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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Item 33 ID#4182

ENERGY DIVISION **RESOLUTION E-3903**

JANUARY 27, 2005

R E S O L U T I O N

Resolution E-3903. Pacific Gas and Electric Company proposes to modify Schedules E-DEPART and E-EXEMPT to extend their expiration dates, and to revise Schedule E-DEPART to permit billing departing load customers for the Regulatory Asset charge. Approved with modifications.

By AL 2043-E filed on October 19, 2000, and Supplemental AL 2043-E-A filed on February 18, 2004.

SUMMARY

Pacific Gas and Electric Company (PG&E) is authorized to bill non-exempt Departing Load (DL) customers for certain charges under Schedule E-DEPART.

- PG&E may revise Schedule E-DEPART to allow billing DL customers for Nuclear Decommissioning (ND) and Public Purpose Program (PPP) charges until superseding tariffs for billing nonbypassable charges have been approved or until it has been determined that DL customers' obligations to pay such charges have ended.

- PG&E is not authorized at this time to bill the ongoing Competition Transition Charge (CTC)[1] or the Regulatory Asset (RA) charge through

[1] Public Utilities (PU) Code Section 369 authorized the Commission to establish a mechanism for recovery of transition costs. With specified exceptions, these transition costs were to sunset no later than March 31, 2002. PU Code Section 367 (a) identified the ongoing costs that could be recovered beyond the end of the transition period. These ongoing costs are referred to as the "ongoing CTC" or "tail CTC."

Schedule E-DEPART until issues regarding the Cost Responsibility Surcharge (CRS) have been resolved for each type of individual DL customer.[2]

BACKGROUND

Certain nonbypassable charges with specified exemptions were enacted through legislation.

Assembly Bill (AB) 1890, signed into law on September 23, 1996, established:

(a) a nonbypassable CTC (PU Code Sections 367-368, 369, 375-376)
(b) certain exemptions to the CTC (PU Code Sections 372, 374)
(c) nonbypassable charges for ND (PU Code Section 379)
(d) recovery of Rate Reduction Bond (RRB) principal, interest, and ongoing costs through a nonbypassable Fixed Transition Amount (FTA) charge (PU Code Section 840(d)); and
(e) a separate nonbypassable rate component to cover PPP costs (PU Code Sections 381-383, 385).

PG&E implemented legislative mandates through tariffs.

To implement these provisions of AB 1890, PG&E established Schedule E-DEPART, Schedule E-EXEMPT, and Preliminary Statement Part BB, *Competition Transition Charge Responsibility for All Customers and CTC Procedure for Departing Loads*.

Schedule E-DEPART applies to all customers who remain physically located within PG&E's service territory, but now receive electricity supply, and

[2] Resolution E-3831 approved tariffs regarding ongoing CTC for Customer Generation (CG) DL. Ongoing CTC for municipal departing load (MDL) is pending in Application (A.) 03-08-004, and a billing and collection phase for MDL CRS is pending in Rulemaking (R.) 02-01-011. Also, with respect to the dedicated rate component (DRC), there may be a pending issue regarding the 2.7 cent/kWh cap in Phase II of PG&E's GRC in A.04-06-024. (See Decision (D.) 04-11-015, p. 62.)

transmission and distribution services from a source other than PG&E. These customers include the following types:

- Customer Generation Departing Load (CGDL) – load that is supplied in part or in whole by on-site or over the fence non-utility owned generation

- Municipal Departing Load (MDL)[3] - loads that transfer from PG&E to a municipal-owned utility, an irrigation district, or similar governmental agency with statutory authority to sell and deliver electricity to consumers in its jurisdictional area

- Municipal Departing New Load (MDNL) – new electric loads that are established in PG&E's service territory, but which receive electricity delivered by a municipal-owned utility, irrigation district, or similar agency

- Split Wheeling Departing Load (SDL) – load that 1) was previously served in part with retail electric service from PG&E and in part by the Western Area Power Administration (WAPA), pursuant to Contract 2948A between PG&E and WAPA, and 2) for which, upon expiration of Contract 2948A on December 31, 2004, the consumer reduces or eliminates retail service from PG&E and replaces that service with wholesale service, supplied by WAPA or a similarly-situated entity and wheeled by PG&E, under a Federal Energy Regulatory Commission (FERC) jurisdictional agreement.

