

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



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Application of Pacific Gas and Electric Company
to Revise its Gas Rates and Tariffs to be Effective
July 1, 2010.

(U 39 G)

Application 09-05-026
(Filed May 29, 2009)

**PACIFIC GAS AND ELECTRIC COMPANY'S REPLY BRIEF
ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW
JUDGE WONG**

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Pursuant to Rule 14.3(d) of the California Public Utility Commission's ("CPUC" or "Commission") Rules of Practice and Procedure, Pacific Gas and Electric Company ("PG&E") hereby replies to the opening Comments of Clean Energy Fuels Corporation ("Clean Energy") regarding the Proposed Decision of ALJ Wong ("PD").

I. INTRODUCTION

Clean Energy in its comments merely repeats arguments previously made while concurrently ignoring salient portions of the record^{1/} and misapplying Commission decisions and applicable law. This is all being done as a misguided effort to demonstrate that PG&E's proposed Natural Gas Vehicle ("NGV") rate excludes some costs and is therefore anticompetitive. A proper analysis of the record and Commission precedent shows that PG&E's proposed NGV rate is completely consistent with the Commission's principle of fully allocated rates.

Clean Energy's arguments are incorrect in several important regards. First, it continues to inappropriately claim that an "incremental" cost allocation methodology is necessarily inconsistent with "fully allocated" rates. Second, it misconstrues the evidence and ignores the Commission's findings regarding Southern California Gas Company ("SoCalGas") and San Diego Gas and Electric Company ("SDG&E") in G-3380^{2/} and their recent Biennial Cost Allocation Proceeding ("Sempra BCAP") Decision ("D.") 09-11-066. In both of these proceedings, the Sempra utilities used an incremental allocation methodology like PG&E. The proposals were supported by Clean Energy and were approved by the Commission. Both Commission rulings provide a direct precedent for the appropriateness of

^{1/} For example, Clean Energy only cites the direct testimony of its witness and ignores the live testimony where the witness admits that he was wrong regarding not using an incremental methodology for NGV rates.

^{2/} G-3380 was an advice filing that was utilized by those utilities to establish their NGV rate. They developed the rate using an incremental methodology. They also used the same incremental methodology in their most recent BCAP wherein a rate of \$0.668 was established. (both cases are discussed infra.)

PG&E's methodology and proposed rate in this case. Third, Clean Energy ignores the oral testimony of its own witness who recanted his testimony and admitted that an incremental methodology was appropriate for calculating the NGV rate. Finally, it inappropriately criticizes the PD and makes a variety of incorrect statements about PG&E's showing. The bottom line is that approving Clean Energy's proposed rate would be contrary to Commission principles and precedent, would generate unwarranted profits for Clean Energy and would hurt customers like municipalities and school districts who have purchased natural gas vehicles in order to be in compliance with clean air regulations.

II. PG&E'S PROPOSED NGV RATE COMPORTS WITH COMMISSION POLICY OF FULLY ALLOCATED RATES

Clean Energy incorrectly argues that fully allocated costs cannot be based upon incremental costs.^{3/} It then goes on to discuss D.95-11-035 as justification for this proposition. It repeatedly refers to the Commission's discussion of "incentive", below cost rates, and alleges that PG&E's proposed NGV rate is an "incentive" rate. This argument inappropriately mixes up two different concepts: 1) fully-allocated costs which means including all cost elements in a rate, and 2) how to allocate those costs between customer classes.

The issue addressed by the Commission in D.95-11-035 involved below cost pricing where cost elements have been left out of the rates. At p.101, it states ". . . as PG&E's rate witness points out, the rates reflect below cost pricing because they do not recover any portion of PG&E's capital outlay, maintenance or fuel taxes . . ." As discussed in the Decision, PG&E's witness led the change away from these "incentive" rates and in the direction of including all elements of cost in the rate.

This concept is different than cost allocation between customer groups who are using the service. For this purpose the Commission has two traditional approaches: "rolled-in" where all costs are divided equally among customer groups and "incremental", which is used in a variety of circumstances, including when a rolled-in approach would be unfair to a particular customer group.^{4/}

^{3/} See for example p.1, the title to Section III at p.3, and the first paragraph of Section IV at p. 5.

