

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



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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.

Application No. 09-02-022
(Filed February 27, 2009)

**COMMENTS OF THE DIRECT ACCESS CUSTOMER COALITION
ON THE PROPOSED DECISION OF ALJ FUKUTOME**

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Summary of the Direct Access Customer Coalition's Recommendations

DACC's recommendations with respect to PG&E's dynamic pricing program proposal are as follows:

- The Commission should reject PG&E's proposal to have Direct Access ("DA") customers charged for costs incurred to provide a dynamic pricing program developed exclusively for bundled customers that DA customers are not qualified to receive.
- The Commission should adopt DACC's proposal to have the costs associated with regard to PG&E's dynamic pricing program collected solely from the bundled customers that are eligible to participate in the program.
- If the Commission concurs with the PD's decision to defer this issue to the PG&E 2011 General Rate Case, then the final decision should delete the brief two sentence paragraph on page 133 that states that the implementation costs are by nature distribution and not generation related, as this unfairly predisposes the resolution of this issue in the future proceeding. Similarly, Finding of Fact 102 should also be deleted and Conclusion of Law 60 should be modified as shown in Appendix A hereto.

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**COMMENTS OF THE DIRECT ACCESS CUSTOMER COALITION
ON THE PROPOSED DECISION OF ALJ FUKUTOME**

Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, the Direct Access Customer Coalition (“DACC”)¹ submits these opening comments regarding the December 22, 2009, Proposed Decision (“PD”) of Administrative Law Judge (“ALJ”) David K. Fukutome regarding the Application of Pacific Gas and Electric Company (“PG&E”) for Approval of its 2009 Rate Design Window Proposals for Dynamic Pricing and Recovery of Incremental Expenditures Required for Implementation (“Application”).

I. INTRODUCTION, OVERVIEW AND SUMMARY OF DACC POSITION

In its application, PG&E proposes to record in the Dynamic Pricing Memorandum Account (“DPMA”) the incremental costs it incurs through December 2010 to implement dynamic pricing and, upon approval of its application, transfer the recorded balance from the DPMA to the Distribution Revenue Adjustment Mechanism (“DRAM”) for subsequent recovery in distribution rates.² In other words, PG&E proposes recovering the costs of the program

¹ DACC is a regulatory alliance of commercial, industrial and governmental customers who have opted for direct access for all or a portion of their loads and/or who support the principles of retail electric competition in California.

² PG&E Application, Exh. PG&E-3, p. 11-1, line 11, through p. 11-2, line 2, and p. 11-4, lines 7-19.

through distribution rates. Therefore, since DA and CCA customers pay distribution rates, they will pay for a portion of the implementation costs of a program in which they are barred from participation.

In this proceeding, DACC has opposed PG&E's proposal to recover dynamic pricing implementation costs in distribution rates. Since the proposed dynamic pricing programs do not benefit DA customers or the energy service providers ("ESPs") who serve them, the costs PG&E incurs to implement dynamic pricing should be recovered solely from PG&E's bundled service customers.

A central tenet of DACC's participation in this proceeding has been premised on the well-established ratemaking principle that costs should be allocated on the basis of causation.³ In the utility procurement context, the cost causation principle dictates that only those customers who have created the need for new programs and commitments should be required to pay for those commitments. Consistent with that principle, DACC's recommendations with respect to PG&E's dynamic pricing program proposal have been as follows:

- The Commission should reject PG&E's proposal to have Direct Access ("DA") customers charged for costs incurred to provide a dynamic pricing program developed exclusively for bundled customers that DA customers are not qualified to receive.
- The Commission should adopt DACC's proposal to have the costs associated with regard to PG&E's dynamic pricing program collected solely from the bundled customers that are eligible to participate in the program.

³ See, e.g., *Opinion Implementing Policy on Broadband Over Power Lines*, D.06-04-070, 248 P.U.R. 4th 305, 2006 Cal. PUC LEXIS 147, at p. *49 ("Costs should be allocated on a cost causation basis.").

