



FILED

04-04-12
11:56 AM

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company for Approval of Economic Development Rate for 2013-2017 (U39E)	Application 12-03-001 (Filed March 1, 2012)
--	--

**RESPONSE OF THE LOCAL GOVERNMENT PARTIES
TO
THE APPLICATION OF PACIFIC GAS AND ELECTRIC FOR APPROVAL OF
ECONOMIC DEVELOPMENT RATE FOR 2013-2017**

James C. Sanchez
City Attorney
Office of the City Attorney
2600 Fresno Street
Fresno, CA 93721-3602
(559) 621-7500
James.Sanchez@fresno.gov

Stephen A. S. Morrison
Special Deputy, Office of the City Attorney
Sutro Building #4
955 Clayton Street
San Francisco, CA 94117
(415) 615-2690
sasmorrison.law@gmail.com

**RESPONSE OF THE LOCAL GOVERNMENT PARTIES
TO
THE APPLICATION OF PACIFIC GAS AND ELECTRIC FOR APPROVAL OF
ECONOMIC DEVELOPMENT RATE FOR 2013-2017**

Pursuant to Rule 2.6 (c) of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the Local Government Parties hereby respectfully submit the following Response to the above-noted Application by Pacific Gas and Electric Company (PG&E). The Local Government Parties is comprised of the City of Fresno, California, together with the California Counties of Fresno, Kern, Kings, Madera, Merced, San Benito, San Joaquin, Shasta and Tehama and the California Cities of Atwater, Avenal, Chowchilla, Clovis, Coalinga, Colusa, Corning, Dinuba, Huron, Kerman, Kingsburg, Firebaugh, Fowler, Lemoore, Livingston, Madera, Mendota, Orange Cove, Red Bluff, Reedley, Sanger, San Joaquin, Selma, Shafter and Stockton. Service upon the City of Fresno will be sufficient to constitute service upon the Local Government Parties.¹

I. INTRODUCTION

On March 1, 2012, PG&E filed the above-noted Application with the Commission.² PG&E seeks, in essence, approval of two rate items: first PG&E seeks to extend the current economic development rate, called “Schedule ED”; second PG&E proposes to establish a new enhanced economic development rate. While the current Schedule ED, which PG&E refers to as the “Standard Option”, albeit with revisions, is proposed for re-approval, the enhanced rate is new and comes before the Commission for the first time. The Standard Option is currently, and is proposed for re-approval as, available in all parts of PG&E’s Service Territory, for qualified customers. The enhanced economic development rate, as proposed by PG&E, is conceived as being a targeted rate with qualifying limits, specifically tailored to those parts of the PG&E Service Territory that can be objectively measured as in the greatest economic distress.

The Local Government Parties represent a significant number of California cities and

¹ The City Attorney’s Office, City of Fresno, acts for the Local Government Parties in this proceeding.

counties from across PG&E's service area. The Local Government Parties have come together specifically to support the PG&E Application (on the terms noted below). The Local Government Parties represent residential, commercial and agricultural populations served in whole or part by PG&E. In addition, the Local Government Parties are located in areas among those with the greatest economic need in the state, those among the hardest hit in terms of energy poverty and economic marginalization and those with the highest unemployment rates. As such, the Local Government Parties have a direct and compelling interest in any proposals put forward by PG&E for economic development, but particularly in an option that is targeted at areas such as those represented by the Local Government Parties.

II. THE APPLICATION

In the midst of the current severe economic and job-loss climate, the City of Fresno, among other steps, approached PG&E to ask the utility to examine what options it might be able to take to help address these issues. The objective was to see if the utility could aid in stimulating jobs growth and address energy poverty within its service territory. This led to a dialogue between the parties. In those discussions a proposal for renewing Schedule ED, on substantially the same terms as the current Schedule ED, was considered but rejected as inadequate by both parties. Schedule ED, in its current form, has failed to attract businesses and therefore failed the objective test of promoting job growth (facts set out in detail by PG&E in its Application).³ PG&E proposed various options including changes to Schedule ED and, in consultation with the City of Fresno, PG&E developed the notion of an enhanced economic development rate. These two notions, along with additional significant work, became the core of PG&E's Application. Of greatest interest to the Local Government Parties is the enhanced economic development rate proposal.⁴ The key features of PG&E's enhanced economic development rate proposal are:

² The Application was published in the Daily Calendar on March 5.
http://docs.cpuc.ca.gov/PUBLISHED/DAILY_CALENDAR/160734.htm

³ Application: Section III, pp. 3 *et seq.*

⁴ The Local Government Parties also support PG&E's proposal to revise the Standard Option – Schedule ED. The Local Government Parties believe that the number of changes PG&E has made to the Standard

- Meaningful incentives that are an increase over past options;
- Targeting the incentive rate at the areas of greatest need; and
- Need is defined as 125% or more of the state’s unemployment average.

