**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, 2011. (U 39 M)	A.09-12-020 (Filed December 21, 2009)

PROTEST OF MERCED IRRIGATION DISTRICT AND MODESTO IRRIGATION DISTRICT TO GENERAL RATE CASE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY

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PACIFIC GAS AND ELECTRIC COMPANY

Pursuant to Rule 2.6 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission" or "CPUC"), Merced Irrigation District ("Merced ID") and Modesto Irrigation District ("Modesto ID") (collectively, the "Districts") submit this Protest to the Application of Pacific Gas and Electric Company ("PG&E") for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2011 ("PG&E Application").

1. Introduction

PG&E proposes to increase its electric revenue requirement $1,191 million, or 9.4%, over 2009 authorized revenues.[1] PG&E proposes an $835 million, or 6.7%, increase over the 2010 electric revenue forecast.[2] PG&E forecasts either no rate change or a slight decrease in the bundled average electric rate on January 1, 2011, based primarily on the timing of recovery of balancing accounts and electric procurement costs.[3]

The Districts appreciate that PG&E has had to carefully balance the impact of a substantial increase in its revenue requirement on customers suffering through the economic downturn against a need to be ready to support an unpredictable recovery, including the provision of safe, reliable service.[4] However, in light of PG&E's much-touted focus on

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1 PG&E Application, p. 2, Table 1.

2 *Id*.

3 *Id*. at 2.

4 PG&E Application, Exh. PG&E-1, p. 1-2, lines 10-34.

customer satisfaction, it is not clear why PG&E persists in yet another General Rate Case ("GRC") application to seek substantial amounts for customer retention and economic development efforts. PG&E requests $4,000,000 from ratepayers in 2011 – a 294% increase over 2008 recorded – to fund customer retention efforts, and $3,000,000 from ratepayers in 2011 – a 428% increase over 2008 recorded – to fund economic development efforts.[5] The Districts have protested similar PG&E requests in PG&E's 2003 and 2007 GRCs. The Districts concerns regarding ratepayer funding of customer retention efforts were addressed in each of the two prior GRCs in multi-party settlements providing *zero allocation* for customer retention expenses.[6] The Districts believe that the same principles supporting zero allocation for customer retention expenses in the prior GRC proceedings apply to PG&E's current proposal, and may support a zero or reduced allocation for economic development expenses. Additionally, based on PG&E's calculation of the 294% increase over 2008 recorded, it is not clear whether PG&E has spent some ratepayer monies on customer retention activities, contrary to the settlement adopted in D.07-03-044.

The Districts also seek more transparency in the way PG&E develops revenue requirements and assigns costs for electric distribution projects. For example, the Districts seek to ensure that PG&E is not undervaluing the cost of projects in the distribution planning area that includes the areas where the Districts also provide electric service.

In sum, Merced ID and Modesto ID request that the Commission take the following actions with respect to the PG&E Application:

- Deny PG&E's request to have ratepayers fund $4,000,000 in customer retention activities and deny all or a portion of PG&E's request for $3,000,000 in ratepayer monies for economic development activities;
- Request that PG&E demonstrate its compliance with the provision of the settlement approved in D.07-03-044 allocating zero dollars for customer retention expenses;
- Request that PG&E explain whether the $8,000,000 it has spent to date in support of the pending initiative, the "New Two-Thirds Vote Requirement for Local Electricity Providers," was funded by shareholders or ratepayers, or both; and
- Require that PG&E equitably develop the revenue requirements for, and allocate the costs of, electric distribution projects among distribution planning areas.

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5 PG&E Application, Exh. PG&E-4, p. 9-1, Table 9-1.

