Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 1999. (U 39 M)	Application 97-12-020 (Filed December 12, 1997)
Investigation into the Reasonableness of Expenses Related to the Out-Of-Service Status of Pacific Gas and Electric Company's El Dorado Hydroelectric Project and the Need to Reduce Electric Rates Related To This Non-Functioning Electric Generating Facility.	Investigation 97-11-026 (Filed November 19, 1997)
Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Decrease its Rates and Charges for Electric and Gas Service, and Increase Rates and Charges for Pipeline Expansion Service.	Application 94-12-005 (Filed December 9, 1994)
Order Instituting Investigation Into Rates, Charges, and Practices of Pacific Gas and Electric Company.	Investigation 95-02-015 (Filed February 22, 1995)

INTERIM OPINION ON ATTRITION RATE ADJUSTMENT FOR 2002

1. Summary

On January 17, 2002, Pacific Gas and Electric Company (PG&E) filed a motion requesting that the Commission issue an interim decision to ensure that if, at a later date, the Commission approves an attrition rate adjustment (ARA) for 2002, such adjustment may be made effective as of the date of the requested interim decision. PG&E's motion also requests that the Commission specify the process for addressing the substantive question of how much, if any, attrition relief PG&E should receive for 2002.

This decision grants PG&E's motion to the extent set forth below. PG&E's rates and authorized revenue requirements are not directly affected by this decision. They would only be affected if, at a later date, the Commission approves an ARA for 2002.

2. Background

Decision (D.) 00-02-046 resolved most issues in PG&E's Test Year (TY) 1999 general rate case (GRC). Among other things it ordered PG&E to file a TY 2002 GRC in accordance with the Rate Case Plan. It also authorized PG&E to file for an ARA for 2001.[1] (D.00-02-046, pp. 54-55, 470-473, and Ordering Paragraph 15.)

D.00-07-050 modified D.00-02-046 by allowing PG&E to file the TY 2002 GRC on a schedule delayed by nine months. By D.01-10-059 dated October 25, 2001, the Commission resolved a petition by PG&E to modify D.00-07-050. Among other things, D.01-10-059 ordered PG&E to file for a TY 2003 GRC and provided for concurrent comments on the need for an attrition increase for 2002.

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[1] PG&E filed Application (A.) 00-07-043 on July 27, 2000. D.02-02-043 granted an attrition increase of $150,838,000 based on the effects of inflation in 2001 on 1999 forecast expenses and on rate base.

In response to D.01-10-059, comments on the need for an attrition increase were filed by PG&E and jointly by the Office of Ratepayer Advocates (ORA), The Utility Reform Network, and James Weil (collectively, Consumers). PG&E filed the instant motion on January 17, 2002 and Consumers filed a joint response in opposition to the motion on February 1, 2002. PG&E filed a reply on February 11, 2002. This decision addresses PG&E's motion while deferring action on the substantive issue of whether to approve an ARA for 2002.

3. Discussion

In D.01-10-059, we modified our plan for PG&E's next GRC by converting it from a 2002 to a 2003 TY. In so doing, we recognized that the deferral in the test year raised the question of whether PG&E should be entitled to request an ARA for 2002. We therefore asked for comments on the need for such an ARA.

We need to allow adequate time for full and fair consideration of whether to approve an ARA for 2002, and if so the parameters and magnitude of such an adjustment. However, even if we ultimately find that a 2002 ARA is justified, we would not be able to make any ARA retroactive unless we act in advance with respect to the effective date. In order to preserve our ability to approve an ARA that would have effect for a substantial portion of the year, we will approve PG&E's motion. We note that in D.00-12-061, we authorized similar relief with respect to PG&E's 2001 ARA.

We emphasize that we are simply preserving our option to authorize an ARA that could be made effective today. We reserve our right to deny an ARA for 2002 after further consideration. Nothing in today's decision assures PG&E an ARA for 2002.

In its motion, PG&E also requests that we establish the process by which we will consider the substantive issue of whether and by how much to approve

an ARA for 2002. As noted earlier, we have asked for and have received comments on the need for an ARA for 2002. We note that in their comments, Consumers contend that the filing of concurrent comments without opportunity for reply comments or evidentiary hearings allowed them no opportunity to test PG&E's showing. Consumers contend that if the Commission chooses to consider further the need for an ARA for 2002, it must provide for discovery and, if needed, further evidentiary hearings. By this order we will provide for replies to the comments filed pursuant to D.01-10-059. Reply comments should include a statement of any issues for which the party asserts evidentiary hearings are required. We further direct the Administrative Law Judge, in consultation with the Assigned Commissioner, to establish further procedures as necessary and appropriate. Discovery should proceed immediately. We intend to resolve this matter expeditiously now that we have resolved A.00-07-043, PG&E's 2001 ARA application.