- New WAPA Departing Load (NWDL)- loads 1) previously served entirely with retail electric service from PG&E, where the consumer reduces or eliminates retail service, and replaces that service with wholesale service, supplied by WAPA or a similarly-situated entity and wheeled by PG&E, under a FERC jurisdictional agreement and 2) new electric loads that are established in PG&E's service territory, but which have all or a part of their power requirements supplied by WAPA or a similarly situated entity and wheeled by PG&E under a FERC jurisdictional agreement

[3] In D. 03-07-028, the Commission refers to MDL as customers who depart from an investor-owned utility (IOU) to take service from a local publicly-owned utility (POU), and thereby displace usage formerly delivered by the IOU.

PG&E has filed advice letters to address each type of DL customer through separate, individual tariff schedules. These advice letters are still pending. To the extent that superseding tariff language has not been approved by the Commission, Preliminary Statement Part BB and Schedule E-DEPART continue to apply, and are used to address consumer and utility obligations related to departing load, subject to adjustment.

PG&E filed Advice Letter (AL) 2043-E to extend the expiration dates of pertinent tariffs.

Currently, Schedule E-DEPART specifies that the tariff will expire the ". . . earlier of March 31, 2002, or the date on which the Commission-authorized costs for utility generation-related assets and obligations have been fully recovered."[4] By AL 2043-E, PG&E proposes to revise Schedule E-DEPART to extend the expiration date until a superseding tariff for billing departing load customers for nonbypassable charges has been approved or until it has been determined that departing customers' obligations to pay such charges have ended.

Schedule E-EXEMPT applies to customers who are exempt from paying the CTC. This tariff states that it will expire on "the earlier of March 31, 2002, or the date on which the Commission-authorized costs for utility generation-related assets and obligations have been fully recovered." To ensure consistency between Schedules E-EXEMPT and E-DEPART, and with PU Code Sections 372 and 374, PG&E proposed in AL 2043-E to continue the exemptions pursuant to PU Code Sections 372 until the Commission has determined that departing load customers' obligations to pay such charges have ended, and clarify that PU Code Section 374 exemptions are no longer operative after March 31, 2002.

PG&E supplemented AL 2043-E to include the RA charge in Schedule E-DEPART.

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[4] PG&E retained the authority to bill for FTA under Schedule E-RRB (Rate Reduction Bonds Bill Credit and Fixed Transition Amount) which does not have a similar termination date.

On February 18, 2004, PG&E filed supplemental AL 2043-E-A to revise Schedule E-DEPART to clarify that non-exempt DL customers are also responsible for payment of the RA charge effective March 1, 2004 in accordance with D.03-12-035, which approved a modified settlement agreement in PG&E's bankruptcy proceeding.

NOTICE

AL 2043-E and AL 2043-E-A were noticed in the Daily Calendar.

Notice of AL 2043-E and AL 2043-E-A were made by publication in the Commission's Daily Calendar. PG&E states that a copy of each of the ALs were mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

AL 2043-E and AL 2043-E-A were protested.

PG&E's AL 2043-E was timely protested by Merced Irrigation District (Merced) on November 7, 2000. PG&E responded to Merced's protest on November 16, 2000. PG&E's supplemental AL 2043-E-A was timely protested by Merced and Modesto Irrigation District (Modesto) on March 9, 2004. PG&E responded to the protests on March 16, 2004.

Merced asserts that PG&E's proposed revisions to Schedule E-DEPART are ambiguous and could result in customers paying a higher CTC amount.

In AL 2043-E, PG&E proposes that Schedule E-DEPART be extended until "such time as the Commission has approved a superseding tariff for billing departing customers for nonbypassable charges or until it has determined that departing customers' obligations to pay such charges have ended." Merced believes that this language could be interpreted to mean customers could continue to pay a "full CTC bill" even though they would have no legal obligation to pay anything other than post-transition CTC (and other nonbypassable charges) after the date the rate freeze ends (which at the latest would be March 31, 2002). Merced proposes that if the advice letter is approved, the Commission should set the post-freeze CTC obligation at 25 percent of the prior year's obligation, subject to a true-up.

PG&E responds to Merced that the proposed changes simply retain the existing tariffs until new rates go into effect.

PG&E says that its filing has no impact on the level of post-freeze CTCs, which will be determined by the Commission, and would not give PG&E authority to bill a higher CTC component than allowed.

Merced believes PG&E's AL 2043-E is premature.

In proposing changes to Schedule E-DEPART, PG&E explained that it did not have a tariff mechanism for collecting post-rate freeze nonbypassable charges from departing customers, and that it planned to file an application to establish future nonbypassable charge payment mechanisms. Merced declares that PG&E should not be allowed to seek the changes by advice letter but instead should be directed to file appropriate tariff language changes in PG&E's anticipated application.

PG&E responds that is not premature to file this advice letter in advance of its anticipated application because the actual end-date of the rate freeze is uncertain.

PG&E believes it is entirely appropriate to request extension of the expiration dates simply to ensure that a tariff mechanism remains in place to bill departed customers for nonbypassable charges until the Commissions sets rates for post-transition period CTCs.

Merced asserts the supplemental advice letter is duplicative of tariffs proposed in another advice letter.

Merced asserts that changes to Schedule E-DEPART proposed in AL 2043-E-A duplicate and cause confusion insofar as they apply to MDL customers that are explicitly addressed and defined in Schedule E-MDL proposed by PG&E in AL 2433-E. Merced requests the Commission require PG&E to revise its proposed Schedule E-DEPART to state that customers subject to Schedule E-MDL shall not be subject to Schedule E-DEPART.

PG&E states that Schedule E-DEPART is necessarily duplicative.

PG&E responds that Schedule E-DEPART is in fact duplicative of provisions in its proposed Schedule E-MDL proposed in AL 2433-E, because it is needed for other types of departing load customers. If and when Schedule E-MDL is approved by the Commission, it is intended to supersede those portions of Schedule E-DEPART and Preliminary Statement BB as they apply to MDL customers.

Modesto argues that PG&E has no authority to collect the charges proposed on Schedule E-DEPART

Modesto protests Supplemental AL 2043-E-A on the basis that Schedule E-DEPART was to expire by its own terms on the earlier of March 31, 2002, or the date on which the Commission-authorized costs for utility generation-related assets and obligations have been fully recovered. Modesto believes that the Commission through D.04-01-026 determined that the latter date occurred on January 18, 2001. Thus by either test Schedule E-DEPART has expired, and thus PG&E has no authority to collect the charges on the rate schedule on a retroactive basis. It states such retroactivity would have significant impacts on customers for whom those charges have not been collected, and would be extremely unfair to customers who departed PG&E's system after the expiration date, only to find that PG&E is now entitled to retroactively impose such charges.

PG&E believes the expiration language in Schedule E-DEPART was erroneous.

PG&E acknowledges that Schedule E-DEPART has expired and explains that it filed AL 2043-E to request an extension because it believes the original terms were erroneous.

Modesto questions the validity and the applicability date of the RA Charge.

In AL 2043-E-A, PG&E revised Schedule E-DEPART to clarify that DL customers who departed on or after January 1, 2000 are responsible for payment of the RA charge, effective March 1, 2004. Modesto believes the RA charge is improper to the extent that it would be imposed on customers who are not presently receiving, or ever received, electric service from PG&E, and it has not been approved by the Legislature. Modesto also argues that the January 1, 2000 date bears no rational relationship to any legitimate starting point.

PG&E responds that Modesto's concerns regarding the validity of the RA charge are without merit and that the proposed applicability date is reasonable.

PG&E believes that the Commission rejected similar arguments by Modesto and concluded that MDL customers should be held responsible for CRS in D.03-07-028 and D.03-08-076. It argues that the same reasoning would apply to the RA charge. In addition, PG&E believes that the Commission effectively affirmed the validity of the RA charge and rejected Modesto's argument for exemption by approving PG&E's modified bankruptcy settlement agreement and the RA agreed to therein, and approving PG&E's Rate Design Settlement Agreement.

Modesto claims that PG&E has not satisfied due process.

Modesto states that it appears AL 2043-E-A was not actually sent to customers who would have a vested interest in Schedule E-DEPART and that this lack of notice does not satisfy due process.

DISCUSSION

Rate schedules allowing PG&E to charge non-exempt DL customers nonbypassable charges have expired.

As discussed above Schedules E-DEPART and E-EXEMPT contained language providing for an expiration date of the earlier of March 31, 2002 or the date on which the Commission-authorized costs for utility generation-related assets and obligations have been fully recovered. In AL 2043-E, PG&E proposes to extend the expiration date of these rate schedules to ensure consistency between the two, and to permit billing non-exempt DL customers the PPP charge, the CTC, and the ND charge.[5] It was filed in October, 2000 but has not been acted on. As of March 31, 2002, Schedules E-DEPART and E-EXEMPT had expired.

Ongoing CTC is now included in the CRS mechanism for DL customers.

[5] As stated above, the FTA charge has been billed and collected pursuant to another tariff schedule.

Since the time PG&E filed AL 2043-E, the Commission has established CRS mechanisms requiring designated DL customers to bear a portion of the costs that the California Department of Water Resources (DWR) incurred pursuant to AB 1X and AB 117, and certain utility costs, as necessary to avoid shifting costs to bundled utility customers. The policies and mechanisms to implement the CRS for DL customers are based on the principles developed for the Direct Access CRS[6]. Specifically, the CRS is composed of the following elements: the DWR Bond Charge, the RA charge per D.04-02-062, ongoing CTC, and the DWR Power Charge.

To charge CRS, PG&E has filed several separate advice letters that would consolidate all nonbypassable charges into a single rate schedule for each of the different departing load types[7]. These new rate schedules, if and when implemented, would supersede Schedule E-DEPART. Until these new rate schedules are in effect and unless the expiration date for Schedule E-DEPART is extended, however, PG&E is unable to bill and collect any nonbypassable charges from DL customers for which they are liable.

PG&E should be allowed to recover charges for PPP and ND but billing for CTC must be addressed as part of CRS applicable to each type of DL customer.

Without dispute, PU Code Sections 379, 381-385 and 399.8 establish that ND and PPP are nonbypassable charges. Accordingly, all non-exempt DL customers are obligated to pay these charges even after they depart PG&E's system. Until it expired, Schedule E-DEPART permitted PG&E to bill DL customers these charges. According to PG&E, the initial expiration date was erroneous and should be extended to allow PG&E to continue to bill for these charges. We agree that PG&E should be allowed to bill DL customers for ND and PPP

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[6] CRS was adopted and applied to non-exempt DL customers under a series of Commission decisions; CGDL in D.03-04-030, as modified by D.03-04-041, and Resolution E-3831, MDL and MDNL in D.03-07-028, D.03-08-076, and D.04-11-014, and SDL in D.03-09-052.

[7] PG&E proposed tariffs for CGDL in AL 2375-E, for MDL in AL 2433-E, E-A, E-B, MDNL in AL 2483-E, SDL in AL 2579-E, and NWDL in AL 2592-E.

charges under Schedule E-DEPART, or in any superseding tariff because these charges are nonbypassable pursuant to statute. To that extent, we deny Modesto's protest regarding PG&E's authority to bill DL customers for ND and PPP.

We can not appropriately allow PG&E to bill and collect for ongoing CTC or RA from DL customers through Schedule E-DEPART because these components are now captured within CRS. CRS charges for CGDL customers were addressed in Commission Resolution E-3831 but have not yet been fully addressed by the Commission for SDL, NWDL, MDL, and MDNL customers. Issues relating to the billing, collection, and accounting for CRS revenues from MDL customers pursuant to D.03-07-028 are the subject of a separate phase of R.02-01-011. PG&E must await the outcome of that phase before it may bill and collect from MDL customers for their liability for CRS, which includes ongoing CTC costs.

PG&E should calculate the amount of PPP and ND charges that it should have but did not collect from DL customers from the date Schedule E-DEPART expired through the effective date of this Resolution. PG&E should amortize these amounts and bill DL customers accordingly.

PG&E should consolidate all information applicable to a particular type of DL customer in a single tariff covering such customers.

In PG&E's AL (AL 2375-E) requesting authorization to permit billing CRS to non-exempt CGDL, PG&E proposed to include the ND and PPP elements of Schedule E-DEPART so that CGDL customers would be able to refer to a single tariff containing information on all nonbypassable charge obligations. Resolution E-3831, which addressed that AL, stated that PG&E could not re-introduce these elements because D.03-04-030 merely authorized CRS implementation. We agree with Merced that duplicative tariffs could lead to confusion and prefer PG&E's proposal to have a single tariff which would contain all information applicable to each type of DL customer. To that end, we recommend that PG&E file an advice letter to move PPP and ND charges into the CG tariff schedule. Per authorization granted by this resolution, PG&E may request that these charges also be included in the tariffs that apply to the other specific types of DL, such as MDL, NMDL, SDL, and NWDL by filing a supplemental to each of the pending advice letters. This solution resolves Merced's protest on the duplicative tariffs issue.

PG&E's request to extend the expiration date of Schedule E-EXEMPT is moot because this tariff is no longer necessary.

PG&E proposed in AL 2043-E to extend the expiration date of Schedule E-EXEMPT to continue the exemptions pursuant to PU Code Sections 372 until the Commission has determined that departing load customers' obligations to pay such charges have ended, and clarify that PU Code Sections 374 exemptions are no longer operative after March 31, 2002.

We note that the exemptions previously permitted under Schedule E-EXEMPT pursuant to PU Code Section 372 have been subsumed into CG tariffs, and PU Code Section 374 exemptions are no longer operative. As a result, Schedule E-EXEMPT is no longer necessary. In compliance with this resolution, PG&E should remove the schedule from its tariffs.

Unless specifically addressed in the Discussion section, issues raised in protests are denied without prejudice.

All issues raised in protests filed by Merced and Modesto were detailed in the Protest Section of this Resolution. Because this Resolution modifies PG&E's request in AL 2043-E and denies AL 2043-E-A without prejudice, it is not necessary to address issues of protest on elements that are not being approved by this Resolution. Accordingly, all issues not specifically addressed in the Discussion section above are denied without prejudice.

COMMENTS

PU 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, and will be placed on the Commission's agenda no earlier than 30 days from today.

FINDINGS

1. Tariff schedules E-DEPART and E-EXEMPT allowing PG&E to charge non-exempt DL customers nonbypassable charges have expired.
2. PG&E filed AL 2043-E on October 19, 2000 to add language to Schedule E-DEPART and Schedule E-EXEMPT to extend the expiration dates.
3. On February 18, 2004, PG&E filed supplemental AL 2043-E-A to permit billing DL customers for the RA charge.
4. Since the time PG&E filed AL 2043-E, ongoing CTC and the RA charge are now included in the CRS mechanism for DL customers.
5. Until new individual rate schedules are in effect for each DL customer type and unless the expiration date for Schedule E-DEPART is extended, PG&E has no mechanism for recovery of the nonbypassable charges from DL load customers.
6. PG&E may revise Schedule E-DEPART to allow billing DL customers for ND and PPP charges until superseding tariffs for billing nonbypassable charges have been approved or until it has been determined that DL customers' obligations to pay such charges have ended.
7. PG&E should calculate the amount of PPP and ND charges that it should have but did not collect from DL customers from the date Schedule E-DEPART expired through the effective date of this Resolution, amortize these amounts, and bill DL customers accordingly.
8. PG&E is not authorized at this time to bill DL customers the ongoing CTC or the RA charge through Schedule E-DEPART until issues regarding the CRS have been resolved for each type of DL customer.
9. PG&E should consolidate all information applicable to a particular type of DL customer, including all nonbypassable charges into a single tariff covering such customers.
10. PG&E's request to extend the expiration date of Schedule E-EXEMPT is moot because this tariff is no longer necessary.
11. Unless specifically addressed in the Discussion section, issues raised in protests are denied without prejudice.

THEREFORE IT IS ORDERED THAT:

1. PG&E's request in AL 2043-E is approved with modifications.
2. PG&E is authorized to revise Schedule E-DEPART to allow billing DL customers for ND and PPP charges until superseding tariffs for billing nonbypassable charges have been approved or until it has been determined that DL customers' obligations to pay such charges have ended.
3. PG&E shall calculate the amount of PPP and ND charges that it should have but did not collect from DL customers from the date Schedule E-DEPART expired through the effective date of this Resolution, amortize these amounts, and bill DL customers accordingly.
4. PG&E is not authorized at this time to bill the ongoing CTC or the RA charge through Schedule E-DEPART until issues regarding CRS have been resolved for each type of DL customer.
5. Supplemental AL 2043-E-A is denied without prejudice.

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 January 27, 2005; the following Commissioners voting favorably thereon:

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STEVE LARSON
Executive Director

ID #4182

December 23, 2004

Commission Meeting Date: January 27, 2005

TO: PARTIES TO PACIFIC GAS AND ELECTRIC COMPANY ADVICE LETTERS 2043-E AND 2043-E-A

Enclosed is draft Resolution E-3903 of the Energy Division. It addresses the PG&E's proposal to modify rate schedules E-DEPART and E-EXEMPT to extend their expiration dates, and to permit billing departing load customers for the Regulatory Asset charge. The draft Resolution will be on the agenda at the January 27, 2005 Commission meeting. The Commission may then vote on this draft Resolution, or it may postpone a vote until later.

When the Commission votes on a draft Resolution, it may adopt all or part of it as written, amend, modify or set it aside and prepare a different Resolution. Only when the Commission acts does the Resolution become binding on the parties.

Parties may submit comments on the draft Resolution.

An original and two copies of the comments, with a certificate of service, should be submitted to:

Jerry Royer
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Fax: 415-703-2200; jjr@cpuc.ca.gov

A copy of the comments should be submitted by electronic mail to Laura Martin in the Energy Division at: lra@cpuc.ca.gov.

Any comments on the draft Resolution must be received by the Energy Division by January 10, 2005. Those submitting comments must serve a copy of their comments on 1) the entire service list attached to this letter, 2) all Commissioners, and 3) the Director of the Energy Division, on the same date that the comments are submitted to the Energy Division. Comments may be submitted electronically.

Comments shall be limited to five pages in length, and list the recommended changes to the draft Resolution. Comments shall focus on factual, legal or technical errors in the proposed draft Resolution. Comments that merely reargue positions taken in the advice letter or protests will be accorded no weight and are not to be submitted.

Replies to comments on the draft resolution may be submitted (i.e. received by the Energy Division) on January 17, 2005, and shall be limited to identifying misrepresentations of law or fact contained in the comments of other parties. Replies shall not exceed five pages in length and shall be served as set forth above for comments.

Late submitted comments or replies will not be considered.

Gurbux Kahlon

Program Manager

Energy Division

1.1 Enclosures:

CERTIFICATE OF SERVICE

Service List

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of Draft Resolution E-3903 on all parties in these filings or their attorneys as shown on the attached list.

Dated December 23, 2004 at San Francisco, California.

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Jerry Royer

NOTICE

Parties should notify the Energy Division, Public Utilities Commission, 505 Van Ness Avenue, Room 4002 San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the Resolution number on the service list on which your name appears.

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