

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of Pacific Gas and Electric Company for Adoption of Electric Revenue Requirements and Rates Associated with its 2016 Energy Resource Recovery Account (ERRA) and Generation Non-Bypassable Charges Forecast and Greenhouse Gas Forecast Revenue and Reconciliation (U 39 E)

Application 15-06-001
(Filed June 1, 2015)

**REPLY BRIEF OF THE DIRECT ACCESS CUSTOMER COALITION
AND THE ALLIANCE FOR RETAIL ENERGY MARKETS**

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Pursuant to Rule 13.11 of the Commission’s Rules of Practice and Procedure and the schedule established in the August 5, 2015, Scoping Memo and Ruling of Assigned Commissioner, the Direct Access Customer Coalition (“DACC”) and the Alliance for Retail Energy Markets (“AREM”) submit this joint reply brief on issues of importance regarding the Application of Pacific Gas & Electric Company (“PG&E”) filed on June 1, 2015, in the above-captioned docket (“Application”). As directed by assigned Administrative Law Judge (“ALJ”) Wilson at the prehearing conference, this opening brief follows the common outline for briefs agreed upon by the active parties to this proceeding.

I. INTRODUCTION

DACC and AREM’s primary interest in this proceeding is the calculation and rate treatment of costs that are charged to Direct Access (“DA”) customers, including the Power Charge Indifference Adjustment (“PCIA”), the Competition Transition Charge (“CTC”) and the Cost Allocation Methodology (“CAM”) revenue requirement. This is DACC and AREM’s usual interest in most utility Energy Resource Recovery Account (“ERRA”) applications.

A. Summary of DACC and AReM's Interest in this Proceeding

DACC is a regulatory advocacy group comprised of educational, governmental, commercial and industrial customers that utilize direct access for all or a portion of their electrical energy requirements. In the aggregate, DACC member companies represent over 1,900 MW of demand that is met by both direct access and bundled utility service and about 11,500 GWH of statewide annual usage. AReM is a California non-profit mutual benefit corporation formed by electric service providers (“ESPs”) that are active in the California’s DA market. This filing represents the position of AReM, but not necessarily that of a particular member or any affiliates of its members with respect to the issues addressed herein.

The issues pertaining to the PCIA that are at dispute in this proceeding are ones with which DACC and AReM have great familiarity. Direct access has been the state’s primary mode of non-utility service since 1998, with Community Choice Aggregation (“CCA”) commencing service in 2010 when Marin Clean Energy (“MCE”) launched its CCA program. The battles, trials and tribulations that have forged the current system of PCIA, CTC and CAM have been largely fought by DACC and AReM attempting to protect and preserve options for customers to elect retail competition options.

Based on the most recent statistics available on the Commission’s website,¹ direct access constitutes 0.1% of statewide residential load; 0.9% of statewide agricultural load; 1.6% of statewide small commercial (<20kW) load; 16.9% of large commercial (20kW-500 kW) statewide load; and 33.6% of the state’s industrial load. In total, 12.77% of the state’s investor-owned utility (“IOU”) load is served by direct access. At its peak, direct access served as much

¹<http://www.cpuc.ca.gov/PUC/energy/Retail+Electric+Markets+and+Finance/Electric+Markets/Direct+Access/thru2008.htm>, dated May 15, 2015.

as 16% of statewide load, but access to DA is currently capped, with the caps in each utility's service territories fully subscribed.

However, there is a significant untapped demand for DA that has been marked by the significant over-subscription that has occurred with each utility when the DA "open seasons" have been held. Also, there is a pending bill² introduced at the state Legislature that would increase the cap further and allow more direct access. By comparison, CCA, another form of retail choice, currently accounts for less than 2% of statewide load.³ Whether CCA or DA, however, the issues in this proceeding related to the PCIA are of significant impact. DACC and AReM continue to believe that the interests of departing load, whether through DA or CCA, are largely congruent and that issues that are at play here must be considered in the light of what is just and reasonable for bundled utility customers as well as for CCA and DA customers.

