



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**FILED**

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Application of PACIFIC GAS AND ELECTRIC COMPANY to Recover Costs Related to the January 2008 Storms Recorded in the Catastrophic Event Memorandum Account (CEMA) Pursuant to Public Utility Code Section 454.9. (U39E)

Application 08-03-017  
(Filed March 28, 2008)

## **PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES**

Pursuant to Rule 2.6 of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) submits its Protest to the Application of Pacific Gas and Electric Company (PG&E) to Recover Costs Related to the January 2008 Storms Recorded in the Catastrophic Event Memorandum Account (CEMA) Pursuant to Public Utility Code Section 454.9 (Application).

PG&E filed this Application on March 28, 2008 and it was calendared on April 3, 2008. In the Application, PG&E requests that the Commission find recoverable \$27.47 million of the costs recorded in PG&E's CEMA for the January 2008 Storms and seeks authority to recover \$19.24 million in electric revenue requirements for the time span of 2008 through 2010.<sup>1</sup> PG&E also requests a potential effective recovery date and asks that the Commission allow PG&E to record the requested revenue requirement to the Distribution Revenue Adjustment Mechanism.<sup>2</sup>

<sup>1</sup> Application at 14.

<sup>2</sup> *Id.*

## I. IDENTIFIED ISSUES

### A. **DRA cannot effectively determine if the costs recorded in PG&E’s CEMA were in fact incremental, or the extent to which they were incremental, until PG&E provides complete recorded 2008 data.**

According to California Public Utilities Code section 454.9(b):

“The costs, including capital costs, recorded in the accounts set forth in subdivision (a) shall be recoverable in rates following a request by the affected utility, *a commission finding of their reasonableness*, and approval by the commission.”<sup>3</sup>

The code thus states the fundamental reasonableness analysis that the Commission must conduct in order to find recorded costs for CEMA-eligible events recoverable in rates. Further, as articulated in D.08-01-021, “[o]ne of the accepted practices in CEMA recovery is to only allow recovery of incremental costs.”<sup>4</sup> Moreover, Resolution E-3238, which authorized the establishment of CEMA accounts, indicates that the level of loss already built into rates is a relevant factor in a CEMA analysis.<sup>5</sup> Thus, a key consideration in the requisite reasonableness analysis is the determination of whether or not costs recorded in the CEMA were in fact incremental.

In the instant Application, PG&E does not provide enough data to ascertain whether its recorded costs were incremental, or the extent to which they were incremental. PG&E’s Application makes the assertion that: “[i]n determining the costs to be recorded in the CEMA, PG&E took steps to ensure that the costs are not duplicative of the items included in the revenues requested and authorized in PG&E’s 2007 GRC and other proceedings.”<sup>6</sup> DRA responds that it would be unfair for ratepayers to pay for CEMA costs based solely on PG&E’s classification process. DRA will therefore scrutinize the specific steps that PG&E took to ensure that the costs recorded in the

<sup>3</sup> Cal. Pub. Util. Code § 454.9(b) (*emphasis added*).

<sup>4</sup> D.08-01-021, *mimeo* at 10 (*modified on other grounds in D.08-04-008*).

<sup>5</sup> Resolution E-3238 (July 24, 1991), *mimeo* at 2-3 (*codified by Cal. Pub. Util. Code § 454.9*).

<sup>6</sup> Application at 6.

CEMA were in fact incremental. It should be noted that DRA is unaware of any appropriate methodology that PG&E could have utilized in order to determine which costs were incremental, or the extent to which they were incremental, without examining the complete recorded data for 2008.

The storms in question occurred in January of 2008, and thus the appropriate baseline to compare recorded costs to would be the complete recorded 2008 data. At this time, PG&E does not have an objective baseline with which to compare the recorded costs. If PG&E were to have lower expenses for the remainder of this year, as compared to what had been projected (e.g.: lower overtime costs relative to the 2007 GRC forecast), then it is entirely possible that all or most of the costs recorded in the CEMA would not be incremental. Conversely, the complete recorded 2008 data might show that the entirety of the recorded costs in this Application were incremental.

The problem is that DRA cannot make a determination as to whether or not recorded costs were incremental, and thus reasonableness, until this analytical gap is filled. Thus, DRA cannot complete its analysis until it has access to the complete recorded 2008 data. Due to the necessity of this data, the Commission should hold this proceeding in abeyance until PG&E's complete recorded 2008 data is made available.

