

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



FILED
7-07-16
04:59 PM

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 Owned Generation Fuel Procurement, Diablo Canyon Seismic Studies Balancing Account, and Other Activities for the Period January 1 through December 31, 2015

Application 16-02-019
(Filed February 29, 2016)

(U 39 E)

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E)
MOTION TO AMEND SCOPING MEMO AND
RULING OF ASSIGNED COMMISSIONER**

CHARLES R. MIDDLEKAUFF
MARK R. HUFFMAN

Pacific Gas and Electric Company
77 Beale Street, B30A
San Francisco, CA 94105
Telephone: (415) 973-6971
Facsimile: (415) 973-5520
E-mail: CRMd@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

July 7, 2016

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

Application of Pacific Gas and Electric Company for Compliance Review of Utility Owned Generation, Electric Energy Resource Recovery Account Entries, Contract Administration, Economic Dispatch of Electric Resources, Utility Retained Generation Fuel Procurement, Diablo Canyon Seismic Studies Balancing Account, and Other Activities for the Period January 1 through December 31, 2015.

Application 16-02-019
(Filed February 29, 2016)

(U 39 E)

**PACIFIC GAS AND ELECTRIC COMPANY’S (U 39 E)
MOTION TO AMEND SCOPING MEMO AND
RULING OF ASSIGNED COMMISSIONER**

Pacific Gas and Electric Company (“PG&E”) respectfully submits this motion to amend the Scoping Memo and Ruling of Assigned Commissioner (“Scoping Memo”) pursuant to Commission Rule of Practice and Procedure 11.1 to limit the scope of this proceeding to actual costs that are recovered through the Energy Resource Recovery Account (“ERRA”), rather than amounts that are estimated in other proceedings for accounting/regulatory purposes, and to ensure that the scope of issues is consistent with California law and Commission precedent.

At a pre-hearing conference held on June 1, 2016, the Office of Ratepayer Advocates (“ORA”) proposed for the first time including two new issues in the scope of this proceeding regarding “indirect” greenhouse gas (“GHG”) costs. ORA also asserted that the Commission’s review in this proceeding should include whether PG&E “operated and managed [its] programs in the most cost-effective way.”¹ The Scoping Memo, which was issued June 16, 2016, adopts ORA’s recommendation to add the “indirect” GHG costs issues and agrees with ORA’s

¹ Scoping Memo at p. 4.

statement that this compliance review proceeding should include a determination “of whether the utility operated and managed their programs in the most cost-effective manner.”² These aspects of the Scoping Memo should be modified. Indirect GHG costs are not a separate procurement cost and thus should not be identified as separate issues in the Scoping Memo. Indeed, the Commission has previously determined that “indirect” GHG costs are not separate procurement costs, but are only estimated for the return of GHG revenues in the ERRA Forecast Application proceeding, which is an entirely different proceeding. Including “indirect” GHG costs as an issue in this proceeding is unnecessary and will likely cause substantial confusion.

With regard to cost-effectiveness, California law and Commission precedent make clear that cost-effectiveness is not at issue in this proceeding. The Scoping Memo’s reference to cost effectiveness should be removed.

PG&E’s proposed modifications to the Scoping Memo are limited, but they are essential to ensuring that this proceeding is not expanded to include unnecessary issues or issues that are inconsistent with California law and Commission precedent.

I. FACTUAL AND PROCEDURAL BACKGROUND

In order to comply with California’s GHG cap-and-trade program, the utilities procure GHG compliance instruments referred to as allowances or offsets.³ The utilities are also allocated GHG allowances by the California Air Resources Board (“CARB”), which they then consign to a CARB auction for sale. The revenues associated with the sale of the utility’s GHG allowances are returned to customers to offset GHG costs. The utilities forecast their GHG costs and associated revenue return in their respective ERRA Forecast Application proceedings.⁴ For

² *Id.*

³ *See* Decision (“D.”) 12-12-033 at pp. 11-16 (providing background on cap-and-trade program).

⁴ D.14-10-033 at pp. 2-3.

example, PG&E's most recent ERRA Forecast Application was filed on June 1, 2016 (Application 16-06-003) and includes forecasts of GHG compliance costs and associated revenue returns for 2017.

In D.12-04-046, the Commission initially approved each utility's respective GHG procurement plan. More recently, in D.15-10-031, the Commission approved PG&E's 2014 Bundled Procurement Plan ("BPP") which includes PG&E's plan to procure GHG compliance instruments.

