for Reimbursement of Costs Associated with Delay in Implementation of PG&E's New Customer Information System Caused by the 2002 20/20 Customer Rebate Program. (U 39 M)	Application 02-09-005 (Filed September 6, 2002)

OPINION GRANTING IN PART, AND DENYING IN PART, PG&E'S PETITION TO MODIFY DECISION 04-05-055 REGARDING PENSION CONTRIBUTIONS

Summary

On July 13, 2005, Pacific Gas and Electric Company filed a Petition to Modify Decision (D.) 04-05-055 regarding the issue of annual contributions to PG&E's retirement plan trust. D.04-05-055 established the Test Year (TY) 2003 revenue requirement for Pacific Gas and Electric Company. The decision denied PG&E's request for a $128.6 million pension contribution, finding that the funding status of the plan did not justify a $128.6 million annual contribution in TY 2003. In its Petition, PG&E requests authorization (1) to resume pension contributions of $325 million, with an associated annual revenue requirement of $185 million, beginning on January 1, 2006 for four years, and (2) to file an application separate from its 2007 test year GRC to justify its annual pension contribution for the years 2006 through 2009.

This decision approves in part, and denies in part, PG&E's Petition for Modification of Decision (D.) 04-05-055. This decision authorizes PG&E to resume pension contributions in 2006 only with a revenue requirement of $185 million, and to recover that revenue requirement in rates beginning January 1, 2006, subject to refund to ratepayers if the Commission rules otherwise on the merits of PG&E's application. Pension contributions, and the associated revenue requirement for the following three years, 2007 through 2009, shall be a part of, and considered along with PG&E's general rate case (GRC) application, scheduled to be filed in December 2005.

Background

D.04-05-055 approved two comprehensive settlement agreements filed by the majority of the parties in the PG&E's TY 2003 General Rate Case (GRC), resulting in a 10.44% increase in electric distribution revenues, a 5.90% increase in gas distribution revenues, and a 4.35% increase in generation revenues for

PG&E. The terms of the settlements included the agreement that PG&E would not file its next GRC application until late 2006, for a TY 2007 GRC, resulting in a GRC term that is one year longer than the typical three-year GRC term. The only issue the settlements did not address was PG&E's request that the Commission approve a $128.6 million contribution to PG&E's Retirement Plan trust. In the proceeding, the parties involved in the settlement requested that the Commission "…(1) resolve the single remaining disputed issue among the Settling Parties related to PG&E's request that the Commission adopt PG&E's forecast contribution to its pension fund; (2) adjust the revenue requirements set forth in the Distribution Settlement according to the Commission's resolution of the disputed issue…"

The Commission denied PG&E's pension funding request because it found that PG&E had not provided sufficient evidence demonstrating that its requested $128.6 million contribution to the Retirement Plan trust is necessary. In its discussion on this matter, the Commission cited PG&E's own actuarial analysis which found that "…minimum required contributions under ERISA are forecast to be zero for the years 2003 through 2005, and most likely zero in 2006, but the probability of needed contributions to the pension fund are 50% by the year 2007," as reason for its denial of the pension funding request.

PG&E claims that the funded status of its retirement plan trust is estimated to be approximately 98.1 percent at January 1, 2005 and is projected to decline to 86.0 percent in 2010 unless contributions resume. PG&E requests that we authorize it to file an application, prior to and separate from its Test Year 2007 GRC application, for a revenue requirement increase of approximately $185 million per year for the four year period from 2006 through 2009 to fund contributions to the pension fund trust.

If the Commission grants the Petition, PG&E will file an advice letter making the revenue requirement increase effective in rates on January 1, 2006, subject to the condition that if the revenue requirement increase is not approved in the Commission's decision on the merits of PG&E's application, any funds collected would be credited back to PG&E's ratepayers. PG&E further states that if the Commission grants PG&E the authority to file such an application before December 1, 2005, then the Commission should consider the issue of pension contributions for the period through 2009 in that application and not in PG&E's TY 2007 GRC.

