

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of PACIFIC GAS AND COMPANY For Approval to Defer Consideration of Default Residential Time-Variant Pricing until Its Next General Rate Case Phase 2 Proceeding, or in the Alternative for Approval of its Proposal for; Default Residential Time-Variant Pricing and For Recovery of Incremental Expenditures Required for Implementation (U 39 E)

Application No. 10-08-005
(Filed August 9, 2010)

**PROTEST OF
THE DIVISION OF RATEPAYER ADVOCATES**

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BEFORE THE PUBLIC UTILITIES COMMISSION
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Application of PACIFIC GAS AND COMPANY For Approval to Defer Consideration of Default Residential Time-Variant Pricing until Its Next General Rate Case Phase 2 Proceeding, or in the Alternative for Approval of its Proposal for ;Default Residential Time-Variant Pricing and For Recovery of Incremental Expenditures Required for Implementation (U 39 E)

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Pursuant to Rule 2.6 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Division of Ratepayer Advocates ("DRA") hereby protests Application 10-08-005 ("Application") filed by Pacific Gas and Electric Company ("PG&E") for Approval to Defer Consideration of Default Residential Time-Variant Pricing until Its Next General Rate Case Phase 2 Proceeding. The following is a summary of PG&E's proposal:

"PG&E files this Application to present two proposals for default residential time-variant-pricing, which PG&E herein calls default residential Peak Day Pricing (DRPDP). PG&E proposes that the Commission defer consideration of default residential PDP rates until Phase 2 of its 2014 General Rate Case (GRC) (Deferral Proposal) in order that the Commission, PG&E and the other utilities that will be filing similar applications, and customers can benefit from experience in 2011 and 2012 with default residential Peak Time Rebate (PTR) proposed in A.10-02-028 and default small and medium commercial and industrial Peak Day Pricing (PDP) approved in D.10-02-032, before proposing a specific rate design and outreach and education approach. If the Commission were to reject

PG&E's recommendation to defer consideration of residential Peak Day Pricing as the default rate for the residential class to PG&E's 2014 General Rate Case (GRC) Phase 2 proceeding, PG&E presents a default residential Peak Day Pricing program, DRPDP, required under OP 8 of D.08-07-045 (Compliant Proposal), and a cost recovery proposal to cover incremental implementation costs."(PG&E Application, pp.1-2)

DRA agrees with PG&E's request to defer default residential Peak Day Pricing until its 2014 General Rate Case. DRA urges the Commission to rule on this threshold issue before parties expend resources conducting discovery and producing testimony. If the Commission chooses not to defer consideration of PG&E's proposed default residential PDP rate design, then another threshold issue emerges regarding what kind of PDP rate design is allowed by PU Code Section 745(d). This issue should be addressed through briefs or testimony early in the proceeding.

I. BACKGROUND

PG&E believes that this filing was necessary because Ordering Paragraph ("OP") 8 of Decision ("D.") 08-07-045 required such a filing if Assembly Bill ("AB") 1X was modified in such a way as to allow default or mandatory time-variant rates for residential customers. Unfortunately, this provision of D.08-07-045 was written in a way that allows a number of interpretations. Another more practical interpretation would suggest that such a filing was not required until closer to the allowable implementation date of a default time-variant rate. SB 695, which was signed by Governor Schwarzenegger on October 11, 2009, allows default time-variant rates with bill protection no earlier than January 2013, and only after other conditions have been met¹. Accordingly, review of PG&E's proposed default PDP rates can wait.

PG&E, however, filed this Application because of its cautious interpretation of OP 8 of D.08-07-045:

¹ P.U. Code Section 745(d)(3) states: "A residential customer shall not be subject to a default time-variant rate schedule without bill protection unless that residential customer has been provided with not less than one year of interval usage data from an advanced meter and associated customer education and, following the passage of this period, is provided with not less than one year of bill protection during which the total amount paid by the residential customer for electric service shall not exceed the amount that would have been payable by the residential customer under that customer's previous rate schedule."

“PG&E shall file an application proposing a default CPP rate for residential customers 30 days after any change in the law that changes the Assembly Bill 1X rate protections in a manner that could allow default or mandatory time-variant rates for residential customers. If the Commission approves a decision that interprets the Assembly Bill 1X rate protections in a manner that could allow default or mandatory time-variant rates for residential customers, then PG&E shall file an application proposing a default CPP rate for residential customers not later than 90 days after the Commission decision goes into effect and is no longer subject to rehearing or judicial review. PG&E shall propose an effective date that is no later than one year after the filing date unless PG&E can justify a later effective date as being necessary to allow time for customer education and system upgrades.”(D.08-07-045, p. 99)

DRA believes that PG&E was overly cautious in its interpretation of OP 8 of D.08-07-045. This OP lacks any clarifying language which specifies when a filing should be made if default or mandatory time-variant pricing is not allowed until several years in the future. It is likely that D.08-07-045 was written assuming a situation where changes in state law would allow immediate implementation of default or mandatory time-variant rates for residential customers. As stated above, the changes from SB 695 would not allow default time-variant rates with bill protection until 2013 and only if other conditions were satisfied.

The fact that default time-variant rates cannot be implemented for several years adds support to PG&E’s primary proposal in this Application to defer the consideration of default residential rates until Phase 2 of PG&E’s 2014 GRC. PG&E would likely file its GRC Phase 2 in early 2013, and a decision from that proceeding would hopefully be reached in early to mid 2014. DRA agrees with PG&E’s reasoning for why examining default time-variant pricing at a later time makes sense.

DRA would also like to observe the results of rolling out the Peak Time Rebate (“PTR”) program for residential customers and default PDP rates for small commercial customers (the majority of which are also unfamiliar with time variant pricing) before PG&E proceeds with a default residential PDP pricing proposal. DRA, like PG&E, is optimistic that the PTR program would be able to meet a significant portion of the Commission’s demand response goals. DRA also agrees that PG&E would be among the

first utilities to roll out this program to a large number of customers. This would likely be the largest PTR roll out attempted in the United States, and it would be very useful to see how effective a complete PTR program would be before designing default PDP rates.

Critics of PTR programs have mainly cited the results of smaller pilot type programs.² PTR has been tried in a limited number of places because it requires more sophisticated meters that are not yet widely used. PG&E's PTR roll out thus offers a great opportunity for California and the rest of the country to study a larger, more complete program.

DRA agrees with PG&E that it makes sense to give the PTR program a minimum of a few years to allow customers to understand and hopefully benefit from the program before implementing default PDP. PG&E will start implementing its PTR program in 2011 and will continue this effort until most PG&E residential customers are on this program in 2012. DRA notes that PTR events coincide with PDP events, and therefore much information useful to PDP implementation can be gleaned from the customer response to PTR events. During this initial period, PG&E's PTR program could be studied and improved. An enormous potential for demand response benefits exists. These benefits comes from the fact that the universal participation in the PTR program likely will greatly exceed that of default, opt-out PDP pricing programs. Additionally, PTR will serve as a useful tool to help educate residential customers about demand response programs and the potential benefits of these programs.

DRA thus supports PG&E's primary proposal of deferring consideration of default residential PDP rates, and further recommends that the Commission make a decision on this proposal before parties proceed further. If the Commission agrees with this proposal, parties can devote more time to implementing and improving PTR, and also continue to think about future time-variant pricing programs. It would help Commission staff, and other parties make the most efficient use of their time, if the

² There have been some programs such as the one at Baltimore Gas and Electric that has shown promising results.

Commission could provide guidance on this issue before parties expend resources on conducting discovery and producing testimony.

II. ISSUES TO BE ADDRESSED

Should the Commission reject PG&E's primary recommendation to defer consideration of default residential time-variant pricing until PG&E's GRC Phase 2 proceeding, DRA believes the Commission must then examine another critical threshold issue regarding the kind of rate design that can be established pursuant to PU Code Section 745(d). This issue is foundational as it will largely determine the scope of the rate design issues in this proceeding.

DRA disagrees with PG&E's interpretation of P.U. Code Section 745 (d). Consumer groups who worked on SB 695 were concerned that a significant number of customers would not understand default time-variant rates or would not understand their ability to opt-out of these rates. They succeeded in ensuring that SB 695 provides bill protection, one year of interval usage data and associated customer education. P.U. Code Section 745 requires these ratepayer protections designed to protect residential customers from potential harm when default time-variant-pricing rates are introduced. Section 745(d) also guarantees further rate protections that customers are assured in other sections contained in Part 1 of the P.U. Code.

Section 745(d) states: "On and after January 1, 2014, the Commission shall only approve an electrical corporation's use of default time-variant pricing *in a manner consistent with the other provisions of this part*, if all of the following conditions have been met: ..." (Emphasis added.) In this statement, the word "part" refers to Part 1 of the P.U. Code, which contains numerous rate protections such as Section 739.9 concerning baseline protections and the limits to increases to residential Tier 1 and Tier 2 rates allowed by Senate Bill 695.

PG&E states that the protections from Section 745(d) are maintained under its default compliance proposal if the customer has the ability to opt out of the default PDP program. It maintains that the fact that Tier 1 and 2 rates are higher than the rate limits provided by Section 739.9 does not matter because the customer has the ability to opt out

of these rates. Whether the ability to opt out is sufficient to meet the requirements of Section 745 (d) is arguable. Some customers may not be aware of their right to opt out and others might be confused or too preoccupied by other matters in their busy lives to figure out whether they should opt out.

The rationale PG&E uses to support its PDP rate design proposal is very similar to its rationale used to justify voluntary dynamic pricing rates in its first Advanced Metering Infrastructure (AMI) Application. In that case, the Commission ruled that customers could voluntarily give up their AB1X rate protections if they voluntarily opt into another rate program³. In the instant proceeding, PG&E argues that, if customers have the ability to opt-out of a default rate schedule, but they remain on the default rate, then they are giving their consent to surrender the rate protections contained in SB 695. DRA disagrees with this interpretation and asserts that there is a critical difference between voluntary programs and default programs. The extra consumer protections in P.U. Code 745 were specifically designed to protect customers who will be defaulted onto time-variant-pricing rates. To expect customers to take action to opt into a rate program with more protections unfairly burdens customers with the task of understanding arcane rate structures, which places them at a great disadvantage.

DRA believes that per Section 745(d), PDP rates would not be permitted for electricity usage at or below 130 percent of baseline. PDP pricing can only be imposed on rates that apply to usage above 130 percent of baseline. This interpretation of Section 745 (d) would significantly constrain the rate design allowable under this statute and limit the scope of this proceeding to preclude the proposal that PG&E has put forth.

DRA recommends that the Commission consider the legal parameters of designing default residential time-variant pricing in a separate phase of this proceeding. In this phase, parties could submit testimony or briefs on this legal issue on which the Commission could rule before parties proceed to design default residential PDP rates. It would help parties make the most efficient use of their time if they had a Commission

³ Please see D.06-07-027, PP. 34-38 and Conclusions of Law #10 and #11.

decision on what was legally permitted under P.U. Code Section 745 (d) before designing default residential time variant pricing programs.

III. PROCEDURAL ISSUES

CPUC Rules of Practice and Procedure 2.6(a) provides that “a protest or response must be filed within 30 days of the date the notice of the filing of the application first appears on the daily calendar.” Notice for A.10-08-005 first appeared in the “New Filings” section of the Commission’s daily calendar on August 11, 2010. Accordingly protests and responses are not due until Friday, September 10, 2010.

DRA agrees with PG&E that the proceeding should be treated as Ratesetting. If PG&E’s primary proposal to defer this application to its next GRC Phase 2 is adopted, there will be no need for hearings. If this proposal is denied, there will likely be the need for briefing the issue of what is allowed to conform to P.U. Code Section 745(d). Also hearings likely will be necessary.

DRA’s Proposed Schedule

DRA believes it is too early to set a schedule. DRA recommends that the Commission first rule on PG&E’s primary proposal for deferral, and then parties can proceed and make recommendations regarding a schedule after that if needed.

IV. CONCLUSION

For the foregoing reasons, DRA protests PG&E's filing.

Respectfully submitted,

/s/ Gregory Heiden

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September 10, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day *served* a copy of “**PROTEST OF THE OFFICE OF RATEPAYER ADVOCATES**” in **A.10-08-005** by using the following service:

E-Mail Service: sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **September 10, 2010** at San Francisco, California.

/s/ HALINA MARCINKOWSKI

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