Review of PG&E's GHG compliance instrument procurement was first addressed in the 2012 ERRA Compliance proceeding (Application 13-02-023). ORA proposed that the appropriate issue was whether PG&E had complied with its Commission-approved GHG procurement plan which was included in the BPP.⁵ PG&E agreed with ORA's proposal, but suggested shortening the language related to this issue. Commissioner Florio agreed with ORA and PG&E and added "[w]hether PG&E's Greenhouse Gas Compliance Instrument Procurement complied with the Bundled Procurement Plan" as an issue to the Scoping Memo.⁶ This same issue was included in the Scoping Memos for the 2013 and 2014 ERRA Compliance proceedings.⁷ ORA never asserted that "indirect" GHG costs was an issue in those proceedings.

PG&E filed its Application in this proceeding on February 29, 2016, and included in its proposed "issues to be considered" the language previously agreed to by ORA and PG&E, which had been approved in three previous Scoping Memos (*i.e.*, whether PG&E complied with its BPP

⁵ *Scoping Memo and Ruling of Assigned Commissioner*, issued October 14, 2013 in Application 13-02-023 at p. 8.

⁶ *Id.*

⁷ *See Scoping Memo and Ruling of Assigned Commissioner*, issued June 4, 2014 in Application 14-02-008 at p. 4 (2013 ERRA Compliance); *Scoping Memo and Ruling of Assigned Commissioner*, issued June 26, 2015 in Application 15-02-023 at p. 4 (2014 ERRA Compliance).

regarding GHG compliance instrument procurement).⁸ ORA filed its protest on April 4, 2016 and agreed with PG&E that the proper issue with regard to GHG compliance instrument procurement was “[w]hether PG&E’s [GHG] compliance instrument procurement complied with its Conformed [BPP].”⁹ Nowhere in its Protest did ORA assert that “indirect” GHG compliance costs were also at issue in this proceeding, nor did ORA assert that the Commission should consider whether PG&E’s procurement of GHG compliance instruments was cost-effective.

At the pre-hearing conference on June 1, 2016, ORA raised for the first time the issue of “indirect” GHG compliance costs and requested that two issues related to these “indirect” costs be included within the scope of this proceeding.¹⁰ ORA also asserted for the first time that the Commission should review the “cost-effectiveness” of PG&E’s GHG procurement program in this proceeding.¹¹ At the pre-hearing conference, PG&E opposed both of these proposed additions to the Scoping Memo.¹² The Scoping Memo ultimately included two issues related to indirect GHG costs and indicated that cost-effectiveness was to be considered in this proceeding. This motion seeks to amend these aspects of the Scoping Memo.

II. INDIRECT GHG COSTS SHOULD NOT BE AN ISSUE IN THIS PROCEEDING

In order to return GHG allowance revenues to customers, the utilities forecast total GHG costs in their respective ERRA Forecast Application proceedings.¹³ Total GHG costs include

⁸ The Application referred to the 2010 and 2014 BPPs because the 2014 BPP was approved in October 2015, so the 2010 BPP was applicable through October 2015 and the 2014 BPP was applicable for the remainder of the year. PG&E demonstrated that during the applicable periods in the 2015 compliance period, it complied with the operative BPP. *See* Application at p. 13.

⁹ *Protest of the Office of Ratepayer Advocates*, filed April 4, 2016 at p. 4.

¹⁰ Transcript at p. 11.

¹¹ *Id.* at p. 13.

¹² *Id.* at pp. 12-14.

¹³ D.14-10-033 at pp. 13-16 (describing purpose of forecasting direct and indirect GHG costs).

direct and indirect costs. Direct GHG costs are the costs incurred by the utilities to purchase allowances and offsets that can be used to satisfy the utility's own cap-and-trade requirements. For example, PG&E owns several natural gas facilities that are subject to cap-and-trade and thus it must purchase GHG compliance instruments for the emissions produced by these facilities. PG&E also has contractual arrangements with third-party generators under which PG&E directly pays for the generator's GHG compliance costs either by procuring and providing allowances and offsets to the generator, or by providing a direct payment to the generator for the generator to purchase GHG compliance instruments. Direct GHG costs are included as a line item in the ERRA balancing account. In this proceeding, PG&E's procurement of GHG compliance instruments is discussed in Chapter 7 of the Prepared Testimony and a line item reflecting PG&E's direct GHG procurement costs is included in Table 12-2 of Chapter 12.¹⁴

