

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
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Agenda ID #10963
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 11-10-021 and RULEMAKING 07-05-025

This is the proposed decision of Administrative Law Judge (ALJ) Pulsifer. It will appear on the Commission's February 16, 2012 agenda. The Commission may act then, or it may postpone action until later. This revised version supersedes the prior version posted on the Commission's February 16, 2012 agenda as Item 7.

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.

Pursuant to Rule 14.6(b), the Commission may reduce or waive the comment period for public review and comment on proposed decisions, where all parties so stipulate. The parties in Application 11-10-021 have so stipulated to a 5-day comment period by e-mail to the ALJ dated February 6, 2012.

Pursuant to Rule 14.6(b), comments on the revised proposed decision, if any, must be filed within five days of its mailing and no reply comments will be accepted.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. 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 Pulsifer at trp@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. A courtesy copy of this revised proposed decision is also being served on Rulemaking 07-05-025, the Commission's current proceeding on direct access.

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

KVC:jt2

Attachment

Decision Proposed Decision of ALJ Pulsifer (Mailed 2/7/2012)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Stanford University for
Modification of Decision 03-04-030.

Application 11-10-021
(Filed October 18, 2011)

DECISION REGARDING APPLICATION FOR MODIFICATION

1. Introduction

This decision resolves the Application of Stanford University (Stanford) for Modification of Decision (D.) 03-04-030 in the manner outlined below. In D.03-04-030, the Commission adopted policies and mechanisms related to cost responsibility surcharges (CRS) applicable to Departing Load served by Customer Generation within the service territories of California's major electric utilities.¹

In D.03-04-030, the Commission created a categorical exemption from CRS for departing load (DL) that began to receive service from customer generation

¹ Departing Load, as defined in D.03-04-030, refers to the portion of a utility customer's electric load for which the customer: (a) discontinues or reduces purchase of bundled or direct access service; (b) purchases or consumes electricity supplied and delivered by customer generation to replace the utility or direct access purchases; and (c) remains physically located within the utility's service territory. Customer Generation refers to cogeneration, renewable technologies, or any other type of generation (a) dedicated wholly or in part to serve a specific customer's load; and (b) relying on non-utility or dedicated utility distribution wires, rather than the utility grid, to serve the customer, the customer's affiliates and/or tenants, and/or not more than two other persons or corporations.

on or before February 1, 2001 (with respect to Department of Water Resources (DWR)-related components of the CRS). This exemption was consistent with the Commission's policy of maintaining bundled customer indifference, thereby ensuring that an investor-owned utility's bundled customers will not be better or worse off as a result of a customer switching to self-generation.

The Commission, however, did not explicitly address in D.03-04-030 the situation in which exempt or grandfathered customer generation load² switches to DA.

Stanford therefore seeks modification of D.03-04-030 to clarify that customers who switch self-generation load that is exempt from CRS to DA service are only obligated to pay DA-CRS based on the amount of total annual power consumption (calculated by reference to historical usage) previously provided by the IOU, for example under stand-by service.

Stanford argues that its situation justifies a modification of D.03-04-030 and related tariff schedules. Since 1987, Stanford load for its main campus has been served by on-site generation. A gas-fired cogeneration plant on the Stanford campus has served the campus' full electric and thermal energy loads. PG&E supplied backup power under Schedule S. Pursuant to the Commission's rules implementing the limited re-opening of DA for non-residential customers, Stanford became a DA customer within PG&E's service territory on March 2011. Stanford thus switched service for the portion of its campus load not served by

² As described in D.03-04-030 at 11-12, "grandfathered" customer generation refers to customer generation departing load served by new onsite or over-the-fence generation up to a prescribed annual new cap that is exempt from a surcharge for DWR-related costs. "Exempt" customer generation simply refers to customer generation that does not have to pay CRS for any reason.

on-site generation from PG&E to an Electric Service Provider. Stanford is also now in the process of reducing self-generation and substituting DA service for that reduced self-generation.