6 D.04-05-055, Attachment A, p. 14; D.07-03-044, Appendix C, Paragraph 19.

The Districts continue to review the PG&E Application and will commence discovery soon. Accordingly, the Districts reserve the right to address other issues relating to the PG&E Application as appropriate. Additionally, to the extent issues arise relating to PG&E's compliance with the Agreement Regarding Removal of Idle Facilities between PG&E and Modesto ID, which was entered into in accordance with the settlement approved in D.07-03-044, Modesto ID reserves the right to address those issues consistent with the Commission's procedural rules.[7]

2. The Districts Have a Material Interest in this Proceeding.

Merced ID and Modesto ID are both customers of PG&E and competitors in the provision of electric services to customers in California's central valley, and as such have an interest in the matters addressed in this proceeding. These matters include PG&E's proposal to use ratepayer monies to prevent customers from switching from PG&E electric service to publicly owned utility ("POU") electric service, and the need for equitable development of revenue requirements for, and allocation of the costs of, electric distribution projects among distribution planning areas, either or both of which could provide PG&E with an unfair advantage in the provision of electric service compared to the Districts.

3. PG&E's Request to Have Customers Pay to Limit Their Ability to Switch to Other Service Providers is Contrary to PG&E's "Ambitious Vision" and Stated Commitment to its Customers.

a. The Leading Utility in the United States Should Not Seek to Preclude the POU Alternative.

PG&E states that it remains committed to fulfilling its "ambitious vision of becoming the leading utility in the United States," consistent with its 2007 GRC pronouncements.[8] PG&E also states that it is focused on providing customers with safe and reliable gas and electric service and understanding and meeting its customers' needs.[9] In fact, "[d]elighting our customers is the first goal for PG&E."[10]

PG&E explains that it is one of the largest energy utilities in the United States, and the largest utility in California, which ranks among the world's 10 largest economies.[11] "PG&E

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7 D.07-03-044, Appendix C, Paragraph 49.
8 PG&E Application, Exh. PG&E-1, p. 1-3, lines 2-3.
9 *Id.* at p. 1-1, lines 23-25.
10 PG&E Application, Exh. PG&E-4, p. 1-1, line 26.
11 PG&E Application, Exh. PG&E-1, p. 1-3, lines 9-11.

serves approximately 15 million people, or about 1 in 20 Americans and 40 percent of all Californians."[12] PG&E's service area covers approximately 70,000 miles in northern and central California, or about 43 percent of the state.[13] Its electric distribution network, comprised of 141,036 distribution miles as of year-end 2008, extends through 47 of California's 58 counties.[14]

Notwithstanding PG&E's enthusiastic dedication to its customers and its seemingly solid position as northern California's essentially monopoly electric service provider, PG&E would have its customers pay $4,000,000 in 2011 to fund PG&E's efforts to preclude those very same customers from choosing to take service from other providers who generally "offer service at a price lower than PG&E's current retail rate but which is higher than PG&E's marginal cost of service."[15]

The main rationale offered by PG&E in support of its request once again is that "PG&E has established and the Commission has recognized that uneconomic bypass adversely impacts remaining customers."[16] PG&E's allegations in this regard are overstated and misleading. PG&E fails to mention that the Commission has also recognized the benefits to California's electric consumers of competition among service providers. For example, in D.98-06-020, the Commission rejected a sale of facilities agreement and long-term service agreement between PG&E and Modesto ID, choosing to preserve the competition between Modesto ID and PG&E.[17]

b. PG&E Currently Has Ample Tools to Address Its Concerns About the POU Alternative.

Irrigation districts have had the ability to provide electric service for almost a century. In 1919, the California Legislature formally authorized irrigation districts to "provide for the acquisition, operation, leasing and control of plants for the generation, transmission, distribution, sale and lease of electric power."[18] POUs, including irrigation districts, have lawfully been providing electric service in California for decades and continue to do so. PG&E knows this. Nonetheless, PG&E fails to mention that it can, and does, forecast municipal departing load, and

12 *Id*. at lines 11-12.
13 *Id*. at lines 18-19.
14 *Id*. at lines 20-22.
15 PG&E Application, Exh. PG&E-4, p. 9-4, lines 3-5.
16 PG&E Application, Exh. PG&E-4, p. 9-2, lines 8-9.
17 D.98-06-020; 1998 Cal. PUC LEXIS 458, p. 12.
18 Cal. Water Code, § 22125.

that state law now requires that it do so.[19] In D.07-12-052, the Commission "concur[red] with PG&E's response … that future DG and [municipal departing load] is captured by historical trends used to develop the forecast."[20] In other words, PG&E has ample ability to account and plan for the decisions of PG&E's existing customers and new energy customers to choose POU electric service.

