

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Housing Authority of the County of Yolo, aka Yolo County Housing (YCH), and the Regional Housing Authority of Sutter and Nevada Counties (RHASNC), and Siemens Industry, Inc.,

Complainants,

vs.

Pacific Gas and Electric Company (U39E),

Defendant.

Case 16-02-006
(Filed February 3, 2016)

DECISION APPROVING SETTLEMENT AGREEMENT

Summary

This decision approves a Settlement Agreement between Pacific Gas and Electric Company, the Housing Authority of the County of Yolo, aka Yolo County Housing, the Regional Housing Authority of Sutter and Nevada Counties, and Siemens Industry, Inc., which resolves all issues in the complaint.¹ The complaint is dismissed with prejudice and this proceeding is closed.

¹ The Settlement Agreement is attached hereto as Attachment A.

1. Background

On February 3, 2016, the Housing Authority of the County of Yolo, aka Yolo County Housing, the Regional Housing Authority of Sutter and Nevada Counties, and Siemens Industry, Inc., filed a complaint against Pacific Gas and Electric Company (PG&E) seeking reinstatement of six Multifamily Affordable Solar Housing (MASH) program applications complainants had submitted to PG&E.²

The MASH program, which is part of the California Solar Initiative, is an incentive program that supports solar installations in qualifying multifamily affordable housing developments. In Decision (D.) 15-01-027, the Commission adopted a two-tiered incentive structure for the program with different eligibility criteria for each incentive level. The two incentive levels are known as Track 1C and Track 1D. The Track 1C incentive is offered at \$1.10/watt for portions of a photovoltaic (PV) system that offset either: (1) common area load, (2) non-Virtual Net Metering (VNM) tenant load,³ or (3) VNM tenant load where the tenant receives less than 50 percent of the economic benefit of the allocated generation. The Track 1D incentive is offered at \$1.80/watt for portions of a PV system that use VNM to allocate generation that offsets tenant load and guarantee that tenants will receive at least 50 percent of the economic benefit of the generation allocated to them for the life of the system.

² Application numbers 393, 394, 397, 399, 400, and 401.

³ VNM allows electricity generated from a single solar energy system on a multifamily affordable housing property to be allocated as kilowatt hour credits to either common areas of the property or to individually metered tenant accounts, without requiring the system to be physically interconnected to each tenant's meter. (D.08-10-036 at 31.)

PG&E timely filed an answer to the complaint on March 21, 2016. The complainants' MASH applications had requested the higher incentives under Track 1D. In its answer, PG&E contended that it rejected complainants' MASH applications because they failed to meet Commission-approved eligibility criteria for the Track 1D incentive level. PG&E also contended that the complaint failed to state a claim for relief under Rule 4.1(a)(1),⁴ which requires that a complaint set forth "any act or thing done or omitted to be done by any public utility ... in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission."

A prehearing conference was held on April 15, 2016, to develop the procedural schedule and to determine the issues properly within the scope of the proceeding. The Assigned Commissioner's Scoping Memo and Ruling, issued on May 4, 2016, set forth the scope of the proceeding and the procedural schedule, and confirmed that hearings would be needed.

On May 24, 2016, PG&E on behalf of all of the parties to Case 16-02-006 requested suspension of the procedural schedule to allow parties time to finalize a motion for approval of a proposed settlement agreement that they intended to submit to the Commission. The assigned Administrative Law Judge (ALJ) granted this request on May 25, 2016.

On July 12, 2016, the parties filed a motion for approval of the settlement agreement (Settlement Agreement).

⁴ All references to a Rule or Rules are to the Commission's Rules of Practice and Procedure. (Cal. Code of Regs., tit. 20, div. 1, ch. 1.)

2. Discussion

2.1. Standard of Review

Pursuant to Rule 12.1(d), the Commission will not approve a settlement unless it is “reasonable in light of the whole record, consistent with law, and in the public interest.” As a matter of public policy, the Commission generally favors settlements of disputes if they are fair and reasonable in light of the record.⁵ This policy supports many goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce an unacceptable result.

2.2. Analysis of Settlement Agreement

The Settlement Agreement is an all-party settlement that resolves all issues pending under the complaint. The parties have agreed as follows:

- 1) PG&E will reinstate Complainants’ MASH Applications Numbers 393, 394, 397, 399, 400, and 401 and provide conditional reservations for these projects for Track 1C incentives in the amount of \$785,697.
- 2) Complainants will relinquish any and all claims for Track 1D incentives for these projects.
- 3) Complainants agree and understand that they must meet all applicable MASH requirements within the MASH Program deadlines in order to receive these reserved MASH incentives.

