

Decision **PROPOSED DECISION OF ALJ FUKUTOME** (Mailed 5/4/2010)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company  
To Revise Its Electric Marginal Costs, Revenue  
Allocation, and Rate Design. (U39M)

Application 06-03-005  
(Filed March 2, 2006, Petition  
for Modification filed  
December 17, 2009)

**DECISION DENYING PETITION FOR MODIFICATION  
OF DECISION 07-09-004**

**1. Summary**

The December 17, 2009 Petition for Modification of Decision 07-09-004, filed by Pacific Gas and Electric Company, Division of Ratepayer Advocates, The Utility Reform Network, and the Western Manufactured Housing Communities Association, is denied. The proposal to revise the method for establishing rate differentials among residential electric rate tiers should be addressed in Application 10-03-014, Pacific Gas and Electric Company's Test Year 2011 General Rate Case Phase 2 filing.

**2. Background**

On March 16, 2007, Pacific Gas and Electric Company (PG&E) filed a 2007 General Rate Case (GRC) Phase 2 motion for adoption of several electric rate design settlement agreements, including the Supplemental Settlement Agreement on Residential Rate Design Issues (Residential Settlement). Under the Residential Settlement, which was adopted on September 6, 2007 in Decision (D.) 07-09-004, PG&E's five-tiered total rates are established by increasing both the distribution and generation components of rates from tier to tier.

On December 17, 2009, PG&E, Division of Ratepayer Advocates, The Utility Reform Network, and the Western Manufactured Housing Communities Association (collectively Petitioners), filed a petition for modification of D.07-09-004 (Petition), requesting that the Commission adopt an addendum to the Residential Settlement which would revise the method used to establish rate differentials among electric rate tiers. There were no responses to the Petition. Also, Petitioners state that Solar Alliance,<sup>1</sup> Vote Solar, and California Solar Energy Industries Association, the other signatories to the Residential Settlement, have elected not to join as a signatory party to the Petition, but have authorized PG&E to advise the Commission that they do not oppose the Petition.

### **3. The Request**

Part VI, Section F, of the Residential Settlement adopted by D.07-09-004 states:

Distribution and generation rates for non-CARE rate schedules in the residential class shall be differentiated by tier. Distribution and generation revenue on non-CARE rate schedules shall be collected in each rate tier in the same proportion as the generation and distribution revenue is allocated to each rate schedule, prior to determining rates for the CSI as described in item G.

Petitioners request that the Residential Settlement be revised so that residential rates increase by tier as a function of the distribution rate component and a Conservation Incentive Adjustment (CIA), and not by virtue of the

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<sup>1</sup> PV Now, an original Settling Party, has reorganized to form the Solar Alliance.

generation component.<sup>2</sup> To accomplish this new rate design, the Residential Settlement methodology quoted above will remain in effect. However, Petitioners propose an additional step at the end of the process to flatten generation rates. This proposed new final step will take the resulting five-tiered generation rates, flatten them such that they become the same across all five tiers, and add a residual CIA rate component to exactly offset the generation rate changes and preserve the current five-tiered values for total bundled rates.

Petitioners state that the proposal is consistent with the approach currently used by San Diego Gas & Electric Company (SDG&E)<sup>3</sup> and recently adopted for Southern California Edison Company (SCE).<sup>4</sup>

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<sup>2</sup> The proposal is detailed in the Addendum to the Supplemental Settlement Agreement on Residential Rate Design Issues in PG&E's Application 06-03-005, which is included with the Petition.

<sup>3</sup> Rate tiers based only on non-generation residential rate components for SDG&E were initially approved in D.05-12-003, effective January 1, 2006. SDG&E filed A.07-01-047, and subsequently a Partial Settlement in that proceeding, to continue to base tier differentials on only non-generation rate components through use of the Total Rate Adjustment Component (TRAC). The Commission approved the Partial Settlement in D.08-02-034. SDG&E filed its 2009 Rate Design Window application, A.08-11-014, on November 14, 2008, proposing to continue the use of the TRAC for the residential tier structure. On May 26, 2009, a Joint Party Settlement Motion was filed which would adopt this SDG&E provision. On September 24, 2009, D.09-09-036 was issued approving the Settlement.

<sup>4</sup> On December 21, 2007, SCE filed its proposal to base tier differentials on only non-generation rate components in SCE's 2008 Rate Design Window application, A.07-12-020,. In a March 26, 2008 ruling, the CPUC ordered consolidation of this issue into SCE's 2009 GRC Phase 2, A.08-03-002, filed on March 4, 2008. On January 26, 2009, SCE filed a motion for adoption of a multi-party settlement on residential and small commercial rate design that would approve the use of SCE's proposed CIA, which is analogous to SDG&E's TRAC. The CIA was adopted in D.09-08-028, with the bulk of SCE's 2009 GRC Phase 2 changes to be effective October 1, 2009, and the CIA scheduled

*Footnote continued on next page*

To implement the proposal, Petitioners request that relevant ordering paragraphs in D.07-12-036 and D.07-09-004 be modified and that the addendum to the Residential Settlement be adopted.

