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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SOUTHERN CALIFORNIA EDISON COMPANY
(U338E) for Modification of Decision 05-09-018 to
Extend EDR-Retention Rates.

Application 09-10-012
(Filed October 13, 2009)

Application of Pacific Gas and Electric Company
for Modification of Decision 05-09-018 to Extend
the Economic Development Rate (U 39 E).

Application 09-11-010
(Filed November 13, 2009)

**ADMINISTRATIVE LAW JUDGE'S RULING
SUMMARIZING TELEPHONIC PREHEARING CONFERENCE**

1. Summary

This assigned Administrative Law Judge's (ALJ) Ruling summarizes the telephonic prehearing conference (PHC) held on March 4, 2010 in these proceedings. This PHC was the continuation of the PHC on March 3, 2010, and was held without a court reporter.

The March 4, 2010, a telephonic PHC was held to determine whether an agreement had been reached regarding the proposed increase to the Economic Development Rate (EDR) program cap, comments on proposals, and response from SCE to questions posed by the ALJ at the PHC held on March 3, 2010. The PHC began at approximately 3:00 p.m. and concluded at approximately 4:00 p.m.

Because this was a telephonic PHC, and a court reporter was not present, my notes are attached, in lieu of a transcript. These notes are for the information of the parties, and reflect the discussion that occurred.

2. Other Matters

Pursuant to Rule 13.9 of the Commissions Rules of Practice and Procedure, I want to notify the parties that I intend to take notice of Unemployment Statistics determined by the Bureau of Labor Statistics.¹ I will review and may rely on this information in my review of these proceedings.

IT IS RULED that this Ruling summarizes a telephonic prehearing conference held on March 4, 2010.

Dated March 10, 2010, at San Francisco, California.

/s/ MICHELLE COOKE for
Seaneen M. Wilson
Administrative Law Judge

¹ <http://www.bls.gov/eag/eag.CA.htm>.

Attachment A

In attendance at the March 4, 2010 telephonic PHC were the assigned Administrative Law Judge (ALJ) Seaneen M. Wilson, Assistant Chief ALJ Michelle Cooke, representatives of Southern California Edison Company (SCE),² Pacific Gas and Electric Company (PG&E),³ F. Jackson Stoddard and Chris Danforth for Division of Ratepayer Advocates (DRA), Robert Finkelstein for The Utility Reform Network (TURN), Carolyn Kehrein for Energy Management Services for Energy Users Forum (EUF), A. Brad Wilkins for TAMCO (TAMCO), and Jose Guzman for Jazz Semiconductor (Jazz).

ALJ Wilson then asked who had spoken to who in the past 24 hours regarding this issue. SCE and PG&E had been in contact. DRA had been in contact with TURN, SCE, and PG&E. TURN had been in contact with DRA and EUF. And EUF had been in contact with TURN and PG&E.

ALJ Wilson then asked SCE to respond to questions posed to it at the March 3, 2010 PHC. SCE responded that, of the 41 applicants in the Economic Development Rate (EDR) review queue (queue), all of whom are existing customers, some of whom have been in the queue for a year, 2 have closed while waiting in the queue and approximately 15% didn't qualify based on the preliminary review. None of these customers has gone through the balance of the full review process yet, though SCE is still in contact with them. Normally, a customer would first submit a notice of its interest in the EDR program, then a preliminary screening would be performed to determine if the customer meets

² SCE representatives included Olivia Samad, Russell Garwacki, Maryann Reyes, Walton Farrar, Denise Parker, Michael Nuby, Monica Lopez, and James Navarrete.

³ PG&E representatives included Stan Kataoka, Megan Lawson and Shirley Woo.

the EDR tariff requirements. Its position in the queue is determined on the date the customer applied for the EDR rate. If they pass through the preliminary portion of the screening process, the customer is then asked to build a business case. At this point, SCE would determine what the customer specific discount would be, based on the difference between its otherwise applicable tariff rate and a shadow EDR rate, using the current floor price method (authorized in Decision (D.) 05-09-018 and modified in D.07-09-016). If they had passed, would then move on to review by CalBis. If a customer has been in the queue for a year, they would have to start over and re-apply for the EDR rate.

