

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of Pacific Gas & Electric Company (PG&E) for Compliance Review of Electric Energy Resource Recovery Account Entries, Contract Administration, Economic Dispatch of Electric Resources, and Utility Retained Generation Fuel Procurement Activities for the Period January 1, 2011 through December 31, 2011 (U39E).

A.12-02-010
(February 15, 2012)

**MOTION OF THE DIVISION OF RATEPAYER ADVOCATES FOR
RECONSIDERATION AND MODIFICATION OF SCOPING MEMO'S ISSUES**

I. INTRODUCTION AND SUMMARY

Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the Division of Ratepayer Advocates (DRA) files this motion, and hereby moves for reconsideration and modification of the *Scoping Memo and Ruling of Assigned Commissioner (Scoping Memo)*. The *Scoping Memo* includes a settled matter of Commission law as issue 2: “[w]hether Standard of Conduct 4 is the appropriate standard for measuring the reasonableness of PG&E’s administration and management of its own generation facilities.”¹ DRA respectfully requests that the *Scoping Memo* be modified to delete re-examination of the appropriateness of Standard of Conduct 4 as applied to utility owned generation (UOG).

¹ Scoping Memo at 3.

II. THE COMMISSION’S ABILITY TO ENSURE UTILITIES PROVIDE SAFE AND RELIABLE SERVICE AT REASONABLE RATES PREDATES AND IS NOT CHANGED BY AB 57.

One of the Commission’s historic roles has been to ensure that utilities provide safe and reliable service to ratepayers at reasonable rates. This responsibility predates passage of AB 57 and its framework. AB 57 was intended to preclude after the fact reasonableness review of purchased power contracts. In enacting AB 57, the Legislature in no way intended to preclude the Commission from ensuring that utilities dispatch, operate and maintain their own generation in a prudent fashion. Standard of Conduct 4 simply codifies the Commission’s historic and continuing authority to review utility contract administration and dispatch, operation and maintenance of UOG.

III. STANDARD OF CONDUCT 4 WAS ADDED TO PROVIDE SPECIFIC GUIDANCE IN THE UTILITY PROCUREMENT PLANS AND ITS APPLICATION TO UTILITY PROCUREMENT ACTIVITIES IS PROPERLY CONSIDERED IN THE LONG TERM PROCUREMENT PLAN PROCEEDING

A. The 2006 LTPP Decision Governed The Procurement Activities Of PG&E During The Record Year

Rules and procedures for electricity procurement for the electricity Investor Owned Utilities (IOUs) are determined in the Long Term Procurement Plan (LTPP) Proceeding. PG&E’s 2006 LTPP governed its procurement in 2011 (the Record Year at issue in the instant proceeding). PG&E’s 2006 LTPP was established in D.07-12-052, which arose out of R.06-02-013. That decision established a multitude of rules and procedures for the IOUs’ electricity procurement. That Decision was issued on December 21, 2007 and is final. Decision 07-12-052 did not change the standard for electricity procurement and therefore, PG&E remains compelled to procure all electricity pursuant to Standard of Conduct 4.²

² Decision 02-10-062 established that the IOUs must comply with Standard of Conduct 4. Standard of Conduct 4 is discussed in more detail under Section III.C of the instant motion.

The Energy Resource Recovery Account (ERRA) annual compliance application confirms that the IOU followed various aspects of its LTPP. The annual compliance process does not establish electricity procurement rules. Some aspects of an LTPP are checked via the Quarterly Compliance Reports (QCRs), while others are checked through the annual compliance applications. Compliance with Standard of Conduct 4 has been ordered to be reviewed in the annual ERRA compliance applications. The instant Application is an annual ERRA compliance application.