Indirect GHG costs are not separate costs that are paid by PG&E, but instead are estimated amounts used for accounting/regulatory purposes only. Most generators that produce GHG emissions are subject to CARB's cap-and-trade requirements and thus must procure GHG compliance instruments, which increases their costs. When these generators sell energy into the California Independent System Operator's ("CAISO") markets, they implicitly include all of their variable costs into their bids, including their GHG compliance costs. Thus, for market purchases, embedded "indirect" GHG cost are included in the prices PG&E (and therefore its customers) pay for power.¹⁵ The same could be said for example for fuel and operations and maintenance ("O&M") costs incurred by a generator and passed on to PG&E (and therefore its

¹⁴ See PG&E's Prepared Testimony, Chapter 12, Table 12-2, Line 5.ah (listing direct GHG compliance costs).

¹⁵ There is also an embedded, indirect GHG cost in certain types of financially-settled contracts. See D.14-10-033 at p. 15.

customers). These costs are also embedded in the generator's price and thus are also "indirect" costs.

When PG&E purchases power in the CAISO markets, it receives an invoice from the CAISO, not the generator, and pays the CAISO based on a single market clearing price that does not disaggregate the generator's cost components such as GHG compliance costs.¹⁶ Because indirect GHG costs are not broken out as a separate line item when PG&E makes market purchases and pays CAISO invoices, the Commission has recognized that these costs are estimated, not actual costs. As the Commission recently explained, "[f]or indirect [GHG] costs (the GHG costs embedded in the price of market purchases), we must rely on estimates for both the amount of emissions and the cost of compliance instruments for those emissions."¹⁷ The same is true for certain financially-settled contracts, such as Qualifying Facilities contracts, which do not include a separate GHG payment, but instead simply include an "all-in" price.¹⁸ The only reason that indirect GHG costs are calculated are for purposes of determining the revenue return associated with the sale of GHG compliance instruments by the utility.¹⁹ The Commission has noted that:

Estimated indirect GHG costs are only used for calculating the allowance revenue returns to customers.²⁰

ORA is aware of this distinction and in fact supported the approach of calculating indirect GHG costs for allowance return purposes.²¹

¹⁶ The CAISO pays generators for energy sold by the generator into the market.

¹⁷ D.14-10-033 at p. 15.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*, at p. 15, n. 20.

²¹ *Id.*, at p. 15.

ORA's belated proposal to add indirect GHG costs as an issue in this proceeding is unnecessary and will result in confusion. At the pre-hearing conference, ORA proposed including issues as to whether PG&E is seeking to recover indirect GHG costs from third-party generators and whether PG&E has met its burden regarding these indirect costs. However, as explained above, there are no actual indirect GHG costs paid by PG&E. As the Commission has explained, indirect GHG costs are estimates and are only used for purposes of returning GHG allowance revenues. PG&E has no way of knowing the actual GHG costs paid by generators selling energy into the CAISO markets. PG&E does not purchase this energy directly from a specific generator. Instead, it purchases this power from a pool of resources in the CAISO market. PG&E is invoiced by the CAISO for market purchases, not the generator, and the CAISO invoices do not identify indirect GHG costs. Moreover, under financially settled contracts, generators do not provide a break out of their GHG costs.

Because indirect GHG costs are simply calculated for accounting/regulatory purposes to return the GHG revenues to customers, PG&E does not seek to recover these costs separately, nor is there any way for PG&E to meet a "burden with regards to the indirect costs." More importantly, as discussed below, the purchases PG&E makes in the CAISO markets are done in conformance with – and compliant with – its Commission-approved BPP. Under California Public Utilities Code Section 454.5²², those costs are *per se* reasonable, and recoverable from customers.

Finally, consistent with the Commission's direction, indirect GHG costs are calculated in the ERRA Forecast Application proceeding, not in this proceeding.²³ If ORA has a concern

²² All further statutory references are to the California Public Utilities Code unless otherwise noted.

²³ D.14-10-033 at pp. 2-3 (direct that direct and indirect GHG compliance costs for revenue return purposes be addressed in the utility's respective ERRA Forecast Application proceedings).

about the calculation of indirect GHG compliance costs, the appropriate venue to raise those concerns is in the ERRRA Forecast Application proceeding, not here. Including indirect GHG compliance costs in this proceeding, when those costs are calculated and used in a separate proceeding for a very limited purpose, is both unnecessary and will create confusion regarding the payment or recovery of indirect GHG compliance costs. The Scoping Memo should be amended to eliminate the two issues related to indirect GHG compliance costs.

