BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Application of Pacific Gas and Electric Company (U39E) for Review of Entries to the Energy Resource Recovery Account (ERRA) and Renewables Portfolio Standard Cost Memorandum Account (RPSMA), and Compliance Review of Fuel Procurement for Utility Retained Generation, Administration of Power Purchase Contracts, and Least Cost Dispatch of Electric Generation Resources for the Record Period of January 1, through December 31, 2010 and for Adoption of Electric Revenue Requirements and Rates Associated with the Market Redesign and Technology Upgrade (MRTU) Initiative.	A.11-02-011 (Filed February 15, 2011)

PROTEST
OF THE DIVISION OF RATEPAYER ADVOCATES

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PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES

I. INTRODUCTION

Pursuant to Rule 2.6 of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) timely submits this Protest to Pacific Gas & Electric Company's (PG&E) Application and its supporting testimony, Application (A.)11-02-011, calendared on February 17, 2011. PG&E's Application requests a Commission finding that PG&E made appropriate entries to its Energy Resource Recovery Account (ERRA) balancing account for calendar year 2010 (the Record Period) and that it complied with its obligations regarding its contract administration and Least Cost Dispatch (LCD) of electric resources during the Record Period. In this application, PG&E requests Commission's approval of the ERRA expenses totaling $3,574 million as of December 31, 2010; this amount includes interest and undercollection from the 2009 Record Period.

PG&E's Application also seeks recovery of $47.2 million for expenses related to the Market Redesign Technology Upgrade Memorandum Account (MRTUMA).

II. DISCUSSION

A. Background

The Energy Resource Recovery Account (ERRA) is a balancing account to record and track energy procurement costs (fuel and purchased power) against recorded revenues (ERRA revenue requirement). In other words, it tracks the difference between the authorized revenue recovered in rates and the cost of power. It is modeled after the Energy Cost Adjustment Clause (ECAC) balancing account and based on Assembly Bill (AB) 57. The first two major ERRA Commission decisions were referred to by the Commission as the 'October Decision' [D. 02-10-062] and as the 'December Decision' [D.02-12-074] and those names are used in this pleading as well.

The purpose of ERRA is to "[e]nsure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan."[1] To accomplish this the "Commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan."[2]

The purpose of AB 57 and ERRA is to re-establish a procurement mechanism after the energy crisis. A primary component of ERRA is reliance on compliance with a Commission-approved procurement plan.[3] Investor Owned Utilities (IOUs) recover 100% of their fuel, purchased power, and other related costs through the ERRA account. It is a pass-through account and thus the costs are not rate based.

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

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[1] Public Utilities Code (PU Code) §454.5(d)(3).

[2] PU Code §454.5(d)(3).

[3] D.03-06-067, 12; D.05-01-054, p. 8.

> The utilities shall prudently administer all contracts and generation resources and dispatch the energy in a least-cost manner.[4]

It is important to emphasize that this standard also applies to administration of contracts and generation resources in addition to Least Cost Dispatch. SOC 4 is an element of each Investor Owned Utility's (IOU) procurement plan.[5] 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."[6] 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."[7]

B. Issues Anticipated

1. Consideration and Comparison of All Three Utilities' MRTU Expenses in the Same Proceeding Will Be Efficient and In the Ratepayers' Interest

a) MRTU Presents a Dramatic Increase in Complexity

Market Redesign Technology Upgrade (MRTU) is a comprehensive program intended to enhance the efficiency of generation dispatch and interact with the California Public Utilities Commission's (CPUC) Resource Adequacy program to increase grid reliability and remedy flaws in the California Independent System Operator (CAISO) previous markets.[8] The FERC ordered a comprehensive redesign of the California electricity market structure.[9]

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[4] October Decision, p. 52 and Conclusion of Law 11, p 74.

[5] D.05-01-054, p. 2.

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

[7] December Decision, p. 53-4. The 'just and reasonable rate' requirement is from PU Sections 454.5(d)(1) and 454.5(d)(5).

[8] The CAISO was established in 1996. In D.95-12-063 the Commission ordered the Investor Owned Utilities (IOUs) to transfer operational control of its transmission facilities to the CAISO, stating:

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The MRTU project has been in development since 2002 and was launched April 1, 2009. The implementation of MRTU required sweeping changes to several of the IOUs energy dispatch processes; managing the overall energy supply portfolio risk, and reconciling transactions related to the trading and procurement of electricity.

