FILED
8-25-16
04:59 PM

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, 2017. (U 39 M)	Application 15-09-001 (Filed September 1, 2015)

REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON THE "CONTESTED ISSUES" IDENTIFIED IN THE PROPOSED SETTLEMENT

Hayley Goodson, Staff Attorney
Thomas J. Long, Legal Director
Robert Finkelstein, General Counsel
Marcel Hawiger, Staff Attorney

THE UTILITY REFORM NETWORK
785 Market Street, Suite 1400
San Francisco, CA 94103
Phone: (415) 929-8876 x307
Fax: (415) 929-1132
bfinkelstein@turn.org

August 25, 2016

TABLE OF CONTENTS

REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON THE "CONTESTED ISSUES" IDENTIFIED IN THE PROPOSED SETTLEMENT

Pursuant to Rule 12.2 of the Commission's Rules of Practice and Procedure and the procedural schedule adopted in the *Assigned Commissioner's Ruling and Second Amended Scoping Memo* issued August 10, 2016, The Utility Reform Network (TURN) submits these reply comments on the two contested issues not resolved by the proposed settlement in this general rate case (GRC).

I. Standard of Review: The Commission's Review Of The "Contested Issues" Is Distinct From The Review Of The Outcomes On Issues Resolved By The Proposed Settlement.

The opening comments highlight the odd posture of the "contested issues" that are addressed in the proposed settlement. As explained at the outset of the motion seeking adoption of the proposed settlement,

> The Agreement is a compromise among the Settling Parties' respective litigation positions to resolve all disputed issues raised by parties in the above-referenced proceeding, except for two contested issues explicitly identified in this motion.[1]

If the agreement does not resolve the two contested issues, then those issues should not be treated as part of the overall settlement. They are not "individual settlement provisions" bound up in the overall settlement, but rather items specifically identified as not resolved by the overall settlement. So when the Commission sets out to "determine whether the settlement as a whole produces a just and reasonable outcome," the outcomes on the contested issues should not be part of that determination.

---

[1] *Joint Motion for Adoption of Settlement Agreement* (Settlement Motion), pp. 1-2.

TURN raises these points here because the opening comments of Consumer Federation of California (CFC) discuss the standard of review and cite Rule 12.1(d) as a basis for denying unreasonable terms of the proposed settlement.[2] While TURN believes Commission decisions address the appropriate standard for the agency's evaluation of a proposed settlement,[3] CFC's comments identify an important question, which is whether the two "contested issues" should be evaluated as if they were part of the overall settlement, or separate from that settlement.

TURN submits that under the circumstances here, the "contested issues" should each be evaluated separately from the rest of the settlement's provisions, and the reasonableness of the proposed outcome for each contested issue must be established on a stand-alone basis. These contested issues are <u>not</u> part of the settlement as a whole, as indicated in the settlement motion. Thus the outcomes on the full range of issues on which <u>all</u> settling parties agree do not provide any support for the outcomes on the two disputed issues. In effect, the Commission has before it three separate and distinct proposals – the proposed settlement (incorporating the outcomes on all of the issues covered by that settlement agreement, supported by the full roster of settling parties), and each of the two "contested issues." TURN submits that the proponents of each of these outcomes bear the burden of separately establishing the reasonableness of each, and the Commission must separately evaluate and determine the reasonableness (or lack thereof) of each. The Commission should have little trouble determining that the proposed settlement on all but the contested issues is reasonable

[2] CFC Opening Comments, p. 3-4.

[3] CFC cites a Ninth Circuit Court of Appeals decision from 1998 for the standard of review in evaluating a proposed settlement. TURN submits the more appropriate standard is that found in Commission decisions such as D.11-05-018 (p. 16), which also emphasizes determining reasonableness based on the whole of a settlement, rather than a determination as to "whether any single provision is the optimal result."

and worthy of adoption as submitted. And the Commission must not hesitate to deny the requested relief bound up in each of the two contested issues.

II. Third Post-Test Year

A. Introduction

ORA and PG&E submitted joint comments that recommend adoption of a third post-test year for this GRC cycle. The Alliance for Nuclear Responsibility (A4NR), CFC, and CAUSE (in separately-filed comments from those submitted jointly with TURN) all weighed in to oppose the PG&E and ORA proposal to add a fourth year to this GRC cycle, at a cost of $361 million.