Stanford has no objection to paying CRS charges reflecting the California DWR obligations on the quantity of electricity previously used to provide the campus load with stand-by service. Stanford argues, however, that it should not have any obligation to pay any additional CRS charges because the balance of its power has been provided by on-site generation, not PG&E or DWR. In order to clarify its cost responsibility in this regard, Stanford seeks modification of D.03-04-030.

This issue may also arise for other customers seeking to fully or partially replace their previously existing or grandfathered self-generation with DA service. Based on review of the underlying facts and arguments presented, as discussed below, we find merit in Stanford's request to be relieved of the obligation to pay additional CRS for the balance of its power that was previously supplied through its on-site customer generation, and that was not previously supplied by PG&E on a stand-by basis. For reasons explained below, however, we address Stanford's concern by granting Stanford a limited deviation from the terms of the PG&E tariff, rather than by adopting any modifications to D.03-04-030 or requiring amendments to the PG&E tariff.³

³ PG&E's tariff schedule DA-CRS identifies the following CRS elements:

Energy Cost Recovery Amount, Ongoing Competition Transition Charges, California Department of Water Resources (DWR) Bond Charge, and the Power Charge Indifference Adjustment (PCIA), as set forth in each rate schedule.

Footnote continued on next page

2. Background

Stanford filed its Application for Modification of Decision (D.) 03-04-030 in accordance with Rule 16.4 on October 18, 2011, and served a copy on Pacific Gas and Electric Company (PG&E). Pursuant to instructions from the assigned Administrative Law Judge (ALJ), and in order to provide notice to interested parties, Stanford served a copy of its filing on all parties in Rulemaking (R.) 07-05-025 on November 29, 2011. (Although D.03-04-030 was issued in R.02-01-011, the R.07-05-025 is the current rulemaking designated to address direct access and departing load issues). The ALJ instructed that any party wishing to respond to the application for modification should do so within 10 calendar days of service, that is by December 9, 2011.

PG&E filed a response on November 21, 2011. PG&E does not oppose Stanford's requested modification to D.03-04-030. Tesoro Refining and Marketing Company (Tesoro) was the only other party that filed a response, which was submitted on December 7, 2011, expressing support for granting the requested modification, pursuant to e-mail authorization granted by the ALJ dated December 6, 2011.⁴

The PCIA is calculated annually and is vintaged by calendar year in PG&E's annual Energy Resource Recovery Account proceeding based on the year the load departed. As adopted in D.06-07-030, the PCIA instituted a bottoms-up calculation of ratepayer indifference, to replace the previous tops-down calculation of DWR power charges.

Pursuant to D.08-09-012 and D.06-07-029, PG&E may apply for a collect a "New Generation" charge as part of the DA-CRS.

⁴ Tesoro is hereby granted party status in this proceeding in order to permit the acceptance of its comments in the record.

The application is uncontested, and no hearings are necessary. We determine that the application should be granted in part, and denied, in part, as explained below, based upon review of the information contained in the application and comments filed in response thereto, as discussed below.

On February 1, 2001, Assembly Bill 1X (AB 1X) was enacted to respond to the California energy crisis and in particular to the investor-owned utilities' (IOUs) inability to purchase power for bundled customers due to extraordinary increases in wholesale energy prices. AB 1X authorized the DWR to procure electricity on behalf of the customers of the California utilities. AB 1X also authorized the Commission to suspend the right of California retail end use customers to take direct access (DA) service, which the Commission did in D.01-09-060, effective September 20, 2001.

As a condition of the DA suspension, the Commission allowed then-existing DA contracts to continue in effect, provided that DA customers were held responsible for previous cost obligations undertaken to serve them. In a series of decisions issued in R.02-01-011, the Commission subsequently adopted provisions for the IOUs to bill and collect CRS applicable to DA as well as other prescribed categories of departing load. D.03-04-030 was one of the decisions in this series, specifically addressing the cost responsibility obligations for customer generation departing load. The calculation of CRS was designed to account for the fair share of cost responsibility for the relevant customers. Moreover, different elements of CRS were applied based upon the different time periods in which the corresponding cost obligations were imposed. For example, responsibility for CTC applied to costs incurred after December 1995. By contrast, cost responsibility for DWR power charges only applied to customer departures beginning after February 2001. Thus, the determination of CRS

obligations may vary depending on a customer's status and timing of the customer's departure from bundled service.