The parties contend that the Settlement Agreement meets the criteria set forth in Rule 12.1(d). They argue that the Settlement Agreement is in the public interest and represents an equitable resolution of all issues raised in the complaint regarding PG&E’s administration of the MASH program.

⁵ D.14-12-040 at 15; D.11-12-053 at 72.

We find the Settlement Agreement to be reasonable in light of the whole record. As parties reached a settlement prior to the serving of testimony and evidentiary hearings, the record in this case consists of parties' pleadings, the motion for approval of the Settlement Agreement, and the Settlement Agreement itself. Based on our review of this record, we find that the Settlement Agreement reflects a reasonable compromise of the parties' respective litigation positions. The parties had disputed whether complainants' projects were eligible for the higher level MASH incentives under Track 1D. There is no dispute that the complainants' projects have always been eligible for conditional reservations under Track 1C. PG&E has agreed to reinstate the complainants' cancelled projects and provide them with conditional reservations under Track 1C while complainants have agreed to relinquish any and all claims for Track 1D incentives.

We find the Settlement Agreement to be consistent with law. PG&E will reinstate and provide conditional reservations under Track 1C for complainants' projects. However, the complainants will still have to meet all applicable MASH program requirements, including statutory and Commission-imposed requirements, in order to receive the reserved MASH incentives.

We also find the Settlement Agreement to be in the public interest. According to the parties, reinstating the complainants' cancelled applications with conditional Track 1C reservations will allow the planned solar projects to move forward. This outcome is consistent with the overall goal of the MASH program to promote the adoption of solar power in the affordable housing

sector.⁶ The Settlement Agreement is also consistent with the Commission's well-established policy of supporting resolution of disputed matters through settlement, it reflects a reasonable compromise, and it avoids the time, expense, and uncertainty of evidentiary hearings and further litigation.

2.3. Conclusion

Based on the foregoing, we find the Settlement Agreement to be reasonable in light of the whole record, consistent with law, and in the public interest as required pursuant to Rule 12.1(d). Therefore, we approve the Settlement Agreement.

Our approval of the Settlement Agreement does not constitute a determination that complainants meet all of the requirements to receive the Track 1C incentives. As set forth in the Settlement Agreement, PG&E will provide conditional reservations for the projects for Track 1C incentives but the complainants must still meet all applicable MASH requirements within the MASH program deadlines in order to receive the reserved incentives.

The Settlement Agreement states that complainants will take any necessary steps to dismiss this complaint with prejudice within ten days of a final Commission decision approving the Settlement Agreement.⁷ We find it unnecessary for complainants to take additional steps to dismiss the complaint. As our approval of the Settlement Agreement resolves all disputed issues under the complaint, we dismiss the complaint with prejudice.

⁶ See D.08-10-036 at 6-7.

⁷ Settlement Agreement at III.C.

3. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

4. Assignment of Proceeding

Michael Picker is the assigned Commissioner and Sophia J. Park is the assigned ALJ.

Findings of Fact

1. The parties had disputed whether complainants' projects were eligible for MASH incentives under Track 1D.

2. PG&E has agreed to reinstate the complainants' cancelled projects and provide them with conditional reservations under Track 1C while complainants have agreed to relinquish any and all claims for Track 1D incentives.

3. The Settlement Agreement reflects a reasonable compromise of the parties' respective litigation positions.

4. The complainants will still have to meet all applicable MASH requirements within the MASH program deadlines in order to receive the reserved Track 1C incentives.

5. Reinstating the complainants' cancelled applications with conditional Track 1C reservations will allow the planned solar projects to move forward, which is consistent with the overall goal of the MASH program to promote the adoption of solar in the affordable housing sector.

6. Approval of the Settlement Agreement will avoid the time, expense, and uncertainty of evidentiary hearings and further litigation.

7. The Settlement Agreement is an all-party settlement that resolves all issues pending under the complaint.

Conclusions of Law

1. The Settlement Agreement is reasonable in light of the whole record.
2. The Settlement Agreement is consistent with law.
3. The Settlement Agreement is in the public interest.
4. The Settlement Agreement should be approved.
5. Evidentiary hearings are not needed.
6. The complaint should be dismissed with prejudice.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement between Pacific Gas and Electric Company, the Housing Authority of the County of Yolo, aka Yolo County Housing, the Regional Housing Authority of Sutter and Nevada Counties, and Siemens Industry, Inc., attached hereto as Attachment A, is approved.
2. No evidentiary hearings are necessary.
3. The complaint is dismissed with prejudice.
4. Case 16-02-006 is closed.

This order is effective today.

Dated _____, at Long Beach, California.