PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

October 14, 2004

Agenda ID# 3974
Alternate to Agenda ID# 3938
Ratesetting

TO: PARTIES OF RECORD IN APPLICATION 04-06-018.

Enclosed is the Alternate Draft Decision of Commissioner Wood to the Draft Decision of Administrative Law Judge (ALJ) Barnett, previously mailed to you.

When the Commission acts on the draft or alternate decision, it may adopt all or part of it as written, amend or modify it, or set aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Public Utilities Code Section 311(e) requires that an alternate to a draft decision be served on all parties, and be subject to public review and comment prior to a vote of the Commission. Rule 77.6(d) provides that comments on the alternate draft decision be filed at least seven days before the Commission meeting.

Comments on the alternate decision must be filed and served October 21, 2004. Reply comments are due on October 25, 2004.

Pursuant to Rule 77.3 comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service. Please also provide an electronic copy of the comments to Steven Weissman at SAW@cpuc.ca.gov.

/s/ ANGELA K. MIN
Angela K. Minkin
Chief Administrative Law Judge

ANG: mnt

Attachment

Agenda ID # 3974
(Alternate to Agenda ID # 3938)
Ratesetting

Decision **DRAFT ALTERNATE DECISION OF CARL WOOD**
(Mailed 10/14/2004)

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

Summary

In this decision, we deny Pacific Gas and Electric Company's (PG&E's) motion for an interim decision granting rate discounts (as proposed more broadly in this application) to Amy's Kitchen, a customer that is considering relocating or expanding its food manufacturing facilities outside of California. Approval of this motion would prejudge the merits of PG&E's proposed discount structure prior to considering many significant issues related to implementation of the new structure. In terms of many issues bearing specifically on the merits of providing discounts to Amy's Kitchen, the record is deficient to support approval.

Background and Discussion

In Application (A.) 04-06-018, 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. PG&E states that it is currently engaged in preliminary discussions with customers who are interested in receiving service under the modified Schedule ED.

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 in which it asks that the proposed new incentives be approved for a particular customer before the Commission issues a decision approving or disapproving the broader proposal. 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 or expand its operations in California. Amy's Kitchen is one of the nation's leading sources of organic convenience food. While its products are available nationally, 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. It reports that it 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 receiving strong encouragement 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 lower operating costs, which could improve the company's financial condition. The cost of electricity in some 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 Schwarzenegger to stay and expand in California. Amy's Kitchen has chosen to delay until November its 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 a total of about $927,000 per year. Using the Phase II rate design figures as a base, if Amy's Kitchen expands within PG&E's service territory and receives the proposed subsidies, PG&E estimates that during the first year (after the 25% incentive) it would pay approximately $696,000, of which about $146,000 would be contribution to margin (payments beyond the variable cost of service that could help offset PG&E's fixed costs). PG&E characterizes the effects from all five years of the Schedule ED rate (again, assuming a baseline using PG&E's Phase II proposal) as 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 not 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.

PG&E's contends that Amy's Kitchen has satisfied the utility's preconditions to qualify for the proposed rate subsidy. 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 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 to offer the enhancements to the Schedule ED rate to Amy's Kitchen 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 argues that it is in both the ratepayer and public interest to grant this request for an expedited interim decision. The grant would 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 amount would go to reduce the burden otherwise shouldered by PG&E's other ratepayers and would be lost if Amy's Kitchen relocated 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 questions the cost-effectiveness of the enhanced Schedule ED rate and expresses concerns about the "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.)

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). ORA emphasizes, however, that its support for the motion is not an endorsement of PG&E's underlying request for program approval in this application.

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.)

The Administrative Law Judge's (ALJ's) Draft Decision would conclude that the motion should be granted based on PG&E's representation that the situation regarding its current customer, Amy's Kitchen, is urgent and of utmost importance to the State of California. It finds that 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). Despite these findings, we conclude that the motion should be denied.

