DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ID#4392

ENERGY DIVISION **RESOLUTION E-3914**

April 21, 2005

R E S O L U T I O N

Resolution E-3914. Pacific Gas and Electric (PG&E) requests the Commission's authorization to establish a memorandum account to track and record costs associated with new long-term resource procurement activities.

By Advice Letter 2597-E Filed on December 10, 2004.

SUMMARY

This Resolution denies PG&E's request to establish a new memorandum account to track and record costs associated with long-term resource procurement activities.

BACKGROUND

PG&E proposes to track costs associated with procuring long-term resources, either through the acquisition of utility generation facilities or through the execution of long-term procurement contracts.

PG&E personnel in the Power Generation and Power Contracts and Electric Resource Development organizations, external consultants, and outside legal support would perform activities associated with long-term resource procurement.

PG&E states that the range of these activities were not envisioned in the 2003 GRC, Exhibit 15, because at the time PG&E did not have long-term contracting authority for general procurement and thus, was only planning for short-term procurement transactions. PG&E also did not believe new generation was needed within the horizon covered by the GRC.

PG&E states that the proposed memorandum account will track the costs associated with PG&E's new long-term procurement activities as authorized in Decision (D). 04-

01-050 through 2006. Costs incurred in 2007 and beyond will be included as part of PG&E's base revenue requirement request in PG&E's next GRC application.

Specific activities identified by PG&E associated with long-term resource procurement include, but are not limited to:

- Development, preparation and administration of Request for Offer (RFO) (contract and ownership)
- Offer evaluation and selection
- External review of development process (which includes engineering, construction, procurement, transmission, and permitting)
- Due diligence on existing facilities and existing contracts (e.g., QF and repowering)
- External legal review
- Contract negotiation and structuring
- Evaluation of bidder qualifications
- Regulatory approval
- Oversight of project development to ensure timely delivery
- Market power studies required for project approval
- Any additional activities as PG&E's role is further defined in R.04-04-003 (e.g. Independent Third-Party Evaluator review)

Prior to PG&E's next GRC Application, PG&E proposes to recover costs recorded in the memorandum account as part of PG&E's filings requesting Commission approval of its long-term resource commitments. Upon Commission approval of the filings, PG&E proposes to record and recover the costs in the Energy Resource Recovery Account (ERRA).

PG&E cites Section 4.11 of the 2003 GRC Settlement Agreement, approved in D. 04-05-055, in filing the AL. The cited section reads in part "…The Settling Parties understand that the Commission is considering integrated resource and procurement issues in R.01-10-024 and that the Commission will further define PG&E's role in this area which may affect costs. The Settling Parties reserve their rights to address such issues in other proceedings, as the role of utilities in this area is further developed by the Commission."

NOTICE

Notice of AL 2597-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

PG&E's Advice Letter AL 2597-E was timely protested by the Office of Ratepayer Advocates (ORA), Aglet Consumer Alliance (Aglet), and The Utility Reform Network (TURN). ORA filed its protest on December 29, 2004. Aglet and TURN filed their protests on December 30, 2004.

PG&E responded to the protests of ORA, Aglet, and TURN on January 5, 2005.

The following is a more detailed summary of the major issues raised in the protests.

ORA, Aglet, and TURN raise concerns that an approval of this AL will circumvent the traditional test year ratemaking process.

ORA states that the GRC revenue requirement adopted by the Commission in D.04-05-055 provided funding for PG&E's entire operations for the term of the GRC period through 2006. The decision also provided PG&E with additional attrition rate increases in the intervening years of 2004, 2005, and 2006 prior to the next GRC. ORA argues that PG&E's allegation that the range of activities was not envisioned in the 2003 GRC is no basis for providing a utility authorization to separately track incremental expenses associated with one particular cost function. ORA states that there is never perfect accuracy within a GRC revenue requirement estimate, but it is an overall budget, which provides adequate funding for the utilities total (distribution and generation) operations for the term of the GRC period.

ORA further states that the incremental costs are simply a part and parcel of PG&E's on-going operations. Any increase (and decrease) in expenses beyond those forecast in the 2004 GRC proceeding will ultimately be considered and reflected in the next PG&E GRC filing.

ORA also finds the AL defective as there is no factual support for the assertion that the costs PG&E seeks authority to track are in excess of the GRC approved revenue requirement. ORA states that simply because a cost is a new cost does not

necessarily correlate to a cost that is in excess of the GRC approved revenue requirement. ORA states that there are always new costs incurred that may not have been considered as well as other "old or forecast" costs that were not ultimately incurred by the utility.

Aglet (with TURN joining and supporting the arguments) states that PG&E's request is contrary to test year ratemaking. Aglet argues the request is one sided as rates can only go up. That PG&E seeks to protect shareholders against the possibility that it will spend more money than the Commission authorized, but does not offer to protect ratepayers against the possibility that some activities that underlie PG&E's authorized revenue requirements will not be necessary.

ORA and TURN raise objections to use of an Advice Letter as a proceeding.