A4NR makes the very salient point that the $361 million increase for 2020 as an additional attrition year (rather than the test year for the next PG&E GRC) should be compared to the 2017 test year increase of $88 million proposed in the settlement.[4] Any presumption that the $361 million increase in a 2020 attrition year is likely to be a better outcome than a 2020 test year increase is questionable, given this recent experience.

B. The Assertion That The Four-Year Cycle Proposed Here Is Materially Different Than The Four-Year Cycle Rejected In D.16-06-005 Is Denial in Action.

ORA and PG&E acknowledge that the Commission recently rejected an ORA-sponsored proposal to replace the three-year GRC cycle with a four-year cycle in D.16-06-005 (the Sempra Utilities test year 2016 GRC). In a transparently self-serving argument, ORA and PG&E contend that their proposal here is materially different, as they propose a change that would only impact PG&E's GRC cycle. As they describe it, their proposal does

[4] A4NR Comments, pp. 9-10, citing Section 3.1.1.1 of the Settlement Agreement. PG&E's litigation position sought an increase of approximately $319 million over currently authorized revenues. Settlement Motion, p. 4.

not seek "to change the GRC period for all of the major utilities[;] the issue at hand is whether to grant a four-year cycle for this GRC, and this GRC only."[5] In their view, "granting an additional post-test year in this rate case does not prejudge the Commission's determination of what the general period should be for the future."[6]

The Commission should reject this argument out of hand. Granting an additional post-test year for PG&E in this GRC will indisputably impact the GRCs for the other major utilities, and it is either naïve or misleading to suggest otherwise. As just the most obvious example, under the ORA and PG&E proposal, PG&E would file its RAMP application in November 2018, and its GRC application on September 1, 2019, thus creating complete overlap with the SCE test year 2021 GRC, with filings due on those same dates.[7] So the claim that the ORA and PG&E proposal here is limited in impact to PG&E's GRC is demonstrably untrue. Either the next PG&E GRC will be conducted in parallel with the SCE test year 2021 GRC, or the SCE GRC will need to be adjusted.

TURN opposed the proposal of the Sempra Utilities and ORA, both as presented in the Sempra Utilities GRC and in R.13-11-006 (the rulemaking regarding incorporation of safety into GRCs). However, we would acknowledge that the proposal there was presented in a more honest way. The utilities and ORA recognized that extension of the Sempra Utilities' schedule would impact the GRCs for other utilities, and they attempted to address those impacts head-on. The Commission correctly denied the request in D.16-06-005. But it was far more responsible for the proponents of the change to squarely consider and addressed the

---

[5] ORA/PG&E Comments, p. 2.

[6] ORA/PG&E Comments, p. 4.

[7] Proposed Decision in A.15-05-002, et al., p. 151. (As of the time these reply comments were written, the Commission had voted out but not yet issued a final decision in the S-MAP application proceeding.)

full range of impacts on the other utilities, rather than act like such impacts can safely be ignored.

Modifying the proposal from the Sempra Utilities GRC to simply assert that the Commission may safely act as if the schedule change would only impact PG&E does not produce an improved proposal. It is really more in the nature of a campaign strategy; lacking a good response to questions about what a four-year PG&E GRC cycle would mean for the other utilities, ORA and PG&E pronounce with conviction that the impact on other utilities is no longer an issue. But their willingness to view PG&E's GRC cycle length in a vacuum should not convince the Commission to likewise ignore the larger context of inter-related utility GRC cycles.

C. The Upcoming Workshop And Report on GRC Cycle Length Is Not Relevant To The Outcome Of The Disputed Issue Here.

The ORA and PG&E comments rely heavily on the portion of D.16-06-005 that calls for a workshop followed by a report "on whether a longer GRC cycle is worth pursuing."[8] It is not clear what if any import ORA and PG&E ask the Commission to assign to this pending workshop process. And the fact that there will be a workshop and further discussion of whether a longer GRC cycle is warranted provides no support to the ORA and PG&E call for committing to a shift to a four-year GRC cycle for this PG&E GRC before the workshop is even convened.

