

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



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Application of Pacific Gas and Electric Company
To Revise Its Electric Marginal Costs, Revenue
Allocation, and Rate Design.

(U39M)

Application 06-03-005
(Filed March 2, 2006, Petition
for Modification filed
December 17, 2009)

**MOTION OF THE MARIN ENERGY AUTHORITY FOR
COMMENT PERIOD ON PROPOSED DECISION**

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April 1, 2010

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I. INTRODUCTION AND SUMMARY

Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the Marin Energy Authority (“MEA”) respectfully requests leave to file comments on the undated Proposed Decision issued by ALJ David Fukutome in this proceeding (“PD”). MEA further requests that an opening and reply comment period be provided for all interested parties to offer comments on the draft PD.

On December 17, 2009, a Petition for Modification of Decision (“D.”) 07-09-004 (“Petition”) was filed by Pacific Gas and Electric Company, Division of Ratepayer Advocates, The Utility Reform Network, and the Western Manufactured Housing Communities Association (hereinafter jointly referred to as “PG&E”). Specifically, PG&E recommended that the Decision be modified to provide that higher residential rates by tier be created by increasing only non-generation rate components. There were no responses to the Petition. Subsequently, an undated PD was issued on a limited circulation basis that would approve the relief requested. That PD is currently on the Commission’s draft agenda for its April 8 meeting, as item 21 on the Consent

Agenda. The consideration of, and possible grant of this motion, would require that the item be held for further consideration in order that the requested comment period be implemented.

This motion is accompanied by a concurrent motion for party status as MEA is not currently a party to this proceeding. That fact, considered in concert with others described below, gives rise to a need for all parties to this proceeding to be allowed an opening and reply comment period with regard to the PD.

II. REASONS SUPPORTING THE REQUESTED COMMENT PERIOD

A. MEA was not a Party to this Proceeding and had no Knowledge of it until the Recent Issuance of the April 8 Commission Meeting Agenda.

MEA was not a party to this proceeding and thus did not receive either a copy of the original Petition or the draft PD. At the time the Petition was filed last December, MEA was still awaiting Commission certification that its Community Choice Aggregation Implementation Plan and Statement of Intent filed with the Commission on December 4, 2009, complied with all of the requirements of P.U. Code Section 366.2(c)(4).¹ It therefore was in a state of uncertainty and had neither the budget nor the manpower to monitor every conceivable pleading that might be filed by PG&E, particularly those that were unrelated to the existing community choice aggregation (“CCA”) docket, R.03-10-003.²

Had it been aware of the Petition, MEA would have filed a strongly worded protest that would have demonstrated the significantly negative effects that its approval would have with

¹ On February 2, 2010, a letter from Commission Executive Director Paul Clanon confirmed that the Marin Plan indeed complied with the statutory information requirements.

² Order Instituting Rulemaking to Implement Portions of AB117 concerning Community Choice Aggregation.

regard to the development of CCA in PG&E's service territory. Should this motion be granted, MEA is prepared to make such a showing.³

B. The Proposed Decision Was Neither Circulated to the Proceeding Service List nor Posted on the Commission Website.

To the best of MEA's knowledge, the PD was not circulated to the service list for this proceeding. Nor, as of the date of this filing, has it been posted on the docket sheet for this proceeding on the Commission's website.⁴ Our understanding is that this was due to the fact that there were no protests or comments filed with regard to the original Petition. While this may seem reasonable to the sponsors of the Petition, it effectively denied the other, numerous parties to this proceeding any opportunity to comment on the PD. As a result, the Commission remains uninformed of the significantly negative effects on CCA development that will be caused by approval of the PD.

Rule 14.3(a) of the CPUC's Rules of Practice and Procedure allow 20 days after the date of service for comments on a proposed or alternate decision. Rule 14.3(d) provides for reply comments 5 days later. In this case, as there was no such service, this appears to have been due to the fact that Rule 14.6(c)(2) provides that the Commission "may reduce or waive the period for public review and comment on draft resolutions and proposed decisions . . . in an uncontested matter where the decision grants the relief requested." The PD in fact cites this provision. It also cites as authority Section 311(g)(2) of the Public Utilities Code. This citation is inapplicable however, as the cited code provision provides that:

³ It should also be noted that MEA's counsel in this matter was retained for the first time on March 30, 2010. Its counsel was on the service list in this proceeding, but on behalf of other clients and had no attorney client relationship with MEA for any matter prior to March 30, 2010.

⁴ See, <http://docs.cpuc.ca.gov/published/proceedings/A0603005.htm>

(2) The 30-day period may be reduced or waived in an unforeseen emergency situation, upon the stipulation of all parties in the proceeding, for an uncontested matter in which the decision grants the relief requested, or for an order seeking temporary injunctive relief.

In this case, there has been no claim of an emergency situation or a stipulation of all parties to waive the comment period. Therefore, Section 311(g)(2) is inapplicable and irrelevant.