The Application also contains proposals to streamline the processes for the economic development rates and a comprehensive analysis of how the economic development rates will benefit other ratepayers by adding customers and making a positive “Contribution to [PG&E’s] Margin”.⁵ Taken together, the PG&E proposals improve on the concept making utility rates part of the armory to be used in the battle to bring jobs to California. The Local Government Parties also believe PG&E’s enhanced economic development rate is the stronger for being developed with local government and, with the potential of local government partnership, it has a greater chance of succeeding than past proposals. That potential is embodied in the significant local government voice represented by the Local Government Parties.

The Local Government Parties agree with PG&E on all elements of the proposed rates, except for one. PG&E proposes to retain unchanged one aspect of the Standard Option Schedule ED for the enhanced rate; the “Customer Affidavit.” As conceived, the Customer Affidavit would require an authorized representative of the customer to sign “under penalty of perjury” that but for this rate,⁶ the business would not expand, stay in, or come to California. The aim is to set a standard of eligibility that prevents free-ridership at the expense of the incentive rate. The objective is not at issue, the means are. While it may seem logical to a regulator’s mind, and may not be unique, importing the notion of a criminal penalty into an *incentive* program can chill the very incentive it seeks to protect. Any business could be forgiven for having difficulty asserting “under penalty of perjury” the primacy of a five-year utility incentive as its investment-decision driver. In business, as in life, matters are seldom so simple and so the proposed incentive should

Option should make it a more effective tool for attracting investment than in the past and a complement to the enhanced option proposed for areas of high unemployment.

⁵ Application: Testimony, Chapter 1, pp. 1-2/1-3 and Chapter 3, pp. 3-2/3-3.

⁶ The full proposed test includes the notion of ‘other incentives’: “But For’ Test: In order to be eligible for this schedule, the customer must sign an affidavit, attesting to the fact that “but for” this incentive rate, *either on its own or in combination with a package of incentives made available to the customer from other sources...*” Application: Testimony, Chapter 3, Attachment A, Special Condition 6.

include a less peremptory qualification requirement. A program incentive that requires an affidavit declaration “under penalty of perjury” as its prerequisite and only means of certification, risks being an unattractive and thereby unsuccessful incentive. The Local Government Parties believe the Customer Affidavit, as currently applied, is one reason for the lack of success of PG&E’s Schedule ED. PG&E therefore errs in retaining this approach.

The Local Government Parties understand the potential “free-rider” problem and accept the need for appropriate means to certify applications for any economic development rate. However, the Local Government Parties believe the most appropriate approach is that a customer affidavit is one option for protecting the integrity of the proposed rates. Indeed, because addressing the restriction of the Customer Affidavit being the *only* means of securing eligibility may be sufficient to prevent its chilling effect on the reformed rate proposals, additional alternate means of proving eligibility should be offered.⁷ The Local Government Parties believe certification by local government (or local economic development authority) and approval of the Office of California Business Investment Services (CalBIS)⁸ are also suitable and appropriate. Any *one* of those alternate ways of approval or certification on its own should provide sufficient attestation of eligibility.

III. ECONOMIC FACTORS BEHIND THE APPLICATION

PG&E supports its Application by detailing the need for economic development measures. The applicant describes a generally poor California economy, one that is losing jobs and suffering from structural deficiencies that drive up poverty. The applicant concedes that electric rates are high (and are set to go higher still) and, together with multiple state energy mandates, are one part of the California’s problem in attracting or retaining jobs. Thus, PG&E accepts it is appropriate for utilities to aid in finding solutions and playing a role in economic development. The Local Government Parties agree with PG&E on the need for such action and welcome the addition of its resources

⁷ If the customer affidavit is made merely an option for the enhanced rate in order to secure the rate’s success, the same logic should apply to the proposed Standard Option.

⁸ CalBIS approval is an *additional* requirement of the current Electric Schedule ED: Special Conditions, 1, Sheet 3: http://www.pge.com/tariffs/tm2/pdf/ELEC_SCHEDS_ED.pdf

to the fight.