If the Commission does not grant the instant petition, PG&E plans to include its pension contribution showing in its December 1, 2005, TY 2007 GRC application. PG&E states that, in this case, the revenue increase requested in the TY 2007 GRC application is anticipated to be approximately $250 million per year for the three year period from 2007 to 2009.

PG&E states that the Petition is consistent with the Distribution and Generation Settlements approved in D.04-05-055 because the settlements did not address the pension contribution issues. PG&E also states that its request is consistent with D.96-12-066 because the revenue requirement will have been in effect for three years regardless of the outcome of the Petition. PG&E further states that the Petition is compatible with D.96-12-066 because "unlike the types of costs at issue in D.96-12-066, the Commission treats pension contributions in their own cost category and does not expect PG&E to shift dollars from operations to fund the retirement plan trust."[1] Finally, PG&E maintains that its request will create minimal additional work for interested parties.

On August 12, 2005, the Office of Ratepayer Advocates (ORA) filed a response to PG&E's Petition, asking the Commission to deny PG&E's request. ORA notes that PG&E is free to make contributions to its pension trust at any time, without Commission approval. ORA points out that San Diego Gas and Electric Company recently made a contribution to its pension plan that was not funded in rates. ORA also points out that PG&E's request would require parties to review PG&E's revenue requirement requests in two proceedings, the TY 2007 GRC and the separate pension application, creating an undue burden on all parties and the Commission. The California Coalition of Utility Employees filed a response supporting PG&E's request. PG&E filed a reply to ORA's Response on August 22, 2005. PG&E disagrees with ORA that it should fund pension obligations using shareholder funds because PG&E believes the Commission has concluded pension obligations are the ratepayers' responsibility. PG&E states that SDG&E's pension contribution in 2003 was a minimum contribution required by the Internal revenue Service under the Employment Retirement Income Security Act and that SDG&E did not voluntarily make such contribution. Furthermore, PG&E argues that granting its Petition would not overly burden parties since the pension contribution issue would have to be addressed in the 2007 GRC anyway.

Discussion

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[1] PG&E Petition at pg. 7.

In this Petition, PG&E is seeking to modify D.04-05-055 to allow it to file for, and begin rate recovery of, pension contributions for the years 2006 through 2007—starting on January 1, 2006. PG&E will further file an application to justify an annual pension contribution of $325 million for the years 2006 through 2009. Even though PG&E will be filing a GRC for test year 2007 shortly, PG&E wishes to have the issue of pension contributions, and the overall revenue requirement, determined outside of this GRC proceeding. The last GRC test year was 2003 and in the Distribution and Generation settlements, the parties agreed to extend the TY 2003 GRC to four years, through 2006, with the TY 2007 GRC planned for filing on December 1, 2005.

PG&E seeks permission to request an interim increase in its revenue requirement of $185 million for the year 2006 to fund a contribution to the retirement plan trust. In D.04-05-055, the Commission denied PG&E's request for a TY 2003 forecast contribution to the retirement plan trust because PG&E had not provided sufficient evidence demonstrating that its requested $128.6 million contribution to the retirement plan trust was necessary based on the funding status of the retirement plan trust. However, PG&E now believes it can adequately support a request for a pension contribution for 2006.

In its Petition, PG&E filed declarations from Peter Corippo and Deborah Dubois supporting the facts as presented in the Petition. Mr. Corippo, Director of Investments and Benefit Finance for PG&E, states that a pension plan's ratio of assets to liabilities is a fundamental measure of its financial health, and as of January 1, 2005, PG&E's pension plan ratio had fallen to 98.1%. Mr. Corippo goes on to state that if no contributions are made to the plan, this ratio will fall to 96% in 2006, 93.7% in 2007, 91.2% in 2008, 88.7% in 2009, and finally to 86.0% by 2010. To return the pension plan to 100% funded status by 2010, Mr. Corippo declares that annual contributions of "approximately $325 million" will have to be made over a four year period—2006 through 2009. This level of contribution translates to an annual revenue requirement of $185 million. Mr. Corippo goes on to state that if contributions to the pension plan are delayed one year—to 2007 from 2006—then annual contributions of $440.5 million would be needed for a three year period—2007 through 2009—to return the plan to 100% funded status by 2010. This level of contribution translates to an annual revenue requirement of $250 million. Ms. Dubois in her declaration certifies Mr. Corippo's analysis and finds his estimates of plan funding actuarially sound.