#### 4. Justification for the Request

Petitioners provide the following justification for their request:

- By adopting the proposal, the Commission will level the playing field between PG&E and energy service providers/community choice aggregators (ESPs/CCAs) by ensuring that generation rates do not vary by tier. This will eliminate the situation today where higher use bundled customers are artificially made more attractive to ESPs/CCAs and lower use bundled customers are made less attractive.<sup>5</sup> The Commission will also be establishing cost-based generation rates, and maintaining a significant conservation incentive for all customers (bundled and DA/CCA alike) through the utility's tiered non-generation rates. Further, the Commission will be improving transparency for customers choosing between bundled and DA/CCA service by facilitating comparisons among generation rates.
- The proposal advances the goal of statewide consistency among utilities (PG&E, SDG&E, and SCE).

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to be effective in 2010 concurrent with rate revisions in SCE's Energy Resource Recovery Account forecast proceeding.

Petitioners propose to use the "CIA" rather than the "TRAC" terminology, indicating their belief that "conservation" and its relation to the five-tier inverted residential rate structure may be better understood by residential customers.

<sup>5</sup> Petitioners explain that a large portion of the rate differential by tier is currently based on increasing the generation component of PG&E's residential rates. As a result, higher-use residential customers pay a much higher average generation rate than lower use customers. Energy service providers (ESP) or community choice aggregators (CCA) can offer generation rates to direct access (DA) or CCA customers that are not tiered in the same manner as PG&E's generation rates. They can offer an alternative generation rate that, while higher than the generation rate PG&E currently charges low-use customers, would be attractive to high-use customers.

- The proposal advances the goal of statewide consistency as between utility bundled customers and DA/CCA customers, since DA and CCA customers would face the same cents per kilowatt-hour (kWh) differential in rates by tier as bundled customers under each utility's proposal, while simplifying rates. The new CIA rate component would be charged to all electric customers. While total bundled rates would remain unchanged (since the CIA rates exactly offset the changes in the generation rates), there would be changes to the total charges paid by existing and future DA and CCA customers. For example, existing low-usage DA customers would see bill decreases, while high-usage DA customers would see bill increases. These changes, however, appropriately remedy the current situation where high-usage DA customers are able to avoid the conservation signal intended by the Commission's rate tiering policy.

## **5. Late Submission of the Petition**

The Petition was filed more than one year after the September 2007 issuance of D.07-09-004. Rule 16.4(d) requires that a petition for modification be filed within one year of the effective date of a final decision, or that the petitioners explain the late submission.

Petitioners explain that PG&E did not seek to file this petition within the one year time limit for a number of reasons, as follows. First, at the time PG&E filed A.06-03-005, and during negotiations that culminated in the March 2007 Residential Settlement, SDG&E's TRAC component had been in place a relatively short time, effective January 1, 2006. However, with the passage of time, and through SCE's similar request filed in December 2007 and subsequent litigation, the appropriateness of establishing tiers through non-generation rates has become more evident. Second, PG&E monitored the progress made on this issue

in SCE's 2009 GRC Phase 2 proceeding, and felt it appropriate to wait to file the petition until the Commission took action on SCE's January 2009 residential settlement. Now that the Commission has issued D.09-08-028 adopting SCE's proposed CIA component, Petitioners believe a comparable PG&E proposal is appropriate. Third, the relatively slow pace at which CCA is unfolding supported PG&E's decision to wait more than one year to file this petition. However, Petitioners believe now is the time to give notice to all customers and generation market participants that PG&E intends to pursue similar action to flatten its residential generation rate structure.

Petitioners' explanation for filing the Petition more than one year after the issuance of D.07-09-004 is reasonable. The late submission of the Petition is justified.

## **6. Opposition to the Request**

In comments to the proposed decision that was mailed on May 4, 2010 (Proposed Decision), Marin Energy Authority (MEA) and the City and County of San Francisco (CCSF) indicated and explained their opposition to the Petition.

### **6.1. MEA**

According to MEA, its primary concern with the request is the effect on its Program Implementation, indicating that its adopted default rates are identical to PG&E's then current five-tier generation rates.<sup>7</sup> According to MEA, the imposition of the CIA is not needed to promote conservation but would increase rates for MEA's Phase 1 customers. MEA adds that the CIA removes an integral

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<sup>7</sup> By D.10-05-051, PG&E was granted authority to substantially revise residential tier rates. Tier 4 and Tier 5 rates are now identical.

component of a CCA's energy service program: sending appropriate conservation incentives to its customers.

