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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric
Company for Adoption of its 2009 Energy
Resource Recovery Account (ERRA) Forecast
Revenue Requirement and for Approval of its
2009 Ongoing Competition Transition Charge
(CTC) Revenue Requirement and Rates

Application 08-06-011

(U 39 E)

**REPLY BRIEF OF
PACIFIC GAS AND ELECTRIC COMPANY**

ANDREW L. NIVEN

ANN H. KIM

Pacific Gas and Electric Company

P.O. Box 7442

San Francisco, CA 94120

Telephone: (415) 973-7467

Facsimile: (415) 973-0516

E-mail: AHK4@pge.com

Attorneys for

PACIFIC GAS AND ELECTRIC COMPANY

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TABLE OF CONTENTS

| | | |
|------|--|---|
| I. | INTRODUCTION | 1 |
| II. | PROCEDURAL BACKGROUND..... | 1 |
| III. | LEGAL ARGUMENTS..... | 1 |
| | A. Ending the Ongoing CTC | 2 |
| | B. Forecasting Municipal Departing Load | 5 |
| | 1. Districts’ argument..... | 5 |
| | 2. CMUA’s argument..... | 5 |
| | C. FF&U Billing Treatment..... | 7 |
| | D. Ongoing CTC Applicability to New MDL | 7 |
| | E. Customer Notice of 2009 Ongoing CTC | 7 |
| IV. | CUSTOMER IMPACT ISSUES | 8 |
| V. | CONCLUSION..... | 9 |

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I. INTRODUCTION

Pursuant to the Assigned Commissioner's Scoping Memo and Ruling issued on August 12, 2008, Pacific Gas and Electric Company submits this reply brief on the issues raised by The Utility Reform Network (TURN), Merced Irrigation District and Modesto Irrigation District (together, the Districts), and California Municipal Utilities Association (CMUA) in their opening briefs. Consistent with the Scoping Memo and Ruling, this brief follows the common outline jointly developed by the parties.

II. PROCEDURAL BACKGROUND

The parties do not disagree about the procedural background of this case.

III. LEGAL ARGUMENTS

The parties do not oppose PG&E's 2009 ERRA forecast revenue requirement of \$4,785 million, ongoing CTC forecast revenue requirement of \$139 million, or Power Charge Indifference Adjustment (PCIA) forecast revenue requirement of -\$7.8 million. Neither do the parties oppose PG&E's proposals to update these revenue requirements in November (including updated natural gas prices) and to update its balancing account balances in December for implementation through the Annual Electric True-up (AET) on or

after January 1, 2009.¹ PG&E's revenue requirements and update proposals are reasonable, supported by the record, consistent with precedent, and unopposed. PG&E therefore requests that the Commission issue a final decision no later than December 2008 approving PG&E's requested relief.

The sole legal issues raised by the Districts and CMUA concern the applicability of the ongoing CTC to municipal departing load (MDL) customers. As discussed in PG&E's opening brief² and reiterated below, neither the Districts nor CMUA have provided any new law or facts to warrant reversing prior Commission decisions that have already rejected their arguments. The Commission should therefore reject the Districts' and CMUA's arguments once again.

TURN does not raise any legal issues with PG&E's application. Rather, TURN uses its opening brief to reiterate policy suggestions for helping prepare customers for high winter bills. As discussed in PG&E's opening brief, PG&E appreciates TURN's ongoing dialogue but disagrees that this proceeding is the appropriate forum to resolve such customer issues.³ The Commission should therefore rule that such customer issues are outside the scope of this ERRA proceeding.

A. Ending the Ongoing CTC

The Districts claim that they are not collaterally estopped from litigating whether the Commission should end the ongoing CTC because the "Commission failed to address the issue...in A.06-07-006."⁴ The Districts are wrong.

In PG&E's 2004 ERRA forecast proceeding (A.03-08-004), the Districts took issue with PG&E's ongoing CTC rates *on the exact same grounds* raised in this 2008 case; namely,

¹ PG&E Testimony, p. 6-10.

² PG&E Opening Brief, pp. 3-6.

³ *Id.*, p. 6.

