

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

Item #14
ID #11739
RESOLUTION E-4523
December 20, 2012

R E S O L U T I O N

Resolution E-4523- Pacific Gas and Electric Company requests approval of its proposed revisions to community choice aggregation information tariffs to comply with the Public Utilities Code as amended by SB 790.

PROPOSED OUTCOME: This Resolution approves Advice Letter 4009-E with modifications. The Resolution resolves the protest filed by Marin Energy Authority by directing PG&E to file revisions to Electric Form 79-1031 (Community Choice Aggregator Non-Disclosure Agreement) to reflect the requirements of Public Utilities Code Section 366.2(c)(9) and to clearly state that the tariff enables Community Choice Aggregators to receive electrical consumption data as defined in Public Utilities Code Section 8380.

ESTIMATED COST: \$0.

By Advice Letter 4009-E filed on March 5, 2012.

SUMMARY

This resolution addresses Pacific Gas and Electric Company's (PG&E's) Advice Letter (AL) 4009-E filed in response to a letter sent by the Energy Division Director on February 2, 2012. The letter asked the investor-owned utilities to submit modified Electric Schedule E-CCAINFO, thus enabling government agencies and Community Choice Aggregators (CCAs) – as defined in Public Utilities Code (P.U. Code)¹ Section 331.1(a)(c) - to receive the "electric consumption data as defined in Section 8380." PG&E filed AL 4009-E on March 5, 2012 with revisions to its

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

CCA-related Electric Schedules and Forms. Some of PG&E's proposed revisions have been protested by Marin Energy Authority (MEA), a CCA in the PG&E service territory.

This Resolution approves PG&E's advice letter with modifications. It directs PG&E to incorporate additional language to Electric Form 79-1031 (Community Choice Aggregator Non-Disclosure Agreement).

BACKGROUND

On October 8, 2011, Senate Bill (SB) 790 was signed into law.

SB 790 (2011), among other things, requires "that the electrical load data to be supplied by an electrical corporation as part of its duty to cooperate fully with any community choice aggregator, include electrical consumption data, as defined."² The bill added to and amended certain sections of the Public Utilities Code³ including Section 366.2, subsection (c)(9), which now states (relevant amended section underlined for emphasis):

All electrical corporations shall cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs. Cooperation shall include providing the entities with appropriate billing and electrical load data, including, but not limited to, electrical consumption data as defined in Section 8380 and other data detailing electricity needs and patterns of usage, as determined by the commission, and in accordance with procedures established by the commission. The commission shall exercise its authority pursuant to Chapter 11 (commencing with Section 2100) to enforce the requirements of this paragraph when it finds that the requirements of this paragraph have been violated. Electrical corporations shall continue to provide all metering, billing, collection, and customer service to retail customers that participate in community choice aggregation programs. Bills sent by the electrical corporation to retail customers shall identify the community choice aggregator as providing the electrical energy component of the bill. The commission shall determine the terms and conditions under which the electrical

² SB 790, Legislative Counsel's Digest.

³ SB 790 amended Sections 331.1, 365.1, 366.2, 380, 381.1, and 395.5; added Sections 396.5 and 707; and added Part 5 (commencing with Section 3260) to Division 1 of the Public Utilities Code relating to electricity.

corporation provides services to community choice aggregators and retail customers.

Section 8380 as cited in Section 366.2 (c)(9), deals with data associated with “a customer’s electrical or natural gas usage that is made available as part of an advanced metering infrastructure, and includes the name, account number, or residence of the customer.”

The Energy Division Director requested the Investor-Owned Utilities (IOUs) to make appropriate modifications to their CCA Tariff pursuant to amended language in the P.U. Code.

On February 2, 2012, pursuant to the changes to Section 366.2(c)(9) resulting from SB 790, the Energy Division Director requested the three IOUs to submit modified Electric Schedule E-CCAINFO⁴ enabling governmental agencies and CCAs defined in Section 331.1(a)(c) to receive the “electric consumption data as defined in Section 8380.”

On March 5, 2012, PG&E filed AL 4009-E, asserting that Schedule E-CCAINFO already allows CCAs to access electrical consumption data as defined in Section 8380 and requires no changes.