We are moved by the Governor's effort to keep this valuable and impressive business in the State, as reinforced by the efforts of the Governor's California Business Investment Service. CalBIS is attempting to put together a package of economic incentives that will encourage Amy's Kitchen to continue to build its business within the state, and is hoping to include utility rate subsidies among those incentives. California Public Utilities Code Section 740.4 directs the Commission to authorize utilities to engage in programs to encourage economic development. However, recovery of expenses resulting from these programs is only allowed to the extent of a broader ratepayer benefit. The Code also places other important restrictions on the approval of economic development programs that we will discuss below.

The facts identified in the Draft Decision as "particularly relevant" are unrelated to the specific incentive package proposed by PG&E. The Governor's interest, the intervention of CalBIS, the desire of Amy's Kitchen to obtain a quick decision, and the company's assertion that the proposed subsidies would be a "material factor" in its relocation decision all are independent of the terms of the agreement. If the subsidies were twice as large, none of the other facts would change. If the subsidies were half as large, we are in no position to conclude that any of the other facts would change.

Regardless of the political interest in a rate break for Amy's Kitchen, and regardless of the company's willingness to consider such a subsidy as a material factor in its business plan, we are obliged to determine whether the proposal is a benefit to ratepayers.

As Aglet points out in its protest to the underlying economic development proposal, this Commission has clearly stated that it takes "a very cautious view of load building and load retention programs, including 'economic development activities…" (D.93-11-017, 52 CPUC2d 47, 53). The Commission addressed load building, load retention and economic development programs in 1995, and adopted several important principles: (1) utility resource planning should be undertaken in a way that minimizes the need for load building programs; (2) proponents of load building and load retention programs carry the burden of proof to quantify the social and ratepayer benefits of these programs; (3) expected program benefits should be identified in terms of rate effects, resource planning effects and other effects; and (4) utilities should design any load building or load retention program so as to avoid frustrating the Commission's goal of encouraging energy efficiency and energy conservation. (D.95-06-016, Attachment 1, 60 CPUC2d 265,276.)

Aglet argues, in its protest, that PG&E has failed each of these principles. In the broader proceeding, we will address these concerns. However, through the current motion, PG&E seeks to leap ahead of this conversation and obtain the approval of its proposed new program, at least for one customer, before it has withstood the test of the already-scheduled evidentiary hearings. Others have protested, as well, including Merced ID, Modesto ID, and AreM/WPTF. ORA anticipated the need to study numerous issues related to the proposal, including: the timing of the proposal in light of PG&E's proposed industrial rate reduction; PG&E's marginal cost analysis as well as the development of ORA's own marginal cost analysis for use in a contribution to margin analysis; the affidavit process and other safeguards; and several implementation issues.

In short, the terms that PG&E proposes to provide to Amy's Kitchen have not been approved by the Commission. They are the subject of this proceeding, but have yet to be carefully considered. The timely objections of numerous protesting parties have not been reviewed. Amy's Kitchen would not qualify for participation in the existing pilot program that offers lesser subsidies, and it would be fundamentally unfair to offer this one company the benefits of a richer, not-yet-adopted program. The care that the Commission has pledged to apply to economic development programs in general must also be applied to individual offers, as well. The current emergency motion does not provide an opportunity to apply this care.

There are many unanswered concerns that must be addressed before we can adopt the proposal that is the subject of this application, and questions specific to Amy's Kitchen that we must consider before applying the program to that company. Here are some of those concerns:

1. Is the Proposed Program Unduly Discriminatory?

Public Utilities Code Section 740.4(1)(e)(1) states that the language allowing for utility economic development programs:

> "does not authorize the commission to establish discriminatory rates for the purpose of attracting or benefiting specific industries or business entities, except that incentives may be provided for the benefit of industries or business entities whose facilities are located within the boundaries of enterprise zones, economic incentive areas, recycling market development zones, or federal rural enterprise communities in accordance with the provisions of Chapter 12.8 (commencing with Section 7070) and Article 1 (commencing with Section 7080) of Chapter 12.9 of Division 7 of Title 1 of the Government Code, and Article 2 (commencing with Section 42145) of Chapter 3 of Part 3 of the Public Resources Code."

PG&E will need to establish that the program will comply with this section by not unduly discriminating in favor of or to the detriment of specific industries or business entities in a manner that is inconsistent with the law. The current motion, if adopted, would provide benefits to a specific business entity without a record establishing that Amy's Kitchen meets any of the exceptions in the section (location within the boundaries of an enterprise zone, economic incentive area, recycling market development zone, or federal rural enterprise community).

At a minimum, this type of program may have a beggar-thy-neighbor quality, where one entity gains a benefit at the expense of its neighbors and competitors. Taken to an extreme, this approach could result in a downward spiral in which more-and-more customers impose fixed costs on those continuing to pay tariffed rates, encouraging more and more customers to qualify for special discounts. And if retaining customers through discounts is considered to be a good policy, then why should it apply only to industrial or commercial customers? If a residential customer would sign an affidavit saying that high utility rates are driving him out of the state, should PG&E give him a discount, as well, to save some contribution to margin?

All of these fundamental questions should be addressed before adopting the ED tariff proposal, and before applying it to any individual customers such as Amy's Kitchen.

2. Would the Program Be Anti-Competitive?

The Commission is obligated to consider anti-competitive implications of its actions (Northern California Power Agency v. Public Utilities Commission, 5 Cal. 3d 370 (1971)). In the current motion, PG&E proposes to offer one firm a rate subsidy that has not been provided to any of the firm's competitors. This raises obvious questions as to the effect that granting the motion would have on competition that have not been addressed in the motion. The same questions apply to adoption of the underlying program.

3. What Are the Opportunity Costs of Providing the Discount?

In presenting its proposal, PG&E identifies what is sees as being the contributions to margin resulting from its agreement with Amy's Kitchen, and asserts that this amount represents the benefit to ratepayers of approving the arrangement. However, this argument presumes that Amy's Kitchen will, in fact, abandon California if it does not receive the proposed rate subsidy. The record does not support such a conclusion. According to PG&E, Amy's Kitchen is considering a range of options including expansion in Santa Rosa, expansion out-of-state while keeping existing facilities in Santa Rosa, and taking all facilities out of the area. Amy's Kitchen has not asserted that it will definitely leave without the subsidies or that it will definitely stay if it receives them.

When departure is less than certain, we must consider the cost represented by the rate discount as well as the potential benefits. In this instance, the most obvious costs are the revenues that will be lost if Amy's Kitchen receives the discounts when it would have remained in Santa Rosa, anyway.[1] Table 2, below, expands upon Table 1 to include those lost revenues.

Table 2

Year (Incentive)	**Annual Revenue Without/With Expansion**	**Annual Contributions to Margin Without/With Expansion**	**Lost Revenues Without/With Expansion**
1(25%)	$696,000 / $972,000	$146,000 / $184,000	$232,000 / $324,000
2 (20%)	$742,000 / $1,037,000	$193,000 / $248,000	$185,000 / $259,000
3 (15%)	$789,000 / $1,102,000	$239,000 / $313,000	$139,000 / $194,000
4 (10%)	$835,000 / $1,166,000	$285,000 / $378,000	$92,000 / $130,000
5 (5%)	$881,000 / $1,231,000	$332,000 / $443,000	$46,000 / $65,000
Totals	$3,943,000 / $5,508,00	$1,195,000 / $1,566,000	$694,000 / $972,000

If Amy's Kitchen receives the proposed rate discounts, and then expands its facilities in Santa Rosa, other PG&E ratepayers will subsidize their business by

[1] There may be other costs resulting from adoption of this motion that may offset some or all of the perceived benefits of the contributions to margin that do not appear to be discussed by PG&E. For instance, if the rate discounts result in expansion of Amy's Kitchen's facilities, will PG&E incur any additional fixed costs in order to serve this customer?

approximately $972,000 in nominal dollars over five years. We do not know with certainty that PG&E would lose any contribution-to-margin without the rate discounts, since the record does not even offer us odds as to the likelihood of the company's departure. We do know, with certainty, that most or all of the cost of the subsidy would be borne by other ratepayers.

