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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)*

OPENING COMMENTS OF CONSUMER FEDERATION OF CALIFORNIA TO 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 JOINT MOTION FOR ADOPTION OF SETTLEMENT AGREEMENT

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I. Introduction

In accordance with Rule 12.2 of the California Public Utilities Commission ("Commission") Rules of Practice and Procedure ("Rules"), Consumer Federation of California (CFC) submits these opening comments to the Joint Motion for Adoption of Settlement Agreement in Application 15-09-001("Application").

II. Procedural History

On September 1, 2015, PG&E filed its 2017 GRC Application. On October 29, 2015, the Commission held a prehearing conference before Assigned Commissioner Michael Picker and Administrative Law Judge (ALJ) Stephen C. Roscow.

In October and November 2015, December 2015, as well as January and February 2016 PG&E served supplemental testimony.

On April 8, 2016, ORA served its testimony in response to PG&E's 2017 GRC Application and supporting testimony.

On April 29, 2016, TURN, A4NR, CAUSE, CUE, CFC, EDF, MCE, Merced ID, Modesto ID, NDC, SBUA and SSJID served their testimony.

On May 26 and 27, 2016, PG&E, CUE, EDF and SSJID served rebuttal testimony.

Through mid-July 2016, PG&E responded to data requests in this proceeding.

On July 21, 2016, pursuant to Rule 12.1(b), PG&E notified all parties on the service list of a settlement conference to be held on August 3, 2016 to discuss the terms of the Agreement. Following the settlement conference, the Settling Parties signed the Joint Motion of Office of Ratepayer Advocates, The Utility Reform Network, Alliance for Nuclear Responsibility, Center for Accessible Technology, Coalition of California Utility Employees, Collaborative Approaches to Utility Safety Enforcement, Consumer Federation of California, Environmental Defense Fund, Marin Clean Energy, Merced Irrigation District, Modesto Irrigation District, National Diversity Coalition, Small Business Utility Advocates, South San Joaquin Irrigation District, and Pacific Gas and Electric Company For Adoption of Settlement Agreement and the attached Settlement Agreement (Settlement).

III. Standard of Review

Settlement is the product of compromise. The question the Commission should address when evaluating a settlement is not whether the final product could be "prettier, smarter or snazzier, but whether it is fair, adequate…free from collusion" and within the bounds of the law.[1] A settlement agreement must stand or fall on its own terms. It should not be compared to some hypothetical result that the settling parties might have achieved, or that some parties believe should have been achieved.

It is important that all parties to the settlement had a sound and thorough understanding of the issues and all of the underlying assumptions and data pertinent to those issues and that result meets legal requirements. Only then can the Commission consider the settlement

[1] Hanlon v. Chrysler Corp., 150 F.3d 1011, 1027 (9th Cir. 1998)

agreement as the outcome of negotiations between competent and well-prepared parties able to make informed choices in the settlement process.

IV. Comments

CFC submits that the two contested settlement terms are unreasonable in light of the record and not in the public interest. It is necessary that service provided by regulated utilities be in a safe and reliable manner at just and reasonable rates. Specifically,

> [a]ll charges demanded or received by any public utility…shall be just and reasonable. Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities…as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.[2]

This settlement proposes, however, the approval of a potentially costly third attrition year and a completely unsupervised collection of expenses in a new balancing account; both without review or pertinent data.[3] Nothing in the record demonstrates that either settlement term is necessary, much less reasonable.

Because these terms are unreasonable, the Commission rules require they be denied. Specifically, Rule 12.1(d) provides that:

> The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.[4]

Because neither contested issue was part of the original application, parties did not have the appropriate information, notice, or opportunity to address the specifics of either issue. An indepth and detailed analysis of the contested issues is not part of the whole record and, therefore, adoption of these issues as part of the settlement would not be consistent with Rule 12.1 and is against public interest.

a. Third Attrition Year

[2] Under Cal. Pub. Util. § 451,
[3] See e.g., P.U. Code § 399.2,
[4] Commission's Rules of Practice. Rule 12.1 Proposal of Settlements

Under the terms of the Settlement, Office of Ratepayer Advocates (ORA) and Pacific Gas and Electric (PG&E) have settled on adding a third attrition year, in 2020, to the next general rate case.[5] The revenue requirement for 2020 would be comparable to ORA's alternative recommendation for 2019: a $361 million increase.[6] CFC does not support the proposed inclusion of 2020 as a third attrition year.

As recognised in Section 3.1.5.5.2 of the Settlement, the Application contains no revenue estimates for 2020.[7] Consequently, "PG&E has forecast no such funding for these activities in 2020."[8] Because the 2020 addition was not a part of the original Application, intervenors had no opportunity to evaluate the implications of a further attrition year and cannot know how the third attrition year would be treated. Presumably, as an attrition year, 2020 would rely on accounts escalated on the same basis as 2018 and 2019. But this is an assumption and a general rate case decision should not be determined through assumption.

The Commission has already considered the GRC interval generally in other rulemakings[9] and concluded a continued 3-year cycle desirable.[10] Approving a four year cycle for PG&E in this proceeding would undermine those decisions.

The extension has simply been put forward with no supporting evidence and arguments as to what benefits it would lead to. Yet, the detriments resulting from a fourth year include an increase in revenue requirement by $361 million through the application of another rate increase for a fourth year significantly in excess of anticipated inflation. Absent clear justification for raising real rates in such manner, extending the post-test years to include 2020 seems simply

[5] A. 15-09-001. Joint Motion of Office of Ratepayer Advocates, The Utility Reform Network, Alliance for Nuclear Responsibility, Center for Accessible Technology, Coalition of California Utility Employees, Collaborative Approaches to Utility Safety Enforcement, Consumer Federation of California, Environmental Defense Fund, Marin Clean Energy, Merced Irrigation District, Modesto Irrigation District, National Diversity Coalition, Small Business Utility Advocates, South San Joaquin Irrigation District, and Pacific Gas and Electric Company For Adoption of Settlement Agreement and the attached Settlement Agreement, p. 12.
[6] Exh. (ORA-13), p. 37, lines 5-10.
[7] A. 15-09-001. Joint Motion For Adoption of Settlement Agreement and the attached Settlement Agreement, p. 1-10.
[8] A. 15-09-001. Joint Motion For Adoption of Settlement Agreement and the attached Settlement Agreement, p. 1-10.
[9] Rulemaking 13-11-006.
[10] Decision 14-12-025 and again in Decision 16-06-005.

arbitrary, with no public interest rationale. Ultimately, no problem is solved by including 2020. The Commission should reject this settlement term.

b. New Environmental Regulatory Balancing Account (NERBA)

As part of the current draft GRC Settlement, PG&E, EDF, and CUE (the "NERBA Proponents") propose closing the Gas Leak Survey and Repairs Balancing Account (GLSRBA), and instituting a New Environmental Regulatory Balancing Account (NERBA).[11] PG&E, EDF, and CUE propose the creation of NERBA to ensure PG&E has the resources necessary to implement practices adopted by the Commission in Rulemaking (R.) 15-01-008, increasing gas system survey and repair activities aimed at reducing greenhouse gas (GHG) emissions.[12] The NERBA was not proposed in PG&E's original GRC Application but arose during the proceeding and settlement negotiations. Parties have had no opportunity to evaluate whether it provides ratepayer benefits, increases ratepayer costs, or is technically suited to its intended purpose. CFC does not support the proposed NERBA as presented in the settlement and encourages the Commission to reject the settlement term.

NERBA is described in the motion and attached settlement as necessary for the purposes of recovering overall incremental Gas Distribution Emission Reduction Costs associated with new regulatory requirements pertaining to gas distribution leak management activities, including, but not limited to, requirements in connection with R.15-01-008 and SB 1371.[13] As described in the proposed Settlement, "Gas Distribution Emission Reduction Costs" could include costs of leak survey, leak repair, leak measurement, leak detection and/or measurement equipment, and other gas distribution emission reduction measures ordered in R.15-01-008 and "beyond the level authorized in this settlement agreement."[14] Measures under consideration in R.15-01-008, such as implementing new technologies and new timeframes for repair of leaks (i.e., 3-year survey cycle), could increase both the units of work to be performed and the unit cost of the work

[11] A. 15-09-001. Joint Motion For Adoption of Settlement Agreement and the attached Settlement Agreement, p. 1-34.
[12] A. 15-09-001. Joint Motion For Adoption of Settlement Agreement and the attached Settlement Agreement, p. 55.
[13] A. 15-09-001. Joint Motion For Adoption of Settlement Agreement and the attached Settlement Agreement, p. 34.
[14] A. 15-09-001. Joint Motion For Adoption of Settlement Agreement and the attached Settlement Agreement, p. 34. (emphasis added)

ultimately increasing rates. This potential broad scope of the proposed NERBA, with no floor and ceiling previously approved by the Commission, causes CFC concern about expenses potentially piling up within the account.

As proposed, the NERBA features no initial expenditure forecast, let alone any recommended spending limit. The offered language of NERBA creates a wide opening for seemingly unlimited gas leak spending. CFC is concerned that NERBA could be used to circumvent revenue requirement reductions which have already been established in these settlement negotiations; that NERBA would be used simply to recover those costs under different guises at a later date.

Due to the late emergence of NERBA, there has been no opportunity for intervenors to discover and comment on these concerns or even the specifics of the account. For example, how will PG&E functionally distinguish between surveys, repairs, and related gas leak activities normally associated with traditional leak management requirements, safety-related repairs historically funded within the GRC, from GHG emissions-related repairs undertaken pursuant to R.15-01-008? No data are provided to answer this question or others. Intervenors have been given no opportunity to evaluate the implications of the specifics associated with the NERBA account as they are not presented in this GRC.

CFC appreciates the need for system condition surveys, immediate safety-related repairs, and timely emissions-reduction maintenance. CFC might have supported NERBA, if it had the opportunity to evaluate the account via discovery. Instead, NERBA was put forward at the eleventh hour, with no time for exploration of its merits or its potential contribution to future ratepayer costs.

CFC believes that, because it does not feature a base line cost forecast, a clear means of distinguishing between work undertaken under "new regulations," or any other associated and apparent cost control provision, the proposed NERBA has not been demonstrated to be in the public interest. The Commission should not adopt this settlement term.

V. Conclusion

CFC appreciates the opportunity to provide these comments and thanks the Commission for its attention to the matters discussed herein. For the reasons set forth above, CFC encourages the Commission to adopt the settlement without these two issues.

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Respectfully submitted,

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