The ORA and PG&E position is premised on an assumption of failure. The point of the effort undertaken in R.13-11-006 was both to better incorporate safety and risk considerations into the GRC process, and "to promote more efficient and effective

[8] ORA/PG&E Comments, p. 4, quoting D.16-06-005, p. 6.

management of the overall rate case process."[9] The instant GRC represents the first to go forward under the revised Rate Case Plan. It met nearly all of the markers for achieving a decision before the start of PG&E's 2017 test year, at least until the procedural schedule was suspended in order to accommodate a settlement effort that produced a near-all party settlement on nearly all issues.[10] And the initial S-MAP applications have produced a Phase I decision that addresses most of the key issues slated for that forum, with the stated expectation that remaining issues will be resolved in time to be incorporated in a PG&E test year 2020 GRC application.[11] ORA and PG&E effectively ask the Commission to assume that the timely processing achieved in this test year 2017 GRC application was a fluke, incapable of repetition if a test year 2020 application is required. That is an awfully cynical approach by any standards, and certainly not one the Commission should embrace here.

D. The Proponents Failed To Demonstrate That A Third Post-Test Year Is in the Public Interest.

PG&E and ORA cite three reasons why they believe the Commission should find their proposal for a third post-test year to be in the public interest. The first reason reiterates a point made in ORA's testimony, claiming that avoiding having the test year for this GRC serve as the base year for the next GRC "could be particularly helpful if the final decision does not issue until well into next year."[12] But since the proposal is limited to the instant

[9] R.13-11-006, p. 1.

[10] Thus, the challenges to timely GRC decisions identified in D.16-06-005 ("the need to process these proceedings in a manner that results in a smoother workload flow, and the processing of all of these proceedings in a timely and efficient manner") have proven not to be insurmountable, even in the first GRC processed under the new approach.

[11] Proposed Decision in A.15-05-002, et al., p. 151. (As of the time these reply comments were written, the Commission had voted out but not yet issued a final decision in the S-MAP application proceeding.)

[12] ORA/PG&E Comments, p. 2.

GRC cycle, the Commission has to assess whether a substantially delayed final decision is a material risk in this proceeding.

PG&E and ORA provide no explanation as to why the Commission should expect a final decision "well into next year" here. A near-comprehensive settlement has been presented to the Commission in early August, and the parties agreed to an expedited schedule for submitting comments on a very limited number of contested issues. In PG&E's 2011 GRC, the proposed settlement was filed October 15, 2010, and a proposed decision issued in late February 2011.[13] Achieving a similar timeline here would produce a proposed decision before the end of 2016.[14]

The point ORA and PG&E seem to rely on is that PG&E management needs to have sufficient confidence in the GRC revenue requirement that will be authorized for 2017 such that PG&E's spending decisions for 2017 are either unaffected or only minimally affected by the date of the final decision. But where there is a comprehensive settlement on all 2017 revenue requirement issues and a Commission track record of only very rarely making material adjustments to such revenue requirement settlements, submission of the settlement itself should go a long way to providing that assurance. A proposed decision before the end of 2016 or even in the early portion of 2017 would provide even greater assurance.

The second reason cited in PG&E and ORA's opening comments relies on the claim that "using 2018 (not 2017) as the base for a 2021 rate case <u>may</u> 'reflect a more stable or

---

[13] D.11-05-018, pp. 5 and 74. The final decision was voted out at the CPUC's May 5, 2011 business meeting.

[14] TURN is unaware of any past comprehensive revenue requirement settlement submitted under similar circumstances with similarly broad support on the uncontested issues where the Commission's final decision made any material changes to the proposed revenue requirement.

steady-state level of expenses or expenditures.'"[15] As the TURN/CAUSE joint comments pointed out, it may or it may not.[16] There is no way to know today whether events will unfold in a way that results in 2017 spending being as "stable or steady-state" as any other recent year in terms of the level of expenditures. By the same token, intervening events might mean 2018 could prove to be as unstable as 2017, and perhaps even more so. The assertion in ORA's testimony is nothing more than an assumption with inadequate support or explanation. It certainly is not a reasonable basis for extending the GRC cycle by a year at a cost of $361 million.