3. Parties' Positions on the Requested Modifications to D.03-04-030

Stanford requests that D.03-04-030 be modified to provide clarification as to its responsibility for cost responsibility surcharges (CRS) based on changes in its customer status, as explained herewith.

As an existing customer-generator before, during, and after the 2000-2001 California energy crisis, Stanford asserts that its campus load is exempt from all applicable CRS charges, except to the extent that it has purchased stand-by power. There is no dispute regarding the applicability of CRS charges during the years that Stanford purchased stand-by power from PG&E. Stanford accepts that as a DA customer, it has a responsibility to pay CRS charges under Schedule DA-CRS in an amount that reflected its historical stand-by purchases for the campus load. Such payments ensured that PG&E's ratepayers were made whole for any procurement obligations entered into by PG&E or DWR to provide stand-by power to the campus load. Therefore, Stanford concludes that the indifference principle would require that Stanford pay some limited, but equivalent amount of CRS upon transitioning all or part of the campus load previously supplied by self-generation to DA service. Accordingly, Stanford seeks acknowledgement and clarification of the Commission's policy and associated tariff language regarding the CRS obligation in this circumstance.

Presumably, PG&E and DWR's forecasting for long-term procurement historically included some quantity of power to serve the limited and intermittent demand of stand-by customers such as Stanford. Therefore, Stanford is willing to pay CRS charges commensurate with that procurement

obligation. Since Stanford switched its main campus account to DA, however, PG&E has been levying CRS charges on all purchases from the electric service provider (ESP), rather than on the amount of load previously served by PG&E's stand-by service.

Stanford thus requests that D.03-04-030 be amended with added text at the end of the first full paragraph on page 57, as follows:

In the event that an exempt "existing" or "grandfathered" customer account subsequently switches all or part of that load to direct access service the customer shall pay DWR bond charges and ongoing power charges and any other applicable CRS charges in an amount that is determined by reference to the average annual quantity of power actually delivered to the customer account pursuant to an IOU tariff (for example, under Stand-by service) on average during the 36 months preceding that month in which the customer account switched to direct access service.

Stanford also proposes that a new Ordering Paragraph be adopted, mirroring the language above. Stanford also requests that similar language and an illustrative calculation be added to Schedule DA-CRS. Stanford further requests that PG&E be ordered to adjust Stanford's payments under Schedule DA-CRS dating back to March, 2011, reflecting the modifications requested.

PG&E does not oppose Stanford's requested modifications to D.03-04-030, and shares the belief that this may be an issue of first impression, since a few customer-generation accounts have switched to bundled service but none apparently have switched directly to DA service. PG&E supports timely action on Stanford's application so as to clarify this issue for Stanford and similarly situated customers, as well as the IOUs that serve them. PG&E notes, however, that the City of Palo Alto is taking steps to serve Stanford once its Cardinal cogeneration unit is shut down. Stanford's application and PG&E's response only address Stanford's shift from distributed generation to DA. PG&E does not

believe that the requested relief would apply to Stanford were it to receive service from the City of Palo Alto.

In its response dated December 13, 2011, Stanford confirmed that its application only addresses Stanford's shift from Distributed Generation to DA. Stanford affirms that it has not requested that the Commission address calculation of CRS (or other non-bypassable) charges for a customer generation account that switches to service from a municipal utility.

4. Discussion

We conclude that Stanford has reasonably demonstrated that it should be relieved of the obligation to pay additional CRS applied to power that was previously supplied by on-site customer generation facilities, and that was not supplied by PG&E as bundled service on a stand-by basis.