The PD defers the issue of whether DA should pay costs of peak day pricing in future years by saying the dynamic pricing program costs are *di minimis* and that it would be preferable to discuss the allocation principle in PG&E's upcoming General Rate Case ("GRC"). Therefore, it concludes that Peak Day Pricing implementation costs through 2010 should be classified as distribution costs and allocated to all distribution customers. However, "Such allocation for 2011 and beyond should be decided in future general Rate Case Phase 2 proceedings."⁴

DACC would have strongly preferred that this issue be resolved now, in the more narrowly focused Application, rather than deferring the issue to the PG&E GRC. By their very nature, general rate cases are slow and ponderous proceedings where it is difficult to get the Commission to focus on more narrow issues such as the cost recovery for dynamic pricing programs. Further, even the schedule proposed by PG&E in its recent GRC application⁵ filed on December 21 calls for a final decision not to be issued until December 16, 2010.⁶ Since the schedules contained in utility applications are quite frequently overwhelmingly optimistic, the likelihood is that a final decision will not be issued until at least 2012. Therefore, DACC urges ALJ Fukutome and the Commission to reconsider the deferral of a decision on the topic. The issue here is one of simple equity and adherence to the Commission's traditional principles of cost causation. Direct access customers should not be required to pay for the costs of a program in which they are denied participation and which exists for the benefit of bundled service customers.

However, if it is the will of the Commission that this issue be deferred to the PG&E GRC, it must remove a single sentence from the PD that unfairly predisposes the issue in a

⁴ PD, at p. 3.

⁵ See, A.09-12-020.

⁶ Id, at p. 23.

manner contrary to DACC's position and contrary to the Commission's principles of cost causation. This is discussed in greater detail in Section III below. Further, Appendix A to these comments contains a list of the recommended changes to the proposed decision and proposed findings of fact and conclusions of law, as required by Rule 14.3(b).

II. THE PD DIRECTIVE ALLOCATING THE IMPLEMENTATION COSTS TO DISTRIBUTION RATES FOR 2010 SHOULD BE REVERSED

As discussed in DACC's opening brief, there is a fundamental inequity with regard to asking direct access customers to pay for the costs of a program in which they are ineligible to participate. In D.08-07-045, the Commission noted that, "Since dynamic pricing as discussed in this decision only relates to the generation component of the unbundled rate, DA and CCA customers would not be eligible for dynamic pricing rates offered by the utilities."⁷ This is of course a reasonable result since the PG&E program is specifically designed to induce demand reductions on peak days so as to better balance PG&E's generation portfolio. Since DA customers receive their generation service from other providers, who implement their own tools to manage their generation portfolios, excluding DA customers from program participation makes perfect sense. What doesn't make sense is the directive that, at least for 2010, DA customers should still have to contribute to the costs for implementing this program.

As direct access customers do not pay the unbundled generation component of applicable tariffs, it would be fundamentally inequitable to require them to pay costs associated with generation-related dynamic pricing programs in which they are ineligible to participate. The principle is simple: DA customers do not pay the generation component of utility rates because

⁷ D.08-07-045, p. 40.

they are ineligible to do so, having elected direct access. Similarly, DA customers should not pay for dynamic pricing program costs when they are ineligible to participate in the program.

A. The PD Disregards Cost Causation Principles

As noted in DACC's opening testimony and briefs, standard ratemaking practice in California is to assign costs, to the greatest extent possible, to the activities that cause those costs to be incurred, particularly with respect to separating distribution and generation costs.⁸ The Commission has stated, as a general rule "it is appropriate to allocate revenue responsibility among customer classes on the basis of cost causation principles."⁹ In fact, at page 8-11 of the DRA Report, beginning at line 5, DRA witness Levin says, "Cost causation has been a fundamental tenet of Commission ratemaking since adoption of marginal cost-based rates in the early 1980s. Basing rates on cost causation generally promotes both equity and economic efficiency."¹⁰

Under the well-established¹¹ regulatory principle of cost causation,¹¹ costs are allocated to those customers that created the need for the costs to be incurred.¹² Thus, the Commission has stated, as a general rule "it is appropriate to allocate revenue responsibility among customer classes on the basis of cost causation principles."¹³ It has further held that "allocation of costs based on energy consumption is consistent with our long-standing principle of allocation by cost

⁸ D.97-08-056, p. 8.

⁹ *In re San Diego Gas and Electric Company*, D.99-06-058, 194 P.U.R. 4th 521 ("Our policy has consistently been that costs should be allocated to those customers who impose them.").

¹⁰ Exh. 101, Chapter 8.

