Decision 12-08-005 August 2, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of its 2009 Rate Design Window Proposals for Dynamic Pricing and Recovery of Incremental Expenditures Required for Implementation (U39E).	Application 09-02-022 (Filed February 27, 2009)

DECISION DENYING PETITION FOR MODIFICATION OF DECISION 10-02-032 AND DECISION 11-11-008

Summary

The Petition for Modification of Decision 10-02-032 and Decision 11-11-008, filed by Pacific Gas and Electric Company on March 19, 2012, is denied.

We decline to revise these Decisions to change mandatory time-of-use (TOU) to "default opt-out" TOU for small and medium commercial and industrial customers and small and medium agricultural customers.

This proceeding is closed.

Background

This proceeding concerns implementation of the Commission's policy to make dynamic pricing available for all customers. On August 1, 2008, the Commission issued Decision (D.) 08-07-045 in Application (A.) 06-03-005. That decision adopted a dynamic pricing timetable and rate design guidance for Pacific Gas and Electric Company (PG&E). The guidance and timetable varied for each of PG&E's customer groups.

On March 2, 2010, the Commission issued D.10-02-032 in this PG&E 2009 Rate Design Window proceeding. That decision took a major step forward in the Commission's policy to make dynamic pricing available for all electric customers by adopting and implementing default and optional critical peak pricing (CPP) and time-of-use (TOU) rates (PG&E refers to such CPP rates, in conjunction with TOU rates, as Peak-Day Pricing (PDP) rates) beginning May 1, 2010 for certain customers of PG&E. The decision also adopted appropriate customer outreach and education activities and measures to ensure customer awareness and understanding of the new rates and options.

On November 10, 2011, the Commission adopted D.11-11-008, addressing two Petitions for Modification of D.10-02-032. Among other actions, the Commission adopted deadlines of November 2012 for transition of small and medium business customers to mandatory TOU rates, and March 2013 for transition of small and medium agricultural customer to mandatory TOU rates.

On March 19, 2012, PG&E filed this Petition for Modification of D.10-02-032 and D.11-11-008, seeking to change mandatory TOU to "default opt-out TOU" for small and medium commercial and industrial customers and small and medium agricultural customers. PG&E requests that the Commission expedite its consideration of this Petition, which does not request any increase in funding, and issue a decision by September 1, 2012.

Justification for the PG&E Petition

PG&E proposes to revise D.10-02-032 and D.11-11-008, (together the Peak Day Pricing Decisions or PDP Decisions) to change mandatory TOU to "default opt-out TOU" for small and medium commercial and industrial (SMB) customers and small and medium agricultural customers.

According to PG&E, it makes this request to allow its SMB and small and medium agricultural customers the choice of opting out of default TOU, instead of locking them into mandatory TOU, because recent events have underscored the importance of choice for customers. As discussed in greater detail below, PG&E cites a "lesson learned" from recent experiences with customer opposition to SmartMeter deployment over the last several years, where once the Commission approved an "opt-out" program, PG&E has seen a reduced level of concern from its customers, which PG&E attributes to the customers now having the choice to participate in the program. PG&E would apply this "lesson learned" in the context of customer rates by changing the upcoming default TOU to a "default opt-out" program, so that customers would have a choice to "opt-in" to their previous flat rate.

Based on these "lessons learned," PG&E proposes to change D.11-11-008 and D.10-02-032 as follows:

For small and medium commercial and industrial customers:

> **Currently:**
>
> By November 1, 2012, for small and medium commercial and industrial customers that have access to at least 12 months of interval billing data, default time-of-use rates. Flat rates will no longer be available to these customers;
>
> **Proposed revision:**
>
> By November 1, 2012, for small and medium commercial and industrial customers that have access to at least 12 months of interval billing data, default opt-out time-of-use rates. Flat Rates will continue to be available to these customers on an opt-in basis.