PG&E also fails to mention the various nonbypassable load charges the Commission has authorized PG&E to collect to minimize or eliminate most impacts to PG&E and its ratepayers as a result of load that departs to take service from a POU. In some instances, nonbypassable charges could put PG&E's remaining customers in a better position than if the departing customer stayed with PG&E. This would be the case where, for example, the cost of serving a customer exceeds the revenue provided by the customer. PG&E also largely ignores its ability to offer rate discounts in the face of certain POU offers for service.

PG&E has successfully opposed various POU and community choice aggregation ("CCA") efforts in recent years. In the 2006-2007 timeframe, PG&E defeated the Sacramento Municipal Utility District's proposal to annex the Cities of West Sacramento, Davis, and Woodland and nearby unincorporated areas and South San Joaquin Irrigation District's ("SSJID") proposal to provide electric service within its boundary. More recently, the San Joaquin Valley Power Authority determined to suspend its efforts to pursue CCA service at least in part because of PG&E's opposition efforts.[21] PG&E currently is very involved in SSJID's renewed effort to provide electric service, as well as the City and County of San Francisco's and the Marin Energy Authority's efforts to establish CCA programs.

Additionally, PG&E is presently the primary financial backer of an initiative, the "New Two-Thirds Vote Requirement for Local Electricity Providers," that would amend the California constitution to, among other things, require that a two-thirds majority approve the formation or expansion of POU service, and the implementation of a CCA program. This requirement would impede the formation of a new POU or a new CCA program, the expansion of POU boundaries, and, in the case of the Districts, the ability to serve new customers in their existing service areas

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[19] Cal. Pub. Res. Code, § 25302.5 (POUs and IOUs required to provide the California Energy Commission with load forecast information that includes forecasts of load expected to take service from POUs).

[20] D.07-12-052, p. 32.

[21] *See* San Joaquin Valley Power Authority press release (June 25, 2009), available at: http://www.communitychoice.info/news/nr2009-06-25.php.

where they compete with PG&E. According to ElectionTrack, PG&E has already spent at least $8,000,000 to date in support of the initiative. A copy of the ElectionTrack report is included as Attachment A hereto.[22] While POUs may provide information regarding the initiative, they are precluded by law from spending money on campaign activities.

Given the customer retention tools presently available to PG&E, and PG&E's substantial customer retention efforts in recent years, presumably with zero allocation of ratepayer monies, it is not at all clear why PG&E needs ratepayers to contribute $4,000,000 in 2011 toward customer retention activities.

c. PG&E's Characterization of the POU Alternative is Erroneous.

PG&E's suggestion that departures to POU service are the result of POU "take-over efforts" is also misleading.[23] The reality is that PG&E's customers quite often initiate a potential move to PG&E service. For example, Modesto ID electric service expansions in Escalon, Oakdale, Ripon, and Riverbank were initiated at the request of the respective city councils. Similarly, in 2005, the governing bodies of the Cities of West Sacramento, Davis, and Woodland and Yolo County unanimously voted to pursue annexation into the Sacramento Municipal Utility District's service area.[24] This approach makes logical sense from a business perspective. A community would not seek to initiate or expand POU service, especially considering the formidable resources PG&E brings to bear to oppose such efforts, without willing customers.

PG&E further misleads with the unfounded statement that "[w]hen these conventional takeover attempts are initiated, proponents typically put forth a number of assertions that, perhaps because of incomplete information or faulty assumptions, are often inaccurate or lead to false conclusions."[25] PG&E may disagree with the assertions and conclusions of customers seeking POU service, however, absent evidence to the contrary, that does not mean the POU proponents "typically" and "often" are working off of inaccurate assertions or false conclusions.