ORA argues that the establishment of a memorandum account is an initiation for a rate increase and as such a formal application should be filed in conformance to Commission General Order No. 96-A. TURN questions whether an AL filing qualifies as a proceeding.

ORA also argues that PG&E's use of the Advice Letter filing is not akin to addressing the issue(s) in a proceeding. ORA state that if PG&E wishes to imitate a proceeding, then it should file an application.

PG&E reiterated its position in its response to the protest.

PG&E responded to all three protests under one response letter on January 6, 2005. In its response, PG&E maintained that its Advice Letter was consistent with the Commission-approved 2003 GRC Settlement Agreement and that the Advice Letter did not violate precedents regarding appropriate test year ratemaking. PG&E also responded that it was entitled to pursue prospective adjustments to its rates to reflect changes in its costs of service; that an Advice Letter filing was an appropriate means to seek authority to establish a tracking mechanism; and that a memorandum account was necessary to preserve PG&E's right to seek future rate recovery.

DISCUSSION

PG&E's request to establish a memorandum account is denied. In section 7.24 of D.04-05-055, the Commission did not specifically approve PG&E's request for $22.1 million in forecasted expenses associated with the Electric Transaction

Administration. PG&E has failed to show that the authorization for long-term procurement activities would lead to administrative expenses in excess of the GRC approved revenue requirement. PG&E's use of an Advice Letter is not a proceeding. Establishing a memorandum account in this particular case is contrary to conventional ratemaking.

Energy Division has reviewed PG&E's AL, protests by ORA, Aglet, and TURN, and PG&E's response to the protests.

PG&E Requested, and the Commission did not Approve, $22.1 Million Forecast Associated with Electric Transaction Administration

PG&E states that long-term procurement activities were not envisioned in the GRC. Yet, in D.04-05-055, section 7.24, it states that in response to the February 13, 2003 ACR, PG&E filed testimony regarding costs related to the Integrated Resource Planning. In section 7.24, PG&E requested an additional $22.1 million of O&M expense to perform the activities associated with procuring electricity, arguing that these activities have been expanded in scope and complexity by recent, and still evolving, Commission decisions on electric procurement issues. PG&E's request was not approved.

Section 7.24 of the decision concluded with the paragraph "The Settling Parties note that no specific amounts are set forth in the Agreement for these IRP or expanded Electric Transaction Administration activities and that PG&E understand that it will meet its current responsibilities within the funds set forth in the settlement."

PG&E has not demonstrated that authorization for long-term procurement activities would lead to administrative expenses in excess of the approved GRC revenue requirement

PG&E proposes to establish a memorandum account to track costs associated with PG&E's new long-term procurement activities as authorized in D. 04-01-050 through 2006. PG&E states in its Advice Letter that the "… Settlement Agreement in its 2003 GRC provides an opportunity to seek recovery of procurement-related administrative expenses in excess of the GRC approved revenue requirement…" However, as ORA points out, there is no factual support for the assertion that the costs PG&E seeks authority to track are in excess of the GRC approved revenue requirement. Simply because a cost is a new cost does not necessarily correlate to a cost that is in excess of the GRC approved revenue requirement. It is simply a new cost incurred between GRC proceedings. There can be new costs incurred that may

not have been considered, but also other "old or forecast" costs that were not ultimately incurred by the utility.

Additionally, while PG&E provided a list of activities that its Power Generation and Power Contracts and Electric Resource Development organization, external consultants, and outside legal support will perform under the long-term procurement authority, PG&E does not address how these activities may affect costs. As TURN points out "…long-term procurement is not a fundamentally different activity from short term procurement – many of the same procedures and personnel are involved in the activity, regardless of the term of the contracts that are being solicited. Indeed, one could reasonably argue that, having been granted authority to enter into longer-term deals, PG&E's administrative costs may actually decrease, because larger blocks of power will be purchased for longer periods of time, thereby reducing the work required to process many smaller shorter-term transactions."

PG&E has failed to provide a balanced picture. PG&E has failed to provide support that the authority to enter into long-term procurement would cause the procurement-related administrative expenses to exceed the GRC approved revenue requirement. PG&E has also failed to provide any estimate for how the long-term procurement activities will impact the forecasted costs embedded in the GRC. In short, as proposed, the memorandum account would only capture the increased cost, while any cost saving would remain embedded in the GRC revenue requirement.

An Advice Letter filing is not a Proceeding

PG&E has failed to show that the Settlement Agreement authorizes the establishment of a memorandum account. The settlement agreement simply states that the integrated resource and procurement issues may be addressed in a future "proceeding." A utility-initiated Advice Letter does not qualify as a "proceeding."

Establishment of a memorandum account would cause ratepayers to bear all the risk.

All three protestors raise concerns on the ratemaking implication. If PG&E is authorized to establish a memorandum account for recovery in the future, ratepayers would bear all the risk.

As ORA and Aglet have protested, there is never a perfect vision when a GRC revenue requirement is established. Some budgeted costs will exceed the estimate, while other costs will be less then budgeted. Establishing a separate memorandum

account to recoup unforeseen or underestimated costs would provide PG&E an opportunity to recoup those cost from ratepayers, while costs that have been built into the GRC, but never incurred, will not benefit ratepayers. That is, PG&E gets an opportunity to recover for any unseen costs, while ratepayers do not have an opportunity to recover forecasted costs that never materialized. In effect all the risk would be borne by ratepayers.