Some significant changes in the CAISO's markets resulting from MRTU are:

- The move from three zonal wholesale pricing areas to approximately thirty two hundred nodal price points (nodes) for generators.
- The introduction of a centralized day-ahead energy market.
- The co-optimization of three markets simultaneously; energy, ancillary services, and grid congestion; which were previously managed separately.
- The introduction of Residual Unit Commitment (RUC) process, which identifies resources needed for grid reliability based on the outcomes of the Day-Ahead market and before the Hour-Ahead market
- The introduction of Congestion Revenue Rights, a financial hedge against transmission costs, to replace the prior system of physical transmission rights.

These changes required new Information Technology (IT) transmission systems on the part of the CAISO as well as entities participating in California's wholesale energy markets. The implementation of these systems required the IOUs to make significant changes to their IT systems in order to interface with the CAISO and accommodate new energy dispatch and transmission management systems as also required by Public Utilities Code §8360 and D.10-06-047.

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> The ISO will have primary responsibility for the determination of the final operation and dispatch of the system to preserve reliability and achieve the lowest total cost for all uses of the transmission system. The ISO will have control over the operation of the transmission facilities. The participating investor and publicly owned utilities will continue to own those facilities and be responsible for their maintenance.

D.95-12-063, p. 26.

[9] D.09-12-021, p.3 fn. 1.

b) Procedural History

Each of the three major IOUs opened a MRTU-associated memorandum account pursuant to Commission authority (MRTU Memorandum Account or MRTUMA)[10] to record incremental capital and Operations and Maintenance (O&M) expenses associated with implementation of MRTU's new systems.[11] These incremental expenses and the associated revenue requirements to recover these costs in the three IOUs' MRTUMAs are to be reviewed by the Commission to ensure that they are prudent, reasonable and recorded correctly.

Each year's costs are discrete applications for review of those costs that must "primarily focus on whether the costs can be verified and are incremental."[12] Care must also be taken to avoid any double recovery, so the possible inclusion of embedded costs[13] must also be examined. All proposed MRTU implementation costs must, therefore, be evaluated under the post-facto incremental standard outlined below:

1) Are the costs mandated for MRTU?
2) Have those costs been incurred? and,
3) Have imbedded costs been removed leaving only the replacement costs above what was allocated to MRTU?

Each of the MRTUMA Resolutions ordered the respective IOU to apply for rate recovery of the MRTU costs in conjunction with its annual ERRA application.[14] Thus, while cost recovery for MRTUMA is part of the same proceeding that seeks various ERRA determinations, it is not judged by the same standards, generally, as those that apply to ERRA issues.

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[10] Resolution E-4087 (SCE), Resolution E-4093 (PG&E), and Resolution E-4088 (SDG&E).

[11] Resolution E – 4087 (SCE), Paragraph 2; Resolution E-4093 (PG&E), Paragraph 2; and Resolution E-4088 (SDG&E), Paragraph 2.

[12] D.09-12-021, p. 3, fn. 1.

[13] Imbedded costs are those internal expenses and labor already included in rates by virtue of ongoing activity, but maybe allocated or transferred to MRTU accounts.

[14] Resolution E -4087 (SCE), Paragraphs 1 & 2; Resolution E-4093 (PG&E), Paragraphs 2; and Resolution E-4088 (SDG&E), Paragraphs 2.

The first application for recovery of MRTU implementation expenses was A.09-04-002 where SCE sought $5.10 million in O&M expenses for 2007 and 2008. The Commission ruled that request was premature without the associated capital spending and ordered SCE to file a supplemental to its already filed A.10-04-002 application.[15] SCE included a revised request for recovery of MRTU implementation expenses in its April 2010 ERRA application (A.10-04-002). SCE's recovery request is for $56.30 million in capital for years 2006, 2007, 2008 and 2009 and $3.60 million in O&M expenses for 2009, resulting in a revenue requirement request of $6.05 million for 2009. SCE subsequently submitted a supplemental filing requesting 2007 and 2008 expenses. Both its Application and Supplemental filings are currently under review.

