

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**10-21-09
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October 21, 2009

Agenda ID #8969
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 09-05-016

This is the proposed decision of Administrative Law Judge (ALJ) Amy Yip-Kikugawa. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Yip-Kikugawa at ayk@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTONKaren V. Clopton, Chief
Administrative Law Judge

KVC: lil

Attachment

Decision PROPOSED DECISION OF ALJ YIP-KIKUGAWA (Mailed 10/21/2009)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**Application of Pacific Gas and Electric Company for
a Two-Year Extension of the ClimateSmart (TM)
Program and Tariff Option. (U39M)Application 09-05-016
(Filed May 18, 2009)**DECISION GRANTING DAY-TO-DAY EXTENSION
OF CLIMATESMART PROGRAM AND TARIFF OPTION****Summary**

This decision grants a request by Pacific Gas and Electric Company (PG&E) to continue operating the ClimateSmart Program and Tariff Option past December 31, 2009 until a decision is reached on PG&E's application to extend the program until December 31, 2011. The extension shall be on a day-to-day basis. During this day-to-day extension period, PG&E may expend up to \$20,000 per month of the unspent administrative and marketing funds collected from ratepayers for administrative expenses.

Discussion

On December 14, 2006, the Commission issued Decision (D.) 06-12-032, which granted, with modifications, an application by PG&E to establish the ClimateSmart Program (Program) and tariff option, the Climate Protection Tariff. The Program is a voluntary program, whereby PG&E customers could elect to pay a monthly premium to offset the greenhouse gas (GHG) emissions associated with their electricity usage. D.06-12-032 further determined that, since this was a demonstration project, administrative and marketing (A&M) costs would be recovered from all PG&E ratepayers. Finally, D.06-12-032 set a sunset

date for the Program of December 31, 2009, but allowed PG&E to file an application seeking continuation of the Program past that date.¹

On May 18, 2009, PG&E filed an application seeking an extension of the Program. In its application, PG&E stated that the Program will not meet the contracting and enrollment goals established in D.06-12-032 by December 31, 2009 due to various challenges. Therefore, it requested that the Program be extended until December 31, 2011. PG&E further proposed that it would not recover additional Program A&M costs from PG&E ratepayers during the extension period, but rather use the unspent A&M costs collected in 2008 and 2009 to fund the extension. PG&E's recorded A&M subaccount balance as of March 31, 2009 was approximately \$1.6 million.

The Utility Reform Network (TURN) filed a timely protest to the application. A prehearing conference (PHC) was noticed and held on July 29, 2009. At the PHC, PG&E, TURN and the Division of Ratepayer Advocates (DRA) requested that the parties be given time to meet and seek consensus on some or all aspects of the proceeding prior to setting a firm procedural schedule. A second PHC was noticed and held on September 23, 2009.

At the second PHC, parties informed the assigned Administrative Law Judge (ALJ) that they were unable to reach any consensus, but agreed that the proceeding could be resolved through a workshop, followed by a round of comments. During this PHC, PG&E also raised a concern that resolution of this proceeding will likely not occur until after the sunset date adopted in

¹ D.06-12-032 at 52 [OP 13].

D.06-12-032. Therefore, to ensure continuity of the Program until the Commission resolves its application, PG&E requested that the Commission issue a day-to-day extension order until the Commission reaches a decision on the merits of the application.

The Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge (Scoping Memo) issued on September 29, 2009 requested comments from parties on the requested day-to-day extension order. The Scoping Memo was also served on the service list of Application 06-01-012, the proceeding which resulted in D.06-12-032.

DRA/TURN filed comments in support of the day-to-day extension. However, they opposed PG&E using any of the unspent A&M funds during the extension period. DRA/TURN express concern that if PG&E were authorized to use unspent A&M funds beyond 2009, a significant portion of the remaining money could be consumed by the time the Commission adopted a final decision in this proceeding.² DRA/TURN note that disposition of the unspent A&M funds are a disputed issue in this proceeding. Thus, they believe allowing use of those funds would unfairly prejudice the outcome of the pending application. DRA/TURN further assert that requiring PG&E to maintain the status quo during the extension period is warranted in order to preserve the underlying issues until the Commission can decide them.

