

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

**FILED**

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Application of Pacific Gas and Electric Company to  
Revise its Gas Rates and Tariffs to be Effective July  
1, 2010 (U39G)

Application 09-05-026  
(Filed May 29, 2009)

**MOTION FOR OFFICIAL NOTICE OF FACTS OF  
THE SCHOOL PROJECT FOR UTILITY RATE REDUCTION,  
ABAG PUBLICLY OWNED ENERGY RESOURCES,  
AND TIGER NATURAL GAS**

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Date: September 16, 2010

**MOTION FOR OFFICIAL NOTICE OF FACTS OF  
THE SCHOOL PROJECT FOR UTILITY RATE REDUCTION,  
ABAG PUBLICLY OWNED ENERGY RESOURCES,  
AND TIGER NATURAL GAS**

The School Project for Utility Rate Reduction, ABAG Publicly Owned Energy Resources, and Tiger Natural Gas (collectively, "SAT"), respectfully request that the Commission take official notice of certain facts referenced in the Opening Brief filed by SAT in this proceeding.

This request is made pursuant to Rule 13.9 of the Commission's Rules of Practice and Procedure, which provides that "Official notice may be taken of such matters as may be judicially noticed by the courts of the State of California pursuant to Evidence Code section 450 et seq."<sup>1</sup> Pursuant to Evidence Code section 452(h), judicial notice may be taken of "Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."<sup>2</sup>

Specifically, SAT requests that the Commission take notice of testimony filed with the New York Public Service Commission ("NY PSC") by two employees of the New York State Department of Public Service (the "NYS DPS Testimony"). The NYS DPS Testimony describes a per therm "Merchant Function Charge" that is included in commodity rates charged to bundled service customers, but not to transportation-only customers, of natural gas utilities in New York State.<sup>3</sup> The Merchant Function Charge was implemented pursuant to an order of the NYPSC.<sup>4</sup> The NYS DPS Testimony was referenced in the Opening Brief filed by SAT in this proceeding and jointly served with this motion.

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<sup>1</sup> California Public Utilities Commission, Rules of Practice and Procedure, Rule 13.9 (Official Notice of Facts).

<sup>2</sup> California Evidence Code, section 452(h).

<sup>3</sup> Prepared Testimony of Gas Rates Panel (Alan F. Mostek and Davide Maioriello), filed January 10, 2010, in NYPSC Cases 09-E-0715, 09-G-0716, 09-E-0717, and 09-G-0718, pages 42 – 44, posted at:

<http://documents.dps.state.ny.us/public/Common/ViewDoc.aspx?DocRefId={7225F445-EA95-4A18-948C-DF460F03949A}>.

<sup>4</sup> Statement of Policy on Unbundling and Order Directing Tariff Filings, issued by NYPSC in Case 00-M-0504, August 25, 2004 (copy posted at:

[www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/Web/0717FE125899AD1985256EFB006253F2/\\$File/201b.00m0504.pdf?OpenElement](http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/Web/0717FE125899AD1985256EFB006253F2/$File/201b.00m0504.pdf?OpenElement) )

The NYS DPS Testimony meets the judicial notice criteria of Evidence Code 452(h). The fact that this testimony exists, and that it is accurately quoted by SAT in the SAT Opening Brief, can be immediately and accurately determined by resort to the NYPSC Web site where the testimony is posted. A link to the NYS DPS Testimony is included in the SAT Opening Brief, and in a footnote to this motion. The NY PSC Web site is a source of reasonably indisputable accuracy.

SAT provided the applicant in this proceeding, Pacific Gas and Electric Company, with information regarding the NYS DPS Testimony in a data response on April 22, 2010. The data response described the NYS DPS Testimony and its relevance to this proceeding, as well as providing a link to the posted NYS DPS Testimony.

A copy of the April 22, 2010, data response is attached to this motion as Exhibit A. A copy of the cover page and the cited pages from the NYS DPS Testimony is attached to this motion as Exhibit B.