PG&E does not provide a specific plan or schedule for customer retention activities, other than a vague need to respond "to actions undertaken by the advocates, cities and special

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22 *See also,* Election Track Report on Contributions web site: http://www.electiontrack.com/lookup.php?committee=1318623.

23 *See, e.g.*, PG&E Application, Exh. PG&E-4, p. 9-4, lines 17-30 (describing conventional "take-over" efforts).

24 Joint Resolution of the Cities of Davis, West Sacramento and Woodland and The County of Yolo, Annexation by the Sacramento Municipal Utility District (April 5, 2005).

25 PG&E Application, Exh. PG&E-4, p. 9-4, lines 18-21.

districts."[26] Customer retention activities are not defined, and there is no meaningful breakdown of the costs PG&E expects to incur in undertaking any such activities. Ratepayers should not be forced to bear $4,000,000 in costs in 2011 based on such skimpy evidence, particularly where, as noted above, PG&E historically has been willing and able to fund substantial customer retention efforts, presumably with zero allocation of ratepayer monies.

d. The POU Alternative Benefits All California Electricity Consumers.

PG&E relies solely on the Ratepayer Impact Measure ("RIM") Test from the California Standard Practice Manual: Economic analysis of Demand-Side Management Programs to estimate the cost effectiveness of its customer retention expenditures.[27] A cost-effectiveness analysis considers whether the benefits of a program outweigh its costs and, therefore, requires that costs and benefits be identified and quantified. Avoided costs can make up a substantial portion of a program's quantifiable benefits. Here, PG&E has not enumerated the costs and benefits of its customer retention efforts. And, PG&E appears to ignore the fact that customer departures to POU service could avoid costs.

POU service affects more than PG&E and its ratepayers. POU service affords California's electric consumers with a competitive alternative to investor owned utility service, thereby affecting the State as a whole, including POU and investor owned utility customers. In order to capture all of the benefits of POU service, it must be considered from society's perspective, using the Total Resource Cost Test from the Standard Practices Manual.[28]

Customer choice is valuable to society and should help PG&E achieve its "ambitious vision to be the leading utility in the United States." Consumers look for opportunities to reduce costs and maintain or improve their competitive position. Cost control is more important than ever during the current extended economic downturn. If electric costs are too high, or if service reliability is at issue, consumers will look for alternatives.

As in any competitive market, the existence of the POU alternative should prompt PG&E to develop more competitive revenue requirements and rates and improve its system reliability. There is no reason why a utility aspiring to be the leading utility in the United States should put its customers in the position of funding activities intended to minimize or eliminate useful

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26 PG&E Application, Exh. PG&E-4, p. 9-4, lines 10-12.

27 PG&E Application, Exh. PG&E-4, pp. 9-10 – 9-15.

28 All cost-effectiveness tests must be based on valid, verifiable inputs regarding the costs and benefits of PG&E's customer retention activities.

competition and customer choice. Rather, the focus should be on offering lower rates and reliable service to satisfied customers.

4. PG&E Should Be Required to Demonstrate that it has Not Spent Ratepayer Funds on Customer Retention Expenses.

In Table 9-5, PG&E provides a "2008 Recorded Adjusted" figure of $2,060,000 and 2009 and 2010 forecast amounts for customer retention and economic development activities. As noted above, in the settlement approved by the Commission in D.07-03-044, PG&E was allowed zero allocation for customer retention expenses. In light of Table 9-5, the Commission should require PG&E to demonstrate that it did not spend in 2008 and 2009, and does not plan to spend in 2010, ratepayer funds on customer retention expenses, as required by the Commission-approved settlement.

Similarly, the Commission should require PG&E to explain whether shareholders or ratepayers, or both, funded the $8,000,000 that PG&E has spent to date in support of the pending initiative, the "New Two-Thirds Vote Requirement for Local Electricity Providers." If both shareholders and ratepayers have funded the $8,000,000, PG&E should state the amounts that each contributed.