For small and medium agricultural customers:

> **Currently:**
>
> By March 1, 2013, for small and medium agricultural customers that have access to at least 12 months of interval billing data, default time-of-use rates. Flat rates will no longer be available to these customers.
>
> **Proposed revision:**
>
> By March 1, 2013, for small and medium agricultural customers that have access to at least 12 months of interval billing data, default opt-out time-of-use rates. Flat Rates will continue to be available to these customers on an opt-in basis.

Responses to the Petitions

Responses to the PG&E Petition

On April 17, 2012 the California Small Business Roundtable/California Small Business Association (CSBRT/CSBA) filed a response to PG&E's Petition. On April 18, 2012, the Division of Ratepayer Advocates (DRA) and the California Farm Bureau Federation (Farm Bureau) filed responses.

CSBRT/CSBA commend PG&E for submitting this Petition, but state "the relief requested in PG&E's Petition for Modification does not address the underlying deficiencies in PG&E's efforts to prepare and assist small business customers."[1] CSBRT/CSBA proceed to request a number of Commission actions that are not directly related to PG&E's requested relief. Those requests, which CSBRT/CSBA has made in previous filings, are already under consideration in this proceeding, so we will not take up those requests here.

DRA expresses its support for PG&E's recommendations for Small Commercial customers. DRA also renews requests for a number of other policy

[1] CSBRT/CSBA Response at 2.

changes that it first sought in an earlier Petition for Modification of D.10-02-032, requests that we denied in D.11-11-008. We will not revisit those requests again here.

Farm Bureau supports PG&E's Petition, stating "Farm Bureau joins in PG&E's request to allow small and medium agricultural customers, as well as others, the ability to opt-out of mandated TOU schedules at least for the immediate time frame."[2]

Discussion

Rule 16.4 of the Commission's Rules of Practice and Procedure governs Petition for Modification. Rule 16.4(b) states that:

> … [a] petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

With respect to Rule 16.4(b), PG&E provided two of the required declarations or affidavits.

First, the "Declaration Of Jodi L. Stablein In Support Of Petition Of Pacific Gas And Electric Company For Modification Of Decision 11-11-008 And Decision 10-02-032" states:

> Pursuant to Rule 16.49(b) of the Commission's rules of Practice and Procedure, I am supporting the allegations of new or changed facts contained in the Petition of Pacific Gas

[2] Farm Bureau Response at 2.

> and Electric Company for Modification of Decision 11-11-008 and Decision 10-02-032 (Petition to Modify) concerning small and medium business (SMB) customer research.

Second, the "Declaration Of Saul Zambrano In Support Of Petition Of Pacific Gas And Electric Company For Modification Of Decision 11-11-008 And Decision 10-02-032" states:

> Pursuant to Rule 16.49(b) of the Commission's rules of Practice and Procedure, I am supporting the allegations of new or changed facts contained in the Petition of Pacific Gas and Electric Company for Modification of Decision 11-11-008 and Decision 10-02-032 (Petition to Modify) concerning small and medium business (SMB) customers' possible reaction if they are forced onto a mandatory Time-Of-Use (TOU) rate, the impact of offering residential customers the opportunity to opt-out having a SmartMeter™, and the importance of providing SMB customers the choice to opt-out of default TOU.

We examine each of these allegations of new or changed facts in turn.

Declaration of Jodi L. Stablein

The Declaration of Jodi L. Stablein states: "I am supporting the allegations of new or changed facts contained in the Petition … concerning small and medium business (SMB) customer research."

Turning to the Petition itself, SMB customer research is discussed at page 3 of the Petition:

> PG&E's time-variant pricing research on SMB outreach confirms that customers first need to understand that time variant pricing isn't an opportunity for PG&E to raise rates and that it is part of a statewide initiative. Only then can PG&E and the Commission work with customers to help them understand the many benefits that time-variant pricing offers. The mandatory nature of the current TOU program is likely to undermine that objective.