The Protests of ORA, Aglet, and TURN are Granted.

PG&E's AL filing states that the Settlement Agreement in its 2003 GRC provides an opportunity to seek recovery of procurement-related administrative expense in excess of the GRC approved revenue requirement. However, PG&E does not state that in the decision approving the Settlement Agreement, PG&E had previously requested, and the Commission did not specifically approve, additional forecasted expenses to perform activities associated with procuring electricity. Additionally, PG&E fails to provide support that the costs exceed GRC approved revenue requirement. PG&E further utilizes an AL filing as a "proceeding" raising procedural questions. Finally, establishment of a memorandum account has the effect of passing a greater share of the risk to ratepayers and shielding shareholders.

We grant the protests of ORA, Aglet, and TURN. PG&E's Advice Letter is denied.

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, and will be placed on the Commission's agenda no earlier than 30 days from today. Comments are due on April 6, 2005. Reply comments are due on April 13, 2005.

FINDINGS

1. PG&E filed Advice Letter 2597-E on December 10, 2004.
2. ORA, Aglet, and TURN timely protested PG&E's Advice Letter.

3. PG&E timely responded to the protests.
4. Advice Letter 2597-E sought authority to establish a new memorandum account to track costs associated with new long-term resource procurement activities.
5. PG&E states that the costs to be recorded were not included in PG&E's 2003 General Rate Case (GRC) nor in the GRC Settlement Agreement base revenue requirement.
6. PG&E states that the 2003 GRC Settlement Agreement provided an opportunity to seek recovery of procurement-related administrative expenses in excess of the GRC approved revenue requirement.
7. Advice Letter 2597-E was timely protested by the Office of Ratepayer Advocates (ORA), Aglet Consumer Alliance (Aglet), and The Utility Reform Network (TURN).
8. ORA, Aglet, and TURN protests that the approval of the Advice Letter will circumvent the traditional test year ratemaking process.
9. ORA and TURN object to the use of an Advice Letter as a proceeding.
10. PG&E has not demonstrated that the authorization for long-term procurement activities would lead to administrative expenses in excess of the GRC approved revenue requirement.
11. An Advice Letter filing is not a proceeding.
12. Establishment of a memorandum account in this particular case is contrary to conventional ratemaking.
13. The protests of ORA, Aglet, and TURN are granted.

THEREFORE IT IS ORDERED THAT:

1. The request of the PG&E to establish a memorandum account to record costs associated with long-term procurement activities as requested in Advice Letter 2597-E is denied.

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 April 21, 2005; the following Commissioners voting favorably thereon:

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STEVE LARSON
Executive Director

ID#4392
March 14, 2005 RESOLUTION E-3914
Commission Meeting April
21, 2005

TO: PARTIES TO PACIFIC GAS & ELECTRIC ADVICE LETTER NO 2597-E

Enclosed is draft Resolution Number E-3914 of the Energy Division. It will be on the agenda for the April 21, 2005 Commission meeting, which is held at least 20 days after the date
of this letter. The Commission may then vote on this Resolution or it may postpone a vote until later.

When the Commission votes on a draft Resolution, it may adopt all or part of it as written, amend, modify or set it aside and prepare a different Resolution. Only when the Commission acts does the Resolution become binding on the parties.

Parties may submit comments on the draft Resolution.

An original and two copies of the comments, with a certificate of service, should be submitted to:

Jerry Royer
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

A copy of the comments should be submitted to:

K. Jerry Oh
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Fax: 415-703-2200

Any comments on the draft Resolution must be received by the Energy Division by April 6, 2005. Those submitting comments must serve a copy of their comments on 1) the entire service list attached to the draft Resolution, 2) all Commissioners, and 3) the Director of the Energy Division, on the same date that the comments are submitted to the Energy Division.

Comments shall be limited to five pages in length plus a subject index listing the recommended changes to the draft Resolution, a table of authorities and an appendix setting forth the proposed findings and ordering paragraphs.

Comments shall focus on factual, legal or technical errors in the proposed draft Resolution. Comments that merely reargue positions taken in the advice letter or protests will be accorded no weight and are not to be submitted.

Replies to comments on the draft resolution may be filed (i.e., received by the Energy Division) on April 13, 2005, five business days after comments are filed, and shall be limited to identifying misrepresentations of law or fact contained in the comments of other parties. Replies shall not exceed five pages in length, and shall be filed and served as set forth above for comments.

Late submitted comments or replies will not be considered.

Clayton Tang

Energy Division

Enclosure: Service List

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of Draft Resolution E-3914 on all parties in these filings or their attorneys as shown on the attached list.

Dated March 14, 2005 at San Francisco, California.

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Jerry Royer

NOTICE

Parties should notify the Energy Division, Public Utilities Commission, 505 Van Ness Avenue, Room 4002 San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the Resolution number on the service list on which your name appears.

Service List for Resolution G-3914

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