MEA states that the concept of a flattened rate structure is not, in and of itself, objectionable, assuming it can be shown to be justified based on cost of service studies. However, it is the timing of the implementation that is problematical. MEA states that delaying the implementation until the commencement of Phase 2 of the MEA CCA program would resolve the concerns that MEA has with regard to the Petition and the Proposed Decision. However, MEA recognizes that an open-ended postponement may not be acceptable. Therefore, MEA requests that the implementation of the tiered rate structure proposed in the Petition be deferred until the earlier of MEA's Phase 2 CCA rollout or May 1, 2012.

## **6.2. CCSF**

CCSF states the following:

- There is no evidence in the record showing that the resulting flattened generation rates would accurately reflect the cost of service or even that such rates would be more cost-based than tiered rates. A cost of service study, for example, may show that, on average, higher usage customers cause more per-unit generation costs to be incurred than do lower usage customers. Moreover, to a significant extent, incorporating a conservation incentive in the rate structure is not a cost-based exercise, but rather a means to achieve important policy goals. In this respect, the proposed shift of conservation incentives to the CIA is no more or less cost-based than the current rate design.
- The Petition appears to assume that CCAs will find it advantageous to employ a flat, untiered rate structure. However, the Petition cites no evidence in support of this assumption. CCAs are likely to desire to promote energy conservation through their rates by using a similarly tiered rate structure.

- The rate changes proposed in the Petition, those ordered in D.10-05-051 and the modifications under consideration in A.10-03-014 pose the undesirable prospect of scattershot rate changes causing generation rate volatility. Such volatility will undermine CCA efforts to develop their rates and wreak havoc on CCAs' ability to offer necessary comparative rate information to their customers. Consumers and CCAs would be better served by allowing a long planning horizon for any rate changes and consolidating the changes as much as possible to limit the number of rate change events.
- The Commission lacks any record upon which to conclude that the proposed rate structure is more cost-based than the current rate structure. The rate design phase of a utility's GRC is the traditional forum for considering the factual and policy issues associated with such a significant change in rate structure. Accordingly, the Commission should defer a decision on the Petition and order that it be considered along with other rate proposals that could affect PG&E's generation rates in A.10-03-014.
- If the Commission nevertheless chooses to approve the Petition, there is no need to implement the rate changes soon. CCSF understands that MEA has developed its Phase 1 rate structure and notified customers based on the current PG&E rates. Any implementation should at least await the conclusion of that phase and the start of MEA's next phase. More broadly, to facilitate rate planning, customer notice, and to avoid imposing unnecessary costs on CCAs and their customers, the Commission should afford ample lead time between any decision to change PG&E generation rates and the implementation of those rate changes.

### **6.3. PG&E's Response**

In reply comments to the Proposed Decision, PG&E states the following:

- Both MEA and CCSF have filed what are in essence protests, not Rule 14.3 comments. CCSF received service of the original Petition. The time for submitting a protest passed long ago. CCSF's comments should be disregarded on that basis alone. In

addition, neither MEA nor CCSF includes any admissible factual support for their assertions of harm.

- MEA has known for years that PG&E planned to align its rate structure with what the Commission had already approved for the other IOUs. MEA seeks to delay implementation of the new structure throughout PG&E's service territory for up to two years while it reaps the financial benefit of the current structure at the expense of PG&E's other customers.
- Customers respond to the conservation incentives provided by total rates. By providing that incentive through distribution and CIA (which all customers pay) the Commission, not the utilities, controls the conservation incentive. It appears that MEA's only interest is to control the incentive to secure short term funding to start up its program. Further, the Commission has already ruled on this issue in setting rates for SCE and SDG&E, both of which have flattened their generation rates. In D.09-08-028 at 19, adopting a CIA rate for SCE, the Commission concluded that ". . . signals to encourage conservation should be provided to all customers, regardless of their energy provider." Nothing prevents MEA from offering an additional incentive, such as by retaining a tiered generation rate.
- It is absurd to suggest that generation rates in excess of 20 cents/kWh better reflect generation costs than PG&E's proposed flat rate of 8.2 cents/kWh. Allowing CCAs to "compete" merely by beating artificially high prices will result in unfair and unlawful cost shifting in the form of higher generation rates borne by PG&E's bundled customers. This cost-shifting is prohibited by Public Utilities Code Section 366.2(d)(1), which states the intent of AB 117 to "prevent any shifting of recoverable costs between customers" under CCA programs and rates
- MEA quickly modified its rates to conform to PG&E's March 1, 2010 rate changes and appears to be doing so again at its June 3, 2010 Board meeting to conform its rates to PG&E's June 1, 2010 changes. But more fundamentally, with the flattened generation rate, future changes in residential total rates by tier will not affect flat generation rates and thus will not trigger the need for CCAs to make "catch-up" changes.