⁴ Districts Opening Brief, p. 7.

that PG&E should not be able to “restructure and extend pre-December 20, 1995 contracts beyond their original duration.”⁵ In denying the Districts’ argument, the Commission held:

Since the Commission ordered PG&E to do this [contract extension], we cannot agree with the Irrigation Districts that the resulting extension of the 16 QF contracts was the result of a “buy-out, buy-down, or renegotiation.” That is, the circumstances by which the terms of the QF contracts were changed are not covered by § 367(a)(2). Accordingly, we conclude that § 367(a)(2) does not bar PG&E from including the 16 QF contracts as part of the CTC revenue requirement.⁶

In denying the Districts’ application for rehearing of the 2004 ERRRA forecast decision, the Commission affirmed its earlier reasoning:

Merced ID...argues that costs from the extended QF contracts can not be included because they are not costs that were being collected in commission-approved rates on December 20, 1995...This argument equally lacks merit. The QF contracts at issue were part of commission-approved rates on December 20, 1995 and these rates are recoverable so long as the contracts are in existence.... Consequently, the costs associated with these extensions remained part of commission-approved rates and were properly included in PG&E’s CTC revenue requirement.⁷

In PG&E’s 2005 ERRRA forecast proceeding (A.04-06-003), the Districts raised this issue again, and the Commission disposed of it as follows:

The CTC issues litigated in PG&E’s 2004 ERRRA forecast proceeding were pending resolution at the time an evidentiary hearing was held in this proceeding. These CTC issues included the method to calculate ongoing CTC costs for departing load customers, method to determine the ongoing CTC benchmark, and ongoing CTC-eligibility for QF power purchase agreement extension costs. Rather than relitigate these CTC issues in this proceeding, all parties concurred that PG&E should incorporate the Commission’s ultimate resolution of these CTC issues into this proceeding.

⁵ *Id.*, p. 6.

⁶ D.05-01-031, p. 31 and Conclusion of Law 11.

⁷ D.05-10-046, pp. 13-14.

D.05-01-031 resolved the pending CTC issues, which was issued subsequent to the filing of briefs and prior to the issuance of a draft decision in this proceeding.⁸

In denying the Districts' application for rehearing of the 2005 ERRa forecast decision, the Commission reiterated its reasoning from the 2004 ERRa rehearing decision:

These issues raised by Modesto ID and Merced ID have been addressed and disposed of in a companion order decided today addressing applications for rehearing of D.05-01-031... We also concluded that we properly permitted PG&E to recover costs associated with the QF contract extensions through tail CTC. Rather than repeat our discussion and findings again, we adopt the findings of D.05-10-046 and deny rehearing of these issues.⁹

In PG&E's 2006 ERRa forecast application (A.05-06-007), the Commission declined to re-litigate whether ongoing CTC should end, but made the decision in that case subject to the outcome of the Districts' pending court appeals of the 2004 and 2005 ERRa decisions:

Merced, Modesto, and CMUA filed applications for rehearing of D.05-02-040 and D.05-01-031, which were issued in PG&E's 2005 and 2004 forecast ERRa/CTC proceedings, respectively. These applications were resolved in D.05-10-047 and D.05-10-046. Today's Decision does not address the issues raised in the applications for rehearing and resolved in D.05-10-047 and D.05-10-046. The revenue requirement adopted by today's Decision is consistent with D.05-10-047 and D.05-10-046, and will be subject to adjustment and true-up, as necessary, if D.05-10-047 and/or D.05-10-046 are successfully appealed.¹⁰

The Court of Appeal denied the Districts' two petitions seeking review PG&E's ERRa forecast decisions on ongoing CTC issues.¹¹

⁸ D.05-02-040, p. 11.

⁹ D.05-10-047, p. 3.

¹⁰ D.05-12-045, p. 23. In Decision 06-04-041, the Commission denied the Districts' subsequent application for rehearing of D.05-12-045.

¹¹ See Merced and Modesto Irrigation Districts v. CPUC, Case Nos. F049265 and F050380 (writs denied 7/26/07).

The Districts most recently re-raised this same issue in PG&E’s 2008 ERRA forecast case (A.07-06-006). Given the Districts’ extensive history of re-litigating the same issues, the Commission was understandably terse in its discussion. Nevertheless, the Commission clearly rejected the Districts’ argument as follows:

In D.05-12-045 and D.06-07-030, the method of calculating ongoing CTC were addressed and the Districts corresponding applications for rehearing and petitions for writ of review were unsuccessful; therefore, this should not be addressed again.¹²

Contrary to the Districts’ claim, the Commission has ruled – repeatedly and consistently – on the issue of whether and when the ongoing CTC should end. The Commission’s clear ruling: the ongoing CTC is “recoverable so long as the contracts are in existence.”¹³ As the Commission stated earlier this year, “this [issue] should not be addressed again.”¹⁴

B. Forecasting Municipal Departing Load

1. Districts’ argument

The Districts “suggest that the Commission ensure, going forward, that PG&E’s MDL forecasts are consistent among proceedings, including the ERRA/Ongoing CTC proceedings and the Long-Term Procurement proceedings.”¹⁵ PG&E has no opposition to this suggestion. Indeed, in both PG&E’s ERRA and Long-Term Procurement proceedings, PG&E does not forecast any MDL departures in 2009.