Notwithstanding the fact that PG&E's pension plan is underfunded according to its own estimates, PG&E argues that the Commission should favorably consider its petition for several additional reasons. D.04-05-055 did not authorize a pension contribution for test year 2003 and the following three year rate case cycle. Two, the rate case cycle is normally three years, not four. So if the three year rate case cycle had been maintained, PG&E would have been timely in its request for pension relief. Its Petition does not in any way alter the Commission's reasoning in our denial of pension contributions in D.04-05-055. And finally, its Petition only seeks an opportunity to present a case for 2006 and beyond to timely recover the approved pension contribution.

PG&E further argues that its Petition is consistent with Commission rules and procedures, parties will have a full opportunity to litigate the merits, and PG&E will return to customers disapproved or unspent amounts. PG&E specifically cites D.96-12-066 which denied PG&E's request for a Rate Case Plan waiver because PG&E had not demonstrated extraordinary or emergency circumstances to warrant "…selective re-examination of the revenue requirement for various activities, or to support its request for an attrition adjustments," and argues that its Petition is compatible with this decision for the following reasons. PG&E states that a waiver to the Rate Case Plan is not needed in this instance, that the Commission does not expect PG&E to shift dollars from operations to fund the pension trust, funds earmarked for the pension contribution will be returned to ratepayers if unspent, PG&E did request pension approval in its 2003 GRC, and that its request creates minimal additional Commission staff work.

The Commission must decide in this case (1) whether PG&E's Petition request falls within Commission adopted ratemaking principles, and (2) whether the requested relief offers any benefits PG&E ratepayers.

Clearly, by allowing PG&E to file for pension contributions for 2007 through 2009 via a separate application from its GRC application for these very same years is nonsensical. On December 1, 2005, PG&E is scheduled to file its GRC for test year 2007 covering a GRC cycle of 2007 through 2009. Pension contributions will be addressed in this proceeding as part of a normal and routine evaluation of PG&E's expenses. It would be unfair and unreasonable to allow PG&E to request a revenue requirement increase for one specific category where it asserts additional revenues are needed outside of the normal GRC proceeding which covers this category. PG&E has made no compelling case for the consideration of pension contributions for years 2007 through 2009 outside of the normal avenue—the GRC filing—for such consideration. Pension contribution evaluation is no easier, nor more difficult, when performed as a part of the GRC filing. And ratepayers are indifferent to which application this evaluation takes place in. As such, we will deny this part of PG&E's request.

However, the situation for 2006 is different. 2006 is the last year of a four-year GRC cycle approved by D.04-05-055. D.04-05-055 approved settlements for every issue except that of pension contributions. Since PG&E could not adequately justify a pension contribution for the 2003 test year, the Commission had no choice but to reject the pension contribution. But the Commission did recognize (in D.04-05-055) that "...the need for ratepayer contributions to the Retirement Plan trust in any given year must be determined based on the funding status of the plan. To do so otherwise would be inconsistent with our obligation, under Pub.Util. Code Section 451 to provide for just and reasonable rates." The pension contribution was a separate issue that the Commission decided upon. As such, the Commission may modify its stance on this issue and in no way affect, or compromise, the adopted settlement agreements.

