

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION G-3447

June 24, 2010

R E S O L U T I O N

Resolution G-3447. Pacific Gas and Electric Company (PG&E) seeks to modify its gas and electric regulatory accounts to recover from its core and noncore gas and electric customers a portion of the California Air Resources Board's (CARB) Assembly Bill (AB) 32 Cost of Implementation Fee (AB 32 Fee) paid to CARB.

San Diego Gas & Electric Company (SDG&E) seeks to revise its regulatory accounts to record the costs associated with the CARB AB 32 Fee and to recover these costs in customer gas transportation and electric commodity rates.

Southern California Edison Company (SCE) seeks to modify its regulatory accounts to record and recover AB 32 Fees paid to CARB.

Southern California Gas Company (SoCalGas) seeks to modify its Core Fixed Cost Account (CFCA) and Noncore Fixed Cost Account (NFCA) to record and recover AB 32 Fees paid to CARB.

PROPOSED OUTCOME: The utility requests are denied without prejudice.

ESTIMATED COST: None.

By PG&E Advice Letter (AL) 3094-G/3618-E, filed on February 12, 2010; SCE AL 2434-E, filed on February 5, 2010; SDG&E AL 2137-E/1917-G, filed on January 15, 2010; SoCalGas AL 4060, filed on January 15, 2010, and 4060-A, filed on February 10, 2010.

SUMMARY

PG&E, SCE, SDG&E and SoCalGas are requesting to establish balancing accounts to record and recover from their respective customers fees they expect to pay to the California Air Resources Board (CARB) for its administration of Assembly Bill (AB) 32. The ALs are denied without prejudice pursuant to Rule 5.1 of General Order (G.O.) 96-B because the utilities do not have the necessary authorization to file their proposals, which result in a rate increase (assuming CARB adopts its proposed AB 32 fee regulations), by AL. The utilities may file an application to request approval of their proposals as provided for in Rule 5.2 of G.O. 96-B. Utilities with Z-Factor mechanisms (SCE, SDG&E and SoCalGas) can also consider recovering the AB 32 fees through that procedure.

Pursuant to our general rate case (GRC) ratemaking policies, the utilities are typically at risk for any expenses they incur exceeding their authorized GRC revenue requirements. In their GRC applications, the utilities may request to include anticipated AB 32 fee payments in their revenue requirements.

BACKGROUND

CARB is developing regulations to collect fees annually from investor-owned utilities and other entities for administering the California Global Warming Solutions Act of 2006 (commonly referred to as AB 32).^{1 2} Finalizing the regulations is expected this year. The utilities estimate that their first payment to CARB will be due by the fourth quarter of 2010. On June 23, 2009, the Commission's Energy Division (ED) submitted comments to CARB on the feasibility of implementing certain aspects of the proposed regulations.

¹ Go to: <http://www.arb.ca.gov/cc/adminfee/adminfee.htm>

² CARB staff presented the total FY 10-11 revenue requirement (\$63.1 million of which \$36.2 million represents annual program costs and \$26.9 million debt repayment) for the AB 32 fee at its August 25, 2009 public workshop. The amount estimated to be collected from natural gas sources (investor-owned utilities, municipally-owned utilities, proprietary pipelines, and interstate pipelines serving the state), is \$19.2 million or 30.2% of the total revenue requirement. The AB 32 fee would be collected from the designated entities on an annual basis. Go to: http://www.arb.ca.gov/cc/adminfee/meetings/042009/slides_4-20-09.pdf

PG&E AL 3094-G/3618-E; SCE AL 2434-E, SDG&E AL 2137-E/1917-G; SoCalGas AL 4060 and 4060-A/cpe

PG&E, SCE, SDG&E and SoCalGas filed ALs seeking to establish balancing accounts to record the AB 32 fees paid to CARB and to provide for the recovery of these payments from their respective customers.

NOTICE

Notice of PG&E AL 3094-G/3618-E, SDG&E AL 2137-E/1917-G, SCE AL 2434-E, SoCalGas AL 4060 and 4060-A was made by publication in the Commission's Daily Calendar. PG&E, SDG&E, SCE and SoCalGas state that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

On February 4, 2010, the Indicated Producers (IP) protested SoCalGas AL 4060. IP recommended that SoCalGas should file its balancing account proposal when CARB finalizes its AB 32 fee regulations. IP also asserted that the tariffs filed in the AL did not include a credit mechanism to prevent SoCalGas from over-collecting the AB 32 fee from customers.

On February 4, 2010, the Southern California Generation Coalition (SCGC) protested SoCalGas AL 4060. SCGC also argued that SoCalGas did not include a credit mechanism in its proposed tariffs. SCGC recommended that the utility re-file the AL to correct this problem.

