

**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
2017 Energy Resource Recovery Account
(ERRA) and Generation Non-Bypassable
Charges Forecast and Greenhouse Gas
Forecast Revenue and Reconciliation
(U 39 E)

Application 16-06-003
(Filed June 1, 2016)

**PROTEST OF MARIN CLEAN ENERGY TO
APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY
FOR 2017 ENERGY RESOURCE RECOVERY ACCOUNT AND
GENERATION NON-BYPASSABLE CHARGES FORECAST AND
GREENHOUSE GAS FORECAST REVENUE AND RECONCILIATION**

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TABLE OF CONTENTS

I.	Introduction	1
II.	Background	2
III.	Grounds for Protest	3
	A. Proposed PCIA Rate Increases Are Unreasonable.....	3
	B. Green Tariff Shared Renewables Participant Load Complicates the PCIA Calculus	4
	C. Retirement of the Negative Indifferent Balance for Early Departing Load Would Violate the Ratepayer Indifference Principle	5
	1. Negative Indifference Must Offset Positive Indifference.....	5
	2. PG&E Has Repeatedly Attempted to Use the Ratepayer Indifference Principle to Their Competitive Advantage.....	6
	3. Regulatory History Does Not Support PG&E's Proposal.....	6
	4. The Duration of Negative Indifference Amounts Are Not Tied to Expiration of DWR Contracts.....	8
	D. PG&E's Application Should Be Rejected as Presented.....	9
IV.	Rule 2.6(d) Compliance	10
	A. Proposed Category	10
	B. Need for Hearing	10
	C. Issues to Be Considered	10
	D. Proposed Schedule	10
V.	Service List	10
VI.	Conclusion	11

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I. INTRODUCTION

In accordance with Rule 2.6 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, Marin Clean Energy (“MCE”), submits the following protest to the APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) FOR 2017 ENERGY RESOURCE RECOVERY ACCOUNT AND GENERATION NON-BYPASSABLE CHARGES FORECAST AND GREENHOUSE GAS FORECAST REVENUE AND RECONCILIATION, dated June 1, 2016 (“Application”). This Protest is timely filed within the standard 30-day period which ends on July 5th. MCE protests this Application primarily on the grounds that Pacific Gas and Electric Company’s (“PG&E”) proposal would create a significant anti-competitive advantage for PG&E over other Load-Serving Entities within its service territory, especially in regards to Community Choice Aggregators (“CCAs”),

through a tremendous increase in costs collected through the Power Charge Indifference Adjustment (“PCIA”).

II. BACKGROUND

MCE is the first operational CCA within California. Currently MCE is one of three operational CCAs within PG&E’s service territory, the other two being Sonoma Clean Power Authority (“SCPA”) and Clean Power San Francisco (“CPSF”). MCE currently provides electricity generation services to approximately 170,000 customer accounts within seventeen distinct communities.¹ MCE is underway with enrolling seven additional communities which will add approximately 80,000 more customer accounts bringing the total number of customer accounts served by MCE Clean Energy to upwards of 250,000.² MCE’s customers receive generation services from MCE while continuing to receive transmission, distribution, billing and other services from PG&E. Because of this split in electricity service provisions, CCA customers are commonly referred to as “unbundled” electricity customers.

Customers that choose to participate in MCE’s CCA service are subjected to several non-bypassable charges (“NBC”) including the PCIA and the Cost Allocation Mechanism (“CAM”). The revenue requests presented by PG&E within its ERRA proceedings ultimately determine how large these NBCs will be for CCA customers and thereby how little of a price margin CCAs will have to compete with PG&E’s bundled electricity generation service rates. MCE’s interest

¹ Communities currently participating in MCE’s CCA include: the City of Belvedere, City of Benicia, Town of Corte Madera, City of El Cerrito, Town of Fairfax, City of Larkspur, City of Mill Valley, County of Marin, County of Napa, City of Novato, City of Richmond, Town of Ross, Town of San Anselmo, City of San Pablo, City of San Rafael, City of Sausalito, Town of Tiburon.

