Decision **DRAFT DECISION OF ALJ BARNETT (Mailed 9/28/2004)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company to Modify the Experimental Economic Development Rate (Schedule ED). (U 39 E)	Application 04-06-018 (Filed June 14, 2004)

OPINION GRANTING THE MOTION OF PACIFIC GAS AND ELECTRIC COMPANY FOR AN INTERIM DECISION PROVIDING EMERGENCY RATE RELIEF FOR A CUSTOMER CONSIDERING RELOCATION OUTSIDE OF CALIFORNIA

In Application (A.) 04-06-018, Pacific Gas and Electric Company (PG&E) seeks to modify PG&E's existing experimental economic development rate, otherwise known as Schedule ED. PG&E alleges that in response to the effort by the State of California to attract and retain more businesses and jobs, it proposes certain modifications to its Schedule ED that will make the ED rate more effective in attracting new businesses that are considering relocation outside of the State. PG&E states that it is currently engaged in preliminary discussions with customers who are interested in receiving service under the modified Schedule ED. For these customers, the proposed modifications may make a material difference in whether such customers bring new business to, or retain their existing business in, California.

PG&E's existing Schedule ED was first offered in 1990 after receiving approval from the Commission in Decision (D.) 89-12-057. Except for a brief period at the close of 1998, Schedule ED has been available continuously from 1990 until the present. PG&E proposes to modify the existing Schedule ED in five ways in order to make the rate more successful in attracting new businesses to California and retaining existing businesses that are considering relocation outside of the State. Specifically, PG&E proposes to: (i) broaden the applicability of the rate to PG&E's entire service territory; (ii) expand the eligibility for the rate to include existing customers considering relocating their operations and associated electric load outside of the State (eligibility for all businesses under the modified Schedule ED would be approved by the office of California Business Investment Services (CalBIS) in the California Employment Development Department, or its successor entity, in consultation with PG&E); (iii) increase the rate incentives from a three-year reduction (*i.e.*, 15%, 10%, 5%) to a five-year reduction (*i.e.*, 25%, 20%, 15%, 10%, 5%) and modify the manner in which the rate incentives are applied to specific rate components in order to simplify the calculations and promote equal treatment for bundled and non-bundled service customers; (iv) remove the current cap on participation; and (v) modify the ratemaking treatment for Schedule ED to eliminate the 25% shareholder penalty currently embodied in the rate and to reflect the fact that the net benefits of the rate incentive accrue to other ratepayers.

On August 13, 2004, PG&E filed a motion to provide interim rate relief for a customer considering expansion and relocation outside of California. The motion states that the enhanced ED rate set forth in PG&E's June 14 Application would be a "material factor" in deciding whether Amy's Kitchen, Inc. of Sonoma County, California would keep its operations in California. Amy's Kitchen is a family-owned and operated business that is one of the nation's leading source of organic convenience food. Its products are available nationally in natural foods stores, many supermarkets, and in select warehouse club stores. Most of Amy's Kitchen's sales occur on the East Coast. Amy's Kitchen was founded in

Santa Rosa in 1987 and currently has its corporate headquarters there, as well as all of its production facilities. It employs 700 people and makes 120 products that generate annual revenues of approximately $100 million. The company represents that it is one of the fastest growing companies in Sonoma County's food processing industry. Amy's Kitchen moved into its current 107,000 square foot facility in 1995, but states that there is no room left in which to expand. Now the company needs approximately 80,000 more square feet of production space in the next 12 to 18 months to keep up with projected demand for its products.

PG&E says Amy's Kitchen is under considerable pressure to relocate its existing facilities and to expand its operations outside of California. In particular, the state of Oregon has initiated a much-publicized effort to create a natural foods industry cluster in southern Oregon and has targeted Amy's Kitchen for relocation and expansion there. Other states have also been aggressive in courting Amy's Kitchen. Out-of-state locations offer much lower operating costs which would dramatically improve the company's financial condition. The cost of electricity in the out-of-state proposals has been as low as 4 cents/ kilowatt-hour (kwh), a figure that PG&E has independently confirmed by applying the publicly-available tariffs of the utilities serving that area. Accordingly, Amy's Kitchen is currently considering different siting alternatives: (i) expand new operations out-of-state while maintaining existing operations in Santa Rosa; (ii) move existing operations out-of-state and expand operations at that consolidated out-of-state location; and (iii) keep existing operations in Santa Rosa and expand operations there as well.

PG&E asserts that in the next few months Amy's Kitchen will decide whether or not to expand and relocate its operations outside California. To ensure that increased production space will be available in the next 12 to

18 months, planning for the expansion needs to begin as soon as possible. The decision to proceed with planning the expansion, and thus whether or not to remain in California, was postponed earlier this year by the company's owners after receiving a direct appeal from Governor Schwarzenneger to stay and expand in California. In deference to the Governor, Amy's Kitchen has decided to delay until November their decision on whether or not to move, in order to give the state an opportunity to present an attractive business alternative.

Amy's Kitchen has informed PG&E that the enhanced ED rate set forth in PG&E's A.04-06-018 would be a material factor in deciding whether or not to keep its operations in California. To that end, Amy's Kitchen has executed an affidavit, attached as Appendix A.

Similarly, CalBIS has met with Amy's Kitchen's owners to discuss their situation, and CalBIS has evaluated the credibility and immediacy of the options available to Amy's Kitchen. CalBIS has informed PG&E that it supports application of the enhanced Schedule ED rate to Amy's Kitchen's existing and proposed operations. A letter from CalBIS to that effect is attached as Appendix B.

Amy's Kitchen uses approximately 8,400 Megawatt-hours (MWh) annually and receives electric service under PG&E's E-19S rate schedule. In 2003, Amy's Kitchen paid approximately $1.2 million in electricity charges. If PG&E's 2003 GRC Phase II rate design proposal (A.04-06-024) is adopted as filed, PG&E estimates that the two existing accounts would pay about $927,000 per year. Using the Phase II rate design figures as a base, under the enhanced Schedule ED rate and assuming the facility expanded, PG&E estimates that revenues for the first year (after the 25% incentive) would be approximately $696,000, of which about $146,000 would be contribution to margin. The effects from all five years of the Schedule ED rate (again, assuming a baseline using PG&E's Phase II proposal) are set forth in Table 1.

Table 1

Year (Incentive)	Estimated Annual Revenue Without Expansion/With Expansion	Estimated Annual Contributions to Margin Without Expansion/With Expansion
1 (25%)	$696,000 / $972,000	$146,000 / $184,000
2 (20%)	$742,000 / $1,037,000	$193,000 / $248,000
3 (15%)	$789,000 / $1,102,000	$239,000 / $313,000
4 (10%)	$835,000 / $1,166,000	$285,000 / $378,000
5 (5%)	$881,000 / $1,231,000	$332,000 / $443,000

PG&E contends that the payments made by Amy's Kitchen toward electricity costs are by no means the only contribution that Amy's Kitchen makes to the State. For example, in 2003, Amy's Kitchen contributed approximately $171,000 in state and local taxes. Also in 2003, Amy's Kitchen contributed approximately $57,000 to state and local charities.

The preconditions set in PG&E's proposal for applicability of the enhanced rate have already been met. Specifically, PG&E has determined that Amy's Kitchen's existing and expanded load qualifies for the enhanced ED rate in so far as it is served on Schedule E-19, has existing load in excess of 200 Kilowatt (kW), and has a planned expansion in excess of 200 kW. Also, Amy's Kitchen has executed the requisite affidavit, modified only to reflect that the rate has not yet been authorized for Amy's Kitchen. Finally, CalBIS has expressed its support for application of the rate to Amy's Kitchen.

Accordingly, PG&E proposes that the enhancements to the Schedule ED rate be offered to Amy's Kitchen – both for its existing and expanded operations – immediately upon the issuance of an interim decision in this matter, under the following conditions:

- The terms and conditions specified in A.04-06-018 would apply – as proposed – to Amy's Kitchen's existing and expanded operations.
- The application of the enhanced Schedule ED rate to Amy's Kitchen shall not constitute a precedent that would in any way affect the final outcome of A.04-06-018. Similarly, the final outcome shall not affect in any way the contract with, and enhanced Schedule ED rate offered to, Amy's Kitchen.

