BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39-E) for Approval of Demand Response Programs, Pilots and Budgets for Program Years 2018-2022.

And Related Matters.

Application 17-01-012
(Filed January 17, 2017)

Application 17-01-018
Application 17-01-019

PACIFIC GAS AND ELECTRIC COMPANY’S (U 39 E) REPLY COMMENTS IN SUPPORT OF MOTION OF THE SETTLING PARTIES FOR ADOPTION OF SETTLEMENT ON SPECIFIED ISSUES IN PACIFIC GAS AND ELECTRIC COMPANY’S APPLICATION 17-01-012

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I. INTRODUCTION

Pursuant to Rule 12.2 of the Commission’s Rules of Practice and Procedure (Rules), Pacific Gas and Electric Company (PG&E) replies to comments filed by San Diego Gas & Electric Company (SDG&E) and Southern California Edison Company (SCE) to the “Motion of the Settling Parties for Adoption of Settlement on Specified Issues in Pacific Gas and Electric Company’s Application A.17-01-012,” (Motion). The Motion was filed by PG&E on behalf of California Large Energy Consumers Association (CLECA), EnerNOC, Inc. (EnerNOC), CPower, Inc. (CPower), EnergyHub, Inc. (EnergyHub), OhmConnect, Inc. (OhmConnect), Electric Motor Werk, Inc. (e-MotorWerks), the California Efficiency + Demand Management


This Reply addresses three issues:

1. The Settlement is not precedential. The Settling Parties do not intend for any Settlement provision, including the provision relating to PG&E’s Automated Demand Response (ADR) Program, to be binding upon SCE or SDG&E.

2. The Settlement’s provision relating to ADR is not in conflict with Commission Decision (D.) 16-06-029 (Decision), because the Decision mandated certain “uniform parameters” of ADR programs, but did not mandate that ADR programs be uniform in all respects. Indeed, the IOUs are implementing residential DR Enabling Technology/ADR programs that are not uniform in all respects, and propose to continue these programs for 2018-2022. Further, PG&E’s understanding is that the Decision only applies to nonresidential ADR programs since the IOUs did not have a residential ADR program at the time of the decision.

3. SCE, like all parties on the service list, was invited to participate in the settlement conference and was not discouraged by PG&E from participating.

After considering the comments of SDG&E and SCE, and PG&E’s reply, the Commission should find the Settlement is reasonable in light of the whole record, consistent with law, and in the public interest, and therefore should be adopted without modification.

II. DISCUSSION

A. The Settlement Is Not Precedential.

PG&E agrees with SCE and SDG&E that the Settlement is not precedent that should bind or affect the outcome of the other investor-owned utilities’ (IOUs’) Applications. Settlements are not precedential per Rule 12.5:

Commission adoption of a settlement is binding on all parties to the proceeding in which the settlement is proposed. Unless the Commission expressly provides
otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.3/

The Settling Parties also explicitly affirmed that no Settlement term should be relied upon in litigation of other IOUs’ Applications:

The Settlement is only applicable to PG&E’s A.17-01-012, and is not intended to affect litigation of issues for Southern California Edison or San Diego Gas & Electric’s Demand Response applications, Application 17-01-018 and Application 17-01-019.4/

In Opening Briefs filed July 24, 2017 in A.17-01-012, et al., four other Settling Parties also confirmed an understanding that a settlement with PG&E is not intended to affect other IOUs’ applications.5/ No Commission rule or factual basis exists to indicate that the Settlement should apply to a non-party to the Settlement. The Commission should find the Settlement applies only to PG&E’s Application.

3/ Commission decisions have confirmed that settlements are not precedential. See, D.15-10-027, p. 5, (Finding that pursuant to Rule 12.5, “the proposed settlement would not bind or otherwise impose a precedent in this or any future proceeding”); D.13-10-002, pp. 18, 22 (COL 7) (Commission’s “approval of the Settlement Agreement is limited in its applicability only to [applicant] and the other signatories to the agreement, and does not constitute prejudgment nor provide any precedent that would apply to any other carrier.”); D.09-07-051, p. 7 (“No settlement is binding on other parties or precedent for other proceedings”).


5/ CLECA represented that it “does not compare the A.17-02-012 Settlement Agreement CLECA’s litigation positions in A.17-01-018 or A.17-01-019.” Opening Brief of CLECA, p. 2, fn. 2. The Joint DR Parties (consisting of EnerNOC, Inc., CPower, Inc., and EnergyHub, Inc.) confirmed their understanding the Settlement is not intended to affect litigation of issues for SCE’s or SDG&E’s applications, and is continuing to advocate for outcome of issues that are not impacted by the Settlement. Opening Brief of Joint DR Parties, p. 4.
B. The Settlement Provision For ADR Is Not Binding On Other IOUs’ ADR Programs.

1. The Settlement Agreement Does Not Extend The ADR Provision To SCE’s And SDG&E’s ADR Programs.

As stated in the previous section, and consistent with the Commission precedent regarding settlements, the Settlement’s Auto Demand Response (ADR) provision is not intended to apply to SCE and SDG&E.

2. The Settlement Is Consistent With Commission Guidance For Statewide ADR Programs.

SCE\textsuperscript{6/} and SDG&E\textsuperscript{7/} expressed concern regarding the provision of the Settlement dealing with Residential ADR. Both utilities cite D. 16-06-029 (Decision), which holds that all three IOUs implement ADR programs with “uniform parameters.”\textsuperscript{8/} The apparent concern is that the Settlement’s provision for PG&E’s Residential ADR program\textsuperscript{9/} would disrupt the consistency amongst the three IOUs’ ADR programs. PG&E understood the Decision to be about nonresidential ADR programs since PG&E did not have any residential ADR programs at the time. PG&E’s testimony in this case reported that PG&E did not propose to expand its ADR program to residential customers until AL 3744-G-A/4886-E-A, submitted on August 8, 2016 in response to Assembly Bill 793—approximately 2 months after D.16-06-029 was issued.\textsuperscript{10/} Therefore, since the Decision was silent about residential ADR as far as PG&E was involved, SCE and SDG&E objections are not well founded, because the Decision’s direction was about types of programs that existed at the time, and did not require uniformity between non-residential and residential programs as far as PG&E could determine.

\textsuperscript{6/} SCE Opening Comments, July 26, 2017, p. 4.
\textsuperscript{7/} SDG&E Opening Comments, July 26, 2017, p. 3.
\textsuperscript{8/} D.16-06-029, pp. 38-39, 46, 50.
\textsuperscript{9/} Motion for Settlement, Attachment A, p. 10 (Section VI, E).
\textsuperscript{10/} Exhibit PGE-01, page 2-20, lines 3-10 and lines 22 to 26. Also see, footnotes 16 and 17, below. AL 37/44-G-A/4886-E-A was updated on September 16, 2016 by AL 3744-G-B/4886-E-B.
D.16-06-029 required the utilities to implement ADR programs that contained specific uniform parameters, including a requirement for a $200 per kW incentive under certain circumstances. However, the Decision does not mandate that all provisions of all ADR programs be uniform, only that the identified parameters be uniform. After implementing programs with these uniform parameters, the Decision does not prohibit IOUs from implementing other details of programs or adding new customer segments that are not consistent across IOUs (as detailed further in the next section).

The Settlement does not promote ADR terms that are in conflict with the D.16-06-029 requirement for programs with “uniform parameters.” The Settlement’s ADR provision requires a “collaborative stakeholder” process to develop some of the residential ADR program designs for PG&E covering the 2018-2022 DR cycle. The Settlement only includes several high-level prospective guidelines, which are essentially supplemental in nature to the proposed Residential ADR program included in PG&E’s 2018-2022 DR Application. Examples of these supplemental requirements include a requirement to develop a list of residential ADR-enabled end-use devices, and to develop relevant criteria to determine the order in which the load impact study for these identified devices should be conducted.

11/ The Commission in, mandated statewide programs “with the following uniform parameters: offer incentive of $200 per kW of verified dispatchable load reduction not to exceed 75 percent of the total project costs with 60 percent of the incentives paid after installation, load shed test and enrollment in a qualified program and 40 percent paid after one year.” D. 16-06-029, at pp 38-39 (emphasis added). The Commission said this level of uniformity “creates consistency among the Utilities, provides reasonable incentives to customers but ensures that the customers are contributing, and provides equity to ratepayers.” Id.

12/ Motion for Settlement, June 26, 2017, pp. 10-11. Elements include: 1) an enrollment period of at least one full DR season, 2) an acknowledgement that a “Bring Your Own Device” option is part of the scope, 3) the need to develop criteria to determine the order in which the load impact study should be done, and 4) the possibility of further changes as part of the mid-cycle review.


14/ Motion for Settlement, Attachment A, p. 10 (Section VI, E).
Further, the Settlement’s requirements will not create a new statewide Residential ADR program, but instead will support the Residential ADR program proposed in PG&E’s 2018-2022 Application.\(^{15}\) The Application proposes essentially the same Residential ADR program that PG&E first proposed in August 2016 as part a proposal to implement AB 793,\(^{16}\) and which the Commission approved when it adopted PG&E’s AB793 proposals in April 2017.\(^{17}\) The Settlement’s ADR provision only supplements this approved program, and contains process guidelines for investigating areas that could contribute to advancing development of the program. It does not add new terms inconsistent with the CPUC’s requirement for certain “uniform parameters,” and the process would be open to all interested stakeholders.

3. SCE And SDG&E Implement Residential Programs That Are Not Consistent Statewide.

SCE’s and SDG&E’s concern that the Settlement may destroy statewide consistency among IOUs’ ADR programs is misplaced. The differences that exist in the programs are not the

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\(^{15}\) Ex. PG&E-01, p. 2-20, line 21 through p. 2-21, line 9.