PG&E filed its annual ERRA forecast application in June, 2009 and sought MRTU costs recovery for years 2007, 2008 and 2009, but the Commission deferred that request to the next PG&E ERRA compliance filing in February, 2010 because of incomplete recorded data to review the reasonableness of these costs. PG&E then refiled its request in A.10-02-012 and requested $86.4 million in capital and $12.1 million in O&M expense, seeking $18.3 million for the revenue requirement equivalent for these capital and O&M expenses for years 2007, 2008, 2009, 2010 and 2011.

In its 2010 ERRA Compliance (A.10-06-001), SDG&E requested $3.01 million in capital and $2.60 million in O&M expenses for years 2007, 2008 and 2009 resulting in a request of $2.80 million in revenue requirement for these record periods.

c) MRTU Expenses Should Be Examined Across All IOUs

DRA is concerned by SCE, PG&E and SDG&E inconsistent requests for MRTU costs recovery. As indicated above, the three IOUs MRTU costs have varied widely. Because of the changes presented by the MRTU system and the common factors driving all three utilities' reasonableness requests, their applications should be reviewed at the same time in a consolidated proceeding that is separate from future and pending ERRA

[15] D.10-07-049, Conclusion of Law 26.

applications.[16] Resolving these issues in a consolidated fashion will be efficient, fair and in the Commission's, utilities' and ratepayers' interests.

The MRTU project is unique. The MRTU market launch is the beginning of a multi-year process the CAISO will undertake to implement additional market design features as part of the FERC mandated MRTU initiative.[17] Given the complexity and large-scale nature of MRTU, the implementation approach that the CAISO described to FERC involves three major releases: Release 1, which is the initial implementation that occurred on March 29, 2009; Release 1A, which includes Virtual Bidding, which was to be implemented within 12 months of Release 1; and Release 2 to be implemented within three years of the initial implementation date.[18] The costs of these ongoing releases are unknown and the dates must be assumed to be fluid. Though the implementation costs for each IOU are expected to be different, they are driven by common factors based on CAISO directives and FERC Tariff and technical requirements. Therefore, the best approach would be to review the MRTU implementation costs incurred by the three IOUs in a consistent manner, best achieved by:

1) bifurcating those portions of A.10-02-012 (PG&E 2010 ERRA Compliance), A.11-02-011 (PG&E 2011 ERRA Compliance, A.10-04-002 (SCE 2010 ERRA Compliance), and A.10-06-001 (SDG&E 2010 ERRA Compliance) that seek recovery of costs associated with the implementation of MRTU and then,

2) consolidating those portions into in a single proceeding with a new application number.

Considering similar costs for all three IOUs in one proceeding is not new, and has been used in Resource Adequacy, Demand Response, Energy Efficiency, and Low

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[16] A.10-02-012 (PG&E 2010 ERRA Compliance), A.10-04-002 (SCE 2010 ERRA Compliance), and A.10-06-001 (SDG&E 2010 ERRA Compliance).

[17] *FERC Order Conditionally Accepting the California Independent System Operator's Electric Tariff Filing to Reflect Market Redesign and Technology Upgrade*, issued on September 21, 2006 in Docket No. ER06-616 et. al.

[18] 116 FERC ¶ 61,274.

Income Energy Efficiency proceedings.[19] Such a consolidated approach better ensures that the Commission treats similar issues in a similar fashion to ensure accurate cost recovery by the IOUs and the protection of ratepayers from unnecessary costs and rates. A bifurcation of the MRTU portions of the IOUs' pending ERRA applications would not result in the filing of new applications or result in the need to re-serve new applications on the public pursuant to Rule 3.2. Consolidating the IOUs' applications would allow for common scheduling and comparison review of those MRTU implementation costs by the Commission and parties.

DRA has made this recommendation in each of the proceedings listed just above. In the earliest to reach hearing (A.10-02-012, PG&E 2010 ERRA Compliance), ALJ Barnett appreciated the value of such action when he stated that "there should be a Rulemaking on this for all of the utilities in California who are involved in MRTU." RT, 21:1-3.[20]

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[19] ALJ Ruling, July 02, 2008 in A. 08-06-001, A. 08-06-002 and A. 08-06-003 (Demand Response); D.07-10-032, followed by A.08-06-004 (Energy Efficiency); A.08-05-022 (Low Income Energy Efficiency).