## **7. Discussion**

At the time the initial Proposed Decision was prepared, there was no indicated opposition to the Petition, and the Proposed Decision would have granted the Petition request. However, both MEA and CCSF made their opposition known through the proposed decision comment process. That there is now party opposition to the Petition is significant, bringing into question whether it is appropriate to make such revisions by a petition for modification.

MEA and CCSF have cited problems and potential issues associated with the Petition request, and PG&E has responded. However, because the request as it relates to PG&E is new and is being proposed through a petition for modification of a previous decision, there has been no formal process (testimony, hearings and briefs) for evaluating parties' positions. Even if problems and issues had been identified in responses to the Petition, rather than in comments to the Proposed Decision, we would still be in the position that we are in now. That is, the Petition request is opposed and was never subjected to a formal evidentiary process. Because of the nature of the request and opposition, we feel such a process is necessary to fairly consider issues and potential problems.

While the Petition request is generally consistent with previously articulated Commission policies and decisions, questions and issues specific to PG&E, such as whether the generation component should be completely flat, when the request should be implemented, and how it should be implemented, in light of existing or soon to be existing CCA entities, were not litigated or analyzed based on an evidentiary record. As indicated, there has been no opportunity to do so. This is contrary to the processes for both SDG&E and SCE. SDG&E proposed to continue the use of the TRAC for the residential tier structure its 2009 Rate Design Window application, A.08-11-014. On May 26,

2009, a Joint Party Settlement Motion was filed which would adopt this SDG&E provision, and on September 24, 2009, D.09-09-036 was issued approving the Settlement. SCE filed its proposal to base tier differentials on only non-generation rate components in A.07-12-020. The issue was consolidated into SCE's 2009 GRC Phase 2 proceeding, A.08-03-002, and the proposed CIA was adopted by D.09-08-028, to be effective in 2010. Therefore, for both SDG&E and SCE, parties had the opportunity to address issues related to the flattening of the generation rate component for residential tiered rates based on an evidentiary record developed in each of the utilities' particular proceedings. It should be the same for PG&E, because the effects of the Petition request are significant. It would therefore be appropriate to address all issues related to the Petition request in PG&E's Test Year 2011 GRC Phase 2 proceeding. This proceedings is specifically set up to address rate design issues, and, in the absence of the Petition, is the proceeding in which the proposal would have been addressed.

Therefore, we conclude that the Petition should be denied.

## **8. Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.<sup>8</sup>

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<sup>8</sup> The Proposed Decision was not initially mailed to parties for comment. It was uncontested and the Proposed Decision granted the relief requested. Under such circumstances, Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure allows the Commission to waive public review and comment. Subsequent to its appearance on the Commission Meeting Agenda, MEA requested that it be allowed party status to the proceeding, indicated its opposition to the Petition, and requested that the Proposed Decision be mailed for public review and comment. MEA's requests were granted by an Administrative Law Judge's Ruling, dated April 8, 2010.

Comments were filed on May 24, 2010 by MEA and CCSF, and reply comments were filed on June 1, 2010 by PG&E and MEA.

It was through the comment process that opposition to the Petition became evident. Based on this opposition and the lack of an evidentiary record to evaluate now contested matters, substantial revisions to the Proposed Decision were made.

## **9. Assignment of Proceeding**

John A. Bohn is the assigned Commissioner and David K. Fukutome is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. Petitioners' proposed method to establish rate differentials among residential electric rate tiers is consistent with (1) the approach currently used by SDG&E and (2) the approach recently authorized for SCE.
2. The Petition is opposed by MEA and CCSF.
3. Questions and issues regarding whether, how, and when the process of flattening the generation rate component should be implemented for PG&E were not litigated or analyzed based on an evidentiary record.
4. For both SDG&E and SCE, parties had the opportunity to address issues related to the flattening of the generation rate component based on an evidentiary record developed in each of the utilities' particular proceedings.
5. PG&E's Test Year 2011 GRC Phase 2 proceeding is specifically set up to address rate design issues, and, in the absence of the Petition, is the proceeding in which the Petitioners' proposal would have been addressed.

### **Conclusions of Law**

1. The late submission of the Petition is justified.

2. Interested parties should have the opportunity to examine and respond to the Petition request based on an evidentiary record.

3. It is appropriate to address all issues related to the Petition request in PG&E's Test Year 2011 GRC Phase 2 proceeding, A.10-03-014.

4. The Petition should be denied.

5. This decision should be made effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. The December 17, 2009 Petition for Modification of Decision 07-09-004, filed by Pacific Gas and Electric Company, Division of Ratepayer Advocates, The Utility Reform Network, and the Western Manufactured Housing Communities Association, is denied.

2. The proposal to revise the method for establishing rate differentials among Pacific Gas and Electric Company's residential electric rate tiers shall be addressed in Application 10-03-014.

3. Application 06-03-005 remains open.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.