A third reason PG&E and ORA cite is the "evolving schedule for identifying the requirements for PG&E's upcoming [RAMP] showing."[17] The assertion relies on the recent decision on S-MAP applications that would defer identification of some of the requirements for RAMP filings "pending the outcome of a Phase Two decision" in that proceeding.[18] By PG&E's and ORA's logic, with PG&E's RAMP application due in November 2017 the utility "may" not have enough time to incorporate outcomes adopted in Phase Two of the S-Map proceeding. This argument falls in the category of "let's concede defeat before we even try," and should be summarily rejected. After all, the same proposed (now final) decision that PG&E and ORA cite as the basis for their concern also states, "The issuance of a Phase Two decision in this proceeding should provide SCE and PG&E sufficient time to comply with any new directives."[19]

---

[15] ORA/PG&E Comments, p. 2, quoting ORA-21, p. 15 (emphasis added).

[16] TURN/CAUSE Opening Comments, pp. 5-6.

[17] *Id.*, p. 3.

[18] *Id.*, apparently citing Proposed Decision in A.15-05-002, et al. As noted earlier, a final decision has been voted out but not yet issued.

[19] Proposed Decision in A.15-05-002, et al., p. 151. At the time TURN prepared these reply

There is no denying that the Commission has undertaken an ambitious revamping of the GRC process to achieve closer attention to safety and risk issues within a schedule that will permit more regular and timely GRC reviews. Through ongoing concerted efforts by all levels of Commission staff and all interested parties, the effort to date has largely been a success. In its very recent S-MAP decision, the Commission expressed its confidence that the success can continue, even to the extent it means adopting new directives in time for PG&E to adequately reflect them in its November 2017 RAMP application.

The Commission should continue to strive to ensure that the new directives are incorporated into PG&E's showing at the earliest practicable opportunity. And at this time that opportunity appears to be the RAMP application PG&E is to submit in November 2017.

E. Times Have Changed, Such That The Commission's Past Adoption of An Additional Post-Test Year Has Little Bearing On The Merits Of The Proposal Here.

ORA and PG&E also argue that the Commission has in the past regularly authorized an additional post-test year in major rate cases. However, the fact that the Commission has exercised its discretion in prior cases does not provide any support for the request here, given the very different circumstances.

ORA and PG&E begin by citing the recent PG&E Gas Transmission and Storage (GT&S) proceeding and the decision adopting an additional post-test year.[20] But the Commission explained that it did so due to "unique circumstances presented in this proceeding."[21] For starters, due to numerous and unanticipated delays (including a substantial delay tied to PG&E's *ex parte* rule violations in its ALJ shopping efforts), the decision setting

comments, the Commission had voted out but not yet issued a final decision.

[20] ORA/PG&E Comments, pp. 3-4.

[21] D.16-06-056, pp. 410 and 411.

the 2015 test year revenue requirement did not issue until mid-2016. The unique circumstances included elements of the decision directing PG&E to include certain things in its next GT&S application; by the time the final decision issued, it would have been difficult if not impossible to incorporate those items without providing more time, as the test year 2018 GT&S application would have been due within a few months of the issuance of D.16-06-056.[22] And the decision made clear that the concerns raised in D.16-06-005 "do not exist here," in that an extension to four year for the GT&S rate case cycle would not delay the incorporation of the RAMP process into the next GT&S rate case.[23]

ORA and PG&E also cite two examples of past PG&E GRCs where the Commission authorized an additional post-test year.[24] But in each case the additional post-test year was part of a comprehensive settlement adopted by the Commission; here the additional post-test year is explicitly <u>not</u> covered by the submitted settlement. And in D.07-03-044 (the test year 2007 GRC), the Commission expressed its opinion that even if its action resulted in a need to process concurrent or overlapping GRCs, the agency has the resources to do so and intervenors should as well.[25] TURN is confident that the Commission today, with the recent real-world experience of overlapping test year 2012 GRCs for SCE and the Sempra Utilities, would not be so cavalier about the impacts of potentially concurrent or overlapping GRCs.

Furthermore, the decisions cited by ORA and PG&E were of a different era, one that did not reflect the Commission's efforts to develop and implement an updated and better-

---

[22] *Id.*, p. 410.

[23] *Id.*, p. 411.

[24] ORA and PG&E cite three such cases, but D.00-02-046 seems to have been mistakenly cited, as it was a 1999 test year GRC application and the decision refers often to an expected 2002 test year application, without mention of an additional post-test year. (*See* Section 12.2.1.)