Least cost dispatch is addressed in two separate parts of PG&E's 2006 LTPP. First, PG&E's 2006 LTPP provides:

Consistent with Commission decisions, PG&E economically dispatches its portfolio subject to the contractual and operating limitations of the resources in the portfolio. In implementing least cost dispatch, PG&E dispatches resources or purchases energy with the lowest incremental cost of providing energy, which includes the variable operating costs of its own resources or resources under its control and the market cost of generation. PG&E uses incremental cost dispatch for all resources within its portfolio. This includes utility-owned generation, bilateral contracts, allocated DWR contracts, and resources available to PG&E from the marketplace.³

In addition, PG&E's 2006 LTPP incorporates Commission Standard of Conduct 4 which provides in part:

The utilities shall prudently administer all contracts and generation resources and dispatch the energy in a least-cost manner. Our definitions of prudent contract administration and least cost dispatch is the same as our existing standard.⁴

Raising the Standard of Conduct 4 issue in this compliance application appears to collaterally attack the decision approving PG&E's LTPP. Determining in the instant

³ PG&E's 2006 LTPP, Sheet No. 9. PG&E's 2006 LTPP was included in PG&E's workpapers.

⁴ *Id.*, Sheet No. 85.

proceeding that SOC 4 does not apply to PG&E's procurement would overrule D.07-12-052.

B. PG&E'S Dispute Over Standard Of Conduct 4 Appears To Be Based On Semantics.

The Scoping Memo apparently included this issue based on PG&E raising it in its Response to DRA's Protest.⁵ PG&E appears to be confused. PG&E's application states that UOG is subject to review under a reasonable manager standard. Then in its response PG&E states that DRA wants to conduct an after-the-fact reasonableness review. For practical purposes, this may be a distinction without a difference. Because DRA is reviewing in this ERRA application whether PG&E reasonably managed dispatch, operation and maintenance of its UOG, that review is of something that happened in the past and as such is necessarily after the fact. The standard to which PG&E is being held is whether its actions were reasonable. In past ERRA compliance proceedings, where DRA and PG&E have disagreed about including review of the prudence of management of PG&E's UOG, PG&E has agreed to "include as an affirmative showing in its application and supporting testimony the issue of whether the operation of its utility retained generation units, including forced maintenance outages, was reasonable."⁶ PG&E has agreed to make such a showing in this application. Thus, it is unclear why PG&E continues to argue that that Standard of Conduct 4 is not the appropriate standard of review. It may be a matter of semantics. At any rate, as a practical matter, there is no material dispute between the parties for the Commission as to the appropriateness of Standard of Conduct 4, because PG&E has in fact made the affirmative showing as to the reasonableness of operations issue, and therefore the appropriateness of Standard of Conduct 4 issue should be deleted from the scope of the proceeding.

Notably, neither Southern California Edison nor San Diego Gas & Electric have opposed the application of Standard of Conduct 4 in their respective ERRA proceedings.

⁵ Reply of PG&E to DRA's Protest of A.12-02-010 at p. 2.

⁶ DRA Protest of A.12-02-010, FN 8, number 4, at 4.

Should PG&E and DRA not be able to reach an agreement in the future as to the application of Standard of Conduct 4 to the operation of its utility owned generation units, including forced maintenance outages, then PG&E may seek to raise the issue in the LTPP docket as that is where Standard of Conduct 4 is formally applied to each utility.

**C. Litigating Standard Of Conduct 4 In This Proceeding
Poses A Collateral Attack On The Long Term
Procurement Plan Proceeding**

If PG&E would like to remove the requirement to comply with Standard of Conduct 4 it should do so in the LTPP proceeding. That is the appropriate forum in which to litigate a settled matter of Commission law that applies to the three major electric utilities in California.

The Energy Resource Recovery Account (ERRA) process is modeled after the Energy Cost Adjustment Clause (ECAC) balancing account and based on Assembly Bill (AB) 57. The first two major Commission decisions regarding ERRA were referred to by the Commission as the ‘October Decision’ [D.02-10-062] and the ‘December Decision’ [D.02-12-074], and those names are used in the instant document as well. The October and December decisions resulted from Rulemaking 01-10-024 and apply to PG&E, Southern California Edison Company (SCE) and San Diego Gas and Electric Company (SDG&E).

The ‘October Decision’ ordered that the utilities comply with minimum standards of conduct, including Standard of Conduct 4 (SOC 4), which states:

The utilities shall prudently administer all contracts and generation resources and dispatch the energy in a least-cost manner. Our definitions of prudent contract administration and least cost dispatch are the same as our existing standard.⁷

⁷ October Decision, p. 52 and Conclusion of Law 11, p 74.