In its detailed case for measures, PG&E proposes two options because, as PG&E contends, there are “two Californias” - first a California that is starting to see the early signs of recovery from the severe economic downturn. That California is mostly coastal and has, in general, experienced much less hardship in recent decades. That California is described as having deeper roots in economic success and in high value job sectors. Second, there is *another California*, one that is largely inland. While it represents the fastest growing populations of the state, it is more likely known for its agricultural base and for other industries less connected to the high value economy. PG&E sees ‘Both Californias’ within Service Territory. The Local Government Parties support the Applicant’s assertions because they recognize this description all too well.

IV. THE LOCAL GOVERNMENT PARTIES & THE APPLICATION

While individual local authorities among the Local Government Parties are taking action on a range of fronts to address the economic distress in their respective communities – this is the first time they have acted together on a rates issue. Moreover, this is the first such filing before the Commission for any of the Local Government Parties.

The Local Government Parties include Counties covering approximately 22,000 square miles of the state, Cities ranging in size from fewer than 6,000 to over 510,000 inhabitants, locations as diverse as the City of Red Bluff, in northerly Tehama County to the City of Shafter in southerly Kern County. Collectively the Local Government Parties represent more than 3.2 million Californians.

The areas (and the ratepayers) represented by the Local Government Parties are at the center of the state’s economic distress; experiencing significantly higher levels of unemployment than the state average and higher levels of persistent unemployment. Rates of joblessness are as high as 32% in the City of Reedley, 20% in Stockton and 43% in Mendota. Only one of the Local Government Parties has an unemployment rate in single digits.⁹ The Local Government Parties include many of California’s areas of

⁹ <http://www.labormarketinfo.edd.ca.gov/Content.asp?pageid=164>

energy poverty and absolute poverty. The City of Fresno, for example, has the highest concentration of poverty of any large city in the United States, according to U.S. Census data.¹⁰ As the third largest city in PG&E's Service Territory, this level of poverty is in marked contrast to the economic status of cities such as San Jose and San Francisco (the two largest cities). Therefore, the notion of the "other California" was already familiar to the Local Government Parties, not just from the description by PG&E. Before the current recession, large areas of the state were already experiencing economic marginalization, poor levels of inward investment, poor access to infrastructure and poor air quality. The Local Government Parties also have some of the state's least beneficial climate zones; central and northern California, for example, are in Climate Zones 11, 12 & 13 with high numbers of heating and cooling days which increases energy poverty.¹¹ The Central Valley and much of inland California has been historically underserved. The current recession has merely made a bad situation worse.

State legislators share the concerns expressed herein and those representing the affected counties have already indicated their support for PG&E's proposal in a letter to the Commission.¹² Moreover, alleviation of the prevailing economic distress is a major priority not just for the Local Government Parties, but also for their many local partners, a number of which have also written to the Commission.¹³ The Local Government

¹⁰ Annie E. Casey Foundation/Brookings Institution report, "Katrina's Window: Confronting Concentrated Poverty Across America." <http://www.aecf.org/upload/publicationfiles/katrina%201.pdf>

¹¹ PG&E Climate Zone 11: "Because there is extreme weather, cooling and heating is necessary. Climate Zone 11 consumes a lot of energy consumption to meet comfort standards."

http://www.pge.com/includes/docs/pdfs/about/edusafety/training/pec/toolbox/arch/climate/california_climate_zone_11.pdf - PG&E Climate Zone 12:

http://www.pge.com/includes/docs/pdfs/about/edusafety/training/pec/toolbox/arch/climate/california_climate_zone_12.pdf - PG&E Climate Zone 13: "There are almost as many CDD as HDD in this high energy consuming Climate Zone 13."

http://www.pge.com/includes/docs/pdfs/about/edusafety/training/pec/toolbox/arch/climate/california_climate_zone_13.pdf

¹² A bi-partisan group of 12 legislators, Senators Rubio, La Malfa, Berryhill, Cannella, and Gaines. Assembly Members Perea, Berryhill, Olsen, Halderman, Valadao, Huber, and Conway, wrote to the Commission on March 23, 2012.

¹³ The Local Government Parties work with a range of community, business and quasi-governmental agencies for which action on economic development is every bit as important as it is to the Local Government Parties. Therefore, the Local Government Parties are pleased to note that the Commission has also received letters of support for the PG&E Application from a number of sources including the following: the California League of Food Processors, Fresno Chamber of Commerce, the California Partnership for the San Joaquin Valley, Fresno Economic Development Corporation, the Kern County Economic Development Corporation, the Kings County Economic Development Corporation, the Latino

Parties are confident that the Commission will recognize the substantial weight of local opinion embodied in these letters of support and in the representation of the Local Government Parties. From harsh daily realities and practical experience, therefore, the Local Government Parties can corroborate the core of PG&E's claims and thus support its request for authority and for action.