[25] D.07-03-044, pp. 248-249.

coordinated Rate Case Plan. Having devoted substantial efforts to achieving a three-year cycle with modifications intended to permit closer consideration of safety and risk-related issues, the Commission should be loath to undermine those efforts absent a truly compelling reason. A third post-test year will delay PG&E's first RAMP application, and likely disrupt the RAMP and GRC applications of the utilities presently scheduled to follow PG&E's test year 2020 GRC. No such issues were present when the Commission adopted a third post-test year in past decisions. And ORA and PG&E have failed to make any showing that might compel adding a third post-test year under the circumstances as they exist today.

III. Balancing Account For Non-GRC Costs from Leak Abatement OIR

A. Introduction

TURN and CAUSE submitted joint opening comments calling for the rejection of the PG&E, EDF and CUE proposal to create a New Environmental Regulatory Balancing Account (NERBA) for PG&E. The NERBA would serve to permit rate recovery of any incremental work that might be ordered in the Leak Abatement OIR before associated ratemaking issues are addressed in Phase II of the OIR. As TURN and CAUSE explained, the proposal is inappropriate given the absence of any cost forecast for such work in this GRC, and given the inappropriate reliance on a Tier 2 advice letter and a balancing account rather than a memorandum account. CFC and CAUSE (in separately-filed comments from those submitted jointly with TURN) also filed opening comments in opposition to the PG&E/EDF/CUE preferred outcome on this contested issue.[26]

---

[26] CAUSE's stand-alone comments described the joint comments with TURN regarding the proposed balancing account for Gas Leak Abatement OIR costs as having "an emphasis on economic consequences" and raising objections "on economic grounds." *Separate Opening Comments of CAUSE*, pp. 4 and 5. TURN is not sure what CAUSE has in mind when it refers to "economic consequences" and "economic grounds" in these statements, as CAUSE did not explain what it meant.

B. The Proponents' Opening Comments Firmly Establish The Flaws In Their Proposal, and PG&E's Rebuttal Testimony Described Why Granting The Requested Relief In This GRC Is Inappropriate.

The fundamental flaw in the proposal to establish a NERBA in this proceeding is that the associated activities and any reasonable costs of those activities are within the scope of a different proceeding. The opening comments of PG&E/EDF/CUE make this clear when they describe the purpose of the NERBA as follows: "to enable PG&E to recover the costs of implementing measures adopted <u>in the Leak Abatement OIR</u>."[27] The only work for which associated costs would be eligible for recovery through NERBA is that which is "incremental to the work PG&E already forecast in this GRC."[28] In other words, the work PG&E forecast as part of its GRC application and the associated costs would be <u>excluded</u> from NERBA, and only non-GRC costs could be recovered through the account. Thus the proponents' opening comments have further confirmed that which was already apparent in their proposal; the provisions that are dependent on actions and outcomes from the Gas Leak Abatement OIR (particularly the proposed NERBA for tracking OIR-related costs, rather than GRC costs) are not within the scope of this proceeding and should be addressed in the OIR itself.

The issue here is not a matter of factual disputes that might be the subject of a reasonable compromise between parties that started with different positions. Rather, the facts

---

TURN disagrees with CAUSE's characterization if the premise is that TURN is seeking to deny rate recovery of amounts the Commission ultimately determines to be reasonable to meet requirements associated with Senate Bill 1371. The comments submitted jointly by TURN and CAUSE focused on procedural and ratemaking issues regarding the inappropriateness of seeking to establish the rate recovery process in one proceeding for costs that are under development in another proceeding and will be wholly determined in that proceeding, rather than in this GRC. Upon reading CAUSE's separate comments, TURN has reviewed the joint comments again and sees nothing that would be reasonably characterized as an argument that relies on "economic consequences" or "economic grounds."

[27] PG&E/EDF/CUE Comments, p. 4 (emphasis added).