PG&E concludes that it is in both the ratepayer and public interest to grant this request for an expedited interim decision. The grant will help ensure the receipt of over $1.5 million in estimated contribution to margin over the next five years, taking into account the planned expansion. (*See* Table 1.) That contribution to PG&E's fixed costs goes to reduce the burden otherwise shouldered by PG&E's other ratepayers and is in jeopardy of being lost if Amy's Kitchen relocates outside of California. Furthermore, retention of this customer supports the broader goals of the State of California to provide jobs and strengthen the economic and social fabric of California communities.

Four intervenors filed responses to the motion. Aglet Consumer Alliance (Aglet) filed an opposition; Modesto Irrigation District (Modesto ID) filed comments expressing among other things that it "does not oppose the interim relief PG&E seeks in its Motion." (Modesto ID Response, p. 3); the Office of Ratepayer Advocates (ORA) filed comments in support of the motion, subject to two conditions; and the Alliance for Retail Energy Markets (AReM) filed comments stating that it did not oppose the motion as long as certain conditions are met.

Aglet's principal reasons for opposing the motion relate to the cost-effectiveness of the enhanced Schedule ED rate and the alleged "social burdens" of keeping Amy's Kitchen in California. (Aglet Response, p. 2.) The "social burdens" cited by Aglet include "traffic congestion and air pollution" from "transporting the customer's products to the East Coast." (Aglet Response, p. 2.) Aglet's characterization of job retention at Amy's Kitchen as carrying "social burdens" is contradicted by statute (Pub. Util. Code § 740.4 "the commission shall authorize public utilities to engage in programs to encourage economic development) and our rejection of the invidious suggestion that we should export pollution. PG&E's filings provide benefits to PG&E's ratepayers by retaining or attracting customers that are evaluating out-of-state location alternatives, and where doing so provides contribution to margin. Aglet's concerns are beyond the scope of this proceeding.

ORA states that it supports the motion with two modifications (i) shareholders should cover 25% of the difference between the otherwise applicable tariff (OAT) and the enhanced Schedule ED rate (ORA Response, pp. 2-3) and (ii) Amy's Kitchen should be required to pay – via a liquidated damages clause in its Schedule ED contract – the full OAT should it terminate the contract prior to the end of its five-year term for the purposes of moving out-of-state (ORA Response, pp. 4-6).

PG&E is strongly opposed to the suggestion that shareholders share in the differences between the OAT and the enhanced Schedule ED rate. However, for the purpose of this interim decision we need not decide this issue. The current tariff requires the 25% shareholder burden and we prefer to consider this proposed modification of the tariff after a full hearing and briefs.

ORA's proposal to require a liquidated damages clause in the contract for Amy's Kitchen is reasonable and will be adopted. PG&E has consulted with Amy's Kitchen about this and – because of the particular circumstances of Amy's Kitchen – PG&E will not oppose inclusion of a slightly modified liquidated damages clause here because it would have a *de minimis* effect on the economics of Amy's Kitchen's relocation decision. For this reason, the last sentence in ORA's proposed Section 7.2 of the customer agreement – which states, "Parties agree the Liquidated Damages specified herein are a reasonable approximation of damages which PG&E and the ratepayers may incur as a result of termination . . . " – is incorrect. (ORA Response, p. 5.) PG&E says it would not be able to execute an agreement with this provision in good faith. We have no objection to removing this sentence. The remaining liquidated damage clause is clear enough.[1]

AReM states that it does not oppose the motion provided that three conditions are met. Those conditions are: (i) the load from Amy's Kitchen should count toward any applicable participation caps; (ii) the cost recovery mechanism ultimately adopted in this proceeding should also apply to any costs associated with service to Amy's Kitchen under Schedule ED; and (iii) Amy's Kitchen should be allowed to have the same option of moving to direct access (DA) service as other bundled service customers. (AReM Response, pp. 2 – 3.) These conditions need not be decided in this interim opinion as they do not affect the merits of the relief being granted.

We conclude that the motion should be granted based on PG&E's representation that the situation regarding its current customer, Amy's Kitchen,

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[1] 7.3 Liquidated Damages under this Agreement shall be an amount equal to the Present Value of the differences between (i) the amount the Customer would have paid for its energy and demand if billed at the Otherwise Applicable Tariff from the date service was first rendered under Schedule ED to the date of termination, and (ii) the amount billed to Customer under this Agreement and Schedule ED during the same period plus interest on the foregoing amounts to the date of payment.

is urgent and of utmost importance to the State of California. The following facts provided by PG&E are particularly relevant. First, the direct appeal from the governor for Amy's Kitchen to stay in California (Motion at p. 3); second, the affidavit from Amy's Kitchen stating that the so-called enhanced ED rates would be a material factor in deciding whether or not to keep its operations in California (Motion Exh. A); third, the analysis and support of the California Business Investment Service for the enhanced ED rates (Motion, Exh. B); and fourth, the company's need to make a decision very quickly, by November, regarding relocation and expansion (Motion at p. 3). We modify PG&E's request by adopting the two recommendations of ORA to the extent discussed above.

Comments on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure.

Assignment of Proceeding

Carl W. Wood is the Assigned Commissioner and Robert Barnett is the assigned ALJ in this proceeding.

Findings of Fact

1. Amy's Kitchen has its corporate headquarters in Santa Rosa, as well as all of its production facilities. It employs 700 people and makes 120 products that generate annual revenues of approximately $100 million. Amy's Kitchen moved into its current 107,000 square foot facility in 1995. There is no room left in which to expand. Now the company needs approximately 80,000 more square feet of production space in the next 12 to 18 months to keep up with projected demand for its products.

2. Amy's Kitchen is currently considering different siting alternatives: (i) expand new operations out-of-state while maintaining existing operations in Santa Rosa; (ii) move existing operations out-of-state and expand operations at that consolidated out-of-state location; and (iii) keep existing operations in Santa Rosa and expand operations there as well.

3. The cost of electricity in the out-of-state proposals has been as low as 4 cents/kwh.

4. The enhanced ED rate set forth in PG&E's A.04-06-018 would be a material factor in the decision by Amy's Kitchen of whether or not to keep its operations in California.

5. CalBIS has evaluated the options being faced by Amy's Kitchen. CalBIS supports application of the enhanced Schedule ED rate to Amy's Kitchen's existing and proposed operations.

6. Amy's Kitchen uses approximately 8,400 MWh annually and receives electric service under PG&E's E-19S rate schedule. In 2003, Amy's Kitchen paid approximately $1.2 million in electricity charges. If PG&E's 2003 GRC Phase II rate design proposal (A.04-06-024) is adopted as filed, PG&E estimates that the two existing accounts would pay about $927,000 per year. Using the Phase II rate design figures as a base, under the enhanced Schedule ED rate, PG&E estimates that revenues for the first year (after the 25% incentive) would be approximately $696,000, including the first year Schedule ED contribution to margin.

7. The following PG&E estimates are reasonable.

Year (Incentive)	**Estimated Annual Revenue Without Expansion/With Expansion**	**Estimated Annual Contributions to Margin Without Expansion/With Expansion**
1 (25%)	$696,000/$972,000	$146,000/$184,000
2 (20%)	$742,000/$1,037,000	$193,000/$248,000

3 (15%)	$789,000 / $1,102,000	$239,000 / $313,000
4 (10%)	$835,000 / $1,166,000	$285,000 / $378,000
5 (5%)	$881,000 / $1,231,000	$332,000 / $443,000

8. In 2003, Amy's Kitchen contributed approximately $171,000 in state and local taxes. Also in 2003, Amy's Kitchen contributed approximately $57,000 to state and local charities.

9. Amy's Kitchen's existing and expanded load qualifies for the enhanced ED rate.

Conclusions of Law

1. Amy's Kitchen qualifies for PG&E's proposed economic development rate.

2. PG&E's motion is reasonable and will be granted subject to two modifications: (i) shareholders should cover 25% of the difference between the otherwise applicable tariff (OAT) and the enhanced Schedule ED rate, and (ii) Amy's Kitchen should be required to pay – via a liquidated damages clause in its Schedule ED contract – the full OAT should it terminate the contract prior to the end of its five-year term for the purposes of moving out-of-state.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company's motion to provide rate relief under its proposed economic development rate to a customer (Amy's Kitchen) considering relocation outside of California is granted subject to the modifications set forth in Conclusion of Law 2.

2. This proceeding remains open.

This order is effective today.

Dated _____________________, at San Francisco, California.

APPENDIX A

APPENDIX B