III. COST-EFFECTIVENESS IS NOT THE STANDARD IN THIS PROCEEDING

At the pre-hearing conference, ORA also suggested that cost-effectiveness should be considered in this proceeding.²⁴ It is unclear from the transcript whether ORA intended cost-effectiveness to be applied only to GHG compliance instrument procurement, or to all of the procurement at issue in this proceeding. Either way, this suggestion, which ORA had not raised previously, is inconsistent with California law and Commission precedent. The Scoping Memo adopts ORA's proposal in a single sentence, which should be deleted.

When the utilities resumed energy procurement after the California Energy Crisis, the Legislature enacted Section 454.5 to establish a framework for procurement going forward. Under Section 454.5(b), the utilities submit procurement plans to the Commission. The Commission then reviews and approves or rejects a utility's procurement plan.²⁵ The purpose of the Commission's review of the procurement plan, in part, is to provide "[u]pfront achievable standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to the execution of the

²⁴ Transcript at pp. 12-13.

²⁵ Cal. Pub. Util. Code § 454.5(c).

bilateral contract for the transaction.”²⁶ Under California Law, once the Commission approves a procurement plan, this then:

Eliminate[s] the need for after-the-fact reasonableness reviews of an electrical corporation’s actions in compliance with an approved procurement plan, including resulting electricity procurement contracts, practices, and related expenses. However, the commission may establish a regulatory process to verify and ensure that each contract was administered in accordance with the terms of the contract, and contract disputes that may arise are reasonably resolved.²⁷

With regard to GHG compliance instruments, the Commission initially approved PG&E’s procurement plan in April 2012 in D.12-04-046. That decision included detailed requirements regarding GHG compliance instrument procurement in addition to the requirements included in each utility’s respective GHG procurement plans.²⁸ Two years later, in October 2014, PG&E submitted its 2014 BPP which included an updated GHG compliance instrument procurement plan. The 2014 BPP was approved by the Commission in D.15-10-031 and established the upfront and achievable standards envisioned in Section 454.5(c).

To implement Section 454.5, the Commission has adopted the ERRA Compliance application process. As the Scoping Memo notes, the Commission has explained:

The Commission is required to perform a compliance review as opposed to a reasonableness review of the ERRA compliance application. A compliance review considers whether a utility has complied with all applicable rules, regulations, opinions, and laws, while a reasonableness review evaluates not only a utility’s compliance, but also whether the data or actions resulting from, for example, the calculation of a forecasted expense, are reasonable, based on the methods and inputs used.²⁹

²⁶ *Id.*, § 454.5(c)(3).

²⁷ *Id.*, § 454.5(d)(2).

²⁸ D.12-04-048, Ordering Paragraph 8.

²⁹ D.16-05-003 at p. 3; *see also* Scoping Memo at pp. 3-4.

With regard to GHG compliance instrument procurement, a compliance review would entail whether PG&E has complied with its Commission-approved GHG procurement plan that is part of the BPP. This is the issue that the Commission identified in the Scoping Memos for the 2012, 2013, and 2014 ERRA Compliance proceedings.

Now, however, ORA has proposed, and the Scoping Memo has adopted, a cost-effectiveness standard as well. Determining whether or not a utility's procurement was done in the "most cost-effective manner" goes well beyond a compliance review. A cost-effectiveness standard is an element of a reasonableness review, which is prohibited by Section 454.5.³⁰ An undefined standard of "cost-effectiveness," determined after-the-fact, is inconsistent with Section 454.5(c), which requires that the Commission establish achievable standards and criteria "upfront" before the procurement occurs. Procurement standards and requirements established after the fact are exactly the type of requirement that Section 454.5 bars.

Application of a cost-effectiveness standard may lead to results that are inconsistent with Section 454.5. For example, if the Commission determined that PG&E had complied with its approved BPP requirements for GHG procurement (which it has), but then determined after-the-fact in this proceeding that PG&E could have procured GHG compliance instruments in a more cost-effective manner, despite the finding of compliance, this is exactly the kind of after-the-fact reasonableness review that is straight-forwardly prohibited by Section 454.5(d).

The Commission has been conducting ERRA Compliance proceedings for more than a decade since Section 454.5 was enacted and has never adopted a "cost-effectiveness" review standard for procurement-related transactions. As the Commission recognized less than two

³⁰ See *e.g.*, Resolution E-3619, Finding 21 (1999) (reasonableness review includes cost-effectiveness issues); D.86-06-026, Ordering Paragraph 9c (1986) (explaining that reasonableness review in ECAC proceedings involved issues of cost effectiveness).