The question therefore becomes whether reliance on Rule 14.6(c)(2) is sufficient in this case to justify waiver of the normal comment period for proposed decisions. In this case, given the Commission's responsibility under AB 117 to ensure that community choice aggregation is implemented fairly and equitably, it appears that the waiver is not appropriate. Doing so in this case denies MEA and other parties the right to express either their opposition to, or support for, the proposed decision. Most importantly, it would mean that the Commission would act without having heard valuable and directly relevant information with regard to the impact of the Petition and PD on CCA development in California.

C. The Proposed Decision Has Extremely Negative Impacts for Community Choice Aggregation that Needs to be Drawn to the Attention of the Commission.

Waiver of the comment period specifically prevents MEA from explaining to the Commission the extremely negative consequences for CCA that would arise from the approval and implementation of the PD. For example, MEA has recently executed an agreement to buy power for five years. The agreement contains various financial consequences and obligations and was premised on the existing PG&E rate structure. A significant change such as that proposed in the Petition and approved in the PD will undercut those underlying economic assumptions that are the basis for MEA's CCA plans.

Furthermore, by approving PG&E's approach in the Petition, CCAs with residential customers would be severely constrained in their ability to procure and deploy renewable energy consistent with California's Renewables Portfolio Standard ("RPS") mandates, meet and exceed AB 32 goals, and have revenues to implement energy efficiency programs, all of which are key underpinnings of MEA's CCA business plan. As it stands, it is unclear how the proposed Conservation Incentive Adjustment ("CIA") creates any benefits aimed at conservation. In fact, the Petition specifically notes that "Total bundled rates for each tier will remain unchanged, as will the total effective rates paid by bundled electric customers."⁵ As with the currently effective tiered rate structure, higher energy users are penalized with higher rates. There is no incremental conservation incentive created through the proposed changes. Rather than "level[ing] the playing field between PG&E and ESPs/CCAs,"⁶ this action instead rewrites the rules of play in the utility's favor and unravels the significant time, effort and money that MEA has invested in developing a better product for its customers and fostering, rather than quashing, competition in the PG&E service territory.

In conclusion, the right of comment on proposed decisions should be regarded as fundamental and not waived except for extremely uncontroversial and uncontested matters. While the original PD may well have been uncontested for the reasons expressed above, it is far from uncontroversial. Given the opportunity, MEA would intend to contest this matter vigorously and believes that other parties may well also wish to support such actions.

⁵ PG&E Petition to Modify, Appendix J.

⁶ PG&E Petition to Modify, at p. 7.

D. The Petition Must be Viewed in Light of the Continuing Disputes between PG&E Corporation and CCA Sponsors.

It is no secret to informed parties that PG&E Corporation has invested significant manpower and financial resources towards an effort to stymie retail competition through community choice aggregation in its service territory. MEA has in fact complained repeatedly to the Commission with regard to what it considers to be continuing and blatantly deceptive, misleading and false marketing and an advertising campaign, including funding of a third-party anti-CCA organization, the Marin Common Sense Coalition, designed specifically to drive customers away from the Marin Clean Energy program. We believe this conduct is in clear violation of the statutory duty of PG&E the utility to, “cooperate fully with any community choice aggregators” under P.U. Code Section 366.2(c)(9).

The utility has further mobilized an effort to have Proposition 16 placed on the statewide ballot in a further effort to frustrate retail competition and CCA development efforts. These efforts to stifle competitive options are inadvertently facilitated by the PD. Providing MEA and other interested parties the right to offer opening and reply comments on the PD will at least ensure that the Commission is fully informed as to the implications for CCA development, so that it can make a truly informed decision.

III. CONCLUSION

The PD states that, “The Petition proposal will level the playing field between PG&E and ESPs/CCAs by ensuring that generation rates do not vary by tier.”⁷ In fact, it does precisely the reverse by implementing a rate structure that will have a seriously negative economic effect on CCA in general and MEA in particular. Furthermore, the proposed CIA, an integral component

⁷ PD, at p. 7.

described in the Petition, is simply a contrived mechanism that does not promote further conservation relative to the current tiered generation rate structure. MEA therefore requests leave for it and all parties to this proceeding to file opening and reply comments on the undated Proposed Decision issued by ALJ David Fukutome in this proceeding. Allowing opening comments to be filed on April 26, 2010, with replies on May 3, 2010, would allow the matter to be voted upon at the Commission's May 6, 2010 meeting.

MEA expresses its appreciation to the Commission and ALJ Fukutome for their consideration of the matters discussed herein.

Respectfully submitted,



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April 1, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the *Motion of the Marin Energy Authority for Comment Period* on all parties of record in *Application 06-03-005*, 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.

Executed on April 1, 2010, at Woodland Hills, California.



Michelle Dangott

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