PG&E contends that DRA/TURN's proposed condition is unnecessary and unreasonable. It asserts that if no ratepayer funds were available to administer the Program, it would have to either shut down the Program or continue the

² DRA/TURN Comments, October 6, 2009, at 5.

Program at shareholder expense. Further, it refutes DRA/TURN's claims that almost all A&M funds could be expended during the extension period. PG&E states that it is forecasting at most \$1.5 million in marketing expenditures for the Program during 2010. While the pro-rata share of these expenditures during the extension period would be about \$250,000, PG&E expects the actual marketing expenditures would be at a lower level due to the time of the year and the fact that there is uncertainty as to whether the Program would be continuing for another two years. Further, PG&E states that its costs to administer the program during the extension period would be nominal.³

We agree that a day-to-day extension should be granted. However, we believe that PG&E should not be allowed to use ratepayer funds during this period for marketing expenses. As part of this proceeding, we will be considering how PG&E should modify the Program to meet its enrollment goals. Since we will be considering the extent to which PG&E's current marketing program should be modified if the application is granted, we do not believe any additional funds should be expended for this purpose until after such a determination is made. To the extent PG&E believes marketing expenditures are necessary during the extension period, funding for these expenditures shall come from its shareholders. We believe that this requirement is reasonable, especially since D.06-12-032 strongly encouraged PG&E to consider using shareholder funding to bear costs of the Program.⁴

³ PG&E Response, October 13, 2009, at 2-3.

⁴ D.06-12-032 at 20. Moreover, PG&E acknowledges in its Response that since no new ratepayer funding will be provided during the extension period, its ratepayers could

Footnote continued on next page

Nonetheless, we believe PG&E should be allowed to expend the A&M funds for administrative expenses. As PG&E notes, these funds will include development of the 2009 ClimateSmart Annual Report and continuing its efforts related to development and execution of contract agreements for procurement of GHG emissions reductions. We agree with PG&E that is reasonable to allow PG&E to continue to utilize ratepayer funds for these non-marketing activities during the extension period because these administrative expenses are necessary for the day-to-day functioning of the Program, and we do not anticipate a lengthy extension period. This conclusion does not prejudge any pending issue in the final decision in this proceeding.

A review of D.06-12-032 shows that of the \$16.26 million authorized for A&M costs, \$4.26 million was for administrative expenses.⁵ Thus, approximately 30% of the A&M costs were budgeted for administrative expenses.⁶ Taking a proportionate share of the \$1.6 million balance in the A&M subaccount as of March 31, 2009, it would be reasonable to conclude that approximately \$480,000 of the unspent funds would be for administrative expenses. Over the requested two year extension period, this would be approximately \$20,000 a month. Accordingly, PG&E is authorized spend no more than \$20,000 per month of the unspent A&M expenses during the extension period on administrative expenses.

bear responsibility for continuation of the Program if the extension is granted. (PG&E Response, p. 3.)

⁵ D.06-12-032 at 50-51 [OP 2].

⁶ $\$16.26 / 4.26 = 0.398$.

Comments on Proposed Decision

The proposed decision of the assigned ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Amy C. Yip-Kikugawa is the assigned ALJ in this proceeding.

Findings of Fact

1. The Program was adopted in D.06-12-032 and has a sunset date of December 31, 2009 unless PG&E files an application to seek continuation of the Program past that date.
2. D.06-12-032 determined that A&M costs for the Program should be recovered from all PG&E ratepayers.
3. PG&E filed an application to seek extension of the Program on May 18, 2009.
4. PG&E seeks to extend the Program for an additional two years, until December 31, 2011.
5. PG&E does not seek any additional ratepayer funding for A&M costs during the two-year extension period.
6. There is approximately \$1.6 million of unspent A&M funds as of March 31, 2009.
7. PG&E's application to extend the Program will not be resolved before December 31, 2009.