2. CMUA’s argument

CMUA “objects to PG&E’s refusal to include in the ERRA Application a specific forecast of the amount of municipal departing load that PG&E expects to occur in 2009,” and claims that “PG&E acknowledges that it estimated municipal departing load,” citing to

¹² D.08-02-018, Conclusion of Law 4.

¹³ D.05-10-046, pp. 13-14.

¹⁴ D.08-02-018, Conclusion of Law 4.

¹⁵ Districts Opening Brief, p. 8.

PG&E's Testimony at p. 7-1.¹⁶ CMUA's argument misses the mark.

PG&E's load forecast methodology is described in Chapter 2 of its testimony. First, PG&E uses "econometric models that project sales for 2009."¹⁷ Then, PG&E adjusts this forecast "to incorporate the latest goals of the state's Energy Action Plan (EAP) with respect to distributed generation and conservation," as well as "the effects of conservation and energy efficiency."¹⁸ Finally, PG&E removes sales attributable to direct access customers.¹⁹ Consistent with previous ERRA forecast proceedings, PG&E does not make any specific adjustments for MDL because PG&E has no basis to anticipate any specific amount of additional MDL in 2009.

Chapter 7 of PG&E's testimony addresses rate design, not load. In other words, while Chapter 2 forecasts the amount of load that PG&E anticipates it will serve in 2009 for purposes of generating ERRA and ongoing CTC revenue requirements, Chapter 7 designs rates to recover those revenue requirements from various customer groups. To design the ongoing CTC rate for the five types of departing load, PG&E "used the most recent recorded [departing load] sales prior to filing as a proxy for 2009 projected departing load."²⁰ This rate design methodology is consistent, not only with the rate design approved in PG&E's prior ERRA forecast proceedings, but also with the premise underlying PG&E's load forecast: namely, that PG&E does not forecast incremental MDL in 2009 beyond the levels that had actually occurred at the time it prepared its application.

For these reasons, PG&E requests that the Commission reject CMUA's arguments as without merit.

¹⁶ CMUA Opening Brief, pp. 3-4.

¹⁷ PG&E Testimony, p. 2-2.

¹⁸ *Id.*, pp. 2-4 to 2-5.

¹⁹ *Id.*, pp. 2-5 to 2-6.

²⁰ PG&E Testimony, pp. 7-1 to 7-2.

C. FF&U Billing Treatment

The Districts argue that, because PG&E does not state FF&U “as a separate revenue requirement and rate, and ultimately as a separate line item on MDL customers’ bills,” the Commission is permitting PG&E “to utterly disregard the Commission’s clear direction.”²¹ PG&E strongly disagrees.

PG&E takes compliance with Commission decisions very seriously and objects to the Districts’ suggestion that PG&E would disregard the Commission’s orders. There is nothing in Decision 08-02-018 that requires PG&E to include FF&U as a separate line item on MDL bills. In that decision, the Commission stated that “FF&U is not a component of ongoing CTC” largely as a preface to its determination: “Nonetheless, these costs should be paid by MDL customers.”²²

The Districts have provided no reason why FF&U should be separately identified on MDL bills. To do so would only increase billing complexity and costs, and potentially increase customer confusion and dissatisfaction. The Commission should therefore reject the request as contrary to the public interest.

D. Ongoing CTC Applicability to New MDL

In their opening brief, the Districts “reserve the right to file a formal pleading with the Commission to resolve any section 369 interpretation dispute arising out of PG&E’s New MDL bills, as contemplated in D.08-02-018.”²³ PG&E does not object to the Districts’ reservation of rights. Therefore, there is no issue for the Commission to resolve at this time.

E. Customer Notice of 2009 Ongoing CTC

The Districts argue that PG&E has failed to provide adequate notice of its 2009 ongoing CTC and “urge the Commission to reject PG&E’s invitation to allow continued non-

²¹ Districts Opening Brief, p. 9.

²² D.08-02-018, p. 9.

²³ Districts Opening Brief, p. 10.

compliance...with the law and the Commission’s Rules....”²⁴ The Districts once again err.

As stated previously, PG&E takes its compliance obligations seriously. In PG&E’s 2008 ERRA forecast case, the Districts raised the identical customer notice issue, which the Commission plainly rejected: “No additional notice of this proceeding beyond that already provided is necessary.”²⁵ The Commission should not countenance the Districts’ continued re-litigation of issues, as it wastes the Commission’s and parties’ resources.

IV. CUSTOMER IMPACT ISSUES

TURN claims that “consideration of customer impact from PG&E’s proposed rate increase is properly before the Commission in this proceeding” because of the potential rate impact on customers from “this application and the companion ERRA ‘trigger’ application (A.08-06-010).”²⁶ PG&E respectfully disagrees.

Under Public Utilities Code Section 454.5(d)(3) and Decision 02-10-062, this ERRA proceeding should be focused on “ensur[ing] timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan.” As noted above, TURN raises no issue with PG&E’s forecast ERRA or ongoing CTC revenue requirements, or PG&E’s rate proposal for collecting these revenue requirements from customers.

While approval of PG&E’s instant application, in combination with other pending proceedings, will affect customer rates, that fact alone does not justify expanding the scope of this ERRA proceeding to include the myriad low-income, arrearage, shut-off, and other customer issues raised by TURN. As ALJ O’Donnell recognized, such issues are “much broader”²⁷ and should more reasonably be pursued in a broad-based proceeding involving all interested parties.

²⁴ *Id.*, p. 11.

²⁵ D.08-02-018, Conclusion of Law 9.

²⁶ TURN Opening Brief, p. 4.

²⁷ PHC Transcript, p. 5.

Notwithstanding the foregoing, the Commission should be aware that, in addition to agreeing to provide TURN with monthly arrearage and shut-off reports, PG&E has also met with TURN to discuss possible modifications to its reconnection deposit policy, as well as PG&E's planned programs for helping customers with their winter bills. PG&E intends to continue these fruitful discussions with TURN, but strongly disagrees that customer issues should be within the scope of this ERRA proceeding.

V. CONCLUSION

WHEREFORE, for the reasons set forth above and in PG&E's opening brief, application, and supporting testimony, PG&E requests that the Commission:

1. reject the arguments raised by the Districts and CMUA on the basis that they have previously been resolved by the Commission, are not supported by the law or facts, and are contrary to the public interest;
2. rule that the customer issues raised by TURN are outside the scope of this proceeding;
3. adopt PG&E's 2009 electric procurement cost forecast of \$4,926 million, including the ERRA forecast of \$4,785 million, ongoing CTC forecast of \$139 million, and PCIA forecast of – \$7.8 million,;
4. approve PG&E's proposals to update these revenue requirements in November (including updated natural gas prices) and to update its balancing account balances in December for implementation through the AET;
5. approve PG&E's rate proposal for implementing its ERRA and ongoing CTC forecast revenue requirements in rates on or after January 1, 2009;
6. admit into evidence PG&E's testimony and workpapers, and grant confidential treatment to PG&E's confidential information pursuant to Decision 06-06-066 and Public Utilities Code Sections 454.5(g) and 583;
7. issue a final decision in this proceeding by December 2008 so that rates may be implemented on January 1, 2009; and
8. grant such additional relief as the Commission may deem proper.

Respectfully Submitted,

ANDREW L. NIVEN
ANN H. KIM

By: _____ /s/
ANN H. KIM

Pacific Gas and Electric Company
P.O. Box 7442
San Francisco, CA 94120
Telephone: (415) 973-7467
Facsimile: (415) 973-0516
E-mail: ahk4@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

Dated: September 15, 2008

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL OR U.S. MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, Post Office Box 7442, San Francisco, CA 94120.

On the 15th day of September, 2008, I served a true copy of:

REPLY BRIEF OF PACIFIC GAS AND ELECTRIC COMPANY

- [XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for **A.08-06-011**.
- [] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service list for **A.08-06-011**.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 15th day of September, 2008, at San Francisco, California.

/s/
RENE THOMAS

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Rates

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(U 39 E)

AHK4@pge.com;atowbridge@daycartermurphy.com;blaising@braunlegal.com;brbc@pge.com;c
em@newsdata.com;crcq@pge.com;hayley@turn.org;jpo@cpuc.ca.gov;lawcpuccases@pge.com;
lms@cpuc.ca.gov;mmg@cpuc.ca.gov;mrw@mrwassoc.com;sha@cpuc.ca.gov;srovetti@sflower.
org;tburke@sflower.org;thunckler@daycartermurphy.com;

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ALJ Assigned: Jeffrey P. O'Donnell on June 13, 2008

CPUC DOCKET NO. A0806011 CPUC REV 08-11-08

Total number of addressees: 16

CALIFORNIA ENERGY MARKETS

425 DIVISADERO ST. STE 303
SAN FRANCISCO CA 94117
Email: cem@newsdata.com
Status: INFORMATION

SCOTT BLAISING ATTORNEY
BRAUN BLAISING MCLAUGHLIN P.C.

915 L ST, STE. 1270
SACRAMENTO CA 95814
FOR: California Municipal Utilities Association
Email: blaising@braunlegal.com
Status: PARTY

THERESA BURKE REGULATORY AFFAIRS ANALYST
SAN FRANCISCO PUC

1155 MARKET ST, 4TH FLR
SAN FRANCISCO CA 94103
Email: tburke@sflower.org
Status: INFORMATION

Maryam Ghadessi
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION

505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: mmg@cpuc.ca.gov
Status: STATE-SERVICE

TRACY K. HUNCKLER ATTORNEY
DAY CARTER AND MURPHY LLP

3620 AMERICAN RIVER DRIVE, STE 205
SACRAMENTO CA 95864
Email: thunckler@daycartermurphy.com
Status: INFORMATION

Jeffrey P. O'Donnell
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES

505 VAN NESS AVE RM 5111
SAN FRANCISCO CA 94102-3214
Email: jpo@cpuc.ca.gov
Status: STATE-SERVICE

SANDRA ROVETTI REGULATORY AFFAIRS MANAGER
SAN FRANCISCO PUC

1155 MARKET ST, 4TH FLR
SAN FRANCISCO CA 94103
Email: srovetti@sflower.org
Status: INFORMATION

MRW & ASSOCIATES, INC.

1814 FRANKLIN ST, STE 720
OAKLAND CA 94612
Email: mrw@mrwassoc.com
Status: INFORMATION

BIANCA BOWMAN CASE COORDINATOR
PACIFIC GAS AND ELECTRIC COMPANY

77 BEALE ST, MAIL CODE B9A
SAN FRANCISCO CA 94105
Email: brbc@pge.com
Status: INFORMATION

CHAD CURRAN
PACIFIC GAS & ELECTRIC COMPANY

77 BEALE ST, MAIL CODE B9A
SAN FRANCISCO CA 94105
Email: crcq@pge.com
Status: INFORMATION

HAYLEY GOODSON ATTORNEY
THE UTILITY REFORM NETWORK

711 VAN NESS AVE, STE 350
SAN FRANCISCO CA 94102
FOR: The Utility Reform Network
Email: hayley@turn.org
Status: PARTY

ANN H. KIM LAW DEPARTMENT
PACIFIC GAS AND ELECTRIC CO.

PO BOX 7442 (B30A) 77 BEALE ST
SAN FRANCISCO CA 94105
FOR: Pacific Gas and Electric Company
Email: AHK4@pge.com
Status: PARTY

FILE ROOM
PACIFIC GAS AND ELECTRIC COMPANY

LAW DEPARTMENT FILE ROOM
PO BOX 7442
SAN FRANCISCO CA 94120-7442
Email: lawcpucases@pge.com
Status: INFORMATION

Lisa-Marie Salvacion
CALIF PUBLIC UTILITIES COMMISSION

LEGAL DIVISION
505 VAN NESS AVE RM 4107
SAN FRANCISCO CA 94102-3214
FOR: DRA
Email: lms@cpuc.ca.gov
Status: STATE-SERVICE

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Total number of addressees: 16

Mitchell Shapson

CALIF PUBLIC UTILITIES COMMISSION

LEGAL DIVISION

505 VAN NESS AVE RM 4107

SAN FRANCISCO CA 94102-3214

FOR: DRA

Email: sha@cpuc.ca.gov

Status: PARTY

ANN L. TROWBRIDGE ATTORNEY

DAY CARTER & MURPHY LLP

3620 AMERICAN RIVER DRIVE, STE 205

SACRAMENTO CA 95864

FOR: MERCED IRRIGATION DISTRICT/MODESTO
IRRIGATION DISTRICT

Email: atrowbridge@daycartermurphy.com

Status: PARTY