In its advice letter PG&E states that E-CCAINFO already allows CCAs to access electrical consumption data as defined in Section 8380 and gaining access to electrical consumption data requires no changes to PG&E’s Schedule E-CCAINFO. PG&E believes that the Commission has already adopted appropriate procedures in the CCA information tariff to provide a CCA with appropriate billing and electric load data, including electric consumption data as per Section 8380.

PG&E further states that currently large non-residential customers are served with a conventional interval data meter reading system that measures consumption data in 15-minute intervals. With the deployment of their SmartMeter system, a CCA will be able to access electrical consumption data as defined in Section 8380 on all PG&E residential and small non-residential customers, subject to applicable opt out rights.

⁴ Information Release to Community Choice Providers:
http://www.pge.com/tariffs/tm2/pdf/ELEC_SCHEDS_E-CCAINFO.pdf.

PG&E asserts that Schedule E-CCAINFO already gives a CCA access to customer specific data through several options.

According to PG&E, a CCA can access customer specific electrical consumption data through several options. For an example, items 16⁵ and 17⁶ of Schedule E-CCAINFO permit a CCA to receive customer-specific consumption data pursuant to Special Condition 4⁷ in E-CCAINFO, which requires the CCA to sign the IOU-CCA Non-Disclosure Agreement (Form 79-1031) and the Declaration by Mayor or Chief County Administrator Regarding Investigation Pursuit or Implementation of Community Choice Aggregation (Form 79-1030). PG&E supports its position by stating that “nothing in SB 790 modifies the limitation on access to customer-specific residential consumption data.”

⁵ Item 16 of Schedule E-CCAINFO; Sheet 2 provides: 16. Customer-specific information from the current billing periods as well as prior 12 months consisting of the following billing information: meter number, service agreement number, name on agreement, service address with zip code, mailing address with zip code, telephone number, monthly kWh usage, monthly maximum demand where available, Baseline Zone, CARE participation, End Use Code (Heat Source), Service Voltage, Medical Baseline, Meter Cycle, Bill Cycle, Balanced Payment Plan and other plans, HP Load and Number of Units, monthly rate schedule for all accounts within the CCA’s territory, per request. In addition, PG&E will provide the CCA the following additional information regarding customers currently enrolled in its CCA service: current and historical billing information for non CCA services provided by PG&E or other service providers (provided on a cd rom/zipped file)

Per request \$920.00

⁶ Item 17 of Schedule E-CCAINFO; Sheet 2 provides:17 Customer-specific information consisting of: service agreement number, monthly interval meter data where available, and rate schedule for all accounts within the CCA’s territory, per request (provided on a cd rom/zipped file)

Per request \$920.00

⁷ Item 4 Special Conditions of Schedule E-CCAINFO; Sheet 3 provides: Customer-specific information or aggregated information that violates the 15/15 Rule, as listed above will be provided when the CCA has met all of the following conditions:

- a. Signed Non-Disclosure Agreement.
- b. Executed an Attestation stating that the city or county is investigating, pursuing or implementing CCA, and
- c. Any registration or other requirements as imposed by the CPUC.

PG&E suggests that another option to access customer specific consumption data is for a CCA to use individual customer consent Form 79-1095 (Authorization to Receive Customer Information or Act Upon a Customer's Behalf) for each customer.

PG&E's proposed modifications to its tariff are focused towards compliance with an expanded definition of a CCA in Section 331.1 of the P.U. Code, which was amended by SB 790.

In the Advice Letter PG&E draws attention to modifications in Section 331.1 that would warrant a change in the tariff language to include the Kings River Conservation District, the Sonoma County Water Agency, and California public agency possessing statutory authority to generate and deliver electricity at retail within its designated jurisdiction, provided certain statutory requirements regarding CCA program formation are satisfied.

PG&E's proposed changes are limited to references of Section 331.1 being added to the following tariffs:

1. Electric Schedule E-CCAINFO: Information Release to Community Choice Providers. The Applicability section was modified to make clear that the information under the tariff is available to CCAs as defined in Section 331.1 and prospective CCAs investigating the feasibility of a CCA program.
2. Electric Form 79-1030 - Declaration by Mayor or Chief County Administrator Regarding Investigation Pursuit or Implementation of Community Choice Aggregation. The form was revised to encompass the expanded definition of a CCA in Section 331.1.
3. Electric Form 79-1031 - Community Choice Aggregator Non-Disclosure Agreement. Condition 1(a)(1) was revised to encompass the expanded definition of a CCA in PU Code § 331.1.

PG&E expects the advice letter filing will be subject to the outcome of the Commission's Rulemaking (R.) 08-12-009.

In its advice letter, PG&E notes that this advice filing will be subject to the outcome of Phase 2 of R.08-12-009, which is the Commission's Rulemaking to Consider Smart Grid Technologies Pursuant to Federal Legislation and on the Commission's own Motion to Actively Guide Policy in California's Development of a Smart Grid System. D.11-07-056 was issued in R.08-12-009 and is the Commission's decision adopting rules to protect the privacy and security of electricity usage data of customers. R.08-12-009's Phase 2

resulted in D.12-08-045, in which the Commission extended the privacy protections to CCA customers adopted in D.11-07-056. The outcome of the Commission's consideration of an electric customer's privacy in D.12-08-045 has a bearing on matters in this advice letter and will be appropriately referenced in the Discussion Section.

NOTICE

Notice of AL 4009-E was made by publication in the Commission's Daily Calendar. Pacific Gas and Electric Company states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-B.

PROTESTS AND COMMENTS

PG&E's Advice Letter AL 4009-E was timely protested by Marin Energy Authority (MEA) on March 26, 2012.

MEA raises the following two issues:

1. PG&E's failure to reference Section 8380 in PG&E's CCA Non-Disclosure Agreement, Form 79-1031.
2. PG&E's proposal for CCAs to use PG&E's Customer Consent Form 79-1095 (Authorization to Receive Customer Information or Act Upon a Customer's Behalf) in order to access SmartMeter data of CCA customers.

PG&E replied to the protests on April 2, 2012.

PG&E restated that no changes are required to the tariffs as requested by MEA, so the advice filing should be approved as filed.

DISCUSSION

PG&E is directed to modify Section 2 of Electric Form 79-1031 to include Public Utilities Code Section 8380 language allowing the delivery of customer data to a CCA.

MEA protested PG&E's failure to reference Section 8380 in their revised tariff Form 79-1031 (CCA Non-Disclosure Agreement). According to MEA PG&E should modify the tariff to include the reference because "SB 790 clearly contemplates the delivery of such information to a CCA, and as a result such information should be protected by the CCA Non-Disclosure Agreement." MEA suggested that Section 2 of Form 79-1031 be modified to include the following underlined language:

The confidential and proprietary information disclosed to CCA in connection herewith may include, without limitation, the following billing information about Utility Customers - Customer-specific information from the current billing periods as well as prior 12 months consisting of: service agreement number, name on agreement, service address with zip code, mailing address with zip code, telephone number, meter number, monthly kWh usage, monthly maximum demand where available, electric consumption data as defined in Section 8380, other data detailing electricity needs and patterns of usage, Baseline Zone, CARE participation, End Use Code (Heat Source) Service Voltage, Medical Baseline, Meter Cycle, Bill Cycle, Balanced Payment Plan and other plans, HP Load and Number of Units and monthly rate schedule for all accounts within the CCA's territory. In addition, PG&E will provide the CCA the following additional information regarding customers currently enrolled in its CCA service: current and historical billing information for non-CCA services provided by PG&E or other electric service providers (collectively, "Confidential Information"). Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by CCA or its representatives that are derived from or based on Confidential Information disclosed by Utility, regardless of the form of media in which it is prepared, recorded or retained.

In its reply comments, PG&E stated that MEA identified no specific changes to tariff E-CCAINFO because Section 17 of Schedule E-CCAINFO already allows CCAs to access electrical consumption data as defined in 8380 along with the appropriate billing and electric load data. PG&E then referenced Form 79-1031 (CCA Non-Disclosure Agreement) Section 2 through which a CCA must keep usage data confidential. PG&E asserts that it does not intend to limit CCA access to this information, while maintaining its position that no additional changes are necessary to allow access to the information.

We agree with MEA that Form 79-1031 (CCA Non-Disclosure Agreement) needs to be modified to clearly include reference to electrical consumption data as defined in Section 8380 and other data detailing electricity needs and patterns of usage as proposed by MEA. This modification is mandated by recent revisions to Section 366.2(c)(9) that electrical corporations should cooperate fully with CCAs and provide them with data as defined in Section 8380. Thus, we believe with the inclusion of the suggested reference language the tariff will comply with the recent changes to the P.U. Code besides providing clear and transparent communication to current and future CCAs about their right to access such data.

This Resolution directs PG&E to modify Section 2 of Electric Form 79-1031 to include reference to “electrical consumption data as defined in P.U. Code § 8380, other data detailing electricity needs and patterns of usage” as among the other confidential and proprietary information disclosed to CCAs pursuant to Form 79-1031.

MEA’s protest regarding the use of customer consent Form 79-1095 has been resolved in D.12-08-045. MEA will be required to furnish a customer consent form only when it does not sign a Non-Disclosure Agreement with PG&E.

MEA believes that through AL 4009-E PG&E is proposing that a CCA should use Customer Consent Form 79-1095 in order to access advanced meter data of CCA customers. MEA goes on to state that PG&E serves as MEA’s meter data management agent (MDMA) and is required to deliver MEA customer meter data to MEA. MEA alleges that PG&E’s refusal to provide this information would create an anticompetitive barrier to CCA.

MEA is requesting that PG&E should be required to confirm that as their MDMA, PG&E will provide all meter data, including such meter data defined in Section 8380, to a CCA without the use of Form 70-1095.

PG&E, in its reply to MEA’s protest, states that “MEA misinterprets [PG&E’s AL] to mean that [use of Customer Consent Form 79-1095] is the only means for a CCA to access the SmartMeter data for a CCA customer.” PG&E states that “a CCA can request customer specific consumption data as defined in Section 8380 through the following: 1) Schedule E-CCAINFO or 2) on an individual customer, with the customer’s consent, through the use of Form 79-1031.”

The Commission’s D.12-08-045 has resolved this issue, and a CCA will be required to furnish a customer consent form only when it does not sign a NDA with the IOU.

Through Form 79-1095, Authorization to Receive Customer Information or Act Upon a Customer’s Behalf, PG&E would protect privacy rights of its customer’s electric consumption data. However, in D.12-08-045, the Commission requires that CCAs treat customers’ confidential usage information in the same manner as does the underlying investor-owned utility.⁸ Additionally, the customer privacy protections of D.11-07-056 have been extended to the customers of CCAs, which is also consistent with the

⁸ D.12-08-045, p. 3.

authority granted to the Commission in Section 366.2(c), which permits the Commission “to ensure compliance with basic consumer protection rules.” In order to grant CCAs the responsibility of protecting their customers’ privacy, the Commission in D.12-08-045, p. 25 states:

In our view, a policy of granting CCAs full access to customer usage data and holding CCAs responsible for protecting the advanced metering data that they obtain from PG&E, SCE and SDG&E provides the CCAs the same usage rights and responsibilities as a utility. Moreover, in this particular situation, such a policy provides CCAs with all rights to data that it requests.

The Commission also noted the circumstances where a CCA will be required to use a customer consent form. At p. 26, D.12-08-045 stated:

We note that the Commission has adopted procedures that require a non-disclosure agreement with the prospective CCA.[footnote omitted] Since there are existing rules regarding the provisioning of customer usage data to a prospective CCA, there is no need to adopt additional requirements. However, the utility should enter into a non-disclosure agreement with a prospective CCA that maintains the privacy protections adopted by the Commission in 1-07-056. If the prospective CCA enters into such a non-disclosure agreement, there is no need for the CCA to secure the consent of each customer for release of the customer’s data. If the prospective CCA, however, will not enter into such a non-disclosure agreement, then the utility may not provide the data unless directed by the customer.

Finally in its Conclusions of Law 29 in D.12-08-045, the Commission stated:

It is consistent with Section 366.2 (9) of the Public Utilities Code to require that the non-disclosure agreement between the prospective or current CCA and the utility contain the consumer protections pertaining to data use and disclosure adopted in Attachment B. The transfer of this billing information, however, does not require the approval of individual customers.

If going forward MEA signs a Non-Disclosure Agreement (Form 79-1031) with PG&E, as they have in the past, then they do not have to request a customer’s electric consumption data through individual customer consent forms (Form 79-1095), in which case their protest in the current advice letter stands resolved.

COMMENTS

Public Utilities Code section 311, (g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311, (g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on November 20, 2012, and was placed on CPUC's agenda no earlier than 30 days from the mail date.

MEA filed timely comments on December 10, 2012, supporting Energy Divisions' analysis and conclusion. Staff has reviewed the comments and no further modifications were needed in the discussion subsections of this resolution above.

The Commission did not seek the submission of reply comments to draft Resolution E-4523.

FINDINGS AND CONCLUSIONS

1. SB 790 (2011), among other things, requires that the electrical load data to be supplied by an electrical corporation as part of its duty to cooperate fully with any community choice aggregator, include electrical consumption data, as defined.
2. On February 2, 2012, pursuant to the changes to Section 366.2(c)(9) resulting from SB 790, the Energy Division Director requested the Investor-Owned Utilities (IOUs) to make appropriate modifications to their CCA Tariff pursuant to amended language of P.U. Code.
3. PG&E filed AL 4009-E on March 5, 2012 with revisions to CCA related Electric Schedules and Forms.
4. PG&E proposed modifications to the following three tariffs: Electric Schedule E-CCAINFO, Electric Form 79-1030 and Electric Form 79-1031. The proposed modifications are focused on compliance with an expanded definition of a CCA in Section 331.1 of the P.U. Code.

5. In its advice letter filing PG&E states that Schedule E-CCAINFO already allows CCAs to access electrical consumption data as defined in Section 8380 and requires no changes. Additionally a CCA can request customer specific consumption data with customer consent using Form 79-1095. PG&E states that “ nothing in SB 790 modifies the limitation on access to customer-specific residential consumption data.”
6. PG&E expects the advice letter filing will be subject to the outcome of Commission Decisions in Phase 2 of R.08-12-009.
7. MEA protested, calling for PG&E to include reference to Section 8380 in PG&E’s CCA Non-Disclosure Agreement, Form 79-1031.
8. MEA also argues that as its meter reading agent, PG&E must provide all meter data without requiring the use of customer consent Form 79-1095.
9. PG&E replied to the protests on April 2, 2012, restating that no changes are required to the tariffs as requested by MEA and that its advice filing should be approved as filed.
10. Modifications to PG&E’s Form 79-1031 should be made to comply with SB 790’s revisions to Section 366.2(c)(9) that electrical corporations must cooperate fully with CCAs and provide them data as defined in Section 8380. The modifications to PG&E’s Form 79-1031 should include Section 8380 language allowing the delivery of customer data to a CCA.

MEA’s protest regarding the use of customer consent Form 79-1095 is resolved by Commission D.12-08-045 (phase 2 of R.08-12-009) regarding privacy and security protections for energy usage data of CCA custo12. EA filed comments on December 10, 2012 supporting the analysis and conclusion of the draft resolution.

THEEFORE IT IS ORDERED THAT:

1. The Commission approves PG&E’s proposed tariff revisions to Electric Schedule E-CCAINFO (Information Release To Community Choice Providers).
2. The Commission approves PG&E’s proposed tariff revisions to Electric Form 79-1030 (Declaration by Mayor or Chief County Administrator Regarding Investigation Pursuit or Implementation of Community Choice Aggregation).

3. The Commission approves with modification PG&E's proposed tariff revisions to Electric Form 79-1031 (Community Choice Aggregator Non-Disclosure Agreement), which shall include in Section 2 of the Tariff the reference to "electric consumption data as defined in P.U. Code § 8380, other data detailing electricity needs and patterns of usage" as among the confidential and proprietary data PG&E must provide to CCAs pursuant to Form 79-1031.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on December 20, 2012; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director