5. PG&E Should be Required to Equitably Allocate the Costs of Distribution Project Expenses Among Distribution Planning Areas.

The Districts seek more transparency in the way PG&E develops revenue requirements and assigns costs for electric distribution projects. For example, the Districts seek to ensure that PG&E is not undervaluing the cost of projects in the distribution planning area that includes the areas where the Districts also provide electric service.

Merced ID and Modesto ID are located in what is referred to as PG&E's Yosemite Distribution Planning Area. The Commission should carefully evaluate in this proceeding PG&E's proposed revenue requirements for distribution projects and upgrades in the Yosemite Distribution Planning Area, so that it may determine in the next phase of this GRC whether the distribution rates PG&E proposes for that Area reflect the costs necessary to allow for reliable service.

6. Requested Relief

The Districts respectfully request that the Commission take the following actions with respect to the PG&E Application:

- Deny PG&E's request to have ratepayers fund $4,000,000 in customer retention activities and deny all or a portion of PG&E's request for $3,000,000 in ratepayer monies for economic development activities;
- Request that PG&E demonstrate its compliance with the provision of the settlement approved in D.07-03-044 allocating zero dollars for customer retention expenses;
- Request that PG&E explain whether the $8,000,000 it has spent to date in support of the pending initiative, the "New Two-Thirds Vote Requirement for Local Electricity Providers," was funded by shareholders, ratepayers, or both; and
- Require that PG&E equitably develop the revenue requirements for, and allocate the costs of, electric distribution projects among distribution planning areas.

The Districts request hearings on these important issues. The Districts continue to review PG&E's application and will commence discovery soon. Accordingly, the Districts reserve the right to address other issues relating to the PG&E application as appropriate.[29]

DATED: January 25, 2010 DAY CARTER & MURPHY LLP

By: Ann L. Trowbridge /s/
Ann L. Trowbridge

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[29] Additionally, to the extent issues arise relating to PG&E's compliance with the Agreement Regarding Removal of Idle Facilities between PG&E and Modesto ID, which was entered into in accordance with the settlement approved in D.07-03-044, Modesto ID reserves the right to address those issues consistent with the Commission's procedural rules. (D.07-03-044, Appendix C, Paragraph 49.)

ATTACHMENT A

ElectionTrack

Contributions to Californians To Protect Our Right To Vote Major Funding From Pacific Gas & Electric Company A Coalition Of Taxpayers, Environmentalists, Renewable Energy, Business And Labor

Cash on hand: $866,229 as of 06/30/09

Contributions since: $8,000,000

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Donor	City, state	Employer/Occupation	Amount	Contribution Date	Report Date
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PACIFIC GAS & ELECTRIC COMPANY	SAN FRANCISCO, CA 94177		500000	2009-10-30	2009-10-30
PACIFIC GAS & ELECTRIC COMPANY	SAN FRANCISCO, CA 94177		1500000	2009-09-11	2009-09-11
PACIFIC GAS & ELECTRIC COMPANY	SAN FRANCISCO, CA 94177		750000	2009-08-14	2009-11-02
PACIFIC GAS & ELECTRIC COMPANY	SAN FRANCISCO, CA 94177		750000	2009-08-14	2009-08-14
PACIFIC GAS & ELECTRIC COMPANY	SAN FRANCISCO, CA 94177		750000	2009-07-24	2009-11-02
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CERTIFICATE OF SERVICE

I, Barb Taylor, hereby certify that I served a copy of the **PROTEST OF MERCED IRRIGATION DISTRICT AND MODESTO IRRIGATION DISTRICT TO GENERAL RATE CASE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY** on January 25, 2010, on all known parties to Service List for **A.09-12-020** via electronic mail to those whose addresses are available and via U.S. mail to those who do not have an electronic address.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on this 25th day of January 2010, at Sacramento, California.

Barb Taylor /s/
Barb Taylor

VIA ELECTRONIC MAIL:

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