[20] For convenience, the majority of the discussion was:

> ALJ BARNETT: -- where, as I understand DRA's position, you want a separate Rule-making proceeding, and you want this whole MRTU to be deferred?
>
> MR. SHAPSON: Yes, your Honor.
>
> Well, we're -- what -- what our recommendation is that the three major IOUs in the state be ordered to bifurcate out or that the Commission bifurcate out their now-pending MRTU Applications and that that portion of these cases be consolidated together so that all three IOUs' MRTU expenditures can be assess in one proceeding.
>
> So as opposed to you becoming educated about MRTU and the cost associated with MRTU and a judge in the Edison case being educated about costs associated with implementing MRTU and a third judge in the San Diego ERRA compliance case be[ing] educated about the implementation costs of MRTU, that those be -- those -- those three are now pending, that those be bifurcated out of those ERRA cases and that that portion of the Application be consolidated together in one proceeding.
>
> Whether you call it an Application or a Rulemaking I don't think is so relevant; I think what's important is that one judge deal with the implementation costs of MRTU.
> ALJ BARNETT: All right. Well, as I read this material I got the impression that DRA wanted two things: one, to defer any findings on MRTU and have a separate proceeding where all of the utilities would come in for their MRTU expenses.

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Well, as I read this, and what my recommendation is going to be, is that the MRTU expenses that have been already booked that we've just discussed shall be decided in this case; and from what I've seen there doesn't seem to be any objection to the actual numbers.

But I agree with DRA that this should be -- there should be a Rulemaking on this for all of the utilities in California who are involved in MRTU.

But the way these things get done, someone has to prepare a Rulemaking, and so I'm going to order DRA in their -- in your brief to prepare a form of Rulemaking that I will bless and send it up to the Commission.

MR. SHAPSON: (Nodding head)

ALJ BARNETT: Because personally I just can't understand why there are three separate MRTUs. This is all Information Technology, as I understand MRTU. Is that correct, Mr. Huffman?

MR. HUFFMAN: The bulk of the expenses, although not all of the expenses, are incurred by our Information Technology Department. That's correct.

ALJ BARNETT: All right. And I assume your -- your department is a little different than Edison's and you're both a little different than SDG&E, and so you all have different kinds of numbers, and they are all over the lot; and that's perhaps something where this Commission should impose a set of rules so that you're all the same; and plus it will be one decision with one number, and that number is so high that I -- I was astonished when I saw the amount of money that went into this Information Technology --

MR. HUFFMAN: Uh-huh.

ALJ BARNETT: -- all of which is paid for by the ratepayers, none of which is paid for by the ISO, the FERC, or the utility. Am I correct in that, Mr. Huffman?

MR. HUFFMAN: The expenses PG&E incurred will be borne by PG&E's ratepayers.

…

ALJ BARNETT: The ratepayers pay for everything, and when you're talking about hundreds of millions of dollars for something that I have no idea of what its value is --

MR. HUFFMAN: Uh-huh.

ALJ BARNETT: -- I would like the Commissioners to see the amount of money in one place that is going out for information -- for computers; so the way to do that is for DRA to prepare a Rulemaking, file it with your brief; and if it seems reasonable, you'll see it in my decision, that is, if my decision ever gets to the Commission, which you all know how this place operates.

RT, 19:13 to 23:4, emphasis added. The proposed Order Instituting Rulemaking requested by ALJ Barnett was attached to DRA's Opening Brief in that proceeding; filed September 28, 2010.

The rationale described above is especially applicable to consideration of all three IOUs' requests for reimbursement of expenses relating to implementation of MRTU. Since the IOUs' MRTU implementations are all driven by common CAISO directives, tariff structure, and technical requirements, DRA believes the best approach would be to review MRTU implementation costs in a consistent and comparative manner. This will best be achieved by a consolidated Commission proceeding that looks at MRTU expenditures of all three IOUs. Consideration of the three utilities' requests together will also save considerable time, effort and expense by the Commission. Bifurcation and consolidation will, as one example, allow DRA and the three IOUs to educate one Judge about MRTU and its implementation requirements as opposed to three judges needing to learn that subject matter.

A final decision based on a full record has not been issued by the Commission.

