DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ITEM # 50 I.D.# 8315

ENERGY DIVISION **RESOLUTION G-3424**

Apri1 16, 2009

R E S O L U T I O N

Resolution G-3424. Pacific Gas and Electric Company requests authorization to establish a new category of nontariffed service entitled Home Services Program. This request is denied without prejudice for the reasons specified herein.

By Advice 2937-G/3294-E dated July 11, 2008

SUMMARY

Pacific Gas and Electric Company (PG&E) filed Advice 2937-G/3294-E (Advice) on July 11, 2008, asking authority to establish a new category of nontariffed product and service (NTP&S) called "Home Services Program" (HSP) as provided by the Commission's Affiliate Transaction Rule VII. This Resolution denies authority to PG&E for this new service for the reasons specified below.

- Provision of this service is unrelated to the core mission of PG&E as a utility which is to provide safe and reliable electric and gas service. While some customers may desire this service, the utility has not shown any pressing need for this program.

- PG&E has not demonstrated that it has unused utility assets or personnel that will be put to use for this service to the mutual benefit of shareholders and ratepayers, as required by Rule VII.C.4.

- In D. 02-11-006, the Commission denied a petition (Pet. 02-05-060) to address rules for utilities using billing envelope space for third-party

advertisements pointing to some complex issues in allowing the utilities to do that.

- This market has few barriers to entry, many substitutes, and appears competitive. However, the use of the utility billing system and customer service personnel to perform the revenue collection function for one vendor gives that vendor an undue advantage over other suppliers thus interfering with competition in the market and raising cross-subsidy concerns.

- The proposal to combine billing for HSP services with the utility's regular bill as a line item is problematic because it is likely to confuse customers and lead them to believe that it is the utility that is the provider of the requested home services program,

- PG&E has not demonstrated that the HSP will not harm utility customers by negatively affecting utility costs or services.

BACKGROUND

It is Commission policy to encourage the use of excess and unused utility capacity to benefit ratepayers, shareholders, and the California economy. To this end, the Commission issued Rule VII of its Affiliate Transactions Rules in D.97-12-088[1] as part of R.97-04-011/I.97-04-012 (as modified most recently in D.06-12-029). Rule VII requires that whenever a utility plans to offer a new category of NTP&S, it is to submit its plan to the Commission in an advice letter seeking authorization.[2] The advice letter should satisfy the Commission that the entry of

[1] 77CPUC 2d 493.

[2] See Rule VII.E of the Affiliate Transactions Rules, D.06-12-029.

the utility into this new market uses excess, unused utility capacity,[3] is not anti-competitive, is not cross-subsidized by the ratepayers, and does not negatively affect utility service or in some other way harm ratepayers. The Commission said in R.97-04-011/I.97-04-012, the rulemaking that resulted in these rules, "It is in the public interest to establish rules which ensure utility affiliates do not gain unfair advantage over other market players, and to ensure utility ratepayers are not somehow subsidizing unregulated activities." (p. 6, *mimeo*).

Rule VII specifies several other conditions which must be met by the utility in Sections C, D and E before authorization can be granted. The HSP planned by PG&E is a new category of NTP&S and thus requires an advice letter. Further, all advice letters seeking authorization to offer a new category of NTP&S are categorized as Tier 3 under General Order 96-B, and as such require approval through Resolution.

NOTICE

Copies of the Draft Resolution were served on the filing utility and the protestants to this advice letter.

PROTESTS AND REPLY

The advice letter was protested by TURN on July 31, 2008, and by the Division of Ratepayer Advocates (DRA) on August 13, 2008, in a letter to Ken

[3] The Commission referred to "the potential benefits to ratepayers and shareholders from using excess utility capacity to provide new products and services on an untariffed basis. . ." in D.97-12-088. See 77CPUC2d, 485.

Lewis, Acting Director of the Energy Division.[4] PG&E replied to the protests on August 20, 2008.