Even though SCE has not determined the possible discount for the 41 customers in the queue, based on prior customer reviews, it believes it is improbable that any of the customers would pass the “but for” test. SCE stated that this is due to the way in which the authorized floor price is calculated and is why SCE has requested that its method for calculating the floor price be changed. Later in the PHC, SCE clarified that one reason it didn’t proceed with review of applicants any further was because headroom shrank due to a change in how the floor price is calculated in D.07-09-016. Decision 07-09-016 includes more rate components in the EDR rate calculation to establish the floor. When the higher floor is compared with otherwise applicable tariff rates, the proportionate amount of the discount is lower than it had been originally. With this lower discount, SCE states that it is less likely that a customer will attest that “but for” the discount, it would otherwise leave the SCE system. ALJ Cooke voiced concern that these customers, some of whom have been in the queue for a year, had faced the artificial impediment of SCE not even trying to screen them further to determine eligibility, based on the assumption that none of them would accept what SCE considers too low of a discount.

SCE also clarified that parties should not rely on the estimates of the EDR discount in the Joint Statement, since the estimates are only examples, and are not based on a real customer and would vary from customer to customer. SCE also stated that in these examples show that if floor price calculation is revised, removing the marginal distribution cost from calculation, the discount could go up to 25%, therefore increasing the chance of a customer being able to pass the “but for” test.

PG&E then stated that even if the discount of one of its potential EDR customers were in the single digits, it would still proceed to providing the customers application to CalBis. In PG&E’s service territory, there are additional options available to these customers beyond the EDR rate, such as government programs that provide funding.

ALJ Cooke asked PG&E how its method for calculating the floor price resembles SCE proposal. PG&E responded that it is not aware of any specific differences with SCE’s proposed methodology. PG&E uses customer specific marginal cost, a zero marginal distribution cost where applicable, and considers where the customer is located and what circuit the customer is on. PG&E is hoping for a quick resolution of the proposed expansion of the program cap. Even though it currently does not have any customers in the queue, it is very close to its EDR program cap limit, so if customers do apply in the future, it would probably go over its limit.

ALJ Wilson then asked the parties if a settlement had been reached regarding the proposed program cap. DRA stated that they had spoken with SCE but there was no resolution at this time. DRA also had an ex parte communication, which it will report, with Carol Brown of President Peevey’s office, and asked if DRA’s assumption was correct that TAMCO was reason for

the fast tracking of the EDR program cap issue. Ms. Brown confirmed that this was the case. DRA suggested a few solutions to her that it sees as appropriate. DRA realizes that it would not help everyone in SCE's queue, but believes that it would be appropriate to tailor the resolution of the program cap issue to the customer in question, even though ALJ had stated previously that the resolution of the EDR program cap issue should not be tailored to one party. DRA's proposal for resolving the program cap issue, which does not include any change to the EDR rate or floor price, is as follows:

1. Only SCE receives an interim increased program cap, from 100 megawatts to 150 megawatts.
2. An addition to the screening process, to require that the applicants' energy cost equal 30% or more of its total operating costs.
3. To safeguard against free ridership, if SCE finds that it has enrolled a free rider because of the increase to the program case, SCE would spread the revenue shortfall across all non-EDR industrial customers.

In general, TURN states that it is in general agreement with DRA proposal and is concerned with keeping residential and small business customers free of risk, due to any changes that may be authorized. TURN went on to state that DRA provides an effective approach that would accomplish this, given narrow tailoring to address situation/political context.

SCE stated that it does not agree with the changes proposed, then commented on DRA's position. SCE does not think that the 30% test simplifies the review process, and that adding this test does not add value to whether an applicant may or may not be a free rider. SCE also stated that changing the cap alone won't help include more customers in the EDR program, that it would need to change how the floor price is calculated as well, in order for applicants to be able to pass the "but for" test (SCE referred to p. 3 of the Joint Statement Section A, filed on March 2, 2010). SCE is also concerned with tailoring relief to

one customer, and is not in the practice of allowing customers to jump the queue, which would likely be the case with TAMCO. Another concern is in regards to spreading the possible free rider revenue shortfall over just industrial class customers. SCE believes, and PG&E agrees, that since a properly tailored EDR program benefits all customers, it seems unfair to put all the risk on one customer class, benefiting all classes of customers. Therefore, both SCE and PG&E believe that the accounting for the risk of free ridership, if included in any revision to the EDR program cap, should be spread to all customer classes. SCE, PG&E, and EUF all find it a difficult task to determine what a free rider is, complicating identification of free riders in DRA's proposal.

SCE also acknowledges and agrees that this is an unusual situation and appreciates the parties efforts, but is concerned with tailoring the relief to one customers.

DRA and TURN responded that the EDR program benefits all customer classes if properly defined and developed, but if a revision to the EDR program happens quickly and is tailored to a specific customer, then it is necessary to protect other ratepayers, thus placing the risk on industrial customers only.

PG&E then stated that since DRA's interim solution effected only SCE and only large SCE customers, its comments would be on a theoretical basis only. It agreed with SCE that there would be an asymmetry to risk and reward if only industrial customers were at risk, and that the risk, if accounted for, should be spread to all ratepayers. PG&E suggested but does not support the idea of giving all benefits and all costs to non-industrial non-EDR customers, in order to address the question of indifference. PG&E had no comments in regard to the calculation of the floor price, since that is an SCE specific issue.

EUF finds the DRA proposal creative, and views it almost as an expedited EDR tariff, rather than allowing one customer to skip the queue. EUF interprets the DRA's 30% test as a substitute for the marginal cost test and the "but for" test. DRA later corrected this interpretation, stating that the 30% test is not a substitute for the other tests. EUF cannot support having free rider costs spread as DRA has proposed. EUF believes that it breaks Commission precedent of whoever shares the benefit of something also shares the risk and questions how an industrial customer benefits more than any other customer class in regards to the EDR program. Since all customers benefit from the EDR rate program, all customers should face the risk. EUF also commented that it doesn't want the processing of the proposed increase to the EDR program cap to delay resolving the broader issues of these proceedings.

SCE then stated that the annual EDR discount ranges from about \$5-7 million. Based on this amount of discount, if free ridership did exist, SCE believes that the amount of money that would be refunded to non-participating customers would be trivial. As part of the screening process, a potential EDR customer must attest that its response to the "but for" test is truthful. It is difficult to prove whether this customer is being truthful or not. But, in four years that the EDR program has been in place, only 47 megawatts of the cap have been enrolled, and no one has been enrolled in about the last two years. SCE can't prove that free ridership doesn't exist, but the low number of megawatts enrolled demonstrates that the screening process appears to be working. If the screening process weren't working, SCE would be much closer to the 100 megawatt cap.

SCE went on to compare the EDR program for industrial customers with its California Alternate Rates for Energy (CARE) program for residential

customers, stating that what DRA has proposed for addressing free ridership in the EDR program is not how it is dealt with in the CARE program. EUF liked SCE's comparison of the EDR and CARE programs.

TURN commented that the parties should distinguish between the broad free ridership risk in general and the incremental risk from increasing the cap or extending the program, particularly when only one customer is involved. TURN is concerned that there will be incremental risk because one company has jammed through, and we should be able to isolate if it is a free rider and deal with this one specific concern. TURN states that it would probably agree that broad benefits for an appropriately administered EDR program or for a proposal that has faced a normal level of review, does accrue to all customers. But given the current effort to address the proposed EDR program cap increase in a short amount of time and in reference to a specific customer, an exception regarding who should face the risk involved, is warranted. TURN also disagreed with SCE's comparison of the EDR program with the CARE program.

ALJ Wilson then stated that this was a very helpful discussion and appreciated the various creative solutions. She will be consulting with President Peevey regarding how to proceed, and will issue a ruling with notes from today's PHC. The President will also be issuing an amended scoping memo in the next week or so. Parties should continue to discuss resolution of this as well as the broader issues of the case.

(END OF ATTACHMENT A)

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated March 10, 2010, at San Francisco, California.

 /s/ CRISTINE FERNANDEZ
Cristine Fernandez

N O T I C E

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.