Respectfully submitted,

September 16, 2010

/s/ MICHAEL ROCHMAN

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served, this day, a copy of the foregoing –

**MOTION FOR OFFICIAL NOTICE OF FACTS OF  
THE SCHOOL PROJECT FOR UTILITY RATE REDUCTION,  
ABAG PUBLICLY OWNED ENERGY RESOURCES,  
AND TIGER NATURAL GAS**

via electronic mail to all parties on the service list for **A. 09-05-026** who have provided an electronic mail address and by first class mail, postage prepaid to any “Appearance” or “State Service” parties on the service list who have not provided an electronic mail address.

Executed September 16, 2010, at Concord, California.

/s/ MICHAEL ROCHMAN

Michael Rochman

VIA E-MAIL AND FIRST CLASS MAIL

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John S. Wong  
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California Public Utilities Commission  
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VIA E-MAIL

See attached service list

Service List for A.09-05-026, posted at

[http://docs.cpuc.ca.gov/published/service\\_lists/A0905026\\_78405.htm](http://docs.cpuc.ca.gov/published/service_lists/A0905026_78405.htm)

Last changed: August 31, 2010

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**PACIFIC GAS AND ELECTRIC COMPANY  
2009 Biennial Cost Allocation Proceeding  
Application 09-05-026**

**EXHIBIT A**

**Response by SPURR, ABAG POWER and Tiger Natural Gas  
to PG&E Data Request of April 8, 2010  
(PG&E Data Request No: BCAP-PGE-2009\_DR\_PGE\_SPURR-ABAG-Tiger\_001! )**

QUESTION 6: Is SPURR aware of any other utilities that have a CBF calculated using the methodology proposed by SAT? If so, please identify the utility and describe the methodology used to calculate the CBF.

ANSWER 6: SPURR objects that a question seeking all facts of which we are “aware” is overbroad.

Without waiving our objection, SPURR can state that we understand that gas utilities in New York state must allocate costs related to providing commodity supplies to charges that bundled customers pay, but unbundled customers do not pay. This is done through a “Merchant Function Charge” (MFC) to bundled service customers. The MFC was established pursuant to the Statement of Policy on Unbundling and Order Directing Tariff Filings, issued by the New York Public Service Commission in Case 00-M-0504, on August 25, 2004 (posted here:

[http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/Web/0717FE125899AD1985256EFB006253F2/\\$File/201b.00m0504.pdf?OpenElement](http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/Web/0717FE125899AD1985256EFB006253F2/$File/201b.00m0504.pdf?OpenElement))

According to testimony recently filed with the New York PSC by two employees of the New York State Department of Public Service, the MFC was “intended to capture utility costs related to its merchant function; that is those costs related to providing commodity supplies to serve bundled sales customers of the utility.” The utilities in that case proposed to include in their MFC “cost components for commodity related uncollectibles, administrative costs related to the procurement function including credit and collections, call center, and customer service expenses, and working capital components related to purchased gas expense, storage inventory and commodity hedge margin.”

Prepared Testimony of Gas Rates Panel (Alan F. Mostek and Davide Maioriello), filed January 10, 2010, in Cases 09-E-0715, 09-G-0716, 09-E-0717, and 09-G-0718 (posted here:

<http://documents.dps.state.ny.us/public/Common/ViewDoc.aspx?DocRefId={7225F445-EA95-4A18-948C-DF460F03949A}>), at pages 42 - 44.

The MFC appears to differ by gas utility and to change from month to month. According to information posted on the New York PSC Web site, a typical commercial natural gas customer in Consolidated Edison territory paid an MFC of \$0.031349 per therm in January 2009.