THE PROPOSAL

PG&E asks authority from the Commission to offer HSP, which will provide "customers such products as home and small business electric and gas line protection plans, home equipment warrantees (i.e., water heaters, A/C units, etc.) and other related home products and services." (Advice, p. 1) These products and services will be offered either by PG&E or through a third party, and "may" be advertised by a brochure put into the customer's billing envelope "when, and as, bill insert space permits." (Id., p. 2) Similar advertising may be put in on the utility's front offices and on its website. These brochures and "other informational materials may be developed or produced by the third-party vendor or by PG&E," and will be reviewed by the utility. (Id., p. 2) Customer service and billing will be provided by the third-party vendor. PG&E seeks authorization to offer line-item billing when it has the ability to provide such service. (Id., p. 2)

PG&E will "include customer service and other quality standards" in its HSP contract with the selected vendor. The utility "will regularly monitor service levels . . . . to ensure there are no adverse impacts to utility service." (Id., p. 2)

As a NTP&S, costs and revenues associated with this program will be tracked in balancing accounts, and revenues net of costs and income taxes will be

[4] DRA was granted an extension of time to protest by the Energy Division.

shared on a 50/50 basis between ratepayers and shareholders in accordance with D.99-04-021. (85 CPUC 2d 545-552) (Id., p. 2)

PG&E asserts that this program meets all of the conditions imposed on proposed NTP&S by Rule VII of the Affiliate Transactions Rules.

PG&E states that it will use "existing utility assets and employees" to offer the HSP in conjunction with the third party vendor. The utility assets used "may include excess capacity in customer communications, billing, and the printing center." (Id., p. 4) The utility will monitor "service levels" and resources to ensure that the HSP "will not affect the cost, quality, or reliability" of utility service. (Id., p. 4)

According to PG&E, all risk will be borne by PG&E shareholders. All costs in excess of revenues will be borne by shareholders. (Id., p. 4)

The utility asserts that the HSP "will not unduly divert utility management attention," but does not expand on this point. (Id., p. 4) It also asserts that HSP "does not violate any laws, regulations or Commission policies regarding anti-competitive practices." PG&E states that the relevant market for the HSP is the home warrantees market, which "is already mature and competitive." (Id., p. 4) It further states that its HSP "vendor will set competitive, market-based prices," which will be paid voluntarily by the customer. (Id., p. 5) None of these statements are supported by further elaboration or data.

The utility already uses a system of accounts that separates tariffed output costs from NTP&S costs, and plans to continue to use this bookkeeping system. PG&E also currently issues an annual report on its current NTP&S activities, and the HSP would be reported in similar fashion. Further, the utility will include this proposed program in its biennial compliance audit regarding the Affiliate

Transactions Rules. (Id., p. 6) Finally, "[t]he amount shared with customers will be transferred to the Distribution Recovery Adjustment Mechanism (DRAM) and the Core Fixed Cost Account (CFCA) for a rate reduction through the Annual Electric True-Up and Annual Gas True-Up advice letters." (Id., p. 3)

PG&E asserts that the HSP complies with all "other applicable Affiliate Transaction Rules," and that no PG&E affiliate will be a participant in the HSP. "No PG&E assets will be fully dedicated" to this program, but the utility does not disclose how much of these assets will be used for the HSP. The utility again claims that "service levels and resources" will be regularly monitored, and repeats that any risks will be borne by the company.

THE PROTESTS

TURN. In its "Protest of PG&E A.L. 2937-G/3294-E" (TURN Protest), TURN argues that the advice letter is "inadequately supported and unduly vague." (TURN Protest, p. 1) The Commission cannot "meaningfully assess" the proposal as a result. (Id, p. 2) The TURN Protest points out that the proposal says that the relevant market for this proposed service "is mainly the home warranties market." (Id., p. 2) However, some of the services listed as examples of what will be offered under the HSP may not be warranties, such as "home and small business electric and gas line protection plans…" TURN recommends that the Commission "limit its consideration of PG&E's advice letter to the proposal to offer home equipment warranties." (Id., p. 3) Additional non-warranty services should be dealt with through subsequent advice letters.

TURN also refers to a recision of authority for Southern California Gas Company to offer newspaper subscription services to new and transferring

customers in Resolution G-3349 in 2003 (the authority was granted in 2000). (Id., p. 3) The Commission lists several reasons for this recision action, such as the lack of connection between the selling of newspaper subscriptions and the core mission of the utility, and the possible threat to the privacy of PG&E's utility customers. TURN argues that PG&E should explain why the reasons advanced by the Commission to discontinue the SoCalGas program do not apply in the HSP case.