8. PG&E seeks a day-to-day extension of the Program until the Commission reaches a decision on the merits of its application.

9. TURN and DRA do not oppose the extension request.

10. Disposition of the unspent A&M funds are an issue in this proceeding.

11. This proceeding shall consider whether and the extent to which PG&E's current marketing of the Program should be changed to meet the enrollment goals adopted in D.06-12-032.

12. Approximately 30% of the A&M budget adopted in D.06-12-032 for the Program would be for administrative expenses.

Conclusions of Law

1. It would be reasonable to grant a day-to-day extension of the Program until the Commission reaches a decision on PG&E's application for a two-year extension of the program.

2. It would be unreasonable to allow PG&E to expend any funds to continue its current marketing program during the day-to-day extension period.

3. PG&E should be allowed to use the unspent A&M funds for administrative expenses during the day-to-day extension period.

4. It would be reasonable to allow PG&E to spend up to \$20,000 per month for administrative expenses associated with the Program during the day-to-day extension period.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company's (PG&E) request for a day-to-day extension of the ClimateSmart Program is granted. The extension shall run from

January 1, 2010 until the Commission issues a decision on PG&E's request to extend the ClimateSmart Program until December 31, 2011.

2. During the day-to-day extension period of the ClimateSmart Program, Pacific Gas and Electric Company may not expend any of the unspent administrative and marketing funds collected from ratepayers for marketing expenses.

3. During the day-to-day extension period of the ClimateSmart Program, Pacific Gas and Electric Company is authorized to spend up to \$20,000 per month of the unspent administrative and marketing funds collected from ratepayers for administrative expenses.

This order is effective today.

Dated _____, at San Francisco, California.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated October 21, 2009, at San Francisco, California.

/s/ LILLIAN LI

Lillian Li

***** SERVICE LIST *****
Last Updated on 20-OCT-2009 by: JVG
A0905016 LIST

***** PARTIES *****

Diana L. Lee
Legal Division
RM. 4107
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-4342
dil@cpuc.ca.gov
For: DRA

Christopher J. Warner
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A
SAN FRANCISCO CA 94120-7442
(415) 973-6695
cjw5@pge.com
For: Pacific Gas and Electric Company

Matthew Freedman
ROBERT FINKELSTEIN
Attorney At Law
THE UTILITY REFORM NETWORK
115 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94104
(415) 929-8876 X304
matthew@turn.org
For: The Utility Reform Network

***** STATE EMPLOYEE *****

Michael Colvin
Policy & Planning Division
RM. 5119
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 355-5484
mc3@cpuc.ca.gov

Melissa Semcer
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1925
unc@cpuc.ca.gov

Amy C. Yip-Kikugawa
Administrative Law Judge Division
RM. 2106
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-5256
ayk@cpuc.ca.gov

***** INFORMATION ONLY *****

William Calder Stewart, Phd
EMAIL ONLY
EMAIL ONLY CA 00000
billstewart@berkeley.edu

CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST., SUITE 303
SAN FRANCISCO CA 94117
(415) 963-4439
cem@newsdata.com

Hilary Corrigan
CALIFORNIA ENERGY MARKETS
425 DIVISADERO STREET, SUITE 303
SAN FRANCISCO CA 94117
(415) 963-4439 X 14
cem@newsdata.com

Cassandra Sweet
DOW JONES NEWSWIRES
201 CALIFORNIA ST., 13TH FLOOR
SAN FRANCISCO CA 94111
(415) 439-6468
cassandra.sweet@dowjones.com

MRW & ASSOCIATES
1814 FRANKLIN STREET, SUITE 720
OAKLAND CA 94612
mrw@mrwassoc.com

Eillen Cotroneo
PACIFIC GAS & ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO CA 94105
(415) 973-2751
EFM2@pge.com

Case Coordination
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000; MC B9A
SAN FRANCISCO CA 94177
(415) 973-4744
regrelcpucases@pge.com

Josephine Wu
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO CA 94105
(415) 973-3414
jwwd@pge.com