[28] *Id.*

are undisputed, and, as a matter of principle, require deferring resolution of the issues to the Gas Leak Abatement OIR where they currently reside. The NERBA element of the proposal is the best example. For starters, it is undisputed that "there is currently no forecast in this GRC for the cost of any incremental work that might be ordered in the Leak Abatement OIR."[29] Nor is there any dispute that the Commission has not yet ordered any incremental work in the Leak Abatement OIR. As PG&E stated in its rebuttal testimony, "Until the Commission finalizes any new requirements, it will not be clear whether the best mechanism for cost recovery will be for PG&E and the other gas operators to provide new forecasts, or whether a balancing account will be the right approach."[30] And even if there were some reasonable basis for assuming that a balancing account is the right approach, PG&E's rebuttal testimony explained that it is not such a simple matter to create the appropriate regulatory accounting:

> To the extent that the Commission, with input from all of the stakeholders (who are all parties to the OIR), determines that a balancing account is the best mechanism, the mechanics of that balancing account will need to be worked out. It is not clear how PG&E and other operators will be able to clearly differentiate between baseline work, in PG&E's case, the work forecast in this GRC, and incremental work to comply with new emissions reduction requirements.[31]

In light of the fundamental and undisputed facts in the record in this GRC and the established scope of the Gas Leak Abatement OIR, the principled position set forth in PG&E's rebuttal testimony is not only the correct one but also the only one that has record support.

The Commission should recognize that the principles have not changed, and the outcome called for in PG&E's rebuttal testimony remains the correct one. All ratemaking

---

[29] Ex. PG&E-22 (PG&E Rebuttal on Gas Distribution), p. 6C-31.

[30] *Id.*, at 6C-31 to 6C-32.

[31] *Id.*, at 6C-32.

matters associated with the Gas Leak Abatement OIR should be determined in the Gas Leak Abatement OIR.

C. Any "Gap" In Ratemaking Associated With The Leak Abatement OIR Should Be Addressed In The OIR, As PG&E Has Proposed In Its Rebuttal Testimony Here And In Comments In The Leak Abatement OIR.

The proponents of NERBA argue that it is necessary to address a "gap between when the Commission identifies best leak abatement practices and when it authorizes funding to implement them."[32] In their view, creation of a new balancing account in the GRC merely closes that gap "until such time as the Commission issues its Phase II decision in the OIR."[33]

The Commission should recognize that the identified "gap" is entirely theoretical at this time, and will remain so until the Leak Abatement OIR reaches a point where there are adopted practices and associated cost forecasts. Only then will there be a need to identify and establish ratemaking for any incremental costs associated with those practices. Under these circumstances, the better approach is to address any potential "gap" at its source, that is, as part of the Leak Abatement OIR. Such an approach is consistent with the proposal PG&E has put forward in the OIR, when it requested a separate workshop to identify a cost recovery mechanism for incremental costs incurred prior to an operator's next rate case:

> Before the Commission adopts best practice requirements, PG&E agrees that the Commission should establish a cost recovery mechanism for operators' incremental costs until those practices can be incorporated into operators' next rate case cycles. Funding should be addressed promptly and with an opportunity for stakeholder input, well in advance of any implementation deadlines that are established. A cost recovery workshop would provide the opportunity for Staff, operators and other

---

32 PG&E/EDF/CUE Comments, p. 5.

33 *Id.*

> stakeholders to assess interim funding mechanism options and make recommendations to the Commission.[34]

PG&E's rebuttal testimony in this GRC provides further support for addressing cost recovery issues in the Leak Abatement OIR:

> Phase II of the Leak Abatement OIR is scheduled to address cost recovery for new requirements mandated in that proceeding. Parties, including the other gas operators, will have an opportunity to develop a much more complete and robust record on this issue than there is in PG&E's current GRC. Given the complexities of determining what costs are truly incremental to baseline work, one or more workshops may be necessary. The Leak Abatement OIR could hold such workshops, whereas PG&E's GRC schedule cannot accommodate them.[35]

Finally, addressing any cost recovery issues in the Leak Abatement OIR better ensures that the Commission will adopt consistent ratemaking approaches for gas utilities facing similar circumstances. PG&E is just one of numerous respondents in the Leak Abatement OIR. As of now, none of the respondents has a clearly established ratemaking mechanism that would apply to incremental costs arising from outcomes that may be adopted in the OIR.[36] Under the PG&E/EDF/CUE approach, there would be a NERBA clearly providing for rate recovery of as-yet unforecasted costs for PG&E and established for that purpose, a NERBA created for a different purpose that might be (but has not yet been) extended to as-yet unforecasted incremental costs from the OIR for the Sempra Utilities, and an apparently blank slate for Southwest Gas and the half dozen or so other respondents in R.15-01-008.