Finally, TURN brings up two consumer protection issues regarding this proposed program. First, warranty service should not be sold to tenants where the landlord is responsible for appliance upkeep. Second, if the Commission allows third party billing for the HSP, it should ensure that there would be no danger that customers would have their utility service terminated because they are delinquent on the HSP portion of the bill.

Division of Ratepayer Advocates. The DRA, in a letter to Ken Lewis, Acting Director – Energy Division, August 13, 2008 (DRA Protest), supports the TURN protest "in whole" and provides two additional reasons the HSP should be rejected. First, DRA argues that Affiliate Transaction Rule VII.C.4 requires that a new NTP&S "must use existing IOU resources, without adding liability or risk, or diverting management attention from the core utility business." (p. 1) DRA points out that the advice letter simply makes pronouncements that the utility will comply with this rule, without providing details or data to support these claims. It argues further that the use of a third-party vendor to provide the HSP requires the utility to obtain additional resources, in violation of Rule VII.C.4.

Second, DRA argues that the warranties offered under the HSP are likely to affect the consumption of energy in these households. These potential

impacts, either positive or negative, are not currently accounted for in the Commission's Energy Efficiency Strategic Plan in Rulemaking 08-07-011. DRA points to goals[5] specified in the draft of this plan that suggest that changes in markets and businesses that affect efficiencies or loads should be coordinated in this Rulemaking, and therefore the authority for the HSP should be sought in PG&E's A.08-07-031, not in this advice letter.[6]

Response to Protests. The utility filed a "Response to Protests from TURN and DRA" (Response) on August 20, 2008. The utility clarified some of the aspects of the HSP program that were questioned by the protestants. Regarding TURN's point, supported by DRA, that the description of potential services to be offered under the HSP is too vague, PG&E argues that its filing asks for a new category of NTP&S, and thus by design does not provide an exhaustive list of new products and services. In response to this protest, the utility provides an Attachment A that lists "products and services that may be offered to customers" under the HSP. Appendix A lists several "service repair plans" including those that address home appliances, interior electrical wiring, interior gas lines, heating and cooling systems, external water service lines, interior water service lines, interior plumbing and drainage, water heaters, sewer and septic lines, pool equipment, compressed natural gas vehicle or electric vehicle charging home

[5] The goals listed by DRA are: "[t]ransform home improvement markets to apply whole-house energy solutions to existing homes. . . ," "quality installation and maintenance [of HVAC systems] becomes the industry and market norm. . . ," and that all IOUs were instructed to ensure their EE porfolios reflect "state energy policies and strategic plan."

[6] DRA cites the Commission's General Rule 7.2.4.2 as grounds for this protest: "The relief requested in the advice letter is pending before the Commission in a formal proceeding."

equipment, home electronics surge repair (not otherwise covered by PG&E's tariff rules), and interior phone lines.

To clarify its use of the excess capacity of utility assets as required by Rule VII.C, PG&E says that the HSP "will not rely on AMI (SmartMeter™) metering technology." (Id., p. 7) The Response continues that "many tasks" will be handled by the vendor, and that PG&E "resources will be involved in portions" of the proposed service, including review of the advertising, billing for the service on its utility bills, review of customer satisfaction, and "other program management activities." (Id., p. 7)

The Response makes the point that its use of a third-party vendor is not prohibited by Rule VII.C.4, alleged by DRA (DRA Protest, pp. 1-2), and that the use of the vendor does not require PG&E to make additional investment.

In its response PG&E also addressed TURN's protest that it was unable to find the service PG&E claims is offered by the Southern California Gas Company (SoCal Gas) which is similar to services to be offered under the HSP, PG&E argues that the concerns raised in Resolution G-3349, and noted in TURN's Protest, are not applicable to PG&E's proposed HSP. The HSP "is at its core a customer service enhancement offering to improve customer satisfaction by providing customers with convenient and time-saving assistance in managing home needs. PG&E believes that quality service for its customers and an overall enhanced customer experience is integral to the utility's mission and values." (Response, p. 9)

The utility further argues that privacy of the customer is not an issue with HSP, as the utility plans to comply with Affiliate Transaction Rule IV.A.[7] PG&E states that it will not give customer lists and phone numbers to the vendor. (Response, p. 9) These issues are addressed in our discussion, below.