² MCE is currently going through the steps of enrolling the incorporated cities and towns within Napa County along with the Cities of Lafayette and Walnut Creek, both of which are located in Contra Costa County.

in this Application is to ensure that the revenue requirements proposed through the ERRRA process are fairly determined and weighed against the Commission's mandate by California legislature "to facilitate the consideration, development, and implementation of community choice aggregation programs, to foster fair competition, and to protect against cross-subsidization by ratepayers."³

Based upon MCE's preliminary analysis of PG&E's request within the instant Application, PG&E is seeking the largest cost recovery in history from departing load customers via the PCIA. Based on the requested increase in the PCIA of up to 30% effective January 1, 2017 on top of the 95% increase that was approved by the Commission effective January 1, 2016, MCE anticipates PCIA rates would reach never before seen levels (approximately 3¢/kWh for residential customers). This potential change to the PCIA would have material impacts on the competitive operations of both existing and emerging CCAs throughout PG&E's service area.⁴

III. GROUNDS FOR PROTEST

A. Proposed PCIA Rate Increases Are Unreasonable

MCE protests the instant Application because it would create significant competitive advantages for PG&E over other LSEs in its service territory, especially in regards to CCAs, by substantially increasing the amount of revenue recovered from departing load customers via the PCIA. Based upon MCE's initial analysis the PCIA, if PG&E's funding request were granted

³ See Section 2(h) of Senate Bill (SB) 790 (Leno, 2011): http://leginfo.ca.gov/pub/11-12/bill/sen/sb_0751-0800/sb_790_bill_20111008_chaptered.pdf

⁴ In addition to the three operational CCAs (MCE, SCPA, & CPSF) numerous other communities within PG&E's service area are very seriously pursuing the formation of CCA programs including: the San Mateo peninsula region (Peninsula Clean Energy), the Silicon Valley region (Silicon Valley Clean Energy), the Monterey-Santa Cruz-San Benito region (Monterey Bay Community Power), the City of Davis and Yolo County, Alameda County region, Mendocino County, Lake County, Humboldt County, and the San Luis Obispo-Santa Barbara-Ventura region.

unaltered, it would increase the PCIA rate for residential customers participating in CCA programs that have a 2012 customer vintage by 24%. Following the nearly doubling of the PCIA rate in PG&E's last ERRRA cycle, this additional 24% increase would result in PCIA charges represent approximately 29% of the generation-side charges on MCE's customers' bills, meaning MCE must procure power at less than 71% of PG&E's generation costs to remain competitive. The PCIA in PG&E's service territory is anti-competitive for CCAs and is fundamentally unfair for CCA customers, particular small usage customers such as residential, small commercial and *especially* CARE-eligible customers.

Previously the Commission has found it reasonable to cap departing load charges for DA customers under the Cost Responsibility Surcharge ("CRS") to 2.7¢/kWh in order to preserve the economic viability of DA programs.⁵ If the Commission does not dismiss this Application outright, then the issue of applying a cap to the PCIA rate should be considered within the scope of this proceeding so that the economic viability of CCA programs can be similarly protected.

B. Green Tariff Shared Renewables Participant Load Complicates the PCIA Calculus

PG&E presents for the first time within an ERRRA proceeding a forecast for load departure due to its Green Tariff Shared Renewables ("GTSR") program. Participants in this program are subjected to stranded cost recovery under the PCIA, like CCA customers. Unlike CCA departing load, PG&E does not appear to factor GTSR load growth into its PCIA revenue requirement forecast which will skew the results. MCE believes this and other matters relating to the GTSR load forecasting must be thoroughly examined within the instant proceedings record before PG&E's 2017 ERRRA can be deemed reasonable by the Commission.

⁵ See Decision D.02-11-022 at 118 and Ordering Paragraph 19.

C. Retirement of the Negative Indifferent Balance for Early Departing Load Would Violate the Ratepayer Indifference Principle

In D.15-12-022, the Commission ordered PG&E to request authority from the Commission if PG&E wished to retire its billion-dollar negative indifference balance.⁶ In its application, PG&E seeks Commission authorization “to retire the DWR PCIA negative indifference amount...”⁷ Importantly, PG&E refers to the PCIA as the “DWR PCIA,” and hangs the entirety of its legal argument on the mistaken view that “[b]ecause the last DWR contract has expired, it is now appropriate to retire the negative indifference amount consistent with the Commission’s earlier determination.”⁸ As summarized below, PG&E has an anachronistic and wrong view of the Commission’s earlier determinations, and PG&E’s proposal runs contrary to the Commission’s longstanding and fundamental “bundled customer indifference” standard. As such, MCE objects to PG&E’s proposal and urges the Commission to reject the proposal.