We have carefully considered Consumers' opposition to PG&E's motion and find the asserted grounds for their opposition to be without merit. Consumers first contend that because we used the term "proceeding" in the dicta of D.01-10-059 when we discussed our request for comments on the need for an ARA for 2002, PG&E's request for interim relief is outside the scope of *this* proceeding. Consumers reason that we required a new ARA proceeding to be established and that such new proceeding is the only appropriate forum for considering the interim relief proposed by PG&E. However, we find nothing in D.01-10-059 to suggest that a new docket must be established in order to consider PG&E's substantive request for an ARA for 2002, or that such proceeding must

be established before interim relief can be considered. PG&E's request is squarely within the scope of this proceeding.[2]

We note that if we were to require PG&E to first file a new application before we consider the question of interim relief, several weeks if not months could be added to the time when a decision on interim relief would be issued. As noted earlier, our objective in this decision is to preserve our ability to authorize an ARA for 2002 that would have effect for a significant portion of the year, should we find an ARA to be justified. More than two months of 2002 have already passed, so in any event an ARA could not have effect for the entire year. Additional delay that would result from requiring the additional procedural step of establishing a new docket is unnecessary and could potentially deny, in whole or in part, relief that we might otherwise find to be justified.

Consumers' other arguments go to the merits of PG&E's case for an ARA, not the company's request for an interim decision that fixes the earliest effective date of any ARA that may be authorized.

4. Comments on Draft Decision

The draft decision was issued on February 19, 2002. PG&E filed comments in support of the decision. ORA filed comments urging that the decision be revised to deny PG&E's Motion. PG&E replied to ORA's comments.

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[2] Moreover, Ordering Paragraph 3 of D.01-10-059 authorizes comments on the need for an attrition increase without making any reference to a proceeding, and this takes precedence over the dicta cited by Consumers. The ordering paragraph is the final decision of the Commission and is not subject to modification by prior statements contained in the opinion. (*City of Healdsburg v. Pacific Gas and Electric Company* (1989) 31 CPUC2d 465, 475.)

ORA's comments largely address the substantive question of whether PG&E is entitled to an attrition allowance for 2002. To the extent they do so, we do not address ORA's comments here for the reason noted earlier, i.e., that in this decision, we are only considering PG&E's motion to fix the effective date of any ARA that might be authorized and to provide procedural guidance.

ORA argues that retroactive attrition increases are a poor policy choice because utility managers will budget to an authorized revenue requirement, not a revenue requirement that may or may not be granted at an indefinite future date. Consequently, ORA goes on to argue, retroactive increases will not provide the utility with an incentive to properly maintain and operate its system while meeting the demands of customer growth through infrastructure investments. ORA believes it is more likely that retroactive attrition increases "will simply go into the pockets of shareholders." (ORA comments, p. 5.)

Pursuant to Rule 77.7(b) of the Rules of Practice and Procedure, comments on a draft decision are governed by Rules 77.2 through 77.5. Rule 77.3 provides that comments shall focus on factual, legal, or technical errors. It also provides that new factual information shall not be included or relied upon in comments as the basis for assertions made. Clearly, comments on the draft decision are not the appropriate means for ORA to raise its novel argument and related factual assertions regarding the effect of retroactive attrition increases on utility management's performance. ORA may pursue this argument in the upcoming proceedings addressing whether PG&E is entitled to an ARA for 2002. We do not find that it justifies denial of PG&E's motion.

ORA's comments also raise the concern that Commission resources will be unduly impacted by processing an additional attrition proceeding during 2002. We are mindful of the potential impact that several current and anticipated major

proceedings may have on limited Commission resources, but we are not persuaded to deny PG&E the right to pursue an ARA for 2002 on the basis of the incremental impact on our resources that will be caused by an attrition proceeding for PG&E.

However, there is one step we can and will take here to provide for more orderly processing of major proceedings coming before us this year, including PG&E's TY 2003 GRC. Specifically, we are concerned that an extended delay in the filing of PG&E's TY 2003 GRC could disrupt our staff's efforts to manage and coordinate the large caseload before us. In order to provide PG&E with an effective incentive to make a timely GRC filing, we shall reserve our right to fix the effective date of any ARA for 2002 within a range of dates that could be as early as the effective date of this interim order or as late as the filing date of PG&E's TY 2003 GRC filing. In any showing it makes on the substantive merits of an ARA for 2002, PG&E should demonstrate why the effective date of such ARA should not be fixed as late as its TY 2003 GRC filing date.

Findings of Fact

1. The current GRC cycle for PG&E has been extended from three to four years.

2. Additional time is required to determine whether, and if so by what magnitude, PG&E should be granted an ARA for 2002.

3. An Interim Order is needed so that attrition relief, if granted, may be made effective on the effective date of this decision.

Conclusions of Law

1. PG&E's motion should be granted.

2. An Interim Order should be issued to allow any decision that authorizes an ARA for 2002 to be effective as of the effective date of the Interim Order.

3. Parties should be permitted to file replies to the comments on the need for attrition that were filed pursuant to D.01-10-059.

4. This interim order does not represent a determination by the Commission that an ARA for 2002 is justified or necessary.

INTERIM ORDER

IT IS ORDERED that:

1. The *Motion of Pacific Gas & Electric Company [(PG&E)] for Interim Decision Regarding 2002 Attrition* is granted as set forth below.

2. In the event that the Commission authorizes an Attrition Rate Adjustment for PG&E for 2002, such authorization may be made effective as of the effective date of this Interim Order or such later date as may be determined by the Commission.

3. Within 15 days of the effective date of this Interim Order, and in accordance with the foregoing discussion, parties may file replies to the comments on the need for an Attrition Rate Adjustment that were filed pursuant to Decision (D.) 01-10-059. The Administrative Law Judge, in consultation with the Assigned Commissioner, D.01-10-059 shall establish further procedures as necessary and appropriate.

This order is effective today.

Dated _____, at San Francisco, California.