On February 10, 2010, SoCalGas replied to the AL 4060 protests. SoCalGas said that filing the AL now will enable it to be prepared to record and recover the expected AB 32 fees from customers. The utility also said it would issue a supplemental AL to address the credit mechanism concerns. On February 10, 2010, SoCalGas filed AL 4060-A with the credit mechanism modifications.

On February 22, 2010, SCGC protested SoCalGas AL 4060-A. SCGC believes that the credit adjustment mechanism in AL 4060-A may inaccurately calculate the amount of a credit. To correct this, SCGC recommended that the credit mechanism should be structured in a separate balancing account.

On March 1, 2010, SoCalGas replied to the AL 4060-A protest. SoCalGas claimed that the modifications filed in AL 4060-A are functional and included an example of how the credit mechanism works as proof.

DISCUSSION

Rule 5.1 of G.O. 96-B specifies that a utility must have the necessary authority to file an AL which results in a rate increase. Without such authority, the utilities must file their requests by application per Rule 5.2 of G.O. 96-B. Rule 5.1 of G.O. 96-B specifies that a utility may request a rate increase by an AL if the following condition is met.

“A utility may seek a rate increase by means of an advice letter only if use of an advice letter for this purpose is authorized by statute or Commission order.” (Rule 5.1 of G.O. 96-B)

If such authorization has not been granted, a utility may only make its request by an application, as specified below.

“Except as provided in General Rule 5.1, a utility must file an application to seek approval of a rate increase; a change to its tariffs; or an alteration of any classification, contract, practice, or rule as to result in a new rate.”
(Rule 5.2 of G.O. 96-B)

PG&E, SCE, SDG&E and SoCalGas failed to comply with Rule 5.1 of G.O. 96-B. In the ALs, the utilities are seeking to establish balancing accounts to record AB 32 fees paid to CARB and to recover the recorded amounts from their customers. Collecting the AB 32 fees through the amortization of the balancing accounts will result in a rate increase. The utilities did not cite in their ALs any statute or Commission order specifically authorizing such an AL filing as Rule 5.1 of G.O. 96-B requires. Therefore, we deny the ALs without prejudice.

We note that SoCalGas refers to ED’s June 23, 2009 letter to CARB as justification for its filing. ED states in the letter that, “To the extent the fee results in additional costs to investor-owned utilities, the CPUC will be able to allow them

to recover the costs via appropriate regulatory proceedings.³ Because the utilities do not have the necessary authorization to file the ALs, an application is the appropriate regulatory proceeding for the consideration of their proposals as Rule 5.2 of G.O. 96-B provides.

SCE, SDG&E and SoCalGas may be able to recover the AB 32 fees through their Z-Factor mechanisms if the applicable criteria are met.⁴ Z-Factor events are unforeseen items that are generally exogenous to a utility, uncontrollable by management, involve costs not considered ordinary, and impact a utility disproportionately. A deductible must be met before a utility can collect Z-Factor costs from its customers. One example of a Z-Factor event is the following:

“Costs resulting from other mandated state, federal, or local governmental programs or from regional environmental programs.”⁵

In response to an ED data request, the utilities opined that the AB 32 fees are not a Z-Factor event. SDG&E and SoCalGas claimed that they will not be disproportionately impacted by the AB 32 fees as all businesses subject to AB 32 will be affected proportionately. They also said that AB 32 benefits all Californians and that the Commission traditionally has allowed full cost recovery of such programs. SCE considers the AB 32 fee to be a procurement-related expense and that Z-Factor events are GRC-type costs.

We find the utilities arguments about the Z-Factor mechanism’s applicability confusing and unconvincing, especially in light of the example provided above. SCE, SDG&E and SoCalGas should re-consider whether the AB 32 fee is a

³ June 23, 2009 letter from Julie A. Fitch, ED Director to Mary Nichols, Chair of CARB, p. 2, emphasis added.

⁴ SCE, SDG&E and SoCalGas have Z Factor event mechanisms. Go to:
<http://www.sce.com/NR/sc3/tm2/pdf/ce267-12.pdf>

http://www.sdge.com/tm2/pdf/ELEC_ELEC-PRELIM_EPBR.pdf
<http://www.socalgas.com/regulatory/tariffs/tm2/pdf/PS-XI.pdf>

⁵ Go to: <http://www.socalgas.com/regulatory/tariffs/tm2/pdf/PS-XI.pdf>, Sheet 3

Z-Factor event. We make no definitive determination in this resolution whether the CARB AB 32 fees meet the Z-Factor criteria.

Under our GRC ratemaking principles, utilities are generally not compensated for expenses that exceed their GRC authorized revenue requirements.