¹¹ *See, e.g., Opinion Implementing Policy on Broadband Over Power Lines*, D.06-04-070, 248 P.U.R. 4th 305, 2006 Cal. PUC LEXIS 147, at p. *49 ("Costs should be allocated on a cost causation basis.").

¹² *See, e.g., D.03-02-06*, 2003 Cal. PUC LEXIS 129, at *53 ("[F]rom a cost causation standpoint, if a distribution system is not interconnected to the grid and therefore imposes no costs on the transmission system, customers on that system should not be required to pay transmission charges.").

¹³ *In re San Diego Gas and Electric Company*, D.99-06-058, 194 P.U.R. 4th 521 ("Our policy has consistently been that costs should be allocated to those customers who impose them."); *see also* D.01-09-059, 213 P.U.R. 4th 1 (2001) (rejecting principle of cost causation in this case on grounds specific to this case).

causation.”¹⁴ The PD does not discuss these precedents at all. Rather, it simply defers the issue and by doing so ensures that DA customers will continue to be charged for costs they do not cause and for a program in which they may not participate. The inequity here is apparent and the casual disregard of the right of customers to elect other suppliers without being unfairly burdened with costs not of their making is striking. The PD can and should be reversed on this issue.

B. The PD Further Disregards the D.08-07-045 Directive that “the load serving entities that serve DA and CCA customers could themselves offer dynamic pricing options.”

D.08-07-045 provides that since dynamic pricing only relates to the generation component of the unbundled rate, DA and CCA customers would be ineligible for dynamic pricing rates offered by the utilities. Importantly, it further states that, “However, the load serving entities that serve DA and CCA customers could themselves offer dynamic pricing options.”¹⁵ The PD totally disregards this Commission directive. If PG&E is permitted to charge DA customers for the costs of implementing its dynamic pricing program, the utility frustrates the ability of DA suppliers to develop their own programs. Furthermore, while DA customers are effectively required by the PD to subsidize the cost of dynamic pricing programs run for the benefit of bundled service customers, there is no opportunity for the ESPs that serve DA customers to receive similar cost contributions from bundled service customers towards the cost of their own dynamic pricing options. This inequity was highlighted in the cross-examination of PG&E witness Pease:

¹⁴ See Amended Scoping Memo and Ruling of Assigned Commissioner Regarding Phase 2 of Tariff and Standard Contract Implementation for RPS Generators.

¹⁵ D.08-07-045, p. 40.

Q. If an LSE or an energy service provider that served DA customers wanted to offer dynamic pricing options, would bundled customers be able to participate in such a program?

A. If they elected direct access, yes.

Q. But not if they remain bundled; is that correct?

A. That's correct.

Q. And if an LSE that served direct access customers wanted to offer dynamic pricing options, would it be able to have bundled customers pay for a portion of the costs of implementing such a program?

A. If an LSE was to offer such a program, could they ask bundle customers? No, they cannot.¹⁶

What this means, of course, is that the PD effectively directs that DA customers have to pay for a share of the costs of implementing dynamic pricing for bundled customers while bundled customers have no such obligation to share in the cost of dynamic pricing programs developed for DA customers. This is fundamentally inequitable and demonstrates the logical inconsistency of the PD on this issue. As stated in the DACC opening brief, the PG&E request is, in effect, based on the age-old schoolyard bully's presumption that "What's mine is mine, and what's yours is also mine." Given that PG&E competes with the ESPs that serve DA customers on its system, it is hardly surprising that it is attempting to pass on to its competitors' customers the costs of the dynamic pricing program. However, it is an injustice that the PD casually assents to this cost-shifting without exploring the deeper cost causation and equity principles that are at play here.

The PD authorizes PG&E to have its competitors' customers pay for a program benefiting only the utility's customers. In doing so, the PD totally ignores the directive in D.08-07-045 that "the load serving entities that serve DA and CCA customers could themselves offer

¹⁶ RT, p. 200.

dynamic pricing options.”¹⁷ The LSEs that serve DA customers can hardly be expected to be able to develop and change their customers for the costs of implementing their own dynamic pricing programs when those same DA customers are also being required to pay for the costs of a utility program in which they are ineligible to participate.

For these reasons and the others discussed in the DACC opening brief, the Commission should reverse the PD’s directive that the implementation costs of PG&E’s program should be included in distribution rates.