We have previously made clear our expectations with respect to PG&E's education and outreach to its small and medium business customers, and we ordered PG&E to revise its customer education and outreach plan, in collaboration with other parties as well as Commission staff.[3] We expect that as part of these efforts PG&E is already conveying the message that time variant pricing is not an opportunity for PG&E to raise rates and that it is part of a statewide initiative. We also expect that PG&E is already working with these customers to help them understand the many benefits that time-variant pricing offers. PG&E has not offered any factual evidence in this Petition, or the supporting Declaration of Jodi L. Stablein, that establishes that the mandatory nature of the current TOU program is likely to undermine these efforts or objectives.

Declaration of Saul Zambrano

The Declaration of Saul Zambrano: states "I am supporting the allegations of new or changed facts contained in the Petition … concerning small and medium business (SMB) customers' possible reaction if they are forced onto a mandatory Time-Of-Use (TOU) rate, the impact of offering residential customers the opportunity to opt-out [of] having a SmartMeter™, and the importance of providing SMB customers the choice to opt-out of default TOU."

Turning to the Petition itself, we discuss each of these three topics below.

First, "the impact of offering residential customers the opportunity to opt-out having a SmartMeter™", is discussed at page 2 of the Petition, while "small and medium business (SMB) customers' possible reaction if they are

[3] D.11-11-008, Ordering Paragraph 5.

forced onto a mandatory Time-Of-Use (TOU) rate" is discussed at page 3 of the Petition.

> As the Commission knows, there has been some customer opposition to SmartMeter™ deployment over the last few years which ultimately led to Commission approval of an opt-out program in D.12-12-014. The CPUC and PG&E both recognized that customers strongly desired choice and provided them with the opportunity to participate in PG&E's SmartMeter™ Program or opt-out, at their discretion. What PG&E has seen in the time since the Commission approved the SmartMeter™ Opt-Out Program is a reduced level of concern from its customers, who now have the choice to participate or not.[4]
>
> Applying this "lesson learned" to the rates-context moving small and medium nonresidential customers, especially SMB customers, to mandatory TOU rates and denying them the choice to keep their existing rates could lead to similar concerns, resistance and negative customer experiences. This reaction, even if from a small number of customers, could substantially damage the Commission's and PG&E's efforts to help California benefit from time-variant pricing.[5]

We take at face value PG&E's observation that "what PG&E has seen in the time since the Commission approved the SmartMeter™ Opt-Out Program is a reduced level of concern from its customers, who now have the choice to participate or not." However, we do not reach the same conclusion as PG&E with respect to applying this "lesson learned" to rate design policy: PG&E's observations regarding the reaction of residential customers to the smart meter deployment do not logically apply to moving small and medium nonresidential

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[4] PG&E Petition at 2.

[5] PG&E Petition at 3, emphasis added.

customers to a new default rate schedule. The customer groups are different in each case, and there is no clear analogy between the deployment of new technology to all of PG&E's residential customers, on the one hand, and transition of certain nonresidential customers to a new rate, on the other. PG&E itself does not make this logical connection in its Petition. Indeed, as discussed below, PG&E has already provided factual information to the service list in this proceeding that undermines the case for its requested relief.

Based on the Petition and Declaration, there is insufficient information to make a factual finding with respect to either (1) the impact in this proceeding of offering residential customers the opportunity to opt-out [of] having a SmartMeter™, or (2) concerning SMB customers' possible reaction if they are forced onto a mandatory TOU rate.

Third, the assertion of Mr. Zambrano regarding "the importance of providing SMB customers the choice to opt-out of default TOU" does not appear to be supported by any new or changed facts anywhere in PG&E's Petition. This is not surprising, since PG&E, or any other party, would understandably have difficulty making a fact-based argument about an event that has yet to occur. We cannot make a factual finding regarding the importance of providing SMB customers the choice to opt-out of default TOU.