B. PG&E's Proposed PCIA Increase

The significant increase in the PCIA proposed by PG&E has been of particular concern to certain parties in this proceeding, particularly those representing the CCA interests. In response to this increase there have been proposals to (a) freeze the PCIA at its current level⁴ and use the PCIA negative indifference amount accumulated for the benefit of pre-2009 DA customers to reduce the PCIA for CCA customers;⁵ (b) implement a PCIA rate stabilization mechanism;⁶ (c)

² Senate Bill 286, sponsored by Senator Robert Hertzberg.

³ Estimate based on a review of data compiled from the following sources: for Marin Clean Energy, see http://www.mcecleanenergy.org/wp-content/uploads/2014_Integrated_Resource_Plan.pdf; for Sonoma Clean Power, see its 2014 - 2018 Resource Plan; and for Lancaster Clean Energy, see <file:///C:/Users/gol63092/Downloads/FINAL%20Community%20Choice%20Aggregation%20Implementation%20Plan.pdf>.

⁴ Marin Clean Energy Opening Brief ("MCE") at p. 3 and p. 13.

⁵ Id at pp. 10-13.

⁶ LEAN Energy US Opening Brief ("LEAN") at p. 7.

amortize the PCIA undercollection balance over a 30-month period⁷ or amortize the undercollection to the extent necessary to cap any annual PCIA increase at 15%;⁸ and (d) reexamine the underlying PCIA and CAM methodologies in a separate proceeding. MCE also addresses in its discussion on item (a) above what it describes as PG&E's proposal to “surreptitiously retire its negative indifference account balance.”⁹ DACC and AReM address each of these proposals in their comments below.

C. Summary of DACC and AReM’s Points and Proposals

As described below, DACC and AReM makes the following major points and offers the following positions:

- The negative indifference amount belongs solely to pre-2009 direct access customers and should not be used to reduce PCIA generally.
- MCE is correct that PG&E has tried to eliminate the mitigating effect of negative CRS elements, whether in the PCIA or in other charges.
- PG&E should not be allowed to retire the negative indifference amount.
- As proposed by MCE and Sonoma Clean Power (“SCP”), a separate phase to consider PCIA-related and rate stabilization issues should be commenced.
- Any such rate stabilization proceeding must address the interests of all departing load customers, both DA and CCA.
- Freezing the current PCIA or amortizing the balance of the under-collection over 30 months may have unforeseen negative consequences.

⁷ MCE at pp. 13-14.

⁸ Sonoma Clean Power Opening Brief (“Sonoma”) at pp. 2 and 7.

⁹ Id at p. 3 and p. 8.

II. PROCEDURAL BACKGROUND

DACC and AReM have no discussion of procedural background since this topic has been adequately described in the opening briefs of PG&E, MCE, Sonoma and LEAN.

III. SHOULD THE COMMISSION ADOPT PG&E'S ERRA FORECAST REQUESTS FOR 2016?

A. ERRA Forecast Revenue Requirement.

DACC and AReM have no position regarding the matters described in this section of the common briefing outline.

B. Ongoing Competition Transition Charge (CTC) Forecast Revenue Requirement.

DACC and AReM have no position regarding the matters described in this section of the common briefing outline.

C. Power Charge Indifference Amount Forecast Revenue Requirement.

As noted above, this is the primary issue of contention in the proceeding that impacts DACC and AReM. As such, DACC and AReM have carefully considered the positions of other parties in this proceeding and offer the following observations, comments and proposals on reply.

1. The negative indifference amount was accrued on behalf of pre-2009 direct access customers and should only benefit them.

At issue in this proceeding is the fact that PG&E has in excess of a one billion dollar negative indifference balance¹⁰ related to the PCIA charged to pre-2009 vintage DA customers. This negative indifference balance exists because in prior PG&E ERRA forecast proceedings the Indifference Amount for pre-2009 vintage DA customers was negative. Decision (“D”) 06-07-

¹⁰ The exact amount was cited by PG&E in a response to a MCE data request as being equal to \$1,079,512,000. *See*, Exhibit MCE-1 (MCE Testimony); Attachment C, line no. 8.

030 specified how that negative indifference balance should be treated: rather than implementing a PCIA rate that reflected this negative balance, the negative balance would be tracked so that it could be applied to future positive Indifference Amounts.¹¹ MCE’s proposal in light of this fact is that the negative indifference balance should be used “to mitigate the rate shock associated with PG&E’s proposed increase to the PCIA.”¹² MCE alleges that the negative indifference balance is evidence “that the departure of customers for DA and CCA service has been ‘economic’ for bundled customers; bundled customers have been ‘better off.’”¹³

Bundled customers are indeed better off due to the policies that have allowed the negative indifference balance to accrue. However, it is not accurate to ascribe this condition, as MCE does, as being due to the departure of both DA and CCA customers. In fact, with respect to the negative indifference balance, bundled customers are better off wholly due to the departure of pre-2009 DA customers for the simple reason that the negative indifference amount relates solely to the departure of pre-2009 direct access customers. The departure of CCA customers, which did not occur until the commencement of MCE service in 2010, did not contribute to the accumulation of the negative indifference amount.

In fact, as explained above, the negative indifference amount balance exists solely because pre-2009 vintage DA customers would have experienced negative indifference amounts (and thus negative PCIA) in prior years but for the Commission’s policy to limit the Indifference Amount to zero. To suggest that it is unfair and improper to keep those credits

¹¹ D.06-07-030, at Finding of Fact 17.

¹² MCE, at p. 3. It is unclear whether MCE proposes that this mitigation should only accrue to the benefit of CCA customers or to all departing load, including DA customers. Perhaps charitably, DACC and AReM presume the latter.

¹³ MCE at p. 7.

within the group that earned them is misplaced and opportunistic. DACC and AReM repeat the conclusion stated in their opening brief in last year's ERRA proceeding (A.14-05-024) that:

The Commission should draw a clear line around the specific identifiable customer group who accrued the credits, pre-2009 Vintage DA customers, rather than the broader category of DA and CCA departing load. Since these older DA customers did not receive the full credits needed to strictly maintain customer indifference in the past, the credits should remain with them.¹⁴

Of important note is the fact that the Commission considered and rejected MCE's position on this identical issue in the PG&E 2015 ERRA (A.14-05-024):

Pre-2009 vintage customers have accumulated a negative indifference amount to exceed 1 billion by the end of 2014, and MCE proposes that it be used to offset the indifference amount for customers in other vintages. DACC and AReM oppose MCE's proposal and advocate for customers of each vintage retaining any negative balance it accumulates. We find MCE's proposal to be unpersuasive. Pre-2009 vintage negative indifference amounts were accrued by direct access customers before the establishment of any community choice aggregations. It is unreasonable to allocate negative PCIA amounts accrued by one group of departing customers (Direct Access Customers) to another group of departing load customers (Community Choice Aggregation Customers). Pre-2009 DA customers accrued the negative PCIA credits, and the credits should rightfully stay with that group.¹⁵

Nothing has changed in the interim to revise this conclusion, and the negative indifference balance should "rightfully stay" with the pre-2009 DA customers.

2. PG&E's Proposal to Retire the Indifference Amount Must be Rejected.

While DACC and AReM strenuously object to MCE's proposal on how the negative indifference balance should be used, there are other valid points that MCE makes about this issue. For example, MCE states that:

At seemingly every juncture in the storied history of the CRS, PG&E has tried to eliminate the mitigating effect of negative CRS elements, whether it is the PCIA or other charges. In response, the Commission has repeatedly rejected

¹⁴ September 22, 2014, DACC and AReM Opening Brief, at pp. 2-3.

¹⁵ D.14-12-053, at pp. 11-12.

PG&E's efforts, principally because PG&E's proposals undermine and violate the overarching rule governing NBCs – the bundled customer indifference policy.¹⁶

This is true. In support of its statement, MCE cites numerous past decisions such as D.06-07-030, D.07-05-005, and D.08-09-012, where the Commission found it “necessary that negative indifference amounts be carried over for use in subsequent years to maintain bundled customer indifference. The total portfolio approach is consistent with this principle. PG&E's separate approach is not.”¹⁷ However, MCE fails to note that the cited decisions predate the commencement of CCA and were hard fought and won by DACC and AReM on behalf of the pre-2009 DA customers who were responsible for the existence of the negative indifference balance.

MCE also notes accurately that, “PG&E has chosen this year to retire the billion dollar Negative Indifference Account balance and no longer carry-forward the balance.”¹⁸ This statement is supported by the PG&E response to a MCE data request wherein the utility stated, “For PG&E, the last DWR contract expires in September 2015...The cumulative negative indifference amount that accrued in forecast years 2006 through 2008 and 2011 and 2012 simply goes away.”¹⁹ DACC and AReM fully agree with MCE's conclusion that, “The Commission must do something with PG&E's billion dollar Negative Indifference Account balance; this amount cannot simply be ignored or allowed to go away.”²⁰ PG&E has cited no precedent that would support the concept that an accrued account balance created to benefit customers can simply be blithely written off. Nor are DACC and AReM aware of any such precedent. As

¹⁶ Id, at p. 10.

¹⁷ D.08-09-012, at p. 48.

¹⁸ MCE, at p. 7.

¹⁹ Exhibit MCE-6 (PG&E Data Response) at 1.

²⁰ MCE, at p. 12.

noted above in Section I.C. and discussed below in Section III.C.4, MCE and Sonoma have proposed a separate phase to consider PCIA-related and rate stabilization issues. The scope of this phase should include a reexamination of the current ban on a negative PCIA and consider other proposals for utilizing this credit for the benefit of the DA customers on whose behalf it was created.

3. As a General Proposition, Freezing the PCIA May Lead to Unforeseen Future Issues

MCE proposes that, “PG&E should be required to freeze the PCIA at its current level and use its one billion dollar negative indifference balance to mitigate the rate shock associated with PG&E’s proposed increase to the PCIA.”²¹ As a further alternative, MCE suggests that CCAs should “have the option to elect, on behalf of their respective CCA customers, to amortize a PCIA undercollection balance over a 30-month period or to the extent necessary to cap any annual increase at 15%.”²² It acknowledges that consideration of these interrelated issues may warrant additional time and that its proposal “may implicate issues affecting the other IOUs.”²³ Therefore, MCE suggests that it may be appropriate to establish a separate phase, in which case, “MCE requests that PG&E be directed to freeze the PCIA at their current levels pending a decision on this issue.”²⁴

The suggestion that a separate phase be held to examine MCE’s proposal acknowledges the reality that the interests of other parties, most specifically Southern California Edison (“SCE”) and San Diego Gas & Electric (“SDG&E”), would be affected by any proposal to freeze the PCIA since presumably it likely would be inappropriate to freeze the PCIA for one but not all

²¹ MCE at p. 3.

²² MCE, at p. 13

²³ Id, at p. 13.

²⁴ D.08-09-012, at p. 13.

IOUs. A freeze would also, of course, affect the interests of DA customers. While DACC and AReM members are of course not pleased by the increase in the PG&E PCIA, we are perhaps more sanguine about them, given the fact that DA customers and their ESPs have observed both significant increases and decreases in the past.

In short, the concept of freezing or amortizing the PCIA because of a large increase may well cause unforeseen issues going forward. For example, what if the market benchmark should call for another large increase in the following year, or the year after that as well? How would the accrued balances be treated? Certainly the specter of significant accounting issues arises from the proposal. Further, what if changes in the market price benchmark were to dictate a large PCIA decrease in a given year? Would PG&E or any other affected utility be able to ask for and receive a freeze on the PCIA in that case? These questions are not addressed by the freeze proposal, yet they certainly merit further consideration.

4. A Rate Stabilization Proceeding Must be Broad Enough to Encompass the Interests of all Affected Customers and to Involve all Utilities.

SCP proposes that, “the Commission commit to reexamining the underlying PCIA and CAM methodologies in a separate proceeding or proceedings in order to address their detrimental effects on CCA customers.”²⁵ DACC and AReM support such a proceeding, so long as it was specifically noticed to include the interests of both DA and CCA customers. DA and CCA interests have in fact jointly asked for Commission action on nonbypassable charges in the

²⁵ Sonoma, at p. 7.

past.²⁶ The PCIA and CAM are nonbypassable charges that impact all departing load customers and not simply CCA customers.