^{4/} PG&E provided several examples of the incremental approach in its Opening Brief dated February 19, 2010. See, e.g. D.97-08-055 and D.04-12-046

III. IN D.95-11-035 THE COMMISSION ALSO STATED (AT P.100): "PG&E PROPOSES ADDRESSING REVENUE ALLOCATION FOR ITS FUTURE PROGRAM COSTS IN ITS UPCOMING BIENNIAL COST ALLOCATION PROCEEDING." THE COMMISSION DID NOT DICTATE HOW THIS SHOULD BE DONE. IN THIS CASE PG&E HAS DETERMINED THAT, BECAUSE MORE OF THE FIXED COSTS SHOULD BE ALLOCATED TO FLEET, IT WAS APPROPRIATE TO USE AN INCREMENTAL METHODOLOGY. PG&E ALSO USED THE SAME METHODOLOGY IN ITS PRIOR BCAP.^{5/} THE COMMISSION'S DECISION IN RESOLUTION G-3380 AND THE RECENT SEMPRA BCAP PROVIDE DIRECT PRECEDENTS DEMONSTRATING THE VALIDITY OF PG&E'S METHODOLOGY

In developing their NGV rates SoCalGas and SDG&E also used an incremental rate methodology. Their methodology was to segregate the portion of costs associated with public service from the total costs, and then utilize only those segregated costs in developing the rate. PG&E used a similar approach of picking representative stations (which eliminated the bias of rural stations). In both cases, the utilities then averaged these costs. This in turn produced a result which shows the costs of providing incremental (i.e., public) service.

The Commission in G-3380 referred back to D.95-11-035 and discussed the need for a fully allocated NGV rate. The Commission (at p.10) then specifically pointed out that ". . . the utilities had estimated the current incremental cost . . ." when approving the new NGV rates. Clean Energy participated in the case, its witness in PG&E's case was actively involved in that case, and Clean Energy supported the result. (CEF, Mitchell, TR 307, Line 27 to TR 309, Line 9, TR 313-314, PG&E Ex.31).

In spite of his participation in the SoCal/SDG&E case, Clean Energy's witness in this case at first contended that he was not aware of the Commission ever using an incremental allocation methodology in any context (CEF, Mitchell, TR 273, Lines 20 to 24). When confronted with some examples, he then acknowledged that such a policy existed. (Id., TR 275, Lines 8 to10). In making his argument in support of average cost for NGV rates, the witness incorrectly argued that the concept of "fully allocated" rates was synonymous with the average cost methodology he was advocating (Id., TR 252, Lines 8 to 24). He also argued that he was not aware of any incremental methodology ever being used in the context of setting NGV2 rates (Id., TR 272, Line 19 to TR 274, Line 16).

As discussed, in G-3380 SoCal and SDG&E made Advice Letter filings (PG&E, Ex. 28 and 29) proposing a new NGV rate that was based upon the methodology used in their withdrawn BCAP (PG&E, Ex. 25, 26, 27; CEF, Mitchell, TR 311, Lines 18 to 24). That methodology is shown in PG&E, Ex. 30, and is an incremental methodology. When confronted with G-3380, Clean Energy's witness was forced to admit that an incremental methodology had been employed to set an NGV rate (CEF, Mitchell, TR 312, Lines 19 to 25). He went on to generally admit that an incremental rate could be a fully allocated rate and that his own pleading in the advice filing proceeding had made that point (CEF, Mitchell, TR 313, Lines 8

^{5/} Clean Energy's witness admitted he was aware of this (CEF, Mitchell, TR 320, Line 4 to Line 18)

to 22). He further admitted that an incremental rate could be used to remove subsidies and competitive disadvantages (CEF, Mitchell, TR 314, Lines 3-27).

The witness had testified initially under oath that he was not aware of the Commission ever having allowed an incremental approach for NGV rates (CEF, Mitchell, TR 272, Line 18 to TR 273, Line 16). In the end, he admitted that an incremental methodology had been used in SoCal's last BCAP (CEF, Mitchell, TR 295, Line 19 to TR 300, Line 11), in the advice letter proceeding which had replaced the earlier withdrawn SoCal BCAP and in PG&E's prior BCAP case (CEF, Mitchell, TR 320, Line 4 to Line 18). In fact, he specifically admitted that PG&E had used an incremental methodology in its last BCAP and that he previously had testified to that effect. (PG&E Ex. 21, p. 8 Line 2, CEF, Mitchell, TR 319, Line 18 to TR 320, Line 18). Further, he was unable to refer to any NGV case that had used an average cost, rolled-in approach (Id., TR 321, Line 1 to TR 322, Line 7). He couldn't because there never has been one. As the record shows, the incremental methodology has been used in all SoCal/SDG&E and PG&E NGV cases.