Rule VII.E.1(c) requires the advice letter "address the potential impact of the new product or service on competition in the relevant market, including but not limited to the degree in which the relevant market is already competitive in nature and the degree to which the new category of products or services is projected to affect that market." PG&E presents an analysis of market competitiveness in its Response through the application of a model that measures five variables influencing market competition.[8] These measures use traditional economic treatments of competition, including ease of entry for competitors and substitutes as well as market power of suppliers and customers. It also adds a fifth "force" that attempts to measure the "intensity" or level of aggressiveness of competition within the industry. PG&E states that the Home Protection Industry in California is the relevant industry for this analysis. The utility concludes through the application of this model that the market is competitive and it is unlikely that the entry into the market by the utility will affect "competition in the relevant home protection market" and that the HSP "complies with the Commission's policies regarding anticompetitive behavior." (Response, p. 3)

[7] Rule IV.A states: "A utility shall provide customer information to its affiliates and unaffiliated entities on a strictly non-discriminatory basis, and only with prior affirmative customer written consent."

[8] Michael Porter, "Competitive Strategy, Techniques for Analyzing Industries and Competitors," Free Press, 1980, Chapter 1.

It says that this industry is growing and covers nine out of ten houses sold in the state, selling over 265,000 new policies in 2007 while renewing 335,000 existing plans. (Response, p. 3) The Response argues that capital requirements for entry into this market are not high - $40,000 for the first 1000 contracts and $20,000 for each 500 contracts thereafter. The entrant must also seek a license from the CDI. PG&E argues that it has no special advantage through its brand not held by many other incumbents and potential entrants.

According to the Home Warranty Association of California, typically covered systems and appliances generally include a house's:

- Electrical System
- Central Heating
- Interior Plumbing
- Water Heater
- Ductwork
- Dishwasher
- Oven/Range/Stovetop
- Trash Compactor
- Garbage Disposal
- Garage Door Opener
- Air Conditioning System (optional)
- Pool Equipment (optional)

- Spa Equipment (optional)
- Washer/Dryer (optional)
- Refrigerator (optional)

The Response argues that, as the HSP will offer unbundled services that cover one system at a time, such as the interior gas line, at an average cost of about $75 per year, with no deductible, this will provide customers with additional options and thus more bargaining power.

PG&E states that substitutes for this insurance service are plentiful. The homeowner can do it himself, hire it done with cash on hand, or hire it done through debt. Information regarding contractors, both through state licensing procedures and through private rating services, exists and is plentiful. The entry of the utility into this market does not diminish the competitive benefits of available substitutes, according to the utility.

DISCUSSION

Background decisions and policy

As referenced above, our rulemaking resulting in the Affiliate Transactions Rules, R. 97-04-011/I.97-04-012, stated, "It is in the public interest to establish rules which ensure utility affiliates do not gain unfair advantage over other market players, and to ensure utility ratepayers are not somehow subsidizing unregulated activities." (p. 6, *mimeo*).

Rule VII.C.4 further specifies the following conditions:

a. The nontariffed product or service utilizes a portion of a utility asset or capacity;

b. such asset or capacity has been acquired for the purpose of and is necessary and useful in providing tariffed utility services;

c. the involved portion of such asset or capacity may be used to offer the product or service on a nontariffed basis without adversely affecting the cost, quality or reliability of tariffed utility products and services;

d. the products and services can be marketed with minimal or no incremental capital, minimal or no new forms of liability or business risk being incurred by utility ratepayers, and no undue diversion of utility management attention; and

e. the utility's offering of such nontariffed product or service does not violate any law, regulation, or Commission policy regarding anticompetitive practices.

Rule VII.D requires that cost and reporting standards be imposed before a NTP&S can be offered. These are the pertinent parts of this rule:

1. A mechanism or accounting standard for allocating costs to each new product or service to prevent cross-subsidization between services a utility would continue to provide on a tariffed basis and those it would provide on a nontariffed basis;

2. A reasonable mechanism for treatment of benefits and revenues derived from offering such products and services. . .

4. Periodic reporting requirements regarding pertinent information related to nontariffed products and services; . . . .

Rule VII.E requires the utility to file an advice letter with the Commission to offer a new category of NTP&S, and Rule VII.E.1 lists what the utility must include in this filing. Following is the pertinent part of this rule.

The advice letter shall:

b. address the amount of utility assets dedicated to the non-utility venture, in order to ensure that a given product or service does not threaten the provision of utility service, and show that the new product or service will not result in a degradation of cost, quality, or reliability of tariffed goods and services;

c. address the potential impact of the new product or service on competition in the relevant market, including but not limited to the degree in which the relevant market is already competitive in nature and the degree to which the new category of products or services is projected to affect that market. . . . .

The Affiliate Transactions Rules also address customer privacy through Rule IV: Rule IV.A states: "A utility shall provide customer information to its affiliates *and unaffiliated entities* on a strictly non-discriminatory basis, and only with prior affirmative customer written consent." (Emphasis added)

In D.02-11-006 (Pet. 02-05-060), we addressed a proposal to institute a Rulemaking that would establish procedures to allow utilities to put third-party literature into their billing statement envelopes. We declined to begin a Rulemaking for this purpose, finding that it "would involve complex issues related to the statutory and practical functions of the utility bill insert in California, the application of the Commission's affiliate transaction rules, and the utilities' control over the content of advertising materials."

In Commission Resolution G-3349, approved May 22, 2003, the Commission rescinded authority granted in Resolution G-3273 for SoCal Gas to

offer a newspaper subscription service.[9] At its voting meeting on September 5, 2002, the Commission discussed its concerns regarding newspaper solicitation services by public utilities within its jurisdiction. In Resolution E-3793, approved April 17, 2003, the Commission denied Southern California Edison Company's (Edison) request to continue its pilot newspaper solicitation service program. Resolution G-3349 denied authorization for SoCal Gas' solicitation program for reasons that included the following:

1. During its discussion on September 5, 2002 voting meeting, the Commission expressed concerns regarding this newspaper solicitation program including the observation that "the Commission's resources are inadequate to be used to incorporate the sale of newspaper subscriptions in its regulation of public utilities."
2. On September 19, 2002, the Commission unanimously voted down Draft Resolution E-3697, which would have authorized Edison to continue its pilot newspaper solicitation program.
3. On April 17, 2003, the Commission adopted Resolution E-3793, denying Edison's request to reinstate this solicitation program.[10]
4. The Commission described that such newspaper solicitation programs are unrelated to the "fundamental mission of providing customers with safe and reliable utility services." (Res. G-3349, p. 8)

In voting down Resolution E-3697, which recommended approval for Edison's newspaper subscription program, and in approving Resolution E-3793, denying Edison's request to continue its newspaper solicitation service, the Commissioned mentioned the following reasons:

1. There are concerns regarding customer privacy.

[9] This authority was requested by SoCal Gas in Advice Letter 2812 on June 7, 1999.

[10] This authority was requested by Edison in Advice Letter 1436-E on February 22, 2000.

2. There is a lack of resources for enforcement of customers' safeguards to protect customers' information (telephone numbers and addresses).
3. The Commission lacks jurisdiction over newspapers.
4. There appears to be a conflict of interest, since newspapers are often the editorial critics of the utilities.
5. The core mission of utilities is to provide safe and reliable service and not to sell newspapers. (Res. E-3793, Finding 2)

Denial of the advice letter

We find that PG&E's request to offer the HSP as a non-tariffed service raises similar concerns as the Commission articulated in rejecting requests by Southern California Edison and SoCal Gas to offer newspaper subscriptions, and would violate the Affiliate Transactions Rules as well as other Commission decisions and policies. Note that while we deny PG&E's proposal here, we do not want to discourage utilities or their unregulated affiliates from offering improved service to their customers. We invite PG&E and other utilities to devise programs that expand their services within the parameters of the Commission's rules, decisions, and policies. As we discuss below, Rule VII was introduced to encourage the utilities to find ways to maximize use of existing utility resources and capacity. Exploitation of such scope economies should increase overall economic efficiency and lower costs to utility ratepayers.

Note also that we deny this proposal without prejudice, keeping in mind what we said in the recent Southern California Edison General Rate Case in Ordering Paragraph 23 of D.09-03-025:

> We intend to issue a rulemaking in 2009 for the purpose of reviewing Non-Tariffed Products & Services (NTP&S). This rulemaking will not include a review of the Affiliate Transaction Rules. At the appropriate

time, all the testimony submitted in this proceeding regarding NTP&S will be incorporated into the record in the rulemaking.

We deny this advice letter for these reasons:

Provision of this service is unrelated to the core mission of PG&E as a utility which is to provide safe and reliable electric and gas service. While some customers may desire this service, the utility has not shown any pressing need for this program. As we said in Res. E-3793, the core mission of the utility is to provide safe and reliable service to the ratepayer, and to provide the commodity at a reasonable price. The core mission is not so broad as to provide "customers with convenient and time-saving assistance in managing home needs." An "overall enhanced customer experience" is, of course, desirable to all customers, but it is part of PG&E's mission only insofar as it is providing utility service. If PG&E were to be allowed to employ its interpretation of its "core mission," as summarized above, there are many businesses such as construction, house painting, lawn care, roofing, and hot tubs that could be included under this concept. Further, the utility has provided no evidence that any of the potential services that may be provided under the HSP has been requested by its customers.

PG&E has not demonstrated that it has unused utility assets or personnel that will be put to use for this service to the mutual benefit of shareholders and ratepayers, as required by Rule VII.C.4. The HSP does not utilize excess capacity of the utility in a way that is consistent with the Commission's intent when it promulgated this rule, which was intended to allow the utilities to make use of existing excess and otherwise unused capacity, such as land or buildings, in order to increase overall efficiency and to generate extra revenues for the

ratepayers and shareholders. The oft-mentioned example was the lease of transmission right-of-way land for use as Christmas tree lots. Instead of using its excess capacity in this way, the utility plans to contract with a third party to sell extended warranties, insurance, and other services using its own assets and labor. The only "excess capacity" provided this project by the utility "may include excess capacity in customer communications, billing, and the printing center." (Advice 2937-G/3294-E, p. 4) These particular operational functions are not "excess capacity" as envisioned by this Rule, and the utility does not attempt to show that its capacity in the performance of these functions is in any way "excess."

In the absence of existing unused capacity, this program could impose certain additional costs on PG&E's utility ratepayers as PG&E's utility personnel plan, execute and monitor this program. According to PG&E, it will "regularly monitor service levels and resources related to the [HSP]. . ." (Id., p. 2). In the absence of having demonstrated that PG&E has unused capacity, we are not convinced by PG&E's argument that "PG&E will offer the [HSP] using existing PG&E facilities and personnel. . . ." (Id., p. 4) and that it will not need to employ additional personnel for this effort.

In D. 02-11-006, the Commission denied a petition (Pet. 02-05-060) to address rules for utilities using billing envelope space for third-party advertisements pointing to some complex issues in allowing the utilities to do that. The utility says that it "may include brochures with customers' bills when, and as, bill insert space permits." (Id., p. 2) We have already addressed a similar proposal for such advertising in D.02-11-006 (Pet. 02-05-060). As stated above, in that decision we considered a request to institute a Rulemaking that would establish procedures to allow utilities to put third-party literature into their

billing statement envelopes. We declined this request, finding that it "would involve complex issues related to the statutory and practical functions of the utility bill insert in California, the application of the Commission's affiliate transaction rules, and the utilities' control over the content of advertising materials." (D.02-11-006, Finding of Fact 2) We also found that we "would need to devote substantial resources" to the Rulemaking, and concluded that "[t]he petition should be denied, effective immediately, in order to conserve the Commission's resources for more significant regulatory efforts." (Id., Finding of Fact 3 and Conclusion of Law 2) . We see no reason to alter our position on this issue in this resolution.

This market has few barriers to entry, many substitutes, and appears competitive. However, the use of the utility billing system and customer service personnel to collect money exclusively for the vendor gives that vendor an undue advantage, thus interfering with competition in the market and raising cross-subsidy concerns. PG&E's application of the "Five Forces" model to analyze market competition is flawed. The "relevant" market is not identified correctly by the utility. The home warranty industry sells bundled insurance policies, covering several appliances and other machines in the house.[11] The HSP will "offer narrow but deep coverage, where one system such as the interior gas line is covered but nearly all repairs are included with no deductible." (Response, p. 5) It appears from the data provided by PG&E that there are few firms offering the unbundled products to be offered by the HSP. However, the barriers to entry

[11] See http://www.warrantyassn.com/hwac/about_hwac.htm

to this market should be similar to those for those represented by the Home Warranty Association of California. These barriers are not substantial and, along with the abundance of viable substitutes to this service, it makes it unlikely that PG&E's entry will decrease competition due to entry barriers significantly.

We are concerned, however, about the effect on competition of providing billing services for the vendor to the exclusion of all other market incumbents. This is a service that is apparently to be limited to PG&E's chosen vendor. The use of the utility billing system and customer service personnel to collect money exclusively for the vendor gives that vendor an advantage unavailable to its competitors, thus interfering with competition in the market.

The use of utility assets and personnel to bill for the vendor also concern us. These resources are not surplus or unused, as required by our rules, and this cross-subsidy by utility ratepayers would represent a slippery slope we wish to avoid.

Combining the charges for the HSP with the utility bill as a line item is problematic as it leads to confusion on the part of the customer as to whether the HSP service provider is the utility. One additional problem with using the utility bill to collect HSP premiums is the confusion created by this practice. In D.97-12-088, we expressed concern regarding the power of the implication that a company is associated with the utility:

> As product promotion and advertising become more intense, we also believe it important to craft rules which prevent consumer confusion, such as the representation or implication that the affiliate assumes all the attributes of the Commission-regulated utility, merely because of its corporate connection. (77CPUC2d at 451)

We were concerned about the unregulated affiliates in that decision, but the effect of using a third-party vendor as requested in this advice letter is similarly problematic. Use of the utility system for billing and advertising will lead customers to believe that the vendor is in some significant way connected to the utility. Giving a third party vendor the benefit of such association can jeopardize the trust the customers have in their long standing relationship with the utility if customers did not have a positive experience with the vendor's unregulated business. The goodwill developed over the years through the design and application of the various Commission rules should not be transferred to and possibly imperiled by vendors in this way.

As in E-3793, this proposal raises concerns regarding ratepayer privacy. PG&E claims that it will not share its customer lists with the vendor it chooses for the HSP (Response, p. 9). Customer privacy is of primary concern to this Commission, and is the reason we wrote Rule IV of the Affiliate Transactions Rules (see above). Utilities are reminded that this rule requires that if they wish to share customer information with any other entity, they must acquire affirmative customer written consent before doing so.

PG&E has not demonstrated that the HSP will not result in additional costs for utility customers. While the utility states that it "will regularly monitor service levels and company resources to ensure that the [HSP] will not affect the cost, quality, or reliability of tariffed utility products and services. . . .," it does not show how it will accomplish this, or what metrics it will use to monitor this program. It is clear that utility management and other logistical and analytical resources will be used to provide the HSP, but PG&E has not shown, nor does it state, that these resources are in excess supply. As DRA also points out, the

PG&E proposal simply asserts that the HSP "program will not unduly divert utility management attention" from its utility service requirements without elaboration. No further explanation is provided in The Response.

PG&E argues that SoCal Gas provides billing for a gas line protection product that is provided by the third-party provider, Assurant. However, that is is a service that has been provided by SoCal Gas since before the creation of Rule VII, and was "grandfathered". In response to TURN's protest, PG&E states that "SoCal Gas provides billing for a gas line protection product that is provided by the third-party provider Assurant…" (p. 8) However, this is a service that has been provided by SoCal Gas since before the creation of Rule VII, and thus was "grandfathered" through the list of existing tariffed and nontariffed products and services filed in SoCal Gas Advice Letter 2669 on January 30, 1998, in accordance with the requirements of D.97-12-088. The Commission has not addressed this category of service.

Other issues from the protests. DRA alleges that the use of a third-party vendor is prohibited by Rule VII.C.4, alleged by DRA (DRA Protest, pp. 1-2).

The relevant section, Rule VII.C.4.d, requires that:

> the products and services can be marketed with minimal or no incremental ratepayer capital, minimal or no new forms of liability or business risk being incurred by utility ratepayers, and no undue diversion of utility management attention;

We do not agree with DRA that the use of a third party vendor is prohibited by Rule VII.C.4. We are denying this request for other concerns as discussed above.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this Resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this Resolution was neither waived nor reduced. Accordingly, this draft Resolution was mailed to parties for comments. PG&E provided comments on March 2, 2009. No reply comments were received. Revisions to the draft Resolution were made as appropriate.

FINDINGS

1. PG&E Advice 2937-G/3294-E seeks authority to establish a new category of nontariffed product and service (NTP&S) it calls Home Services Program (HSP).

2. PG&E's proposed HSP would provide "customers such products as home and small business electric and gas line protection plans, home equipment warrantees (i.e., water heaters, A/C units, etc.) and other related home products and services."

3. It is Commission policy to encourage the use of excess and unused utility capacity to benefit ratepayers, shareholders, and the California economy.

4. Rule VII of the Commission's Affiliate Transactions Rules governs the provision of NTP&S, designed to use excess and unused utility capacity, consistent with Commission policy.

5. Rule VII provides guidelines and requirements when a utility proposes to create a new category of NTP&S, and requires the utility to file an

advice letter showing how the characteristics of the new category satisfy the requirements of Rule VII.

6. Advice letters seeking authorization to offer a new category of NTP&S are categorized as Tier 3 under General Order 96-B, and as such require approval through Resolution.

7. Protests were received from DRA and TURN. PG&E provided a Response to these Protests.

8. These products and services will be offered either by PG&E or through a third party, and "may" be advertised by a brochure put into the customer's billing envelope "when, and as, bill insert space permits."

9. Customer service and billing will be provided by the third-party vendor. PG&E seeks authorization to combine the charges for this service as a line-item in the customer's utility bill.

10. As a NTP&S, costs and revenues associated with this program will be tracked in balancing accounts, and revenues net of costs and income taxes will be shared on a 50/50 basis between ratepayers and shareholders in accordance with D.99-04-021.

11. The core mission of PG&E as a regulated utility is to provide electric and gas service. The core mission is not so broad as to provide "customers with convenient and time-saving assistance in managing home needs."

12. The utility has provided no evidence that any of the potential services that may be provided under the HSP have been requested by its customers.

13. The Commission designed Rule VII to allow the utilities to make use of existing excess and otherwise unused capacity, such as land or buildings, in order to increase overall efficiency and to generate extra revenues for the ratepayers and shareholders. The oft-mentioned example was the lease of transmission right-of-way land for use as Christmas tree lots.

14. PG&E has not demonstrated that it has unused utility assets or personnel that will be put to use for this service to the mutual benefit of shareholders and ratepayers, as required by Rule VII.C.4.

15. In the absence of existing unused capacity, this program could impose certain additional costs on PG&E's utility ratepayers as PG&E's utility personnel plan, execute and monitor this program.

16. In D. 02-11-006, the Commission denied a petition (Pet. 02-05-060) to address rules for utilities using billing envelope space for third-party advertisements pointing to some complex issues in allowing the utilities to do that.

17. This market has few barriers to entry, many substitutes, and appears competitive. However, the use of the utility billing system and customer service personnel to perform the revenue collection function for one vendor gives that vendor an undue advantage, thus interfering with competition in the market and raising cross-subsidy concerns.

18. SoCal Gas provides billing for a gas line protection product that is provided by the third-party provider, Assurant. However, that is a service that has been provided by SoCal Gas since before the creation of Rule VII, and was "grandfathered".

19. This Commission is concerned about customer privacy. Utilities are reminded that Rule IV of the Affiliate Transactions Rules requires them to receive affirmative written consent from the customer before they release customer information to any entity.

20. Ordering Paragraph 23 of D.09-03-025 states, in brief: We intend to issue a Rulemaking in 2009 for the purpose of reviewing Nontariffed Products and Services (NTP&S).

THEREFORE IT IS ORDERED THAT:

1. This advice letter is denied without prejudice for the reasons specified herein.

2. The Protests are approved or denied as specified herein.

3. This Resolution is effective today.

I certify that the foregoing Resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on April 16, 2009; the following Commissioners voting favorably thereon:

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Paul Clanon
Executive Director