As discussed above, CRS components generally are imposed on a designated DA and DL customers because (a) costs were planned for at a time when those customers took bundled service, and (b) related costs continue to be incurred after such customers depart bundled service. The costs incurred on these customers' behalf were based on their load at or about the time of departure, from bundled service or changes in load expected at that time. Nevertheless, the load on which CRS is imposed is not the load prior to departure or the load previously forecast. Rather, the CRS is applied to the DA or DL customer's current ongoing load. In other words, the load on which CRS is paid varies from month to month based on the customer's current actual usage.

As explained above, however, this method of calculating CRS obligations for Stanford does not make sense. That is because: (i) Stanford was self-generating most of its load long before any of the components of CRS were

imposed; (ii) Stanford is now in the process of reducing self-generation and substituting DA service for that reduced self-generation; and (iii) has entirely ceased taking even stand-by service from PG&E, which it now also obtains from its provider. Under these specific circumstances, if the normal rules were to apply, which is what PG&E has done so far, Stanford pays CRS not only on (a) the quantity of electricity that it used to get from PG&E but now gets from its DA provider, but also on (b) the quantity of electricity that it used to self-generate, but now gets from its DA provider. However, there is no reason why Stanford should pay CRS on this latter quantity, because none of the costs that are recovered through CRS were ever incurred to serve that load. Since Stanford, only gets a single bill from its DA provider for all of its current usage, its current usage is not a proper basis for calculating its fair share of CRS obligations.

If Stanford's previously exempt customer generation load were to be required to pay CRS on every kilowatt hour of consumption after it switches to DA, the resulting CRS payments would be in excess of procurement costs undertaken by PG&E and DWR on behalf of Stanford, and would violate the principle of customer indifference. PG&E and DWR did not assume procurement obligations on behalf of the entire Stanford campus load historically served by on-site generation. Accordingly, PG&E should not now impose CRS charges on Stanford's DA energy purchases in excess of its historical purchases from PG&E.

As a remedy to eliminate the excess CRS, Stanford has proposed to use a fixed quantity of electricity as the basis on which its CRS will be imposed. More specifically, Stanford proposes that the quantity used as the basis for its CRS obligation be its average electric usage supplied by PG&E on a stand-by basis

during the 36 months immediately preceding its switch to DA. We find this to be a reasonable proxy on which to base Stanford's CRS obligation. Because others pay CRS based on current consumption it is appropriate to look to a recent period. Because Stanford took only stand-by service from PG&E, it is appropriate to look at service over a long enough period to capture the variability of stand-by usage. We find that 36 months is a reasonably long enough period.

Stanford sought to implement this remedy by seeking a modification to D.03-04-030, with a corresponding change to PG&E's tariffs. While we will grant Stanford a deviation from the PG&E tariff in order to limit its CRS obligations, we decline to grant Stanford's request to modify D.03-04-030. In examining Stanford's proposed language to modify D.03-04-030, we found several areas that need revision to more clearly specify how CRS charges should be imposed. As we consider appropriate language to revise the tariff, however, it becomes apparent that the choice of language depends on the specific customer situations that would be covered. However, the only situation about which we have any specific facts is Stanford's situation. Therefore, we decline to develop generic language to modify D.03-04-030 which could, in the absence of a better developed record, potentially produce unintended outcomes. Instead, based on the limited facts presently before us here we will grant Stanford the deviation from the PG&E tariff that it needs without deciding broader matters about which we lack sufficient facts.

If it should appear that there a significant number of customers who will find themselves in a situation like Stanford's then we would consider granting more generic relief, i.e. modification of our prior decision, in a separate proceeding with more participation by a greater number of parties. Otherwise, if

a utility is presented with a customer whose situation seems similar to that of Stanford, the utility may file a request for a deviation from its tariffs by means of a Tier 3 advice letter, which should be served on all parties to the then current, or most recent, ratemaking designated to address direct access and departing load issues.

