

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Application of Pacific Gas and Electric Company for Compliance Review of Utility Owned Generation Operations, Electric Energy Resource Recovery Account Entries, Contract Administration, Economic Dispatch of Electric Resources, Utility Retained Generation Fuel Procurement, and Other Activities for the Period January 1 through December 31, 2012 (U39E)

A.13-02-023  
(Filed February 28, 2013)

**PROTEST  
OF THE DIVISION OF RATEPAYER ADVOCATES**

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**I. INTRODUCTION**

Pursuant to Rule 2.6(a) of the Commission’s Rules of Practice and Procedure, the Division of Ratepayer Advocates (“DRA”) timely submits this Protest to Pacific Gas and Electric Company’s (“PG&E”) Application, Application (“A.”) 13-02-023, and its supporting testimony. PG&E’s Application was noticed on the CPUC’s Daily Calendar on March 7, 2013. In A.13-02-023, PG&E requests a Commission finding that PG&E made appropriate entries to its Energy Resource Recovery Account (“ERRA”) balancing account for calendar year 2012 (“the Record Period”) and that it complied with its obligations regarding its contract administration and Least Cost Dispatch (“LCD”) of electric resources during the Record Period.<sup>1</sup>

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<sup>1</sup> Application of Pacific Gas and Electric Company for Compliance Review of Utility Owned Generation Operations, Electric Energy Resource Recovery Account Entries, Contract Administration, Economic Dispatch of Electric Resources, Utility Retained Generation Fuel Procurement, and Other Activities for  
*(footnote continued to the next page)*

In its application, PG&E requests recovery of the amounts recorded in the ERRAs as of December 31, 2012, which includes \$74.797 million in over-collections recorded in the 2012 Record Period. PG&E's over-collection figure derives from adding \$84.594 million in ERRAs over-collection in the period ending on December 31, 2011 to \$3.603 billion in 2012 ERRAs revenues and \$109,857 in interest credit, minus \$3.613 billion in 2012 ERRAs expenses (including the Power Charge Indifference Adjustment, which reduced total expenses).

In addition, PG&E seeks approval to recover the balances of the following accounts:

- the Market Redesign and Technology Upgrade Memorandum Account (“MRTUMA”);
- the Diablo Canyon Seismic Studies Balancing Account (“DCSSBA”); and
- PG&E's Greenhouse Gas Compliance Instrument Procurement.

## **II. DISCUSSION**

### **A. Background**

The Energy Resource Recovery Account is a balancing account in which the utilities record and track energy procurement costs (fuel and purchased power) against recorded revenues (ERRAs revenue requirement). In other words, it tracks the difference between the authorized revenue recovered in rates and the cost of power. It is modeled after the Energy Cost Adjustment Clause (“ECAC”) balancing account and based on Assembly Bill (“AB”) 57 (codified at Public Utilities Code § 454.5). The first two major ERRAs Commission decisions were referred to by the Commission as the “October Decision,” Decision (“D.”) 02-10-062, and as the “December Decision,” D. 02-12-074, and those names are used in this pleading as well.

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the Period January 1 through December 31, 2012 (U39E), p. 1 (Feb. 28, 2013) [hereinafter “PG&E's Application”].

The purpose of ERRA is to “[e]nsure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan.”<sup>2</sup> To accomplish this the “Commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan.”<sup>3</sup>

The purpose of AB 57 and ERRA is to re-establish a procurement and cost-recovery mechanism after the energy crisis. A primary component of ERRA is reliance on compliance with a Commission-approved procurement plan.<sup>4</sup> Investor Owned Utilities (“IOUs”) recover 100 percent of their fuel, purchased power, and other related costs through the ERRA account, provided the costs are incurred consistent with the utility’s approved procurement plan. It is a pass-through account; the costs are not included in the IOUs’ rate base.

The October Decision ordered that the utilities comply with minimum standards of conduct, including Standard of Conduct 4 (“SOC 4”), which states: “The utilities shall prudently administer all contracts and generation resources and dispatch the energy in a least-cost manner.”<sup>5</sup> This standard also applies to administration of contracts and generation resources in addition to Least Cost Dispatch. SOC 4 is an element of each Investor Owned Utility’s (“IOU”) procurement plan.<sup>6</sup> The Commission has specifically included in the procurement plans the requirement that the “utility bears the burden of proving compliance with the standard set forth in its plan.”<sup>7</sup> This language was added to each IOU’s procurement plan to avoid “the dangers of this Commission agreeing to an

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<sup>2</sup> Public Utilities Code (“PU Code”) §454.5(d)(3).

<sup>3</sup> PU Code § 454.5(d)(3).

<sup>4</sup> Decision 03-06-067, p. 12 (Oct. 25, 2001); Decision 05-01-054, p. 12 (Jan. 27, 2005).

<sup>5</sup> October Decision, p. 52 & Conclusion of Law 11.

<sup>6</sup> Decision 05-01-054, p. 2.

<sup>7</sup> December Decision, p. 54 & Order Paragraph 24. *See*, Decision 05-01-054, p. 5; Decision 05-04-036, pp. 15–16.

interpretation of AB 57/SB 1976 that would remove our continuing oversight of utility operational performance and, thereby, remove the Commission’s ability to meet its statutory requirement to assure “just and reasonable” rates.”<sup>8</sup>

## **B. Issues Anticipated**

### **1. Issues in Scoping Memo**

DRA has begun its discovery effort and intends to conduct further discovery and review of PG&E’s Application and supporting testimony. DRA and PG&E have in the past disagreed about the appropriateness of inclusion of review of the prudence of management in PG&E’s Utility-Owned Generation (“UOG”) in the ERRA proceeding. However, PG&E and DRA have reached an agreement for this and future ERRA proceedings addressing this issue.<sup>9</sup>

As in previous ERRA filings, DRA anticipates the following issues should be part of the scope of this proceeding:

- whether PG&E administers and manages its own generation facilities prudently (SOC 4);
- whether PG&E administered and managed its Qualifying Facility (“QF”) and non-QF contracts<sup>10</sup> in accordance with the contracts’

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<sup>8</sup> December Decision, pp. 53–54. The “just and reasonable rate” requirement is established in Public Utilities Code, Section 454.5(d)(1), (5).

<sup>9</sup> See, Pacific Gas and Electric Company’s (U 39 E) and The Division of Ratepayer Advocates’ Motion for Approval of Proposed Settlement in A.12-02-010 filed November 1, 2012 at Attachment A, p.5, Article 2.4.4. (“PG&E will address UOG outages and associated fuel costs, if applicable, in PG&E’s ERRA compliance application and prepared testimony in all future ERRA compliance proceedings.”). As of the date of this Protest, this motion is pending before the Commission.

<sup>10</sup> In Decision 06-12-009, the Commission identified three forums available for utilities to request Commission approval of their contract amendments. First, pursuant to Decision 98-12-066, utilities may file an advice letter to seek approval of restructured QF contracts with a term of five years or less. Second, pursuant to Decision 04-12-048, utilities may file an application for the approval of amendments to contracts with greater than a five-year term. And finally, utilities may use the ERRA reasonableness application process to seek approval of contract amendments and modifications. Decision 06-12-009, p. 7 (Feb. 15, 2006).

While the number of contract amendments and modifications included for Commission approval in this ERRA application is larger than previous applications, DRA believes, at this point, that it will be able to complete its review within the schedule proposed.

- provisions and otherwise followed Commission guidelines relating to those contracts (SOC 4);
- whether PG&E achieved Least Cost Dispatch of its energy resources (SOC 4);
  - whether the entries in the ERRRA are reasonable;
  - whether PG&E prudently managed UOG outages and associated fuel costs; and,
  - whether PG&E properly complied with the notice requirements of Commission Rules of Practice and Procedure, Rule 3.2.<sup>11</sup>

In addition, other issues in this year's application include:

- whether the costs booked in the MRTUMA are reasonable and whether PG&E has met its burden of proof regarding its claim for cost recovery;
- whether the costs incurred and recorded in the DCSSBA are reasonable and whether PG&E has met its burden of proof regarding its claim for cost recovery;
- whether PG&E's Greenhouse Gas Compliance Instrument Procurement complied with the Bundled Procurement Plan and Decision (D.)12-12-003 in Rulemaking (R.)11.03.012, Order Instituting Rulemaking to Address Utility Cost and Revenue Issues Associated with Greenhouse Gas Emissions, regarding the allocation of greenhouse gas (GHG) allowance costs and revenues.

As discovery continues, DRA expects other issues may arise during the course of this proceeding and reserves the right to amend this protest and/or seek other relief as appropriate.

### **III. SCHEDULE**

DRA agrees with the preliminary determination that this is a ratesetting proceeding and that hearings should be scheduled in this proceeding.

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<sup>11</sup> PG&E has not finalized the Compliance Filing pursuant to the Commission's Rules of Practice and Procedure, Rule 3.2, as of the date of this Protest. DRA may withdraw this as an issue at the Pre-Hearing Conference ("PHC") if it receives the compliance filing with sufficient time to review that filing prior to the PHC.

Prior to PG&E's filing, DRA and PG&E discussed a proposed procedural schedule. Those specific procedural dates on which DRA and PG&E agreed, as presented on page 10 of PG&E's Application, are as follows:

Application Filed	February 28, 2013
Prehearing Conference	May 14, 2013
DRA/Intervenor Testimony	August 23, 2013
Utility Reply Testimony	September 20, 2013
Hearings (if necessary)	October 7-8, 2013
Opening Briefs	October 18, 2013
Reply Briefs	November 1, 2013
Proposed Decision (PD)	Late November, 2013
Final Decision	Late December 2013 to mid-January 2014.

As is typical with each ERRA compliance review application, the testimony and supporting documents are voluminous and the scope of review requires a significant amount of time for DRA to make a thorough evaluation. For this reason, DRA may seek a warranted schedule change as discovery proceeds.

DRA believes that the schedule might be further accelerated if and when parties make a determination that hearings may not be necessary and/or may be limited to specific issues.

#### **IV. CONCLUSION**

For the reasons stated herein, DRA urges the adoption of the issues it suggested and the schedule it proposed.

Respectfully submitted,

/s/ ROBERT HAGA

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