III. IF THIS ISSUE IS TO BE DEFERRED TO THE PG&E GRC, THE PD SHOULD BE REVISED SO AS NOT TO PREJUDGE THE RESULT OF THIS FUTURE CONSIDERATION

As mentioned above, the PD basically defers the issue of cost allocation to the utilities’ next GRC, A.09-12-020. Specifically it states as follows:

Parties can recommend different revenue allocation methodologies in PG&E’s 2011 GRC Phase 2 proceeding, when the allocation of all costs are considered. It is a more appropriate proceeding for considering new or different revenue methodologies and for evaluating the need to exempt certain customer classes from specific cost responsibilities. Whether parties settle or the Commission decides, a more proper balance of parties’ interests and a fairer outcome can be achieved when taking all of this into consideration with all other issues and factors in that GRC Phase 2 proceeding.¹⁸

While DACC is not enamored of this result, it at least appreciates the fact that the PD leaves the issue open for future analysis and discussion in A.09-12-020. This provides DACC and like-minded parties the opportunity to continue its efforts to seek equitable treatment of DA customers and ratification in this context of the Commission’s traditional practices of cost causation.

¹⁷ D.08-07-045, p. 40.

¹⁸ PD, at p. 136.

However, in order that this future discussion and the ensuing results are not prejudiced by this decision, the PD must be revised to eliminate a brief two-sentence paragraph on page 133. Specifically, it reads that, “With respect to the costs themselves, CSOL, customer billing, and customer outreach costs are, by their nature, distribution and not generation costs. Such costs are normally allocated based on distribution-level EPMC.”¹⁹ The PD states that the GRC “is a more appropriate proceeding for considering new or different revenue methodologies and for evaluating the need to exempt certain customer classes from specific cost responsibilities.” It says that “a fairer outcome can be achieved” when considering these issues collectively with other cost allocation matters in the GRC Phase 2 proceeding. Stating in this decision that the costs are “by their nature, distribution and not generation costs” totally prejudices the issue and unfairly burdens DACC and others who attempt to deal with these issues in the upcoming GRC. For reasons of simple fairness, these two sentences should be deleted from the final decision adopted by the Commission. Furthermore, related Finding of Fact 102 should be deleted and Conclusion of Law 60 should be modified as shown in Appendix A hereto.

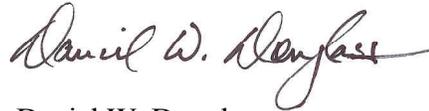
IV. CONCLUSION

For all of the reasons discussed above, the Commission should reject PG&E’s proposal to have Direct Access customers charged for costs incurred to provide a dynamic pricing program developed exclusively for bundled customers, for which DA customers are not qualified to participate. Instead, the Commission should adopt DACC’s proposal to have the costs associated with regard to PG&E’s dynamic pricing program collected solely from the bundled customers that are eligible to participate in the program. However, if the Commission is determined to

¹⁹ PD, at p. 133.

defer detailed consideration of this issue to the utility's upcoming GRC, then it must modify the decision to eliminate the language discussed in Section III above so as not to prejudice the issue and frustrate a full and free debate and discussion of the vital cost allocation issues discussed herein.

Respectfully submitted,

A handwritten signature in black ink that reads "Daniel W. Douglass". The signature is written in a cursive style with a large, sweeping initial 'D'.

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APPENDIX A

List of Recommended Changes to Proposed Decision

Suggested new language is shown by underlining and proposed deletions by strikethroughs.

At Page 133:

~~With respect to the costs themselves, CSOL, customer billing, and customer outreach costs are, by their nature, distribution and not generation costs. Such costs are normally allocated based on distribution level EPMC.~~

At page 156 (Finding of Fact 102):

~~102. CSOL, customer billing, and customer outreach costs are, by their nature, distribution and not generation costs.~~

At Page 166 (Conclusion of Law 60):

60. Allocating 2010 distribution related capital costs and related O&M costs by distribution level EPMC related allocators, and applying that allocation to all distribution customers, including DA customers, is reasonable, provided that this issue shall be reexamined in PG&E's 2011 GRC Phase 2 proceeding, when the allocation of all costs are considered.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the *Comments of the Direct Access Customer Coalition on the Proposed Decision of ALJ Fukutome* on all parties of record in proceeding *A.09-02-022* by serving an electronic copy on their email addresses of record and by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is not available.

Dated at Woodland Hills, California, this 11th day of January, 2010.



Michelle Dangott

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