[http://www.dps.state.ny.us/typical\\_bills/util\\_gas\\_ci\\_bills\\_Jan\\_2009.pdf](http://www.dps.state.ny.us/typical_bills/util_gas_ci_bills_Jan_2009.pdf)

EXHIBIT B

BEFORE THE  
STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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Cases 09-E-0715, 09-G-0716, 09-E-0717, and 09-G-0718

In the Matter Of

New York State Electric & Gas Corporation  
And  
Rochester Gas & Electric Corporation

ELECTRIC AND GAS RATES

January 2010

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Prepared Testimony of:

GAS RATES PANEL

Alan F. Mostek  
Utility Engineer 3  
Office of Electric, Gas & Water  
Gas Rates & Tariffs

Davide Maioriello  
Utility Engineer 2  
Office of Electric, Gas & Water  
Gas Rates & Tariffs

State of New York  
Department of Public Service  
Three Empire State Plaza  
Albany, New York 12223-1350

1 bill regardless of whether the consolidated bill  
2 provided is for combined electric and gas service,  
3 electric only service, or gas only service.

4 Accordingly, a customer served by an ESCO/marketer  
5 will not see a BIPP charge on their NYSEG or RG&E  
6 delivery bill (Embedded Cost of Service Panel -  
7 NYSEG pages 42-43, RG&E pages 41-42).

8 Q. Is this proposal consistent with previous Commission  
9 orders?

10 A. Yes. The Companies' proposal recognizes that the  
11 BIPP charge should be per bill regardless of whether  
12 the bill is for combined services, electric only or  
13 gas only, and that the BIPP charge should not be  
14 applied to utility provided consolidated bills for  
15 ESCO/marketer customers. This is consistent with  
16 previous Commission orders in Cases 00-M-0504 and  
17 06-G-1386 regarding unbundled billing costs.

18 Merchant Function Charge (MFC) and Purchase of  
19 Receivables (POR)

20 Q. Do both NYSEG and RG&E currently have gas MFCs and  
21 did they propose to continue a gas MFC in the  
22 current case?

23 A. Yes.

24 Q. What is the purpose of an MFC?

1 A. An MFC is a charge intended to capture utility costs  
2 related to its merchant function; that is those  
3 costs related to providing commodity supplies to  
4 serve bundled sales customers of the utility.

5 Q. Why is this necessary?

6 A. In its Statement of Policy on Unbundling and Order  
7 Directing Tariff Filings (Unbundling Policy  
8 Statement) in Case 00-M-0504 issued on August 25,  
9 2004, the Commission provided guidance on the  
10 allocation of utility costs between regulated and  
11 competitive functions. The Commission asked the  
12 utilities to establish cost based competitive rates  
13 that would afford customers accurate price signals  
14 as they choose among the providers of services in  
15 the competitive market. The MFC together with the  
16 Gas Supply Charge (GSC) represents that competitive  
17 price for purposes of comparing the cost of utility  
18 supplier service with the cost of alternative  
19 providers of supply services in the competitive  
20 market.

21 Q. How have the Companies proposed to structure the gas  
22 MFCs?

23 A. The Companies have proposed to calculate the MFCs by  
24 aggregating the supply procurement function revenue

1 requirement at the claimed rate of return into  
2 residential and non-residential customer groups.

3 The grouped revenue requirements were divided by the  
4 forecasted therms in the rate year for bundled sales  
5 customers in each group to create two MFCs for each  
6 Company (Embedded Cost of Service Panel - NYSEG page  
7 42, RG&E page 41).

8 Q. What cost components did the Companies propose to  
9 include in the gas MFCs for NYSEG and RG&E?

10 A. The Companies propose to include cost components for  
11 commodity related uncollectibles, administrative  
12 costs related to the procurement function including  
13 credit and collections, call center, and customer  
14 service expenses, and workings capital components  
15 related to purchased gas expense, storage inventory  
16 and commodity hedge margin (Embedded Cost of Service  
17 Panel - NYSEG Exhibit\_\_\_\_(NYSEGECOS-20)-12/4/09  
18 Update page 1 of 1, RG&E Exhibit\_\_\_\_(RGEECOS-20)-  
19 12/4/09 Update page 1 of 1).

20 Q. Does the Panel believe these cost components are  
21 consistent with the guidance provided in the  
22 Unbundling Policy Statement?

23 A. In general, yes. However, the provision of working  
24 capital on purchased gas expense and commodity