The Commission must recognize that consideration of PCIA and CAM issues cannot and should not be made solely in a CCA context, as the impacts to DA customers are equally affected. There is no distinction between the two classes of customers and the damaging effects that nearly interminable PCIA charges impose on them and on competitive retail markets.

Furthermore, any such separate phase should involve each of the three IOUs. These issues are of statewide importance and cannot be addressed solely in a PG&E context. It would be economically inefficient and improper from a regulatory perspective to consider these issues in solely the context of a single utility's rates and charges. Therefore, any reconsideration of these issues must (a) deal with the interests of all departing load, both DA and CCA; and (b) involve the participation of all IOUs and not simply PG&E.

D. Cost Allocation Mechanism (CAM) Revenue Requirement

DACC and AReM have no position regarding the matters described in this section of the common briefing outline.

E. Electric Sales Forecast

DACC and AReM have no position regarding the matters described in this section of the common briefing outline.

F. Net Forecast Greenhouse Gas (GHG) Revenue Return Amount

DACC and AReM have no position regarding the matters described in this section of the common briefing outline.

²⁶ See, for example: Testimony on Behalf of the Alliance for Retail Energy Markets, Direct Access Customer Coalition, and Marin Energy Authority, R.12-03-014, June 25, 2012; and P.12-12-010 submitted by Marin Energy Authority, AReM, DACC, *et al.*

G. Rate Proposals Associated With Its Proposed Total Electric Procurement-Related Revenue Requirements

DACC and AReM have no position regarding the matters described in this section of the common briefing outline.

IV. THE REASONABLENESS OF PG&E'S RECORDED 2014 ADMINISTRATIVE AND OUTREACH EXPENSES FOR GHG

DACC and AReM have no position regarding the matters described in this section of the common briefing outline.

V. WHETHER ALL CALCULATIONS, INCLUDING BUT NOT LIMITED TO THE CALCULATION OF THE ERRA, ONGOING CTC, PCIA, CAM, GHG, NON-BYPASSABLE CHARGES, ERRA UNDER-COLLECTION, PROCUREMENT COSTS, VINTAGING, ARE IN COMPLIANCE WITH ALL APPLICABLE RESOLUTIONS, RULINGS, AND DECISIONS FOR ALL CUSTOMER TYPES

DACC and AReM have offered their comments on the PCIA above in Section III. C. paragraphs 1-4.

VI. THE NOVEMBER UPDATE

DACC and AReM intend to review the PG&E November update carefully and to offer such comments they believe to be justified and appropriate at that time, in accordance with the schedule provided by the Commission.

VII. SAFETY ISSUES

DACC and AReM have no position regarding the matters described in this section of the common briefing outline.

VIII. PG&E'S PROPOSED IMPOSITION OF THE NEW SYSTEM GENERATION CHARGE ON INCREMENTAL TRANSFERRED MUNICIPAL DEPARTING LOAD

DACC and AReM have no position regarding the matters described in this section of the common briefing outline.

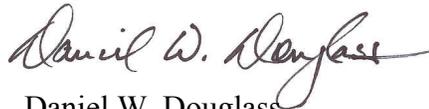
IX. CONCLUSION

In conclusion, DACC and AReM reiterate the points made above:

- The negative indifference amount belongs solely to pre-2009 direct access customers and should not be used to reduce PCIA generally.
- MCE is correct that PG&E has tried to eliminate the mitigating effect of negative CRS elements, whether in the PCIA or in other charges.
- PG&E should not be allowed to retire the negative indifference amount.
- As proposed by MCE and Sonoma, a separate phase to consider PCIA-related and rate stabilization issues should be commenced.
- Any such rate stabilization proceeding must address the interests of all departing load customers, both DA and CCA.
- Freezing the current PCIA or amortizing the balance over 30 months may have unforeseen negative consequences.

DACC and AReM thank the Commission for its attention to their discussion of the issues under consideration in this proceeding as described in this joint reply brief.

Respectfully submitted,



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