1. Negative Indifference Must Offset Positive Indifference

Boiled down to its core elements, the issue raised by PG&E’s proposal is as follows: *is it proper and consistent with the bundled customer indifference standard to continue to apply negative indifference amounts as an offset against positive indifference amounts?* Contrary to PG&E’s farsighted view of Commission precedent, the Commission has said repeatedly, and in particular in recent years, that the answer is “yes.” With respect to the PCIA and its antecedent cost responsibility surcharge (“CRS”) elements, the Commission has repeatedly stated that “[t]he threshold policy issue underlying cost responsibility surcharges is to ensure that remaining bundled ratepayers remain indifferent to stranded costs left by the departing customers.”⁹

⁶ See D.15-12-022 at 23; Ordering Paragraph 5.

⁷ PG&E Application at 11.

⁸ *Ibid.*

⁹ D.08-09-012 at 10 (referencing D.04-12-048; Finding of Fact 28).

“Indifference” is defined as the scenario in which “bundled customers should be no worse off, nor should they be any better off as a result of customers choosing alternative energy suppliers (ESP, CCA, POU or customer generation).”¹⁰ In order to ensure that bundled customers are not “better off” because of the departure of CCA customers, the Commission has repeatedly (and at times stridently) insisted that the investor-owned utilities’ accrued negative indifference amount balances be used to offset positive indifference amounts.

2. *PG&E Has Repeatedly Attempted to Use the Ratepayer Indifference Principle to Their Competitive Advantage*

PG&E has a long history of trying to buck, resist and ignore this Commission directive. 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 PG&E’s efforts, principally because PG&E’s proposals undermine and violate the overarching rule governing the CRS – the bundled customer indifference policy. It is important to note that PG&E’s view of the “regulatory history of negative indifference amounts” is stuck in time.¹¹ Inexplicably, PG&E fails to address Commission decisions on this issue that occurred after 2007, most important of which is D.08-09-012, which is the Commission’s foremost decision on CRS, as further described below. The following is offered as a brief rebuttal to PG&E’s anachronistic view of “regulatory history.”

3. *Regulatory History Does Not Support PG&E's Proposal*

a. *D.06-07-030 & D.07-05-005*

The use of negative PCIA balances was first addressed by the Commission in D.06-07-030, in which the Commission expressly held that “[t]he PCIA component of DA CRS may be a

¹⁰ D.08-09-012 at 10 (emphasis added).

¹¹ See PG&E Prepared Testimony at 10-6 to 10-7.

negative number in those instances in which ongoing competition transition charge (CTC) is larger than the indifference charge, *so that overall indifference is maintained.*”¹² The Commission addressed a similar issue in D.07-05-005, which was issued in response to a petition for modification filed by PG&E. PG&E argued that negative CRS amounts should not be carried-forward to be used to offset positive CRS amounts. In D.07-05-005, the Commission rejected PG&E’s proposed modification, expressly stating that “PG&E’s proposed modification would not result in bundled customer indifference.”¹³ The Commission affirmed that “in order to maintain indifference, both positive and negative indifference effects must still be tracked, with the negative amounts offsetting positive amounts.”¹⁴

b. D.08-09-012

Seemingly ignorant of the Commission’s past directives, PG&E again tried to upend these directives in R.06-02-013 – the proceeding that examined, among other things, how the indifference amount should be calculated with the inclusion of so-called “new world” generation resources. In that proceeding, as it had done repeatedly in past proceedings, PG&E advanced a proposal that, if approved, would have resulted in a negative indifference element not being used to offset a positive indifference element. In D.08-09-012, the Commission again flatly rejected PG&E’s proposal. In that decision, the Commission first affirmed the ongoing relevance of D.07-05-005 with respect to the principle of bundled customer indifference, stating that “[w]hile the Commission’s reasoning in [D.07-05-005] applied to the existing DA/DL CRS calculations, the basic principles directly relate to handling of negative charges in this proceeding....”¹⁵ As it had previously concluded in D.07-05-005, the Commission likewise concluded in D.08-09-012

¹² D.06-07-030; Ordering Paragraph 7 (emphasis added).

¹³ D.07-05-005 at 19.

¹⁴ D.07-05-005 at 19.

¹⁵ D.08-09-012 at 48.

that “[i]t is similarly 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.”¹⁶

c. D.11-12-018

Unaffected by the Commission’s repeated rejections, PG&E again advanced a proposal in R.07-05-025 (PCIA Reforms) that would have had the effect of eviscerating negative indifference amounts. In D.11-12-018, the Commission again rejected PG&E’s proposal, recounting the numerous times in which the Commission had rejected PG&E’s “similar proposals” and reiterating its enduring view that negative amounts must be used offset positive amounts.¹⁷ Although apparently PG&E would prefer to ignore the Commission’s views with respect to negative indifference amounts, it should not be allowed to do so.

