

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of Pacific Gas and Electric Company (U 39-E) for Approval of Demand Response Agreements.

Application 07-02-032
(Filed February 8, 2007)

Southern California Edison Company's (U 338-E) Application for Approval of a Demand Response Resource Purchase Agreement for 2007 and 2008.

Application 07-02-033
(Filed February 8, 2007)

**REPLY COMMENTS OF THE
DIVISION OF RATEPAYER ADVOCATES**

I. INTRODUCTION

Pursuant to Rule 14.3 of the Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) timely submits these reply comments on Administrative Law Judge (ALJ) Hecht's proposed *Decision Denying Petition For Modification Of Decision 07-05-029 And Rejecting Expansion Of An Existing Demand Response Contract* (PD), filed on February 4, 2010.

II. DISCUSSION

A. PG&E's Argument That the ECS Contract Should Not Be Required to Comply With D.09-08-027 is Without Merit

On page 11, the PD states, "PG&E has not established that it is reasonable to expand the use of the 3-in-10 baseline in light of our conclusion that a 10-in-10 baseline provides a more accurate estimate of baseline energy usage." In comments, PG&E argues the Commission sets forth an impossible standard to comply with— that a "petitioner must not only explain compliance with existing, but also with future

Commission policies and decisions adopted after the petition was filed.”¹ PG&E argues that because this Petition for Modification was filed in February 2009, it is unreasonable that the PD expects it to comply with the DR program design requirements adopted in D.09-08-027, issued on August 2009.

PG&E’s arguments are not persuasive. Although PG&E’s Petition for Modification predates D.09-08-027, it does not obviate the need for all new or incremental DR program megawatts to comply with Commission’s new policy requirements. In D.09-08-027, the Commission adopted a 10-in-10 baseline for all demand response programs going forward. The fact that the ECS contract, along with other third-party aggregator contracts were excluded from this requirement, is only an acknowledgement of PG&E’s existing contractual arrangement; it does not, in any way, require the Commission to carve out such exception for any additional megawatts included in the proposed contract expansion. If ECS were to file a new contract today, the Commission would be justified in requiring ECS to comply with all of the features Commission found useful and necessary in D.09-08-027. This Petition for Modification should not serve as a loophole around the Commission’s new policy requirements adopted in D.09-08-027.

B. ECS And PG&E’s Argument That PG&E Will Have To Pay More for RA Capacity If The Petition is Denied Is Without Merit

ECS argues that “should the Commission not approve ECS’ contract amendment, PG&E will have no choice but to pay more for their Resource Adequacy (“RA”) capacity than it would should ECS’s contract amendment be approved.”² ECS further suggests that if the ECS contract expansion is not approved, PG&E will have to procure RA capacity through the purchase of new combustion turbine resources.³

¹ PG&E’s Opening Comments, pp. 2-3.

² ECS’s Opening Comments, Section IV.

³ Id.

DRA disagrees with ECS's assertions. First, a whole summer (summer 2009) has passed without the benefit of ECS's additional 20 MW or so of additional capacity included in its expansion request. There is no evidence that PG&E attempted to replace the capacity lost from the ECS contract expansion during 2009-2011 by building or procuring a new combustion turbine. PG&E has not provided any evidence that the near-term prices for short-term RA capacity in the market (if PG&E needed such capacity to replace the ECS expansion) exceed the capacity payments it would have made to ECS. Regardless, the California Energy Commission states that for 2010, the statewide electricity consumption forecast is down by around 5.4 percent and peak demand by around 3.6 percent relative to the 2007 forecast.⁴ Because forecasted demand is lower over the next two years, both the need for ECS expansion capacity and market prices for RA capacity are likely to be lower. The ECS contract expansion, if approved by the Commission, will have only two years of life (2010 and 2011). Ratepayers will be making two years worth of capacity payments whether the contract is dispatched or not. Ratepayers would be far better off by purchasing any necessary RA capacity in the short-term market, if indeed PG&E needs such capacity. By not approving the contract during 2009, the ratepayers have already saved one year's (2009) worth of capacity payments to ECS. If necessary, PG&E should continue to rely on short term capacity markets for the next two years.

In summary, DRA believes the PD is justified in rejecting PG&E's request to expand ECS contract. If appropriate, PG&E should submit a new ECS contract, as a part of the next Demand Response portfolio cycle application.

⁴ California Energy Commission, Energy Demand 2010-2020 Adopted Forecast Report: <http://www.energy.ca.gov/2009publications/CEC-200-2009-012/CEC-200-2009-012-CMF.PDF>

Respectfully submitted,

/s/ LISA-MARIE SALVACION

LISA-MARIE SALVACION

Attorney for the Division of Ratepayer
Advocates

California Public Utilities Commission

505 Van Ness Ave.

San Francisco, CA 94102

Phone: (415) 703-2069

Facsimile: (415) 703-2262

March 1, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES** to the official service list in **A.07-02-032, A.07-02-033** by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on, **March 1, 2010** at San Francisco, California.

/s/ Imelda Eusebio

IMELDA EUSEBIO

SERVICE LIST
A.07-02-032, A.07-02-033

gesmith@ecsny.com
klatt@energyattorney.com
janet.combs@sce.com
jellis@resero.com
lms@cpuc.ca.gov
marcel@turn.org
magq@pge.com
cbaskette@enernoc.com
eric@strategyi.com
dfdavy@well.com
bdicapo@caiso.com
sschare@summitblue.com
douglass@energyattorney.com
mark.s.martinez@sce.com
case.admin@sce.com
olivalm@sce.com
liddell@energyattorney.com
bruce.foster@sce.com
cpuccases@pge.com
rcounihan@enernoc.com
kea3@pge.com
jwwd@pge.com
mrw@mrwassoc.com
agartner@energyconnectinc.com
rquattrini@energyconnectinc.com
grosenblum@caiso.com
e-recipient@caiso.com
agc@cpuc.ca.gov
ang@cpuc.ca.gov
bsk@cpuc.ca.gov
jhe@cpuc.ca.gov
bkb@cpuc.ca.gov
skg@cpuc.ca.gov
ys2@cpuc.ca.gov