In D.02-12-074, the Commission elaborated on the definition of SOC 4 by indicating that “least-cost dispatch” includes the purchase and sale of energy to achieve the most cost-effective mix of resources and minimize cost to ratepayers.⁸ Pursuant to this definition of SOC 4, the Commission recently summarized the appropriate review of least-cost dispatch in SCE’s 2009 ERRA compliance proceeding as follows:

The question to be addressed in the ERRA proceeding regarding least-cost dispatch is whether the utility has complied with this standard -- that is, (1) whether the utility has dispatched the dispatchable contracts under its control “when it is most economical to do so,” (2) whether it has “disposed of economic long power and purchased economic short power in a manner that minimizes ratepayer costs,” and (3) whether it has used “the most cost-effective mix of its total resources, thereby minimizing the cost of delivering electrical services.”²

PG&E quotes this summary of the requirements for evaluating least-cost dispatch in its Application and does not dispute the application of Standard of Conduct 4 to the review of its contract administration.¹⁰ PG&E then explains that operation of UOG resources is subject to review under a reasonable manager standard.¹¹ However, PG&E fails to recognize that Standard of Conduct 4 applies to dispatch, operation and

⁸ Specifically, D.02-12-074 as modified by D.03-06-076 states:

Prudent contract administration includes administration of all contracts within the terms and conditions of those contracts, to include dispatching dispatchable contracts when it is most economical to do so. In administering contracts, the utilities have the responsibility to dispose of economic long power and to purchase economic short power in a manner that minimizes ratepayer costs. Least-cost dispatch refers to a situation in which the most cost-effective mix of total resources is used, thereby minimizing the cost of delivering electric services. The utility bears the burden of proving compliance with the standard set forth in its [approved procurement] plan.

(D.02-12-074, Ordering Paragraph 24b.)

² D.10-07-049, pp. 5-6, quoting D.02-12-074, Ordering Paragraph 24b.

¹⁰ A.12-02-010, pp. 5-6.

¹¹ *Id.*, at p. 6.

maintenance of utility owned generation resources, as well to administration of contracts. The reasonableness of PG&E's management of both areas must be considered for the Commission to determine whether PG&E realized "the most cost-effective mix of its total resources."

Standard of Conduct 4 is an element of each IOU's procurement plan.¹² The Commission has specifically included in the procurement plans the requirement that the "utility bears the burden of proving compliance with the standard set forth in its plan."¹³ This language was added to each IOU's procurement plan to avoid

the dangers of this Commission agreeing to an interpretation of AB 57/SB 1976 that would remove our continuing oversight of utility operational performance and, thereby, remove the Commission's ability to meet its statutory requirement to assure 'just and reasonable' rates.¹⁴

In contrast to LTPP proceedings, historically DRA has been the only responding party in ERRA compliance applications. It would be inappropriate to litigate an issue of such magnitude as Standard of Conduct 4 in an individual utility's ERRA compliance application. PG&E is the only utility that objects to applying Standard of Conduct 4 to its management of its Utility-Owned Generation facilities. If PG&E believes that Standard of Conduct 4 is the incorrect standard of review of the management of its utility-owned generation, the appropriate place to address that issue would be the long term procurement plan proceeding, not its ERRA compliance application.

¹² D.05-01-054, p. 2.

¹³ December Decision, p. 54 and Order 24; and see also, D. 05-01-054, p. 5 and D.05-04-036, p. 15-6.

¹⁴ December Decision, p. 53-4. The 'just and reasonable rate' requirement is contained in PU Code Sections 454.5(d)(1) and 454.5(d)(5).

IV. CONCLUSION

For the reasons stated herein, DRA urges that the Commission modify the Scoping Memo by excluding the Standard of Conduct 4 issue:

“Whether Standard of Conduct 4 is the appropriate standard for measuring the reasonableness of Pacific Gas & Electric (PG&E’s) administration and management of its own generation facilities.”

Respectfully submitted,

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