What else could PG&E do with that $972,000 on behalf of its ratepayers, and would some other option produce a more reliable ratepayer benefit? For instance, rather than providing Amy's Kitchen with a $972,000 rate discount, what if those funds were invested in site-specific energy efficiency improvements at the Amy's Kitchen facilities? Could the company achieve equal or greater reductions in its energy bills through targeted energy efficiency improvements that would also accrue to the benefit of all ratepayers by reducing demand? We do not have the answer before us, because PG&E did not attempt to demonstrate that the rate discount to Amy's Kitchen is the best use of the money. We take official notice of using two of PG&E's energy efficiency programs approved in D.02-03-056 as an example, here (Table 3) is another way to think about the value of the $972,000:

Table 3

Program	**Total Budget**	**Target Savings**	**Cost/MWh**	**What $972,000 Would Buy in Savings**	**Reduction in Amy's Kitchen's Energy Bill**
Savings By Design	$10.046 M	35,000 MWhs	$287	3,379 MWhs	28 % per year
Retrofits	$8.050 M	15,734 MWhs	$511	1,898 MWhs	16 % per year

The specific numbers may or may not apply to current program offerings. In addition, it is yet to be determined what energy efficiency programs, if any could benefit Amy's Kitchen. Based on these observations, we can only conclude that, before spending the money, it would be interesting to know. On average, the proposed rate discounts would lower the energy component of Amy's Kitchen's bills by an average of 15% over a five year period. The hypothetical examples offered in Table 3 would lower Amy's Kitchen's energy charges by at least 16% for as long as the company used the facilities. The rate discount would provide a short-term win for Amy's Kitchen, and theoretical short-term savings for other ratepayer. Energy efficiency savings would provide a long-term win for everybody.

4. How Much Value Should the Commission Place on Preserving Contributions to Margin?

PG&E's argument for the approval of a discounted rate rests on the potential benefits that would result from preserving some of Amy's Kitchen's contributions to margin. Should the Commission be making its decisions on this basis?

For instance, in other circumstances the Commission places great value on allowing competitive forces to encourage the utilities to become more efficient. Here, PG&E faces competitive pressures from unidentified out-of-state utilities, or energy service providers that could cause Amy's Kitchen to choose a lower-cost provider. If the Commission responds to these pressures by artificially reducing this customer's charges and spreading the resulting subsidy among other captive customers, what signal are we sending to PG&E? What impact would this have on PG&E's motivation to become more efficient and reduce costs? Further, is it consistent with Commission policy to place so much importance on contributions to margin in this instance, when the Commission and the Legislature do not consider the loss of such contributions as a cost in other areas, such as in the crafting of self-generation incentives and net metering, the analysis of proposed energy efficiency programs, or the institution of Cost Responsiblity Surcharge Caps in order to encourage customers to remain on Direct Access?

5. Is Approval of the Amy's Kitchen Proposal Consistent with the Commission's and the State's Energy Efficiency Goals?

According to PG&E, approximately 70% of Amy's Kitchen's business is on the East Coast. That means that products going to market must travel across California and the rest of the nation. While we undertake perhaps the most ambitious and costly energy efficiency programs in the country's history and express concern about the effects of greenhouse gases, should the Commission consider transportation inefficiencies that might result if we approve financial incentives that would discourage this customer from moving its production closer to market? Aglet raises this issue, but it is not addressed adequately in the limited record before us.

6. If the Goal Is To Avoid the Risk of Lost Contribution-to-Margin, Shouldn't We Take A Closer Look At the Risks Involved?

