

Decision 09-06-025 June 18, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Modesto Irrigation District,

Complainant,

vs.

Pacific Gas and Electric Company (U39E),

Defendant.

Case 07-08-027
(Filed August 28, 2007)

**DECISION ADOPTING A SETTLEMENT RESOLVING MODESTO
IRRIGATION DISTRICT'S COMPLAINT AGAINST PACIFIC GAS AND
ELECTRIC COMPANY REGARDING TARIFF SCHEDULE E-31**

1. Summary

This decision adopts a settlement between Modesto Irrigation District (MID) and Pacific Gas and Electric Company (PG&E) that resolves MID's complaint that PG&E improperly provides service to customers under Schedule E-31. Case 07-08-027 is closed.

2. Procedural Background

MID filed its complaint on August 8, 2007. PG&E filed its answer to the complaint on October 4, 2007. PG&E and MID entered into lengthy negotiations to try to resolve the complaint. By Decision (D.) 08-07-012, the Commission extended the statutory deadline for this proceeding to June 30, 2009. PG&E and MID filed a joint motion for approval of a settlement agreement on March 19, 2009.

3. Issue Background

On September 30, 2000, Section 454.1 was added to the Public Utilities Code.¹ Section 454.1 authorized utilities to offer discounted rates to customers with loads over 20 kilowatts (kW) when those customers receive bona fide offers from an irrigation district at rates lower than the electric utility's tariff rates. The utility is allowed to discount the non-commodity portion of the rate so long as the resulting non-commodity rate exceeds the utility's marginal distribution cost of providing service to the customer. For customers in MID's distribution area, the rate must exceed 120% of the utility's marginal distribution cost of providing service to the customer.

To implement Section 454.1, PG&E filed Advice Letter 2276-E on August 26, 2002. By Resolution E-3801, dated August 21, 2003, the Commission authorized PG&E to file a supplemental advice letter to modify its proposed tariff to reflect the changes imposed in the resolution. PG&E subsequently filed Advice Letter 2276-E-A in compliance with the resolution. Advice Letter 2276-E-A contained PG&E's Electric Schedule E-31, Distribution bypass Deferral Rate, which became effective September 2, 2003.

Schedule E-31 provides discounted non-commodity rates to qualified electric customers. The criteria to qualify are:

- Existing PG&E customers must: (1) have at least 20 kW peak demand at their premises on PG&E's system; (2) demonstrate they have received a bona fide offer from an irrigation district for service at rates less than PG&E's tariff rates; and (3) sign an affidavit to that effect.

¹ All section references are to the Public Utilities Code.

- New customers must: (1) have at least 20 kW peak demand at their premises that could be served by an irrigation district; (2) demonstrate they have received a bona fide offer from an irrigation district for service at rates less than PG&E's tariff rates; and (3) sign an affidavit to that effect.
- Existing irrigation district customers must: (1) have at least 20 kW peak demand at their premises that is currently served by an irrigation district; (2) demonstrate they have a contract with an irrigation district that is due to expire and have received a bona fide offer from an irrigation district for service at rates less than PG&E's tariff rates; and (3) sign an affidavit to that effect.

Schedule E-31 requires the customer to sign Form 79-995, Agreement for Customers Taking Service on Schedule E-31, which was included in the tariffs filed with the Commission on September 2, 2003 pursuant to Resolution E-3801 and effective September 2, 2003. Form 79-995 requires the customer to provide PG&E with a "written offer from a Competitor or Competitor's tariff (in the case of a customer already taking service from Competitor)" in order to qualify for service under Schedule E-31. Form 79-995 provides for an expiration date.

The commencement date of the discount rate period is specified as follows:

- for an existing customer, the date shall be no earlier than the date at which, in PG&E's judgment, the customer would have begun taking service from the irrigation district; and
- for a new customer, the date shall be the date on which the customer begins taking service.

The discount period is the period for which the discounted rate may be offered. Schedule E-31 provides that the discount period shall match the term specified in the irrigation district's bona fide offer. If the bona fide offer contains no term, the discount period may not exceed five years. If the bona fide offer

contains a term of six months or less, the discount period may not exceed one year.

4. MID's Complaint and Requested Relief

MID alleges the following:

- PG&E provided service to customers to whom MID has not extended written bona fide offers.
- PG&E extended service to customers before the date at which MID could have provided service.
- PG&E continued to serve customers under Schedule E-31 after its agreement with the customer expired.

MID's requested relief is the following:

- PG&E should be enjoined from shifting costs, for rate discounts provided to customers who are not eligible for the discounts, to other customers. In cases where noncompliant discount rates are being provided, the costs of such noncompliant discounts should be born by shareholders and not ratepayers.
- The Commission should implement a new annual proceeding to review Schedule E-31 contracts, and possibly other special rates, to ensure that future discounts are provided only to qualified customers.
- The Commission should suspend further use of Schedule E-31 until an oversight mechanism is in place.
- Such other relief as the Commission may deem appropriate.

5. Settlement Overview

The settlement, included as Attachment A to this decision, resolves all issues between the parties and asks for dismissal of this complaint. The settlement eliminates ambiguity in Schedule E-31 and establishes a framework of rules regarding PG&E's provision of service pursuant to Schedule E-31.

The settlement provides for a one-time payment to MID of \$925,000 to resolve the current litigation, and eliminate all past claims relating to Section 454.1, Resolution E-3801, and Schedule E-31. The Commission understands that the \$925,000 payment to MID is not intended to be recoverable from ratepayers in any form. The Commission's approval of the settlement is conditioned upon this understanding.

Generally, the settlement:

- Defines terms;²
- Provides for exchanges of information;
- Provides for hold periods where PG&E or MID cannot enter into a contract with a customer for a specified period of time to allow the customer to contact the other party; and
- Provides for an annual reasonableness review.

The reasonableness review will be initiated by an annual advice letter to be filed by PG&E. The Commission's Energy Division (ED) will conduct a rate review (e.g., ensuring PG&E's compliance with the marginal cost floor price), and a procedural review (e.g., ensuring compliance with the procedures set forth in Section 454.1, Resolution E-3801, Schedule E-31, the underlying E-31 contracts, and the settlement).

Pursuant to the settlement, PG&E will submit its first advice letter within 90 days of the effective date of this decision. The first reasonableness review will include a rate review, but not a procedural review because all existing procedural review issues have been resolved in the settlement.

² In the body of the settlement reference is made to various numbers of days. As used therein, days mean calendar days.

Subsequent reasonableness reviews will include both a rate review and a procedural review of any new Schedule E-31 contracts, and only a rate review of contracts in existence after the last review.

The Commission's approval of the use of an advice letter for reasonableness reviews of Schedule E-31 contracts, as part of the settlement, is limited to the circumstances of this proceeding and does not constitute a precedent for the use of advice letters for reasonableness reviews.

6. Approval of the Settlement

Rule 12.1(d) of the Commission's Rules of Practice and Procedure provides that the Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

This is the standard of review for this settlement. PG&E and MID are the only parties to the settlement.

The settlement indicates that differences were resolved to the satisfaction of both parties and provides for avoidance or resolution of any future issues regarding Schedule E-31. Thus, the settlement is reasonable in light of the whole record.

The settlement does not violate any statute or Commission decision or rule. Thus, the settlement is consistent with law.

PG&E represents the interests of its shareholders. MID represents its interests. The settlement governs how the parties interact regarding Schedule E-31. This will enhance fair competition between PG&E and MID for existing and potential Schedule E-31 customers. This competition will benefit such customers by allowing them to choose between PG&E and MID based on the offers they receive. Thus, the settling parties fairly represent the directly

affected interests and existing and potential Schedule E-31 customers will benefit from the resulting enhanced competition. The settlement also results in a clearer understanding of Schedule E-31 and provides for reasonableness reviews, both of which enhance the Commission's ability to ensure the proper administration of Schedule E-31. Since the settlement makes no changes to Schedule E-31, although changes are made to forms used to initiate service under Schedule E-31, the general body of ratepayers are indifferent to the settlement. Thus, the settlement is in the public interest and is adopted.

7. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed.

8. Category and Need for Hearings

The Instructions to Answer, filed September 11, 2007, categorized this proceeding as adjudicatory and determined that evidentiary hearings would be held unless the matter was otherwise resolved by the parties. At the request of the parties, no hearings were held. Because the parties have reached a settlement resolving all issues between them, which is adopted herein, no hearings are necessary.

9. Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner and Jeffrey P. O'Donnell is the assigned ALJ in this proceeding.

Findings of Fact

1. The settlement eliminates ambiguity in Schedule E-31 and establishes a framework of rules regarding PG&E's provision of service pursuant to Schedule E-31.
2. The settlement provides for a one-time payment to MID of \$925,000 to resolve the current litigation, and eliminate all past claims relating to Section 454.1, Resolution E-3801, and Schedule E-31.
3. The settlement defines terms, provides for exchanges of information, provides for hold periods where PG&E or MID cannot enter into a contract with a customer for a specified period of time to allow the customer to contact the other party, and provides for an annual reasonableness review.
4. The reasonableness review will be initiated by an annual advice letter to be filed by PG&E. As part of the reasonableness review, ED will conduct a rate review (e.g., ensuring PG&E's compliance with the marginal cost floor price), and a procedural review (e.g., ensuring compliance with the procedures set forth in Section 454.1, Resolution E-3801, Schedule E-31, the underlying E-31 contracts, and the settlement).
5. PG&E will submit its first reasonableness review advice letter within 90 days of the effective date of this decision.
6. The first reasonableness review will include a rate review, but not a procedural review because all existing procedural review issues have been resolved in the settlement.
7. Subsequent reasonableness reviews will include both a rate review and a procedural review of any new Schedule E-31 contracts, and only a rate review of contracts in existence after the last review.
8. PG&E and MID are the only parties to the settlement.

9. The settlement indicates that differences between PG&E and MID were resolved to the satisfaction of both parties and provides for avoidance or resolution of any future issues regarding Schedule E-31.

10. The settlement does not violate any statute or Commission decision or rule.

11. PG&E represents the interests of its shareholders and MID represents its interests.

12. The settlement governs how the parties interact regarding Schedule E-31, which will enhance fair competition between PG&E and MID for existing and potential Schedule E-31 customers, and benefit such customers by allowing them to choose between PG&E and MID based on the offers they receive.

13. The settling parties fairly represent the affected interests and existing and potential Schedule E-31 customers will benefit from the resulting enhanced competition.

14. The settlement results in a clearer understanding of Schedule E-31 and provides for reasonableness reviews, both of which enhance the Commission's ability to ensure the proper administration of Schedule E-31.

15. Since the settlement makes no changes to Schedule E-31, although changes are made to forms used to initiate service under Schedule E-31, and the costs of the \$925,000 payment by PG&E to MID will not be recovered from ratepayers, the general body of ratepayers is indifferent to the settlement.

Conclusions of Law

1. The \$925,000 payment to MID should not be recoverable from ratepayers in any form.
2. Rule 12.1(d) of the Commission's Rules of Practice and Procedure provides that the Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.
3. The settlement is reasonable in light of the whole record, consistent with law, and in the public interest.
4. The joint motion for approval of a settlement agreement should be adopted.
5. Case 07-08-027 should be closed.
6. This order should be effective today.

O R D E R

IT IS ORDERED that:

1. The joint motion for approval of a settlement agreement, included herein as Attachment A, filed by Modesto Irrigation District and Pacific Gas and Electric Company on March 19, 2009 is adopted.
2. Pacific Gas and Electric Company shall file annual advice letter reasonableness reviews, with accompanying documentation, as provided for in Article IV of the settlement agreement.
3. The Commission's Energy Division shall conduct a rate review, and a procedural review of the reasonableness review advice letter.

4. Pacific Gas and Electric Company shall submit its first reasonableness review advice letter within 90 days of the effective date of this decision.

5. The first reasonableness review shall include a rate review, but not a procedural review because all existing procedural review issues have been resolved in the settlement agreement.

6. Subsequent reasonableness reviews will include both a rate review and a procedural review of any new Schedule E-31 contracts, and only a rate review of contracts in existence after the previous review.

7. The cost of the settlement provision requiring a \$925,000 payment by Pacific Gas and Electric Company to the Modesto Irrigation District shall not be recoverable from ratepayers in any form.

8. Case 07-08-027 is closed.

This order is effective today.

Dated June 18, 2009, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners

[O'Donnell Attachment A](#)