Although we are not modifying D.03-04-030, that was the form relief requested by Stanford. A petition for modification generally must be filed within a year of the effective date of the decision, unless the petition could not have been presented within that time frame. (See Rule 16.4(d) of the Commission/s Rules of Practice and Procedure.) Although Stanford did not file within that time frame, we find no unexcusable delay in Stanford's filing. Stanford filed shortly after it discovered that PG&E was imposing CRS on an inappropriate quantity of electricity. Until then, it was not clear that an IOU might seek to impose CRS charges (not relating to prior stand-by service) on energy used by a customer and otherwise subject to exemption from CRS, solely because the load has switched from on-site generation to service by an ESP. Customer generation accounts, as defined in D.03-04-030, did not have the option of switching to DA until the effective date of Senate Bill 695.

Until Stanford recently applied for and received a DA allocation under the procedures established in D.10-03-022, Stanford did not have a right to switch its campus account from customer generation to DA. Stanford only became aware of PG&E's interpretation of D.03-04-030 and Schedule DA-CRS after discussing its transition to DA with PG&E representatives. Stanford initiated efforts to resolve its dispute with PG&E informally immediately upon learning of PG&E's interpretation of the DA rules. Since those efforts were unsuccessful, Stanford

filed the instant application to promptly resolve this question of policy interpretation.

In summary, we find that Stanford should be granted a deviation from the PG&E tariff as necessary to limit its CRS obligations in the manner requested. We accordingly grant Stanford a deviation from the PG&E tariff necessary to limit its CRS obligation to reflect only the quantities of electricity previously provided by PG&E bundled stand-by service, to be calculated based on the most recent 36-months of stand-by service prior to Stanford's switch to DA service. We decline to modify D.03-04-030 or order amendments to the PG&E tariff for the reasons discussed above.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Thomas Pulsifer is the assigned ALJ in this proceeding.

6. Reduction of Comment Period on the Proposed Decision

Pursuant to Rule 14.6(b) of the Commission's Rules of Practice and Procedure, which allows for a shortened comment period upon stipulation of all the parties, this proposed decision is issued for a shortened comment period of five business days. A courtesy copy of the revised proposed decision is also being served on Rulemaking 07-05-025.

Findings of Fact

1. In D.03-04-030, the Commission adopted policies and mechanisms related to CRS applicable to "Departing Load" served by Customer Generation within the service territories of California's major electric utilities.

2. CRS components generally are imposed on designated customers because (a) costs were planned for at a time when those customers took bundled service,

and (b) related costs continue to be incurred after such customers depart bundled service.

3. In D.03-04-030, the Commission established various categories of CRS exemptions for loads served by customer generation based on the date that certain load departed bundled service with the goal of maintaining bundled customer indifference.

4. The Commission did not explicitly address in D.03-04-030 the situation where exempt customer generation load switches to DA, and utility tariffs do not enumerate an express exception for loads that switch from exempt self-generation to DA.

5. There is no dispute between Stanford and PG&E regarding the applicability of CRS charges during the years that Stanford purchased stand-by power from PG&E.

6. Since 1987, Stanford load for its main campus has been served by on-site generation. A gas-fired cogeneration plant located on the Stanford campus has served the campus' full electric and thermal energy loads, except for necessary backup service. PG&E supplied the backup power under Schedule S.

7. Stanford began self-generation at an early enough date that its self-generation has been exempt from all of the elements of CRS.

8. Pursuant to the Commission's rules implementing limited re-opening of DA, Stanford became a DA customer within PG&E's service territory in 2011 and switched its main campus stand-by account to DA service. Stanford is also now in the process of reducing self-generation and substituting DA service for that reduced self-generation.

9. As a DA customer, Stanford should be responsible for CRS charges under Schedule DA-CRS in an amount that reflects its historical stand-by purchases for

the campus load. Such payment ensures that PG&E's ratepayers are made whole for PG&E and DWR procurement obligations entered into to provide stand-by power to the Stanford campus load.

10. If Stanford were required to pay CRS on its entire DA load, including the quantity of electricity that is used to self-generate, but now gets from its DA provider, the payments would exceed those required by the principle of customer indifference, because none of the costs that are recovered through CRS were ever incurred to serve the load that Stanford previously self-generated.