Is Amy's Kitchen about to leave California? We do not know. Nonetheless, we are asked to assume that it will, because it says that it might. However, it also says that it might keep its existing facilities in the state, and expand elsewhere. We have no basis to determine the relative likelihood of either of these outcomes occurring. Logically, it might be a harder decision to move an existing plant to another state and disrupt the lives of 700 employees than to build its needed added capacity elsewhere. If it did keep its current facilities in the state and paid the tariffed rates, the company would be likely to contribute approximately $1.89 million in payments above marginal cost over a five year period.[2] However, if Amy's Kitchen received the proposed rate discounts and chose to expand within the PG&E service territory, PG&E estimates its total contribution-to-margin over that same five years would be $1.566 million. Ratepayers may be better off if PG&E does nothing. The record provides us with no basis to conclude that one scenario is more likely than another.

7. Would PG&E's Proposal Appropriately Treat Otherwise Non-By-Passable Charges?

PG&E proposes applying the rate discount to all components of the energy tariff, including non-by-passable charges such as the Department of Water Resources (DWR) bond charge and the public purpose programs. The application of the 25% discount to the non-by-passable charges is in controversy in the underlying proceeding, with a number of parties arguing that it would be inconsistent with Legislative and Commission policy to grant PG&E authority to do so. However, PG&E appears to propose giving such a discount to Amy's Kitchen.

Prior to allowing for such a discount, this Commission must first determine that doing so would not be inconsistent with Public Utilities Code Section 366.2 (d) (1) , which states the intent that each retail end-use customer bear a fair share of the DWR purchase costs through the bond charge. That section also declares the intent to prevent shifting of recoverable costs between customers. On its surface PG&E's proposal would appear to result in just such a shifting of costs.

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[2] We derive this approximate figure by adding PG&E's estimated contribution to margin from existing facilities under the proposed rate discount ($1,195,000) and our estimated additional contribution to margin under full tariffed rates ($694,000).

In its rebuttal testimony, PG&E argues that its proposed Schedule ED will not conflict with this provision because it is designed to provide new contributions to margin and thus will not result in ratepayers having to shoulder any higher revenue burdens. However, regardless of PG&E's justification, the result is that with adoption of the proposal, PG&E will have some retail customers paying less than their share of the DWR bond costs, and others that will absorb shifted costs. We cannot adopt this proposal, for one entity such as Amy's Kitchen or for many, without being persuaded that such a result is consistent with the law and appropriate pursuant to Commission policy. This question will be fully explored in the underlying proceeding. We are not in a position to decide the issue now in response to the Amy's Kitchen proposal.

Conclusion

For all of these reasons, approval of the motion regarding Amy's Kitchen would be both premature, and inappropriate based on the record before us. We look forward to consideration of the merits of PG&E's underlying Schedule ED proposal after completion of the evidentiary record in this proceeding.

Comments on Draft Decision

The alternate draft decision of the Commission Carl Wood 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. There are many significant unresolved issues concerning PG&E's underlying Schedule ED proposal and its specific Application to Amy' Kitchen.

Conclusion of Law

PG&E should not apply its yet-to-be-approved proposed economic development rate to Amy's Kitchen.

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 denied.

2. This proceeding remains open.

This order is effective today.

Dated ____________________, at San Francisco, California.

(SEE APPENDIX A)

(SEE APPENDIX B)

CERTIFICATE OF SERVICE

I certify that I have by ***electronic***, and by ***U.S. mail,*** served to the parties of which an electronic mail address has been provided, a true copy of the original attached ***Opinion Denying the Motion of Pacific Gas and Electric Company for an Interim Decision Providing Emergency Rate Relief for a Customer Considering Relocation or Expansion Outside of California*** on all parties of record for proceeding A.04-06-018, or their attorneys of record.

Dated October 14, 2004, at San Francisco, California.

/s/ SUSIE TOY

Susie Toy

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

* *

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.