---

[34] *PG&E's Reply Comments on ALJ's Ruling Entering Summary of Best Practices Working Group Activities and Staff Recommendations Into The Record And Seeking Comments* (May 20, 2016), p. 7.

[35] Ex. PG&E-22 (PG&E Rebuttal on Gas Distribution), p. 6C-32.

[36] As is discussed further in a following section, the settlement in the Sempra Utilities' GRC merely commits the parties to "seek any additional necessary regulatory authority to clarify that the recovery of those costs is permissible" within the already existing NERBA. TURN is not aware of any other respondent for which the ratemaking for SB 1371 costs has been addressed, either directly or indirectly, in a Commission decision or order.

D. The Cited Examples Of Balancing Accounts Adopted In Previous GRCs Are Inapposite, As Each Is Tied To A GRC Forecast For Activities Addressed In The GRC.

PG&E, EDF and CUE claim there is "ample legal authority" for adoption of a balancing account for costs associated with "yet-to-be-known regulatory requirements."[37] But the decisions they cite actually better serve to highlight the critical flaws of their proposal.

In D.14-08-032 (in PG&E's test year 2014 GRC), PG&E's GRC forecasts included costs associated with hydroelectric licensing and license conditions in MWC 11, and the Commission addressed those forecasts <u>in the GRC</u>.[38] The Commission adopted a balancing account because of uncertainty that impacted the reasonableness of those GRC forecasts.[39] Similarly, PG&E's forecasts in the 2014 GRC included a forecast for costs associated with the NRC rulemakings that followed the Fukushima Daiichi nuclear plant disaster. The balancing account was premised on that forecast.[40]

And rather than being "even more on point," the recent decision in the Sempra utilities' GRC (adopting a settlement with broad support) addressed a materially different proposal. The Sempra Utilities have each had a New Environmental Regulatory Balancing Account since their 2012 GRCs.[41] In their test year 2015 GRC applications, those utilities sought to expand the costs eligible to be recorded in the existing NERBA to include, among other things, leak detection and repair (LDAR) costs to the extent the recorded costs vary from the forecasted costs of the LDAR program <u>included in their GRC forecast</u>.[42] The

---

[37] PG&E/EDF/CUE Comments, pp. 5-6.

[38] D.14-08-032, Section 6.2.2.7, pp. 376-378.

[39] *Id.*, p. 380.

[40] *Id.*, p. 420.

[41] D.13-05-010, Conclusions of Law 9 and 19, and Ordering Paragraphs 14 and 18.

[42] Ex. SCG-17 from A.14-11-003/-004, p. JT-11.

settlement adopted the NERBA "as proposed in this GRC by SDG&E and SoCalGas."[43] The NERBA as proposed by the utilities did not cover incremental costs associated with compliance with SB 1371 incremental to activities included in their GRC forecasts. For such incremental costs, the settling parties addressed a need for "additional regulatory authority to clarify that the recovery of those costs is permissible using the adopted NERBA for the duration of the GRC cycle."[44]

In sum, the recent Sempra Utilities' GRC decision adopted a settlement that made the distinction that PG&E/EDF/CUE seek to blur here. To the extent SB 1371 impacts the work that had been included in the utilities' LDAR forecasts as presented in their GRCs, the associated costs may be recorded in the balancing account. But to the extent there are incremental activities associated with implementing SB 1371 that go beyond the activities covered in the GRC forecasts, the NERBA will serve as a cost recovery vehicle only if the Commission deems that approach permissible, presumably in the Leak Abatement OIR, but certainly not in the Sempra Utilities' GRC.

Date: August 25, 2016

Respectfully submitted,

By: __________/s/______________
Robert Finkelstein

THE UTILITY REFORM NETWORK
785 Market Street, Suite 1400
San Francisco, CA 94103
Phone: (415) 929-8876 x307
Fax: (415) 929-1132
Email: bfinkelstein@turn.org

[43] D.16-06-054, pp. 22-23 (quoting paragraph 4 of the "Attachment 3 Settlement Agreement").

[44] *Id.*, p. 23 (quoting paragraph 5 of the "Attachment 3 Settlement Agreement").