\(^{16}\) PG&E’s Application request explicitly requests to “Continue the residential ADR incentive that was requested for the in AL 3744-G-B/4886-E-B through the 2018-2022 budget cycle.” Ex. PG&E-01, p. 2-20, lines 25-26.

\(^{17}\) Ex. PG&E-01, p. 2-20, line 21 through p. 2-21, line 9. Pursuant to Assembly Bill (AB) 793, PG&E filed its ADR implementation plan via AL 3744-G-A/4886-E-A on August 8, 2016 (Updated via AL 3744-G-B/4886-E-B on September 16, 2016). This AL was subsequently approved by the Commission, effective April 6, 2017, by Resolution E-4820 and Executive Resolution E-4857. \[https://www.pge.com/tariffs/assets/pdf/adviceletter/ELEC_4886-E-A.pdf\]

Resolution E-4820 summarized PG&E residential ADR offering as follows:

… PG&E’s proposal includes offering automated DR (ADR) to the residential sector, which provides incentives and technical assistance for customers to acquire EMTs and enable them to perform DR. Customers who sign up to participate in ADR will receive automated event signals from PG&E that will initiate pre-programmed DR strategies. PG&E’s final proposed program offering for the residential sector is the Time of Use (TOU) smart phone app technology, which will assess customer acceptance of a multi-functional smart phone app that will convey a variety of useful information to TOU participants. This information may include pricing information, TOU-specific performance feedback, and energy-saving tips informed by user-specific end use load disaggregation features to encourage energy savings or load shifting.
result of the Settlement’s ADR provision. Indeed, SCE and SDG&E are implementing and proposing DR enabling technology incentive programs for residential customers that are not consistent with each other, and are not uniform in all respects.\(^{18}\) Therefore, at the same time SCE and SDG&E argue that the Settlement’s ADR provision may not foster statewide consistency, they are implementing residential DR Enabling Technology programs that are not consistent statewide.

If the CPUC would like to explore statewide consistency policy for Residential ADR Programs, PG&E recommends the comparison be between PG&E’s Residential ADR, SCE’s PTR DLC-ETP, and SDG&E’s Technology Development Program. In summary, residential DR enabling technology incentive elements are not identical across IOUs. Program elements are tailored by each IOU as they represent very specific program design attributes that are within the discretion of each IOU to determine. Since these elements already differ from IOU to IOU, there is precedent for some level of variation to exist among IOUs’ DR enabling technology incentive programs’ design.

III. PROCEDURAL ISSUES

A. The Agreement Attached To The Motion For Settlement Supersedes The Memorandum Of Understanding.

SDG&E requested clarification of the relationship between the Settlement Agreement, attached to the Motion for Settlement filed June 26, 2017, and the Memorandum of Understanding (MOU) identified at hearings on June 20, 2017. To be clear, the Settlement Agreement supersedes the MOU.

At hearings on June 20, 2017, the Settling Parties announced they entered into the MOU, and the Commission allowed for cross examination on that MOU on the last day of hearings.

\(^{18}\) For instance, varying incentive levels. SCE’s residential DR enabling program offers an incentive of $75 while SDG&E’s residential DR enabling program offers up to $100/kW. (Source: ORA Data Request to SCE titled “DATA REQUEST SET A.17-01-018 ED-SCE-004”)

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June 22. During the cross examination, the Administrative Law Judge decided instead to follow the motion process for the approval of settlements.\textsuperscript{19} The Settling Parties then transformed the MOU into the Settlement Agreement and filed the Motion for Settlement. The Settlement Agreement, executed by all Settling Parties, contains the following provision:

This Settlement embodies the entire understanding and agreement of the Parties with respect to the matters described, and it supersedes prior oral or written agreements, principles, negotiations, statements, representations, or understandings among the Parties with respect to those matters.\textsuperscript{20}

Accordingly, the Settlement Agreement contains the operative terms agreed upon by the Settling Parties, and the Settlement Agreement is the document presented for consideration and approval by the Commission.

\textbf{B. SCE’s Participation in the PG&E Settlement Conferences.}

SCE’s comments include reference to a June 9, 2017 conference, claiming that a party participating in the PG&E settlement discussions expressed opposition to SCE participation in the settlement conference. Because the presence of a party at a settlement conference might be confidential, PG&E is not replying to this allegation. However, PG&E sent SCE notice of the settlement conference, as a party on the service list, and welcomed its participation.

\textbf{IV. REQUESTED RELIEF}

PG&E and Settling Parties entered into the Settlement consistent with long-standing policy supporting settlements as a means of not only conserving the Commission’s scarce resources, but also allowing parties to reduce the risk that litigation will produce unacceptable results. The Settlement is reasonable in light of the record, consistent with law, and in the public interest, and therefore should be adopted without modification.


\textsuperscript{20} \textit{Motion for Settlement}, p. 2 (Section III, 1).
Respectfully Submitted,

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