2. Issues in Scoping Memo

DRA has already begun its discovery effort and intends to conduct further discovery and review of PG&E's Application and supporting testimony. DRA and PG&E have in the past disagreed about the appropriateness of inclusion of review of the prudency of management in PG&E's UOG in the ERRA proceeding. PG&E and DRA, however, have reached agreement on this issue for this instant proceeding and for next year's proceeding.[21]

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[21] DRA and PG&E have agreed as follows:

> 1. For the Record Period covered by A.11.-02-011 (PG&E's 2010 ERRA Compliance Proceeding), PG&E will address the issue of whether the operation of its utility-retained generation units, including forced maintenance outages, was reasonable through discovery, as it has in its previous ERRA compliance proceedings. Additionally, PG&E will continue to make its subject matter experts available to DRA for face-to-face discussions on forced outage issues and the parties agree to make all reasonable efforts to resolve such issues informally. If DRA and PG&E are unable to informally resolve issues regarding the reasonableness of utility-retained generation forced outages for the record period covered by A.11-02-011, then, subject to the provisions of paragraphs 2 and 3 below, each party retains its respective right to present testimony/rebuttal testimony on unresolved issues.
>
> 2. DRA will not assert in the A.11-02-011 proceeding that PG&E failed to adequately address the issue of whether the operation of PG&E's utility-retained generation units, including forced

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DRA anticipates issues will arise regarding the following:

- whether PG&E administers and manages its own generation facilities prudently (SOC 4);
- whether PG&E administered and managed its QF and non-QF contracts in accordance with the contract provisions and otherwise followed Commission guidelines relating to those contracts (SOC 4);
- whether PG&E achieved Least Cost Dispatch of its energy resources (SOC 4);
- whether the entries in the ERRA are reasonable;
- whether the Market Redesign and Technology Upgrade (MRTUMA) claim for relief should be bifurcated out of the instant case and consolidated with similar applications by the other two Investor Owned Utilities to be considered together; and,
- whether the instant application was properly served pursuant to Commission Rules of Practice and Procedure, Rule 3.2.[22]

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maintenance outages, was reasonable on the basis that PG&E did not address this issue in its application or any supporting testimony in A.11-02-011.

3. PG&E will resend its Data Responses for Master Data Request Questions 3, 10-22, 25, 26 and 27, concerning utility-retained generation outage issues, without its scope-related objections and PG&E will not otherwise assert that DRA does not have the right to address the issue of whether the operation of PG&E's utility-retained generation units, including forced maintenance outages, was reasonable, because such issue is outside the scope of issues to be considered in A.11-02-011.

4. Next year only, in PG&E's 2011 ERRA Compliance Review Application covering the Record Period January 1-December 31, 2011, PG&E will 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.

[22] This issue is listed here because the Compliance Filing pursuant to the Commission's Rules of Practice and Procedure, Rule 3.2, has not been made as of the date of this Protest. DRA may withdraw this as an issue at the Pre-Hearing Conference (PHC) if it receives the compliance filing with sufficient time to review that filing prior to the PHC.

As discovery continues, DRA expects other issues may arise during the course of this proceeding and reserves the right to amend this protest and/or seek other relief as appropriate.

III. SCHEDULE

DRA agrees with the preliminary determination that this is a ratesetting proceeding and that hearings be scheduled in this proceeding. DRA also believes that hearings may be avoided through more informal procedures, but reserves comment on that pending additional discovery and analysis. DRA reviewed PG&E's proposed schedule, and proposes slight modifications, as follows:

Application Calendared	February 17, 2011
Protest Filed	March 21, 2011
Prehearing Conference	early-April, 2011
DRA/Intervenor Testimony	mid-July, 2011
Utility Reply Testimony	end of July, 2011
Hearings (if necessary)	end of August, 2011
Opening Briefs	mid-September, 2011
Reply Briefs	end of September, 2011
Proposed Decision (PD)	end of October, 2011
Comments on PD	mid-November, 2011
Reply Comments on PD	end of November, 2011
Final Decision	December 2011

DRA's modifications to PG&E's proposed schedule are reasonable and would not prejudice PG&E's request for a final Commission decision by the end of the year. As is typical with each ERRA compliance review application, the testimony and supporting documents are voluminous and the scope of review requires a significant amount of time for DRA to make a thorough evaluation.

However, given that PG&E's recent ERRA compliance review applications have not required extensive hearings, DRA believes the schedule can be further accelerated if and when parties make a determination that hearings may not be necessary and/or may be limited to specific issues.

IV. CONCLUSION

For the reasons stated herein, DRA urges the adoption of the issues it suggested and the schedule it proposed.

Respectfully submitted,

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