Through GRC proceedings, the utilities are provided with an authorized revenue requirement for various expenses they anticipate will be incurred to provide service in a future test year. Adjustments to the test year revenue requirement are also approved to account for the period between the test year and next rate case (referred to as attrition). As explained in the following excerpts, the utilities have some discretion regarding the use of their authorized revenue requirements and generally stand to benefit when actual costs fall below the forecast; however, they are not compensated for costs exceeding the forecast.

“Our decision today is guided by a fundamental tenet of forecast test year ratemaking that inclusion of a particular expense, or category of expense, in a general rate case (GRC) authorization does not, by itself, create a specific obligation for the utility to spend the authorized amount during the test year. Utility management is generally provided discretion regarding use of authorized funds and is not bound by the adopted forecast.” (D.09-03-025, *slip op*, p. 3)

“If the adopted forecast overestimates expenses we do not ask a utility to return the funds to ratepayers. Similarly, if an adopted forecast underestimates expenses, we do not go back and give the utility funds to complete projects that should have been addressed in the prior GRC cycle.” (D.09-03-025, *slip op*, p. 4)

“In addition, traditional test-year ratemaking in general rate cases provides utilities an authorized test year revenue requirement with specified formulae and factors to adjust that revenue requirement for years following the test year. If a utility spends less than the adopted amount for a particular expense category, they are not typically required to return the unspent money to ratepayers. And, if a utility spends more than the forecasted amount for an expense category, it may not request an increase in the authorized revenue requirement unless the utilities can make a case that some unforeseen event had substantially changed their actual

expenditures from the forecast used in determining the test year revenue requirement.” (Resolution G-3441, p. 7)

Consistent with and given these principles, we find that, in any application they may file outside the normal GRC process to seek recovery of the ARB fees, the utilities would need to convincingly demonstrate that additional recovery is warranted. In the absence of such an application and its approval, the utilities are obligated to pay the AB 32 fees to CARB without any need for us to adjust their currently authorized revenue requirements. In any application, including a GRC application, the utilities can request to include a forecasted amount of AB 32 fees they expect to pay in their revenue requirements. The utilities shall not retroactively recover from their customers any AB 32 fees paid to CARB.

We do not comment on the merits of the IP and SCGC protests because we denied the ALs without prejudice on procedural grounds.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on May 25, 2010.

On June 14, 2010, PG&E, SCE, SDG&E and SoCalGas commented on the Draft Resolution. SCE said that its AL should not be denied because it will not necessarily result in a rate increase. This is because the recovery of the AB 32 fees would be considered in SCE’s annual Energy Resource Recovery Account (ERRA) review proceedings. As an alternative, SCE requested that it be allowed to establish a memorandum account to record the AB 32 fees. PG&E, SDG&E and SoCalGas also requested that they be allowed to establish memorandum accounts through this resolution.

We are not persuaded by the utilities' comments to modify the Draft Resolution. Establishing memorandum accounts and SCE's ERRRA account proposal might essentially result in a revenue requirement increase outside of the normal GRC or other appropriate application process prior to the effective date of a decision in such proceedings. As the Draft Resolution explained, an application is the proper venue for us to consider such a request. Also, a misstatement by SCE needs to be corrected. In its comments, SCE said that the Draft Resolution concluded that the utility should recover the AB 32 fees through its Z-Factor mechanism. This is incorrect. The Draft Resolution said that SCE as well as SDG&E and SoCalGas should consider whether recovery of the AB 32 fees through their Z-Factor mechanisms would be appropriate.

FINDINGS AND CONCLUSIONS

1. In the event CARB adopts its proposed AB 32 fee regulations, PG&E, SCE, SDG&E and SoCalGas will incur increased costs.
2. Adopting the balancing account proposals of PG&E, SCE, SDG&E and SoCalGas would result in a rate increase if the CARB AB 32 fee regulations are approved.
3. Rule 5.1 of G.O. 96-B specifies that a utility can only request a rate increase through an AL if authorized by statute or Commission order.
4. PG&E, SCE, SDG&E and SoCalGas do not have the authority specified in Rule 5.1 of G.O. 96-B to file their proposal by AL.
5. PG&E, SCE, SDG&E and SoCalGas may file their request by application as provided for in Rule 5.2 of G.O. 96-B.
6. In any application filed by the utilities seeking additional revenue requirement for the CARB AB 32 fees, the utilities must demonstrate that their requests are reasonable.
7. PG&E, SCE, SDG&E and SoCalGas are not barred from paying the AB 32 fees under their current GRC authorized revenue requirements.

THEREFORE IT IS ORDERED THAT:

1. The requests of PG&E in AL 3094-G/3618-E, SCE in AL 2434-E, SDG&E in AL 2137-E/1917-G and SoCalGas in ALs 4060 and 4060-A are denied without prejudice.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on June 24, 2010; the following Commissioners voting favorably thereon:

/s/ Paul Clanon

Paul Clanon
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners