

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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In the Matter of the Application of
Pacific Gas and Electric Company for
Approval of Economic Development
Rate for 2013 – 2017 (U39E).

Application No. 12-03-001
(Filed March 1, 2012)

**COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON
THE PROPOSED DECISION OF ALJ CLARK**

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August 29, 2013

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I. SUMMARY

Pursuant to Rule 14.3 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Division of Ratepayer Advocates ("DRA") hereby comments on the August 9, 2013 Proposed Decision of ALJ Richard Clark ("PD"). While the PD did not adopt all of DRA recommendations in this proceeding, DRA supports the PD subject to correction of minor errors discussed below. Importantly, the PD recognizes the legal necessity of an additive price floor to assure that each EDR customer provide both a contribution to margin ("CTM") and also fully fund nonbypassable charges.

II. DISCUSSION

A. Correction of a Factual Error Regarding Marginal Cost Updating

The PD contains a factual error regarding marginal cost updating that must be corrected. It states:

We require that the marginal costs for generation and distribution used to calculate the Enhanced EDR discount be initially set at the marginal costs established by GRC in effect at the time that the EDR contract is signed, and then adjusted annually to reflect the changes in the marginal cost of generation authorized by the Commission in its annual

proceedings on PG&E's Energy Resource Recovery Account.¹

Similarly:

Annually updating the marginal costs used in the CTM analysis, by using the marginal costs for generation and distribution established by the most current GRC in effect and adjusted annually to reflect the changes in the marginal cost of generation authorized by the Commission will afford the most appropriate discount to the Enhanced EDR customer while maintaining protection against negative CTM.²

These PD passages are incorrect. Presently, marginal costs are established triennially, in GRC Phase 2 proceedings, and thus are not updated annually. Further, while the nonbypassable rate components ("NBCs") do change annually, the annual changes tend to be small. DRA recommends that the PD be changed to account for the triennial updating of marginal costs.

The Commission, in the Annual ERRA Forecast proceedings, determines the procurement-related revenue requirement for the following year. These applications contain forecasts on assumptions such as natural gas prices, CAISO energy prices, demand, capacity prices, and new capacity that will come online. PG&E submits its ERRA Forecast Application in June of each year. Then, as part of the proceeding, it is permitted to update the forecast in November.

In contrast to the annual focus of ERRA, the marginal generation costs used in the EDR price floor consist of:

1. Forecasts of marginal energy costs by PG&E's five TOU periods based on a three-year forecast of hourly energy costs; and
2. The marginal generation capacity cost in \$/kw-year, based on a six-year capacity need analysis.

While data from ERRA could be used to update the marginal generation costs adopted in GRC Phase 2 proceedings, such updating would not necessarily be straightforward. A

¹ PD, p.26

² PD, pp. 28-29

specific process for updating the marginal energy costs for changes in gas prices and other relevant inputs would need to be worked out.

Given that the Commission does not now update marginal generation costs annually, DRA sees no pressing need for annual floor price updating except for the NBCs. In summary, DRA recommends that the floor price be updated annually for changes to NBCs, and triennially for marginal costs as adopted in GRC Phase 2 decisions.

B. The PD and Appendix Should Clarify that the Price Floor Applies to Both Standard and Enhanced EDR Options

The PD correctly finds that “price floors have ensured that the minimum rate for any customer reflected the annual payment of the marginal cost of providing service plus the payment of all NBCs”.³ It further concludes that “PG&E’s proposal to eliminate the floor price and remove ratepayer protections presents an unacceptable level of risk of unjust and unreasonable rates for non-participating ratepayers in violation of Pub. Util. Code § 451.”⁴ However, while the PD clearly enforces the price floor for the Enhanced EDR contracts through an ex post annual refund,⁵ the PD is not clear on how or whether such price floors are enforced for Standard EDR contracts.

In discussing the Standard EDR program, the PD states “the 12 % Standard EDR discount proposed by PG&E conforms with our requirement that the rates paid by the customer be reasonably expected to generate revenue sufficient to exceed the sum of distribution and generation marginal costs plus NBCs, by each EDR customer, in each year of the contract.”⁶ Yet, the PD does not clearly state how the Standard EDR price floor will be enforced on an annual basis to assure that each customer is paying NBCs and marginal costs. DRA recommends that the PD clarify that both the Standard and Enhanced EDR discounts are subject to an annual price floor consistent with the law.

³ Finding of Fact # 13.

⁴ PD, Conclusion of Law #2.

⁵ PD, pp 28-29.

⁶ PD, p.28.

Appendix A states that “an Enhanced Option EDR program which provides at least a 12% discount ...” is available to qualified customers. This provision of the EDR Tariff also should contain the additional clarification that the 12% discount is subject to the same legally-mandated price floor as the higher discount.

C. The Commission Should Clarify that the EDR Annual Reports are Required to Include Analysis of Contribution to Margin

The PD requires PG&E to submit annual reports to the Director of Energy Division containing information on each EDR Participant, including the participant’s name, level of discount received, and the number of jobs retained or created attributable to the named EDR participant’s participation in the EDR program.⁷ DRA supports this requirement to report on the indirect benefits of the EDR program, but we suggest that the PD’s annual reporting language on participant specific and programmatic CTM analysis,⁸ as articulated in the Discussion section of the PD, also be included in Appendix A “Standard and Enhanced Economic Development Rate Tariff Options”. This would ensure that it is clear that information on the *direct* benefits of EDR (i.e, a CTM analysis) also should be included in the EDR annual reports. Including the CTM analysis in the annual reports will enable the Commission to verify that EDR participants are providing CTM. CTM analysis provides a clear and tangible metric of direct non-participating ratepayer benefit that should be considered when the Commission evaluates the EDR program. Consistent with the most recent EDR program, DRA suggests the annual reports be submitted to DRA as well as Energy Division.

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⁷ PD, p.A-4.

⁸ “We require the reporting of the amount of CTM attributable to each Enhanced EDR attraction, expansion and retention participant, and the total CTM attributable to the program.” PD, p.27.

Respectfully submitted,

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APPENDIX A
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW TO THE
PROPOSED DECISION⁹

Proposed Findings of Fact

26. Confidential reporting of the names of the EDR participants, their SIC, the total EDR discount afforded to the participant, the number of jobs retained or created and the amount of wage and benefits paid to ~~each of~~ those employees is critical in measuring the indirect benefits attributable to an EDR program. **Confidential reporting of the annual contribution to margin provided by each EDR participant is critical in measuring the direct ratepayer benefits attributable to an EDR program.**

35. **Currently, the Commission updates marginal costs triennially in GRC Phase 2 proceedings, and updates most nonbypassable rate components annually. Price floors for EDR discounts should be updated accordingly.**

Proposed Conclusions of Law

2. PG&E's proposal to eliminate the floor price and remove various ratepayer protections presents an unacceptable level of risk and unreasonable rates for non-participating ratepayers in violation of Pub. Util. Code § 451. **The additive price floor consisting of the sum of marginal costs and nonbypassable charges is an essential component of both the Standard and Enhanced EDR programs adopted in this proceeding.**

⁹ DRA's proposed changes to the Findings of Fact and Conclusions of Law in the Proposed Decision are in **bold, underlined** type.