The Local Government Parties believe there are ample reasons for the Commission to respond positively and act swiftly on the requests within Application. The Commission should, with the caveat noted above,¹⁴ approve the rates requested in the Application.

V. THE COMMISSION HAS PRECEDENT AND AUTHORITY FOR APPROVAL OF ECONOMIC DEVELOPMENT RATES

As previously noted, the enhanced rate is new and comes before the Commission in this form for the first time. However, despite new features and a new discount rate, precedent for the enhanced rate is well established. While the Schedule ED Standard Option is proposed for *re-approval*, it is nonetheless current and was approved by the Commission in various iterations on multiple occasions. A companion rate has received similar Commission approval, multiple times, for Southern California Edison.¹⁵ Further, PG&E has in the past sought, and received, approval for the details of a similar measure: the current Distribution Bypass Rate E-31.¹⁶ Whether for 'economic bypass' or 'economic development' reasons – the Commission's approval of such rates uses the scope of Commission authority to address macro-economic matters. The differences are merely matters of degree.

Moreover, state law specifically anticipates an economic development role in

Coalition, the League of California Cities Latino Caucus and the San Joaquin Valley Clean Energy Organization, indicating an unprecedented level of partnership and support.

¹⁴ Replacing the Customer Affidavit as the sole and mandatory means of verification with a range of options including Local Government certification, CalBIS approval or customer affidavit.

¹⁵ In Commission actions reflected in Decision (D.) 05-09-018, D.07-09-016, D.07-11-052, D.10-06-015, and by action of the Commission's Executive Director, Southern California Edison's applications A.04-04-008 and A.09-10-012 for economic development rates were variously consolidated, approved, modified and extended.

¹⁶ In Commission actions reflected in D.03-01-012 and Resolution E-3801, PG&E's Advice Letter 2276-E for a "flexible pricing option" was reviewed, modified and approved as Electric Schedule E-31 Distribution Bypass Deferral Rate.

Commission regulation.¹⁷ The Public Utility Code places economic development measures squarely within the scope of Commission authority. The Commission must simply prevent rate discrimination in favor of one area or industry. The measures proposed in PG&E's Application avoid such discriminatory rates. The tragedy of so many counties in PG&E's Service Territory with such high unemployment negates any notion of discriminatory rates and, at the same time, calls for swift Commission action.

Given the severity of prevailing economic conditions, local government from within the service territory urged PG&E to consider aggressive steps and the Local Government Parties are encouraged by the results. The Local Government Parties support the steps proposed by PG&E in the Application, as both bold and necessary. The Local Government Parties therefore urge the Commission to recognize this necessity, act in a similarly bold way and approve the rates sought in the Application, albeit with the caveat noted.

VI. COMMUNICATIONS

Any communications with respect to this pleading should be directed to:

Stephen A. S. Morrison
Special Deputy to the City Attorney
Sutro Building #4
955 Clayton Street
San Francisco, CA 94117
(415) 615-2690
sasmorrison.law@gmail.com

James C. Sanchez
City Attorney
Office of the City Attorney
2600 Fresno Street
Fresno, CA 93721-3602
(559) 621-7500
James.Sanchez@fresno.gov

Katie Stevens
Government Affairs Manager
Office of the Mayor
2600 Fresno Street
Fresno, CA 93721-3602
(559) 621-7910
Katie.Stevens@fresno.gov

¹⁷ Public Utilities Code: §740.4.

VII. CONCLUSION

The Local Government Parties believe the evidence of need for economic development measures and the urgency to act are overwhelming. With reports citing electric rates as a determinative disincentive to job creation in California, Local Government Parties believe action on electric rates is *essential*. The Local Government Parties believe PG&E is proposing steps in its Application that are not only necessary, but are appropriate to its responsibilities. Finally, the Local Government Parties believe the Application has precedent and is within the jurisdiction of the Commission and its scope of authority. For all the foregoing reasons, the Local Government Parties support the Application in the manner described above.

The Local Government Parties appreciate the opportunity to submit this Response.

April 04, 2012

Respectfully submitted,

By _____ /s/ _____
Stephen A. S. Morrison
Special Deputy,
Office of the City Attorney

Sutro Building #4
955 Clayton Street
San Francisco, CA 94117
(415) 615-2690
sasmorrison.law@gmail.com

COUNSEL FOR THE LOCAL GOVERNMENT PARTIES