DRA notes that if the Commission decides to proceed in the absence of complete recorded 2008 data, all parties would likely be forced to rely on PG&E's classification process. This is not the process contemplated by Resolution E-3238 or Public Utilities Code Section 454.9, and ratepayers would be severely disadvantaged by the lack of an objective baseline with which to compare the recorded costs. In such a context, DRA would likely be forced to argue that PG&E has failed to meet its burden to prove the reasonableness of any of these costs, and may recommend a complete disallowance. Justice would be better served by holding this proceeding in abeyance until the complete 2008 data is available, so that an objective analysis can be conducted.

**B. DRA will audit this Application in a manner consistent with prior CEMA applications.**

As stated above, the complete recorded 2008 data must be submitted in order for DRA to be able to conduct a meaningful analysis of this Application. In addition to examining whether PG&E's recorded costs were in fact incremental, DRA intends to audit this Application by:

- Reviewing the sufficiency of the disaster declarations to ensure that they comply with Commission precedent;
- Reviewing the recorded and/or requested costs to determine whether they were related to CEMA-eligible events;
- Reviewing the recorded and/or requested costs to determine whether they were incurred in territories with competent disaster declarations, in a manner consistent with Commission precedent;
- Reviewing the allocation of costs between the Federal Energy Regulatory Commission and the California Public Utilities Commission;
- Examining the appropriateness of including certain categories of costs, such as straight-time/overtime labor, in the CEMA;
- Reviewing the accounting to determine whether the recorded and/or requested costs were to restore utility services to customers; to repair, replace, or restore damaged utility facilities; and/or were in compliance with governmental agency orders in connection with events declared disasters by competent state or federal authorities;
- Reviewing PG&E's decision-making regarding the storms, including decisions regarding insurance;
- Reviewing the accounting (for both capital and expenses) in order to determine the reasonableness of the recorded costs;
- Investigating any other issues that may arise in connection with this matter.

## II. PROCEDURAL MATTERS

DRA agrees with PG&E that this proceeding is appropriately classified as rate-setting.

At this time, DRA expects that evidentiary hearings will be necessary. The primary issues to be considered are those discussed in Section I, although additional issues may arise during discovery.

## III. PROPOSED SCHEDULE

In order to conduct a complete analysis of this Application, DRA proposes the following modifications to PG&E's proposed schedule:

PG&E provides complete recorded 2008 data	March 5, 2009
DRA and other Intervenor Testimony	April 24, 2009
Rebuttal Testimony	May 8, 2009
Hearings Begin	Week of May 18, 2009
Opening Briefs	June 19, 2009
Reply Briefs	July 3, 2009
Proposed Decision Issued	August 2009
Final Decision Issued	September 2009

In compliance with Rule 2.6(d) of the Commission's Rules of Practice and Procedure, this proposed schedule would resolve this Application within the time allotted for rate-setting matters. DRA notes that the Commission has the authority to extend the 18-month deadline.<sup>7</sup> DRA further notes that through effective utilization of alternative dispute resolution approaches, such as settlement talks and/or a Commission-sponsored ADR process, this matter could potentially be resolved much sooner. In any case, this

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<sup>7</sup> Cal. Pub. Util. Code § 1701.5.

schedule enables DRA to adequately analyze PG&E's complete recorded 2008 data (which usually becomes available towards the end of February). As stated earlier, the complete recorded 2008 data is necessary in order to determine whether the costs recorded in the CEMA were incremental, or the extent to which they were incremental. Absent this data, DRA cannot conduct a meaningful analysis of the reasonableness of the costs recorded in the CEMA.

Respectfully submitted,

/s/ EDWARD MOLDAVSKY

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May 5, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing document  
**“PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES” in**  
**A. 08-03-017.**

A copy was served as follows:

**BY E-MAIL:** I sent a true copy via e-mail to all known parties of record who have provided e-mail addresses.

**BY MAIL:** I sent a true copy via first-class mail to all known parties of record.

Executed in San Francisco, California, on the **5th** day of **May, 2008.**

/s/ REBECCA ROJO

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Rebecca Rojo

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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