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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of Economic Development Rate for 2013-2017 (U39E).

Application 12-03-001
(Filed March 1, 2012)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

1. Summary

Pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure (Rules),¹ this Scoping Memo and Ruling sets forth the procedural schedule, assigns the presiding officer, and addresses the scope of this proceeding and other procedural matters following the prehearing conferences held on May 17 and July 23, 2012.

2. Background

On March 1, 2012, Pacific Gas and Electric Company (PG&E) filed Application (A.) 12-03-001, its *Application for Approval of Economic Development Rate for 2013 - 2017* (Application).

On March 8, 2012, Resolution ALJ 176-3290 preliminarily determined that this proceeding was ratesetting and that hearings would be necessary. On

¹ All references to Rules are to the Commission's Rules of Practice and Procedure, which are available on the Commission's website at http://docs.cpuc.ca.gov/word_pdf/RULES_PRAC_PROC/70731.pdf.

April 4, 2012, protests were filed by the Division of Ratepayer Advocates (DRA), the Merced Irrigation District (Merced ID), the Modesto Irrigation District (Modesto ID), the Alliance for Retail Energy Markets, the Energy Users Forum, the City and County of San Francisco, Marin Energy Authority, the San Joaquin Valley Power Authority, the Greenling Institute, and The Utility Reform Network, and a Response was filed by the Local Government Parties.² PG&E filed a Reply on April 13, 2012. On April 11, 2012 a *Notice of Prehearing Conference* was issued by Chief Administrative Law Judge (ALJ) Karen Clopton followed by a Notice of Workshop issued on June 18, 2012 and a second *Notice of Prehearing Conference* issued on July 10, 2012. On May 17, 2012, a prehearing conference (PHC) took place in San Francisco to establish the service list, discuss the scope, and develop a procedural timetable for this proceeding. A workshop was held on July 6, 2012 to clarify the Application and understand the issues. On July 23, 2012, a second PHC was held to discuss a common outline of the issues presented by the Application.

3. Category, Need for Hearing, and *Ex Parte* Rules

The Commission preliminarily categorized this Application as ratesetting as defined in Rule 1.3(e) and anticipated that this proceeding would require evidentiary hearings. The parties did not oppose the Commission's preliminary categorization. This ruling affirms the preliminary categorization of ratesetting.

² The Local Government Parties is comprised of the City of Fresno, California, together with the California Counties of Fresno, Kern, Kings, Madera, Merced, San Benito, San Joaquin, Shasta, Tehama and Yuba and the California Cities of Atwater, Avenal, Chowchilla, Clovis, Coalinga, Colusa, Corning, Dinuba, Huron, Kerman, Kingsburg, Firebaugh, Fowler, Lemoore, Livingston, Madera, Mendota, Orange Cove, Red Bluff, Reedley, Sanger, San Joaquin, Selma, Shafter, Stockton and Willows.

At the PHC, all Parties agreed that evidentiary hearings should be scheduled, though it may turn out that they will not be necessary. As noted in the schedule below, and in accordance with Rule 7.3(a), today's scoping memo adopts a procedural schedule that includes hearings. In a ratesetting proceeding *ex parte*, rules as set forth in Rules 8.1, 8.2, 8.3, 8.5, and Pub. Util. Code § 1701.3(c)³ apply, until such time as a final determination is made regarding the need for hearings.

4. Discovery

If parties have discovery disputes they are unable to resolve by meeting and conferring, they should raise these disputes with the presiding officer, pursuant to Rule 11.3.

5. Scope of Proceeding

5.1. Substance of the Application

Section 740.4(h) of the Pub. Util. Code requires the Commission to allow recovery through rates of expenses and rate discounts supporting economic development programs to the extent that ratepayers "derive a benefit from those programs." In Decision (D.) 05-09-018, the Commission first authorized PG&E to have an Economic Development Rate (EDR). The current version expires at the end of the year on December 31, 2012.

This application seeks to establish an EDR discount effective January 1, 2013 through December 31, 2017. The Application is comprised of a Standard EDR Option and an Enhanced EDR Option. Both options would be available to business customers or potential business customers with credible out-of-state

³ All section references are to the Public Utilities Code.

business location options under active consideration, or who would otherwise close their business.

As proposed, the Standard EDR Option would provide a five year, 12% reduction in the customer's otherwise applicable commercial or industrial tariffed rate schedule, net of taxes. The Enhanced EDR Option would provide a five year, 35% reduction in the customer's otherwise applicable commercial or industrial tariffed rate schedule, net of taxes. A PG&E customer would qualify for the Enhanced EDR option if that customer is located in a PG&E served county with unemployment rates of at least 125% of the previous year statewide average.

Additional features of the Application include the following provisions related to both the Standard Option and the Enhanced:

- The five-year term would be required to commence within 24 months of the execution of the EDR agreement.
- The rate reductions would be set for the term of the agreement and would not be subject to modification.
- The EDR options would be intended to attract, retain and encourage expansion of companies and reduce unemployment in PG&E's service territory.
- An EDR eligible customer would be a non-residential customer with at least 200 kilowatts of new or existing load.
- The EDR options would apply to only that portion of the customer's electric load that is either added to or not removed from PG&E's system.
- The EDR discount options would be available to all qualified fully-bundled customers and to direct access and community choice aggregation customers.

The EDR discount for bundled customers would be calculated by applying either the 12% or the 35% discount to the total bundled net charges (including all

Non-Bypassable Charges and excluding all Energy Commission Taxes and all Utility Users Taxes) under the otherwise applicable commercial or industrial tariffed rate. The resulting calculated discount would be applied to the distribution charge component of the rate, and the distribution charge would be allowed to go negative in order to provide the full EDR discount to the customer.

The EDR discount for direct access and community choice aggregation customers would be calculated by applying either the 12% or the 35% discount to the total net charges due to PG&E (including all Non-Bypassable Charges and generation-related charges applicable to direct access and community choice aggregation customers, and excluding all other charges for the generation component of the rate, all Energy Commission Taxes, and all Utility Users Taxes) under the otherwise applicable commercial or industrial tariffed rate. The resulting calculated discount would be applied to the distribution charge, and the distribution charge would be allowed to go negative in order to provide the full EDR discount to the customer.

- The proposed EDR would eliminate the currently required floor price that was established in D.05-09-018 and modified in D.07-09-016
- The proposed EDR would remove the 200 megawatt (MW) participation cap currently required in D.10-06-015.

The proposed EDR would remove the current requirement that a qualifying EDR customer's billed electricity costs must account for at least 5% of the customer's actual or estimated operating costs, less the cost of actual or estimated raw materials.

The proposed EDR would eliminate the currently required after-the-fact annual review and true up that ensures that the discounted rates charged remained above the floor price.

The proposed EDR would eliminate the current requirement that the Office of California Business Investment Services conduct an independent evaluation of a customer's eligibility for Economic Development Rates.

Lastly, PG&E shareholders would make no contribution to the program costs.

5.2. Substance of the Protests and Responses

All parties generally support a properly constructed EDR discount.

Several parties question whether PG&E's past EDR program has resulted in an unfair burden to ratepayers and if that burden will carry forward into the proposed redesigned program offerings of the Standard and Enhanced EDR options.

Several parties challenge PG&E's mathematical assumptions in its application and its prepared testimony.

All commenting parties except the Local Government Parties see significant problems with the changes PG&E proposes to the existing EDR program - both with respect to the proposed Standard EDR program and the proposed Enhanced EDR Program.

Numerous technical changes have been suggested by each of the Parties, all in an effort to ensure that the program truly does result in a benefit to ratepayers.

5.3. Scope of Issues

In general, the scope of this proceeding is the following: is the creation of an economic development rate in PG&E's territory, either proposed or in some

modified form, in the best interest of its ratepayers? Within this scope, there are a large number of matters for us to consider, given the context of the Application and the range of comments offered in protests to the application. Accordingly, the following issues are within the scope of this proceeding:

A. Policy Issues Associated with the Need for ED Rate Reductions

- 1) Will the proposed EDR Option attract, retain and encourage expansion of companies and reduce unemployment in PG&E's service territory?
- 2) Should the Commission continue to require that the EDR maintain the floor price program component that was established in 2005 and modified in 2007?
- 3) Is PG&E's proposal to allow a negative distribution rate consistent with the Commission's existing policy?
- 4) Does the proposed EDR result in discounts to Non-Bypassable Charges if it results in negative distribution rates for some customers?
- 5) Is the proposed EDR competitively neutral with respect to Community Choice Aggregators, Energy Service Providers and Irrigation Districts (IDs)? If not, in what respects is the proposed EDR not competitively neutral and how may competitive neutrality be achieved?
- 6) Does the proposed EDR (either standard or enhanced) favor large businesses and thereby inadvertently exclude small and medium sized businesses? Should there be a percentage quota established across business category types who enroll in the EDR?

B. Legal Issues including the Commission's Authority to Approve EDR

- 7) Will the proposed EDR result in benefits to ratepayers as required by Public Utilities Code section 740.4(h)? If so, what are those benefits, and how can those benefits be measured?

- 8) Does the Commission have authority, broader than that provided in section 740.4(h), to undertake programs to foster and encourage economic development?
- 9) Must the proposed EDR schedule of rates generate a positive contribution to margin⁴ in order to comply with section 740.4(h), or are there other benefits that will suffice to demonstrate compliance with this statutory requirement?
- 10) Are there discriminatory impacts in offering the enhanced EDR in counties with unemployment levels at 125% or more above the state average? Should customers outside those geographic areas bear the costs of the deeper discount? Should the economic development needs of counties with higher unemployment obtain an advantage over economic development needs of other counties?
- 11) Should the Commission deny PG&E the ability to offer an EDR discount in the areas where it competes with Merced ID and Modesto ID and already has the statutory ability to offer discounts?
- 12) Do the geographic distinctions in the proposed EDR comport with laws prohibiting rates that grant preferences or advantages to some customers and that prejudice and disadvantage others?
- 13) Does California Environmental Quality Act require the Commission to review the environmental impact of any EDR agreements that PG&E proposes to execute?
- 14) What provisions of an EDR are necessary in order to avoid conflicts with the existing legislative framework relative to

⁴ Contribution to margin is calculated by subtracting the variable costs associated with the production of a megawatt hour (MWh) of electricity from the price received for that MWh. The product of this equation is the contribution to margin for that MWh. The contribution to margin is then available to the utility to pay its fixed costs of doing business and/or to be allocated to its profit.

competition between PG&E and Modesto ID and PG&E and Merced ID?

C. Program Design Issues

- 15) Are the proposed 12% and 35% EDR discount rates the most appropriate discount rates?
- 16) Should the Commission remove the 200 MW participation cap it currently requires as an element of PG&E's current EDR?
- 17) Should the Commission modify the EDR participation verification requirements by eliminating the current requirement that the Office of California Business Investment Services conduct an independent evaluation of a customer's eligibility for Economic Development Rates?
- 18) Should the Commission establish a requirement that all EDR Agreements must contain a provision that requires cost-effective conservation or other equivalent demand-side management and load reduction discussions between PG&E and the applicant? Should any post discussion actions be required?
- 19) Should potential EDR customers be required to demonstrate that electricity makes up a threshold percentage of operating costs in order to qualify for the EDR discount?
- 20) Is there value in the current requirement that the "Customer Affidavit" be signed "under penalty of perjury" in attesting that but for this rate, the business would not expand, stay in, or come to California?
- 21) Should the enhanced EDR option be for a more limited or a different term than the standard EDR option?
- 22) Should there be a limit on the number of times that a customer's EDR participation may be extended for another term?
- 23) What provisions of an EDR are necessary to guard against free-riders?

D. Calculation of Contribution to Margin and Price Floors (including whether price floors are necessary)

- 24) Which elements of the current floor price (e.g. generation marginal costs) have decreased the headroom available for discounting rates? Would modifying the terms of discounting floor price elements (e.g. indexing the price of natural gas to generation rate discounts) significantly increase the headroom available for discounting rates?
- 25) Does the existence of a price floor act as a disincentive to business participation in the EDR program?
- 26) Should the Commission eliminate the currently required after-the-fact annual review and true up that ensures that the discounted rates charged remained above the floor price?
- 27) Should contribution to margin be required of each participant, or of the program generally?
- 28) Should contribution to margin be calculated annually, or over some other time period?

E. Program Requirements for Appropriate Protection of Non-Participating Ratepayers

- 29) What must the Commission do in order to ensure that rates remain just and reasonable rates for non-EDR participants?
- 30) Should PG&E shareholders bear some of the costs of any rate increases to non-EDR program participants that occur because of the rate reductions given to EDR program participants?

F. Shareholder Funding of ED Rate Reductions

- 31) Should there be a provision that requires shareholders to bear the cost of the EDR rate differential if an *ex-post* review of the program reveals that it has not resulted in benefits to ratepayers?

G. Documenting Ratepayer Benefits of Economic Development Rate

- 32) To what extent have previously authorized EDR programs accomplished these objectives?
- 33) Should the EDR include a requirement that each participant provide a good faith *ex ante* projection of the number of jobs the discounted rate will produce, and an accurate ex-post assessment of what jobs were actually created?

H. Other

- 34) Any other relevant and materials factors raised by parties and specifically added to the list of issues by subsequent ruling of the Presiding Officer.

5.4. Responses to Scoping Questions

We ask parties to provide responses to the questions in the scope of the proceeding when filing testimony and/or briefs and require that they provide a reference to the applicable questions within their testimony and/or briefs.

6. Proceeding Schedule

The Parties agreed on a schedule at the May 17, 2012 PHC. That schedule is adopted here, with slight modification of hearing dates to accommodate Commission resources.

EVENT	DATE
Intervenor Testimony Served	August 24, 2012
PG&E Rebuttal Testimony Served	September 14, 2012
Hearings, if necessary, 10:00 a.m., Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California 94102	October 3, 4, 2012
Concurrent Opening Briefs Filed	October 16, 2012
Concurrent Reply Briefs Filed; Requests for Final Oral Argument Filed	October 30, 2012

Proposed Decision Issued	Within 90 days of submission
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Consistent with Pub. Util. Code § 1701.5, the Commission anticipates that this proceeding will be completed within 18 months of the date of this scoping memo.

7. Final Oral Argument

Pursuant to Rule 13.13, if hearings are held, any requests for a final oral argument before the Commission must be filed and served at the same time as reply briefs.

8. Intervenor Compensation

The PHC in this matter was held on May 17, 2012. Pursuant to Pub. Util. Code § 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by June 16, 2012.

9. Presiding Officer

Pursuant to Rule 13.2, I designate ALJ Richard W. Clark as the Presiding Officer.

10. Filing, Service, and Service List

In this proceeding, there are several different types of documents participants may prepare. Each type of document carries with it different obligations with respect to filing and service.

Parties must file certain documents as required by the Commission Rules or in response to rulings by either the assigned Commissioner or the assigned ALJ. All formally filed documents must be filed with the Commission's Docket Office and served on the service list for the proceeding. Article 1 of the Rules contains all of the Commission's filing requirements. Parties must file and serve all pleadings and serve all testimony, as set forth in Article 1 of the Commission's Rules. Parties are encouraged to file and serve electronically, whenever possible,

as it speeds processing of the filings and allows them to be posted on the Commission's website. More information about electronic filing is available at <http://www.cpuc.ca.gov/puc/efiling>.

This proceeding will follow the electronic service protocols adopted by the Commission in Rule 1.10 for all documents, whether formally filed or just served. This Rule provides for electronic service of documents, in a searchable format, unless the party or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by U.S. mail. Concurrent e-mail service to ALL persons on the service list for whom an e-mail address is available, including those listed under "Information Only," is required. Parties are expected to provide paper copies of served documents upon request.

E-mail communication about this case should include, at a minimum, the following information on the subject line of the e-mail: A.12-03-001 - PG&E's 2013 - 2017 EDR Proceeding. In addition, the party sending the e-mail should briefly describe the attached communication; for example, Comments. Both an electronic and a hard copy should be served on the ALJ. Please note, the assigned Commissioner's office does not require service of hard copies; electronic submissions will suffice.

The official service list for this proceeding is available on the Commission's website. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process Office. Prior to serving any document, each party must ensure that it is using the most up-to-date service list. The list on the Commission's website meets that definition.