11. Stanford seeks a modification of D.03-04-030 to clarify customers who switch self-generation load that is exempt from CRS to DA service are only obligated to pay DA-CRS based on the amount of total annual power consumption (calculated by reference to historical usage) previously provided by the IOU, for example under stand-by service.

12. PG&E does not oppose Stanford's requested modification.

13. Stanford expressly limited its request for a CRS exemption so as not to apply to any subsequent switch to a municipal provider to supply its load.

Conclusions of Law

1. Stanford timely filed its Application for Modification of D.03-04-030.

2. Stanford has justified why its pleading was brought within a reasonable time even though it was more than one year after the effective date of D.03-04-030.

3. Stanford's requested methodology for calculating its CRS obligations would preserve the principle of bundled ratepayer indifference while providing appropriate clarity with respect to its cost responsibility for its customer generation that subsequently switches to DA.

4. Stanford's proposed language to modify D.03-04-030 would need revisions to more clearly specify how CRS charges should be imposed.

5. The choice of language to modify D.03-04-030 in order to ensure appropriate CRS charges depends on the specific customer situations that would be covered

6. In this application, the only customer situation about which any specific facts have been presented is Stanford's situation. Without further information and analysis concerning differently situated customers, the record is not sufficiently developed to adopt generic language to modify D.03-04-030, as requested by Stanford.

7. Stanford's substantive concerns can be adequately addressed by granting it a deviation from the PG&E tariff necessary to implement the methodology for calculating CRS that Stanford proposes, i.e., calculating its CRS based on a fixed quantity of electricity, namely the amount of total annual power consumption previously provided by PG&E.

8. Because Stanford took only stand-by service from PG&E, it is appropriate to look at service over a long enough period to capture the variability of stand-by usage. 36 months is a reasonably long enough period.

9. Stanford's request to modify D.03-04-030 and for an amendment to the PG&E tariff should be denied.

10. The Stanford Application for Modification of D.03-04-030 should be granted, in part, and denied, in part, as set forth in the Ordering Paragraphs below.

11. Since Stanford served a copy of its Application for Modification on the service list in R.07-05-025, reasonable notice and opportunity to be heard on the deviation granted has been provided to interested parties.

12. If it should appear at a future time that there are a significant number of customers who will find themselves in a situation like that of Stanford's, then a more generic form of relief should be considered (i.e., modification of a relevant prior decision in a separate proceeding with more participation by a greater number of parties)

13. If a utility is presented with a customer whose situation seems similar to that of Stanford, the utility may file a request for deviation for its tariff by means of a Tier 3 advice letter, which should be served on all parties to the then-current, or more recent, ratemaking designated to address direct access and departing load issues, in addition to any other required service.

O R D E R

IT IS ORDERED that:

1. The application of Stanford University for Modification of Decision 03-04-030 is hereby granted in part and denied in part.

2. Stanford is hereby granted a deviation from the Pacific Gas and Electric Company tariff Schedule DA-CRS methodology for calculating its Cost Responsibility Surcharge obligation. With regard to its load previously served by self-generation, Stanford shall pay all applicable CRS charges based on a fixed quantity of electricity. That quantity shall be calculated by determining the average quantity of power actually delivered to Stanford by Pacific Gas and Electric Company tariff during the 36 months preceding the month in which Stanford switched to direct access service.

3. This deviation shall apply only insofar as Stanford is substituting direct access service for self-generation. No deviation is hereby granted with respect to

any load previously served by self-generation that subsequently switches to service from a municipal utility.

4. The application is denied with respect to the request to modify Decision 03-04-030, and to incorporate corresponding language in Pacific Gas and Electric Company tariff Schedule DA-CRS.

5. Within 45 days from the date of issuance of this decision, Pacific Gas and Electric Company shall implement changes to Stanford's prospective billings and also adjust Stanford's prior payments under Schedule DA-CRS billed since March, 2011, reflecting the provisions adopted herein.

6. Application 11-10-021 is hereby closed.

This order is effective today.

Dated _____ in San Francisco, California.