4. The Duration of Negative Indifference Amounts Are Not Tied to Expiration of DWR Contracts

One final thing should be noted about PG&E’s view of history. PG&E states repeatedly that “[r]etirement is warranted at this time because the underlying DWR contracts have all expired or been terminated and thus, the requirement to preserve customer indifference for this portfolio of resources is no longer applicable.”¹⁸ In this regard, in particular, PG&E’s view

¹⁶ D.08-09-012 at 48.

¹⁷ See D.11-12-018 at 40 (“Consistent with our prior review of similar proposals as noted in the above-referenced decisions, we find no basis to approve PG&E’s proposed modification here. ... PG&E’s proposal would violate the bundled customer indifference principle by recognizing only the cost to bundled customers...while not recognizing the offsetting benefit accruing to bundled customers...”).

¹⁸ PG&E Prepared Testimony at 10-8. See also PG&E Prepared Testimony at 10-6 (“The last remaining DWR contract eligible for stranded cost recovery pursuant to D.06-07-030 expired on April 15, 2015, which effectively ended the need for stranded cost recovery.”) and PG&E Application at 11 (“Because the last DWR contract has expired, it is now appropriate to retire the negative indifference amount consistent with the Commission’s earlier determination.”).

would have been greatly informed if PG&E had consulted and relied on D.08-09-012. D.08-09-012 directly addressed this issue, as follows:

[T]he current provisions related to negative indifference charge carryover for use in subsequent years should be continued once DWR power charge recovery ends. Again, this is necessary to maintain bundled customer indifference. D.07-05-005 did state that at the expiration of the DWR contract term, the applicability of the indifference requirement would also expire. That made sense in the context of that decision, since it was the recovery of the DWR contracts themselves that necessitated the total portfolio approach and bundled customer indifference as it relates to such recovery. With the expiration of the DWR contract term, none of this would have been necessary, and the applicability of the indifference requirement as it relates to DWR power charge cost recovery should also have ended. However, with the inclusion of D.04-12-048 cost recovery as part of the total portfolio, the reasons cited in D.07-05-005, as discussed above as to why negative indifference charge carryover is appropriate, apply even after expiration of the DWR contract term. That reasoning is as valid for cost recovery related to the ongoing CTC and D.04-12-048 charges as it was for cost recovery related to the ongoing CTC and DWR power charges.¹⁹

D. PG&E's Application Should Be Rejected as Presented

For all of these reasons, PG&E's Application should be rejected. If the Commission does not reject PG&E's Application outright, then it should proceed with great caution paying extremely close attention to the impacts that PG&E's request would have on CCAs, CCA customers, and participants of unbundled electricity services at large. Bundled and unbundled ratepayers alike are entitled to fair and reasonable electricity rates and PG&E's latest request is simply both unfair and unreasonable. Additionally close scrutiny is needed to consider the impacts of GTSR program participation on the ERRR PCIA calculation process. Lastly the Commission should uphold prior policy precedent by rejecting PG&E's request to retire the negative indifference balance for early vintages of departing load.

¹⁹ D.08-09-012 at 51-52. *See also* D.08-09-012 at 99; Finding of Fact 28 (“With the inclusion of D.04-12-048 cost recovery as part of the total portfolio, the reasons cited in D.07-05-005 as to why negative indifference charge carryover is appropriate apply even after expiration of the DWR contract term.”).

IV. RULE 2.6(D) COMPLIANCE

A. Proposed Category

The instant proceeding is appropriately categorized at “ratesetting.”

B. Need for Hearing

Due to the significant anti-competitive impacts on CCAs resulting from specific NBC funding requests within the PG&E’s proposal, evidentiary hearings will be necessary. The factual record will need to be explored in detail to determine whether these proposed cost recoveries are accurate and reasonable.

C. Issues to Be Considered

If the Commission continues to consider PG&E’s proposal as currently presented, then the Commission should closely evaluate and weigh the appropriateness of these funding requests in light of the unfair and anti-competitive impacts that they will have on departing load customers, especially CCA customers.

D. Proposed Schedule

No revisions to the proposed schedule are presented at this time.

V. SERVICE LIST

Filings and other communications to this proceeding should be served on the following individuals:

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VI. CONCLUSION

MCE thanks Commissioner Mike Florio and Assigned Administrative Law Judge Pat Tsen for their thoughtful consideration of this protest and the issues detailed herein.

Respectfully submitted,

/s/ Jeremy Waen

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