IV. CLEAN ENERGY MAKES NUMEROUS MISSTATEMENT REGARDING THE PD AND PG&E'S PRESENTATION

In Section XI, Clean Energy makes a number of erroneous assertions based on computations using aggregate data on the 19 stations that were not part of PG&E's compression cost study. This approach is incorrect and leads to false conclusions. As the PG&E witness stated, it was observed that the station usage data of PG&E's stations was stratified (TR Page 93 lines 19-25), ten stations having throughput above 10,000 therms per month and fourteen stations with less than 10,000 therms per month. Clean Energy has ignored the witness's statement about this stratification, and specifically about the fact that PG&E picked a representative sample of five stations out of the ten. The five selected stations were not the five highest throughput stations (TR Page 50 line 8). Consequently, PG&E's costs analysis, using the 5 station sample, is representative of all ten of PG&E's NGV stations using 10,000 therms per month, or more. So when Clean Energy presents data based on the 19 stations, it is including data for five stations already represented by the results of the PG&E's study. This problem leads Clean Energy to make a number of erroneous assertions. For example on page 14, Clean Energy states that the average throughput for the remaining 19 stations is 125,000 therms per year and that as such it meets the 10,000 therms per month criterion that PG&E established, and therefore all 19 stations should have been included in the study. What this really demonstrates is that the five stations out of ten that were not included in the review sample have relatively high throughputs since the other 14 stations have throughputs below 10,000 therms per month and do not belong in the NGV cost analysis. If Clean Energy wanted to explore such conclusions on the excluded stations, it should have only used the 14 stations that PG&E classified as "rural" in nature. Had that been done, this erroneous assertion never would have been made. Clean

Energy's 19-station data analysis only works if PG&E had chosen the five highest throughput stations to perform its cost study. That was not the case. It is therefore appropriate to disregard any assertions that Clean Energy has made based upon the 19-station aggregate data.

Clean energy makes two unwarranted criticisms of the PD. In section VII, the PD is criticized for referencing a "growing competitive market". PG&E agrees that this is an appropriate characterization of market conditions for the forecast period. In this context, the PD was rejecting the conclusion that a "fully competitive CNG market" existed. Such a determination would have justified an even lower NGV rate, which would not have been in Clean Energy's interests. In Section VIII, the PD is criticized for benchmarking PG&E's proposed rate with other evidence in the record. It should be noted that the PD had first independently determined the reasonableness of PG&E's methodology (PD p. 32). It is thus clear that the benchmarking was being done merely to confirm this determination. In this context, Clean Energy criticizes the PD's use of a figure of \$0.93 per therm. Clean Energy itself developed this figure and spends several pages arguing against itself. PG&E notes that another benchmark that could have been used is SoCal's recently approved rate which Clean Energy's witness claimed would be comparable. (See e.g. CEF, Mitchell, TR 323, Lines 4 to 21 and TR 331, lines 7 to 10) That rate of \$0.668 is lower than PG&E's proposed rate (Ex. 33).

In Section V, Clean Energy attempts to attack the credibility of PG&E's witness by alleging that he did not understand Commission guidelines for his study. In this context, it criticizes the witness for saying ". . . he thought that D.95-11-035 was only effective for six years, . . ." Ordering Paragraph 2 of that Decision states: "This order affects all ratepayer-funded LEV activities for the next six years." Further, the record shows that PG&E's witness did a study that included all cost elements and that comported completely with Commission policy.

In Section X, Clean Energy makes a ridiculous argument that PG&E was attempting to exclude all of the fixed costs of the public access NGV fueling stations. PG&E's study included all of the fixed costs of the stations in its study and the \$0.744 per therm rate is set to fully recover PG&E's cost of service from G-NGV2 customers.

V. CONCLUSION

For the reasons noted here, Clean Energy's opening Comments are without merit and should be disregarded.

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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 June 21, 2010 I served a true copy of:

PACIFIC GAS AND ELECTRIC COMPANY'S REPLY BRIEF TO PRPROPOSED DECISION

By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service lists for A. 09-05-026 with an e-mail address.

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 lists for A. 09-05-026 without an e-mail address.

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 June 21, 2010, at San Francisco, California.

/s/
JENNIFER S. NEWMAN