

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED
05-02-11
04:59 PM

Application of Pacific Gas and Electric Company (U39E) for Review of Entries to the Energy Resource Recovery Account (ERRA) and Renewables Portfolio Standard Cost Memorandum Account (RPSMA), and Compliance Review of Fuel Procurement for Utility Retained Generation, Administration of Power Purchase Contracts, and Least Cost Dispatch of Electric Generation Resources for the Record Period of January 1, through December 31, 2010 and for Adoption of Electric Revenue Requirements and Rates Associated with the Market Redesign and Technology Upgrade (MRTU) Initiative.

A.11-02-011
(Filed February 15, 2011)

**REPLY COMMENTS TO OPPOSITION TO DIVISION OF RATEPAYER
ADVOCATES MOTION TO DISMISS A PORTION OF THE
PROCEEDING**

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May 2, 2011

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OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U39E) for Review of Entries to the Energy Resource Recovery Account (ERRA) and Renewables Portfolio Standard Cost Memorandum Account (RPSMA), and Compliance Review of Fuel Procurement for Utility Retained Generation, Administration of Power Purchase Contracts, and Least Cost Dispatch of Electric Generation Resources for the Record Period of January 1, through December 31, 2010 and for Adoption of Electric Revenue Requirements and Rates Associated with the Market Redesign and Technology Upgrade (MRTU) Initiative.

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I. INTRODUCTION

Pursuant to Rule 11.1(f) of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates ("DRA") hereby submits these reply comments to the *Response of Pacific Gas & Electric (PG&E) In Opposition of Ratepayer Advocates Motion to Dismiss a Portion of the Application*, filed April 22, 2011 (PG&E Opposition). Administrative Law Judge (ALJ) Stephen C. Roscow authorized the filing of these reply comments.

II. DISCUSSION

PG&E raises six points in its response to DRA's motion and DRA responds to those in the order raised in PG&E's pleading. It is important to remember that the publication of the newspaper notice must occur within 10 days of the filing of the

Application [the first requirement] and that the corresponding compliance filing must be made within 10 days of the last newspaper notice publication [the second requirement].

A. PG&E published in the newspapers within the requisite 10 days of filing the Application

DRA accepts the Declaration attached to the PG&E pleading as evidence that the 10 day publication deadline was met. A better practice would be for that evidence to be presented as part of the compliance filing.

B. The newspaper notice does not contain the required information and PG&E has not endeavored to comply with the Commission's directives regarding newspaper notice to the public

PG&E indicates that it will continue to endeavor to follow the Commission's rules and that its newspaper notice does contain the required information. The evidence, however, shows that PG&E instead continues to disregard the Commission's rules regarding notice to the public. PG&E was given a pass and a warning in Decision (D.) 10-04-028. There the Commission clearly instructed PG&E to:

... correct these defects in future applications, ensuring that notice is timely given and that the notice provides all required information, **including e-mail and mailing addresses and locations where the application may be viewed by the public.**¹

The Commission also observed that:

We appreciate DRA's diligence in ensuring that notice under Rule 3.2 is fulfilled, and its attention to this matter should improve the timeliness and completeness of future notices by PG&E.²

PG&E obviously did not give the notices to the public the appropriate attention because the utility failed to provide any email address as specifically directed by the Commission and failed to list any of the PG&E offices where the Application can be examined. Rule

¹ D.10-04-028, p. 33-34, emphasis added.

² D.10-04-028, p. 33-34, emphasis added.

3.2 (c) and D.10-04-028 make clear that the notice must include PG&E locations where the documents can be viewed. The newspaper notice in this case, however, does not contain the address of any of the PG&E district offices where a ratepayer should be able to examine the Application.³

C. PG&E did not file the compliance pleading within the required time

The Declaration attached to the PG&E pleading confirms that the Rule 3.2 (c) newspaper notices were all published on or before February 25, 2011. *PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) PROOF OF RULE 3.2(c) COMPLIANCE* was filed on March 10, 2011. Ten days after the last publishing date is March 7, 2011. PG&E's circular argument that it thought that the last day of publication was February 28 and that therefore it had to file the compliance within 10 days of February 28 should be rejected out-of-hand as merely an attempt to have it both ways. Either PG&E published by the 25th and complied with the first part of the requirement, but not the second part **or** PG&E filed its compliance pleading 10 days after the last publication and satisfied the second requirement, but not the first requirement.

D. PG&E's newspaper notice is misleading

The argument in PG&E's Opposition regarding the issue of other party participation is more confusing than the misleading statement in its notice on this issue. PG&E seems to be saying that it is acceptable to tell the public that other parties 'will be participating' when other parties "can, and often do, participate."⁴ DRA's concern is that a member of the public may read the statement that other parties 'will be participating' and then justifiably rely on those other parties to protect their interests. The notice should

³ PG&E's argument that it has too many offices to list lacks merit. Although DRA can not change Commission rules, it is notable that PG&E did not even suggest that it include a website with a listing of the 75 offices, a website with the Application materials, or a listing of the PG&E offices in major metropolitan areas. PG&E simply disregarded the Commission Rules and Decision.

⁴ PG&E Opposition, p. 4.

be accurate at the time it is published. Here, no other parties had appeared at the time the notice was published. As such, PG&E's statement was not accurate.⁵

III. CONCLUSION

The Commission should dismiss the portion of PG&E's Application that seeks recovery of \$47.2 million for expenses related to the Market Redesign Technology Upgrade Memorandum Account (MRTUMA) application. This motion should be granted because notice of the Application was not properly given to the public in violation of this Commission's Rules of Practice and Procedure, Rule 3.2(c) and in violation of D.10-04-028. PG&E had previously violated the same rules and been admonished to make extra effort to follow the rules, but failed to do so. Such flagrant and repeated disregard of the Commission's rules should not be condoned.

Respectfully submitted,

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⁵ The newspaper notice is viewed by the public and is the subject of news reports about PG&E. For example see <http://www.bakersfieldnow.com/news/local/116959933.html> (a copy of this article is attached to this pleading).