Conclusion

Because of the deficiencies discussed above, we deny PG&E's Petition. PG&E has not provided factual support for any of the assertions in its Petition or in the attached Declarations, so we cannot find that PG&E should be granted the relief it seeks. Indeed, the factual information that PG&E does cite provides support for continuing with our current approach to making the transition to TOU rates mandatory for PG&E's SMB and agricultural customers:

> PG&E's "Analysis of Most Impact In Transition To TOU," posted March 5, 2012 and made available to the service list in A.09-02-022, does reveal that less than 5 percent of SMB customers would see much of an increase in their bills due to the transition.[6]

PG&E immediately goes on to argue that this information should be disregarded, but its reasoning is speculative and therefore unconvincing:

> However, the mandatory nature of the TOU rate may anger customers even if the impact to their bill is relatively small so that they cannot understand the impact, or hear messages about how to use TOU to their benefit. To mitigate that "problem" [quotes added], PG&E requests that the Commission give SMB customers and small agricultural customers the ability to choose between default TOU and their current rate, and remove the requirement for mandatory TOU.[7]

We are asked here to address a scenario where PG&E speculates about possible customer reactions to events that are unlikely to materialize. Given that the actual factual message around the impending roll-out of mandatory TOU appears to be that most customers will be unaffected, we see no reason to act today to enable PG&E to dilute that message by offering customers the option of opting out of a rate that will not affect them. PG&E, as well as the entities that represent these customers, should focus on conveying this important information to customers in the clearest manner possible, rather than seeking to confuse them by enabling them to opt out of a rate change that will not affect them in the first place.

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[6] PG&E Petition at 3, emphasis added.

[7] *Id.* Emphasis and quotation marks added.

We also note here, as PG&E itself acknowledges, that this Petition followed very closely on our decision to grant PG&E's related requests to adjust the roll-out of these TOU rates, requests that we granted in almost exactly the manner that PG&E requested. PG&E's request to further adjust that recently-decided deployment schedule is ill-advised, especially given the paucity of support it offers in the instant Petition.

Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Stephen C. Roscow 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. Comments were filed on July 23, 2012 by PG&E, DRA, CSBRT/CSBA, and Farm Bureau. No reply comments were filed.

The comments that focused on factual, technical, and legal errors have been considered; no changes to the ALJ's proposed decision were necessary.

Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner and Stephen C. Roscow is the assigned ALJ in this proceeding.

Findings of Fact

1. PG&E provided two sworn declarations supporting allegations of new or changed facts regarding small and medium business customers in support of its Petition to Modify D.10-02-032 and D.11-11-008.

2. PG&E provides no facts to support its allegations of new or changed facts regarding SMB customer research that establish that the mandatory nature of the current TOU program is likely to undermine efforts to help customers understand the many benefits offered by time-variant pricing.

3. PG&E provides no facts to support its allegations of new or changed facts concerning the impact of offering residential customers the opportunity to opt-out having a SmartMeter™.

4. PG&E provides no facts to support its allegations of new or changed facts concerning SMB customers' possible reaction if they are forced onto a mandatory TOU rate.

5. PG&E provides no facts to support its allegations of new or changed facts concerning the importance of providing small and medium business customers the choice to opt-out of default TOU.

6. Regarding small and medium agricultural customers, PG&E did not provide any factual allegations or allegations of new or changed facts in support of its Petition to Modify D.10-02-032 and D.11-11-008.

Conclusions of Law

1. Rule 16.4 of the Commission's Rules of Practice and Procedure governs Petition for Modification, providing in pertinent part, "allegations of new or changed facts must be supported by an appropriate declaration or affidavit."

2. The declarations provided by PG&E in support of this Petition for Modification do not support the modifications requested by PG&E.

3. The Petition for Modification should be denied.

O R D E R

IT IS ORDERED that:

1. The Petition for Modification of Decision 10-02-032 and Decision 11-11-008, filed by Pacific Gas and Electric Company on March 19, 2012, is denied.
2. Application 09-02-022 is closed.

This order is effective today.

Dated August 2, 2012, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners