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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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.

Application 11-02-011
(Filed February 15, 2011)

(NOT CONSOLIDATED)

Application of Southern California Edison Company (U338E) for a Commission Finding that its Procurement-Related and Other Operations for the Record Period January 1 Through December 31, 2010 Complied with its Adopted Procurement Plan; for Verification of its Entries in the Energy Resource Recovery Account and Other Regulatory Accounts; and for Recovery of \$25.613 Million Recorded in Three Memorandum Accounts.

Application 11-04-001
(Filed April 1, 2011)

(NOT CONSOLIDATED)

Application of San Diego Gas & Electric Company (U902E) for Approval of: (i) Contract Administration, Least Cost Dispatch and Power Procurement Activities in 2010, (ii) Costs Related to those Activities Recorded to the Energy Resource Recovery Account and Transition Cost Balancing Account in 2010 and (iii) Costs Recorded in Related Regulatory Accounts in 2010.

Application 11-06-003
(Filed June 1, 2011)

(NOT CONSOLIDATED)

**JOINT COMMISSIONER AND ADMINISTRATIVE LAW JUDGE RULING
PROVIDING CLARIFICATION REGARDING CONSOLIDATED REVIEW OF
MARKET REDESIGN AND TECHNOLOGY UPGRADE COSTS**

Summary

This ruling responds to the September 9, 2011, motion filed by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) Market Redesign and Technology Upgrade (MRTU) implementation costs seeking “Clarification of Ruling Regarding Consolidated MRTU Review Proceeding and to Stay Deadlines for Filing Joint Application and Conducting Joint Workshop.”

Background

On May 18, 2011, the Division of Ratepayer Advocates (DRA) filed its *“Motion of the Division of Ratepayer Advocates to Bifurcate the MRTU Implementation Cost Recovery Portions of Energy Resource Recovery Account (ERRA) Compliance Proceedings and Consolidate Those Portions into a Single and Separate Proceeding”* (Motion), in several proceedings. On June 23, 2011, a ruling of the assigned Administrative Law Judge’s (ALJ) denied DRA’s motion for Applications (A.) 10-02-012, A.10-04-002, and A.10-06-001, but granted the motion for A.11-02-011, A.11-04-001 and A.11-06-003, stating “as these proceedings are in their early stages, there is an opportunity to consider MRTU issues as a whole without disruption to the overall ERRA proceedings.”

On August 12, 2011, the assigned Commissioner and assigned ALJ issued a ruling providing further detail and ordering PG&E, SCE, and SDG&E to jointly file an Application that describes how they implemented MRTU, the costs of those efforts to date, likely future costs, and how those costs should be requested and reviewed in future proceedings.

On September 9, 2011, PG&E, SCE, and SDG&E¹ filed their motion seeking clarification from the Commission regarding the August 12 ruling providing for a joint MRTU application and a joint workshop. The Joint Utilities sought clarification of several points regarding the Commission's Ruling:

- First, the Joint Utilities request that the Commission clarify that MRTU implementation costs for the 2010 record period and up through the date of any final decision in the joint proceeding will be reviewed under the applicable incremental and verifiable standard set forth in Decision (D.) 09-12-021.
- Second, the Joint Utilities request that the Commission clarify that the Joint Utilities will be permitted to demonstrate how they each identified and followed "best practices" to research, develop and implement their respective MRTU systems given their unique circumstances prior to MRTU.
- Third, the Joint Utilities request that the Commission clarify that the Commission's evaluation will be used to define and integrate "lessons learned" into the Joint Utilities' future MRTU implementation efforts.
- Finally, the Joint Utilities also request that the Commission stay the deadlines established in the August 12 Ruling for filing the joint application and conducting the joint workshop pending a ruling on their motion.

On September 15, 2011, DRA responded to the Joint Utilities' motion, requesting that "the Commission's ruling in response to the Joint Utility Motion clearly indicate that MRTU implementation costs subject to the consolidated MRTU proceeding will be reviewed for reasonableness."

¹ For the remainder of this Ruling, we will refer to the combined utilities of SDG&E, PG&E, and SCE as "the Joint Utilities."

On September 30, 2011, the Joint Utilities replied to DRA, recommending that “the Commission should expressly reaffirm its prior determination that review of the joint utilities’ MRTU-related costs will focus on whether these costs are incremental and verifiable.” The Joint Utilities argue that “the Commission has clearly stated that the Joint Utilities’ MRTU-related costs are not subject to a traditional reasonableness review” and state that “The Commission should clarify that the ‘best practices’ workshop will be used to develop ‘lessons learned’ among the Joint Utilities for prospective applicability, not to assess retroactively whether the Joint Utilities’ MRTU-related costs were reasonable.” The Joint IOUs also request an expedited ruling staying the deadlines for filing the joint application and conducting the joint workshop pending a ruling on the joint utilities’ motion for clarification.

On October 5, 2011, the assigned ALJ granted the stay requested by the IOUs, stating “the deadline for filing the joint application and the deadline for holding the jointly-organized workshop are both stayed until further notice. The new dates will be included in the Ruling that is issued in response to the Joint IOUs’ Motion.”

Discussion

In seeking clarification of the August 12, 2011, ruling, the Joint IOUs list and discuss three items and conclude “clarification of the above points will enable the Joint Utilities to better understand the distinction between the Commission’s review of MRTU costs for the 2010 record period and its evaluation of overall ‘best practices’ among the three utilities.”

As discussed in greater detail below, the Joint Utilities seek to create a “distinction” where none can be found, either in the August 12, 2011, ruling or in any prior Commission statements regarding its intentions for its review of

MRTU implementation by the IOUs. The August 12 ruling clearly explained the purpose of the Joint Application:

This joint application will be used to develop a cross-IOU understanding, **and record**, of how MRTU has been implemented. **This record** will incorporate the relevant portions of each IOU's 2010 ERRRA compliance application and testimony, **and will serve as the basis for the Commission's determination on the issues [listed in the ruling] for PG&E, SCE and SDG&E, including the extent to which these costs may be recovered in rates.** (August 12, 2011, Ruling at 7, emphasis added.)

In short, the Commission will weigh the Joint Utilities' showing on "best practices" as part of its decision-making on the reasonableness of the each IOU's request for approval of its 2010 MRTU expenditures but also with an eye toward improved practices going forward. As is further explained below, this is no different than the Commission's prior approach to reviewing MRTU implementation by the IOUs.

The Commission addressed MRTU review previously in the Resolutions approving each IOU's MRTU memorandum accounts, and, briefly, in D.09-12-021.

In 2007, the Commission adopted Resolutions approving each IOU's respective MRTU memorandum accounts (MA). Each Resolution included language instructing the IOUs as to the purpose of the accounts:²

- For PG&E, Ordering Paragraph 3 of Resolution E-4093 states, "In order to recover amounts recorded in the MRTUMA, PG&E must first provide justification that its entries to the MRTUMA are incremental **and have been**

² See, respectively, Resolution E-4093 (PG&E), Resolution E-4087 (SCE), and Resolution E-4088 (SDG&E). Emphasis added.

- reasonably incurred** to implement the CAISO MRTU initiative.”
- For SCE, Ordering Paragraph 3 of Resolution E-4087 states, “In order to recover amounts recorded in the MRTUMA, SCE must first provide justification that its entries to the MRTUMA are incremental **and have been reasonably incurred** to implement the CAISO MRTU initiative.”
 - For SDG&E, Ordering Paragraph 3 of Resolution E-4088 states, “In order to recover amounts recorded in the MRTUMA, SDG&E must first provide justification that its entries to the MRTUMA are incremental **and have been reasonably incurred** to implement the CAISO MRTU initiative.”

Decision 09-12-021 concerned PG&E’s application for approval of forecast Energy Resource Recovery Account (ERRA) expenditures for 2010. In that Decision, the Commission affirmed the scoping memo for that proceeding, which had determined that MRTU costs would not be an issue in that proceeding. In the Decision, the Commission denied PG&E’s motion for reconsideration of the Scoping Memo’s exclusion of MRTU issues, as well as a companion motion to provide interim rate relief. In a footnote, the Commission stated:

Although this decision denies PG&E’s Motion to include MRTU-related costs on procedural grounds and defers the issue to PG&E’s ERRA Compliance filing (or separate application), the Commission notes that the scope of its review of PG&E’s MRTU costs is not necessarily a traditional reasonableness review. The MRTU project is a project mandated by regulatory and reliability requirements of the California Independent System Operator and Federal Energy Regulatory Commission. Therefore, the Commission expects the review of these costs to primarily focus on whether the costs can be verified and are incremental. (D.09-12-021, at 3, footnote 1.)

The material quoted above does not support the Joint Utilities’ requested clarifications.

First, the Joint Utilities request that the Commission clarify that MRTU implementation costs for the 2010 record period and up through the date of any final decision in the joint proceeding will be reviewed under the applicable incremental and verifiable standard set forth in D.09-12-021. This request is denied. The Joint IOUs' summary of D.09-12-021 is incomplete. As is clear from the entirety of the text quoted above, the Commission did not "set forth" a standard of review in that decision. Rather, the Commission stated that the scope of its review is "not necessarily" a traditional reasonableness review. Those qualifying words leave open the possibility that the scope of the Commission's review could, in fact, encompass a traditional reasonableness review. Furthermore, the Commission also stated that it expects the review of MRTU costs to "primarily" focus on whether the costs can be verified and are incremental. Again, in using the qualifier "primarily", the Commission leaves open the possibility that its review could also focus on secondary matters other than whether the costs can be verified and are incremental. This is consistent with the Ordering Paragraphs in the 2007 Resolutions. Indeed, the Joint Utilities' selective quoting from a single footnote in a Commission decision only serves to draw attention to the Commission's intention to take a more nuanced approach to its review than the IOUs would appear to prefer. Most fundamentally, it is illogical to suggest that the Commission would ignore evidence of unreasonable behavior by a utility that it regulates, much less place that topic entirely outside the scope of the proceeding to begin with. If the Joint IOUs wish to argue that they did not follow best practices in implementing MRTU, but were allowed to take this approach by prior Commission directives, they are free to make that case in the joint proceeding.

Second, the Joint Utilities request that the Commission clarify that the Joint Utilities will be permitted to demonstrate how they each identified and followed

“best practices” to research, develop, and implement their respective MRTU systems given their unique circumstances prior to MRTU. Here, the Joint Utilities’ requested clarification accurately describes the Commission’s intention in initiating the joint proceeding: the August 12th Ruling does seek the information described by the Joint Utilities, but the purpose of requiring the information in a joint Application is also to allow for more discussion among the IOUs than would otherwise be possible. Thus, each IOU should be fully prepared to explain and contrast its unique efforts in comparison to the other two utilities. The purpose of the joint proceeding is to provide a forum for this dialog and to allow the IOUs to learn from each other and hopefully improve their individual practices going forward.

Third, the Joint Utilities request that the Commission clarify that the Commission’s evaluation will be used to define and integrate “lessons learned” into the Joint Utilities’ future MRTU implementation efforts. The Joint Utilities state that “such a clarification also will make it clear that the Commission does not intend to revisit the foundations of a traditional reasonableness review – to focus on facts known to the utility at the time in which decisions were made and actions taken. Any other approach would result in the unfair retroactive application of a standard of review or best practices the Joint Utilities had no way of knowing would be applied at the time MRTU costs were incurred.” To clarify, we agree with DRA that the Commission made clear its standard of review in the 2007 Resolutions that adopted each IOU’s MRTU Memorandum account. A footnote in a 2009 decision, when unsupported by any Findings of Fact, Conclusions of Law, or Orders, would not in any case supersede the Commission’s Orders in the 2007 Resolutions. It is simply impossible to interpret D.09-12-021 as the Joint Utilities assert: “the Commission clearly stated that the review of the Joint Utilities’ MRTU implementation costs should “not

necessarily [be] a traditional reasonableness review” but instead should “primarily focus” on whether these costs are both “incremental” and “verifiable.”³ No such directives can be found in D.09-12-021.

As DRA requested in its September 15, 2011, response to the Joint Utilities, we clarify that the MRTU implementation costs subject to the consolidated MRTU proceeding will be reviewed for reasonableness, as the Commission used the term in its 2007 MRTUMA Resolutions: each utility “must first provide justification that its entries to the MRTUMA are incremental and have been reasonably incurred to implement the CAISO MRTU initiative.” This may be labeled a “traditional” reasonableness review, but it will not be based on new standards developed after-the-fact since 2007.

With the above clarifications in mind, we also direct the attention of the Joint Utilities, as well as DRA, to the concluding paragraph in the August 12, 2011, Ruling:

The common CAISO directives, FERC Tariffs, and technical requirements that drive MRTU costs should either produce consistency in the level of MRTU implementation costs, or result in differences that are easily understood and explainable. A consolidated review of costs and best practices will allow the Commission to compare and clearly identify and evaluate cost differences before the costs are approved. Examining the costs across the three IOUs will also allow the Commission to more easily evaluate the rationale for differences in specific expenditure areas.

DRA, on behalf of the ratepayers they represent, has posed reasonable questions regarding the details of implementation of MRTU. The IOUs have

³ Joint Utilities’ September 30, 2011, Reply to DRA, at 2, citing D.09-12-021, at 3, footnote 1, emphasis added.

responded that their actions were reasonable. The consolidated review is simply intended to provide a forum that will allow the Commission to resolve these questions in an expeditious manner. The Joint Utilities should simply provide the information that they were clearly directed to provide in the August 12, 2011, Ruling, and they should prepare that information with the understanding that it will be used for the purposes clearly identified in that Ruling. They should also take this opportunity to learn from each other's experiences and potentially improve their individual approaches going forward.

IT IS RULED that:

1. The stay granted in the October 5, 2011, Administrative Law Judge Ruling is lifted.
2. The following schedule is adopted for processing the joint Application ordered in the August 12, 2011, Ruling:
 - a. The joint Application ordered in the August 12, 2011, Ruling shall be filed and served 90 days from today's date.
 - b. Within 120 days from today's date, the utilities shall jointly organize and host a workshop where they will present their report and respond to questions from parties and Commission staff. The workshop shall be held at Commission headquarters in San Francisco. The Commission's Energy Division shall provide logistical assistance to the utilities.
 - c. Parties shall serve comments on the report 20 days following the workshop.

- d. The utilities may serve responses to comments 10 days afterwards.

Dated November 2, 2011, at San Francisco, California.

/s/ MICHEL PETER FLORIO

Michel Peter Florio
Assigned Commissioner

/s/ STEPHEN C. ROSCOW

Stephen C. Roscow
Administrative Law Judge