PG&E has presented declarations that show that its pension fund was underfunded as of January 1, 2005. And PG&E's Petition further states that if it were to wait to make contributions to the pension fund until its next GRC cycle starts, then ratepayers will bear higher expenses spread over a shorter period of time, thereby resulting in increased rates. Delaying what seems like an inevitable rate increase to fund pension obligations does not benefit ratepayers. Ratepayers will benefit by lower pension contributions now. And ratepayer risk of overpaying is eliminated as these contributions are subject to refund.

For these reasons, we are persuaded to grant PG&E's petition for 2006 only. For 2007 through 2009, PG&E's revenue requirement request will be before the Commission in the TY 2007 GRC and should be addressed there.

Comments on Draft Alternate Decision

The draft alternate decision of President Peevey was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.6 of the Rules of Practice and Procedure. Comments wee filed on December 4, 2005 and reply comments were filed on Dec ember 9, 2005. The Commissions's Office of Ratepayer Advocates and PG&E filed both comments and reply comments. To the extent changes were necessary as a result of the filed comments, they were made in Finding of Fact No 4 and 5 with the addition of the phrase "PG&E declares that…" preceding the existing language. Similarly, Conclusion of Law No. 1, (a) was preceded by the same phrase "PG&E declares that…"

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Julie Halligan is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In D.04-05-055 the Commission denied PG&E's pension funding request.
2. D.04-05-055 found that PG&E had not provided sufficient evidence demonstrating that its proposed contribution of $128.6 million for 2003 was necessary.
3. D.04-05-055 did not authorize any pension contribution for 2003, nor for the subsequent three years of the GRC rate cycle—2004, 2005 and 2006.
4. PG&E declares that the funded status ratio (assets to liabilities) of PG&E's retirement pension trust has now fallen below 100%.
5. PG&E declares that absent any additional pension contribution in 2006, the funded status ratio will fall to 93.7% by January 1, 2007.
6. PG&E will file in December 2005 a GRC for test year 2007 covering a three-year rate cycle period—2007 through 2009.
7. The issue of pension contribution for the 2007 through 2009 time period is more appropriately considered in the GRC proceeding.
8. D.04-05-055 did not authorize a pension contribution in 2006, leaving this year uncovered.

Conclusions of Law

1. PG&E's request to resume pension contributions in 2006 only with a revenue requirement of $185 million, and to recover that revenue requirement through rates beginning January 1, 2006, subject to refund upon Commission determination should be granted because (a) PG&E declares that its retirement pension trust is currently under funded, (b) ratepayers will benefit by an earlier, as opposed to later, contribution, and (c) any pension contribution will be subject to refund upon final Commission determination upon the merits of PG&E's filing.

2. Pension contributions, and the associated revenue requirement for the following three years, 2007 through 2009, should be a part of, and considered along with PG&E's GRC application because pension contributions are expense line items normally evaluated in GRC proceedings and PG&E has not made a compelling case otherwise.

3. Today's decision should be effective immediately.

O R D E R

IT IS ORDERED that

1. Finding of Fact No 13 in D.04-05-055 which reads,

   "The need for ratepayer contributions to the Retirement Plan trust should be determined based on the funding status of the Retirement Plan trust."

   shall be modified as follows.

   "The need for ratepayer contributions to the Retirement Plan trust should be determined based on the funding status of the Retirement Plan trust. PG&E may continue to evaluate the need for a contribution to the Retirement Plan trust. In the event PG&E determines that it would be prudent to resume contributions in 2006, PG&E is authorized to file an application for a revenue requirement increase to fund the estimated contribution for 2006 only, and PG&E is further authorized to make that revenue requirement effective in rates on January 1, 2006, subject to refund to PG&E ratepayers upon Commission determination of the merits of the application."

2. PG&E's Petition to modify D.04-05-055 is granted to the extent indicated above and is otherwise denied.

3. The Executive Director shall serve this decision to the service lists for A.02-11-017, I.03-01-012, and A.02-09-005.

This order is effective today.

Dated December 15, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President

GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOH
Commissioners