

Decision 09-07-002 July 9, 2009

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric  
Company To Revise Its Electric Marginal  
Costs, Revenue Allocation, and Rate  
Design. (U 39 M)

Application 06-03-005  
(Filed March 2, 2006; Petition for  
Modification filed April 3, 2009)

**DECISION DENYING PETITION FOR MODIFICATION  
OF DECISION 08-07-045 WITHOUT PREJUDICE**

**1. Summary**

The Division of Ratepayer Advocates, the California Small Business Association and California Small Business Roundtable filed a Petition for Modification of Decision 08-07-045. The request that the effective date for default critical peak pricing rates for small and medium commercial and industrial customers be postponed from on, or before, February 1, 2011 to no sooner than February 2012 is denied without prejudice to the determination of such appropriate date in Pacific Gas and Electric Company's ongoing Rate Design Window proceeding, Application 09-02-022. Also, the request for bifurcation of Application 09-02-022, and consideration of rate design for small and medium commercial and industrial customers in the second phase, is moot and denied.

This Application remains open to consider the May 12, 2009 Petition of Pacific Gas and Electric Company and California City-County Street Light Association for Modification of Decision (D.) 07-09-004 and D.07-12-036.

## 2. Background

D.08-07-045 adopted a dynamic pricing implementation timetable and associated rate design guidance for Pacific Gas and Electric Company (PG&E). Among other things, the decision ordered PG&E to file a Rate Design Window Application no later than February 28, 2009. As part of that filing PG&E was ordered to propose one or more default critical peak pricing (CPP) rates<sup>1</sup> for commercial and industrial (C&I) customers with maximum load less than 200 kilowatts (kW) (small and medium customers) that have had an advance metering infrastructure (AMI) meter for 12 months or more. The indicated effective date of the default rate(s) is on, or before, February 1, 2011.<sup>2</sup>

However, the Commission did leave open the possibility of changing the dynamic pricing timetable, as follows:

This decision does not itself adopt any rates and does not commit the Commission to approve specific rates. Instead, this decision establishes dates when PG&E will be required to propose specified rates. We refer to these dates as the timetable. In the proceedings in which the Commission considers PG&E's specific rate proposals, the Commission could decide to adopt different rates or a different timetable based on the information presented to the Commission at that time. (D.08-07-045, pp. 8-9.)

On April 3, 2009, the Division of Ratepayer Advocates (DRA), the California Small Business Association (CSBA) and California Small Business

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<sup>1</sup> In its Rate Design Window filing, PG&E refers to such CPP rates as Peak Day Pricing (PDP) rates.

<sup>2</sup> D.08-07-045, Ordering Paragraph 6.

Roundtable (CSBRT) (collectively, Petitioners) filed a Petition for Modification of D.08-07-045 (Petition). Petitioners request that the Commission postpone the date by which CPP and other new rates are to become effective for medium and small commercial customers, to no sooner than February 2012.<sup>3</sup>

Petitioners further request that the Commission bifurcate the PG&E Rate Design Window proceeding, Application (A.) 09-02-022, with Phase 1 devoted to rate design for large C&I and all Agricultural customers, and Phase 2 devoted to rate design for small and medium C&I customers.

On April 24, 2009, The Utility Reform Network (TURN) filed a response supporting the Petition. On May 1, 2009, PG&E filed a response opposing the Petition.

### **3. The Petition**

As support for their requests to change the dynamic pricing timetable and bifurcation of A.09-02-022, Petitioners provide the following reasoning:

- The Commission must consider this Application in the context of the current economy. It is too soon to say whether PG&E's cost or bill impact estimates are reasonable,<sup>4</sup> but what is clear is that unnecessary increases in rates should be avoided or, at least, postponed. These are desperate economic times. Businesses have closed, many of PG&E's ratepayers have lost their jobs and

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<sup>3</sup> Petitioners request no change in the schedule for implementing dynamic pricing for large C&I customers, nor for Agricultural customers.

<sup>4</sup> DRA notes that PG&E is requesting revenue requirement increase for 2008 through 2010 of \$32.1 million. In addition, many medium and small business customers will face other significant bill increases. For example, PG&E estimates that approximately 17% of customers currently on schedule A-1 will see additional annual bill increases from PDP rates of 8% or more during abnormal weather years, due to implementation of dynamic pricing via changes in rate design.

their homes, and many more face an uncertain future. While dynamic pricing may be intended to “lower consumer costs,” at this point, the only guarantee is that this proposal will increase costs to many medium and small commercial ratepayers of PG&E at a time when they can least afford it.

- While large commercial and industrial customers have interval meters and are already on time of use rates, many smaller customers will not have AMI until 2011 or 2012. Given the Commission’s conclusion that “[i]t is reasonable for PG&E to provide a customer with maximum load less than 200 kW 12 months with a new advanced meter to observe its usage before moving to a default time-differentiated rate,”<sup>5</sup> there is little benefit to be lost by deferring the implementation date to 2012 for medium and small commercial customers.
- As directed, PG&E has proposed a major overhaul of its tariffs. Given the complexity of the rate designs proposed by PG&E, informed customer choice requires that customers be provided ample time to understand the ramifications of the choices they are being offered, and to assess their possibilities to modify their energy consumption. All parties should be given sufficient time to evaluate PG&E’s proposal to ensure, as far as possible, that the CPP/ PDP tariffs the Commission adopts will be fair, reasonable, and cost ratepayers as little as possible. Forcing PG&E and other parties to evaluate the complexities and ramifications of the proposed tariff changes pursuant to an abbreviated schedule set before the Application was filed does a disservice to the utility and to its ratepayers.
- Given the electric procurement outlook in the near-term, and the impact of the current economic difficulties in reducing demand, a near-term shortage of electric generation capacity appears improbable. Therefore, the near-term need for dynamic pricing

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<sup>5</sup> D.08-07-045, Conclusion of Law 14.

appears to have diminished, allowing the Commission to extend the implementation schedule in order to fine-tune the rate design options for maximum customer acceptance.

#### **4. TURN's Response**

TURN supports the Petition. However, in order to allow for a more orderly and efficient processing of A.09-02-022, TURN suggests that it would be most effective to change the timetable for rate implementation and to bifurcate the issues in A.09-02-022 via the Scoping Memo to be issued in that proceeding.

Also, TURN states that it is pointless to spend time reviewing the reasonableness of costs if PG&E spends the money and can claim that such expenditures are necessary to meet the compliance schedule. If this were to be the basis for approval, TURN requests that the May 1, 2010 CPP implementation date for large customers be moved far enough ahead (perhaps one year) so that a decision on implementation costs can be issued in advance of PG&E's spending the money.

As an alternative to such a delay, TURN states that the Commission could adopt DRA's proposal, made at the April 22, 2009 prehearing conference in A.09-02-022, to allocate the implementation costs between Phases 1 and 2. TURN reasons that such a procedural change would allow parties to evaluate at least a portion of the information technology (IT) costs, if the Commission accepts the recommendation to delay only the February 2011 implementation date.

#### **5. PG&E's Response**

PG&E states that the procedural schedule for A.09-02-022 already is under consideration in that docket, and it is inappropriate to determine the procedural schedule for A.09-02-022 through a request to modify D.08-07-045. PG&E also states that the parties in A.09-02-022 expect a scoping memo setting the schedule

long before the Commission issues a decision on the Petition. Thus, PG&E indicates that Petitioners' request here may be moot by the time the Commission issues a decision on the Petition.

PG&E also makes the following points:

- There is no inconsistency between a decision on rate design for small and medium C&I customers at the end of 2009, and a dynamic pricing implementation date for those customers in February 2012 or later. That is, the Commission decision date on small and medium C&I rate design does not need to move, even if the implementation date for the new default CPP rate is deferred to a later date.
- PG&E shares the Petitioners' concern about the potential impact that default CPP may have on its small and medium C&I customers, if they are not adequately prepared for the change. However, while deferring the effective date for small and medium C&I customer CPP to February 1, 2012 might provide more time for customer education, delaying a decision on the actual rate design, as Petitioners request, is likely to negate the potential for more time to reach and educate these customers.
- DRA's assertion that a near-term shortage of electric generation capacity appears improbable is not supported by the indicated citation.<sup>6</sup>
- In A.09-02-022, PG&E provided a discussion of the integrated nature of PG&E's IT efforts to support peak day pricing and why adjusting the scope and/or timing of these efforts, would have a

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<sup>6</sup> While Petitioners cite a California Energy Commission Staff Report, CEC-200-2009-001-SD, "Draft Revised Demand Forecast" (CEC staff report) that notes PG&E's estimated 2008 peak demand was 471 megawatts less than forecasted in the 2007 Integrated Resource Plan, PG&E states the CEC staff report does not reduce the load forecast for PG&E, or the generation capacity needed to meet that load.

serious adverse impact on the cost and timeliness to complete the IT activities.<sup>7</sup>

## 6. Discussion

### 6.1. Modification of the Dynamic Pricing Timetable

There is no disagreement with the fact that, in D.08-07-045, the Commission provided a timetable specifying effective dates for implementing dynamic pricing for each customer class. For the small and medium C&I class, the effective date for implementing default CPP/PDP rates is shown to be on, or before, February 1, 2011. Also, there is no disagreement with the fact that, in D.08-07-045, there are provisions for the adoption of a timetable that is different than that provided in the decision.

D.08-07-045 states that the Commission could decide to adopt different rates or a different timetable based on the information presented to the Commission at the time and in the proceedings in which the Commission considers PG&E's specific rate proposals. PG&E is proposing specific CPP/PDP rates, and the Commission will be considering those rates, in A.09-02-022. Therefore, the Petitioners' request to change the dynamic pricing timetable could certainly be done in A.09-02-022. Moreover, it is preferable to do so rather than to address the request through a decision on the Petition.

Addressing substantive issues raised by the Petition and responses at this time would necessitate the use of potentially incomplete information that is not tested by cross-examination. On the other hand, addressing proposed timetable changes in A.09-02-022 will allow parties to raise related issues in direct

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<sup>7</sup> A.09-02-022, PG&E's Reply to Protests, pp. 2 to 4, 6, and declaration of Christopher L. Vana, *passim*.

testimony, parties to respond in rebuttal testimony, and parties to test the evidence through cross examination in evidentiary hearings.

Also, the scope of issues to be considered in A.09-02-022 already includes proposals to change the effective date for default PDP rates for small and medium customers.<sup>8</sup> Issues related to dynamic pricing timetable changes should continue to be addressed in A.09-02-022, where applicable. In this respect, the Scoping Memo for A.09-02-022 does not need to be adjusted.<sup>9</sup>

Therefore, the Petitioners' request to change the effective date for default PDP rates for small and medium C&I customers will be denied without prejudice to the determination of such appropriate date in A.09-02-022.

## **6.2. Bifurcation of A.09-02-022**

As TURN suggests and PG&E asserts, the appropriate means for determining whether or not A.09-02-022 should be bifurcated is through the Scoping Memo in A.09-02-022. Also, DRA requested that A.09-02-022 be bifurcated as part of its protest to that application.

Due to the time requirements for issuing a Commission decision on a petition for modification and the need to proceed expeditiously in A.09-02-022, the Scoping Memo in A.09-02-022 was issued on May 5, 2009, prior to this decision on the Petition. We note that DRA's request to bifurcate the proceeding was not adopted in that Scoping Memo. As the assigned Commissioner stated, the adopted schedule in that proceeding is intended to resolve all issues by the

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<sup>8</sup> See Assigned Commissioner's Ruling and Scoping Memo for A.09-02-022, dated May 5, 2009, p. 8.

beginning of 2010 so that dynamic pricing can be implemented as envisioned in D.08-07-045.<sup>10</sup> We see no reason to change that determination.

Petitioners' request to bifurcate A.09-02-022 is moot and will be denied.

With respect to TURN's concern regarding whether it would be pointless to review costs that have already been spent, all costs are subject to a finding of reasonableness before rate recovery is authorized. This applies to costs that are requested on a recorded basis as well as costs requested on an estimated basis.

## **7. Comments on Proposed Decision**

The proposed decision (PD) 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. Comments were filed by Petitioners on June 23, 2009. No reply comments were filed.

Petitioners commented on the PD's denial of the bifurcation request as well as the request to extend the default CPP timetable for small and medium commercial customers.

### **7.1. Bifurcation**

Petitioners state that the PD's denial of the bifurcation request is not supported by any findings or evidence, and by failing to address the issues raised in the Petition, the PD effectively denies small and medium commercial

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<sup>9</sup> The Scoping Memo indicated that whether the scope of issues in A.09-02-022 needed to be adjusted at a later date with respect to this issue would be determined by the manner in which the Commission resolved the Petition.

<sup>10</sup> Scoping Memo for A.09-02-022, p. 10.

customers due process. Petitioners assert that for the Commission to adopt the PD as its final decision in this case would be legal error. We disagree.

The PD's denial of the bifurcation request is based on the fact that the appropriate forum for addressing whether A.09-02-022 should be bifurcated is in A.09-02-002 where the schedule for that proceeding is established. There is nothing to modify in D.08-07-045, with respect to bifurcation of A.09-02-022, because the procedural schedules for the applications that would implement dynamic pricing for specific customer groups are not addressed in D.08-07-045. We also note that Petitioners did not provide proposed wording to carry out any proposed modification to D.08-07-045, with respect to the bifurcation of A.09-02-022.<sup>11</sup>

With respect to due process, there may be merit to those issues which would support delaying implementation of default CPP rates for small and medium customers. However, as the PD indicates the timetable for such implementation is being addressed in A.09-02-022, and the merits of those issues raised in the Petition can be evaluated along with other issues and concerns raised during the course of that proceeding. Issues and concerns regarding the need for bifurcation of A.09-02-022 should have been brought up in A.09-02-022 where the procedural schedule, including potential bifurcation, was properly considered.<sup>12</sup>

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<sup>11</sup> Rule 16.4(b) states, in part, that a petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision.

<sup>12</sup> In its protest to A.09-02-022, DRA raised the same concerns expressed in the Petition and proposed the proceeding be bifurcated. The schedule was also discussed extensively at the PHC and addressed in the Scoping Memo.

## 7.2. Timetable

Petitioners state that denying the modification of the dynamic pricing timetable for small and medium commercial customers on the basis that the information supporting the request is “Potentially Incomplete”<sup>13</sup> is factual error. Petitioners also assert that the Commission does not need cross examination to conclude that a flawed rate design for small and medium commercial customers will harm them, nor does the Commission need cross examination to conclude that an effective customer outreach program is needed to communicate the new rate design to small and medium commercial customers. These arguments are not persuasive.

The primary reason for deferring this issue to A.09-02-022 is not that there are concerns with evidence presented in the Petition, but that the appropriate means for establishing the effective date for default CPP rates for small and medium commercial customers is through A.09-02-022. This is entirely consistent with D.08-07-045 which states that, in the proceedings in which the Commission considers PG&E’s specific rate proposal, in this case A.09-02-022, the Commission could decide to adopt different rates or a different timetable based on the information presented to the Commission at that time.<sup>14</sup> In this way, concerns brought up in the Petition, as well as concerns that may be brought up in direct testimony and evidence developed over the course of that proceeding, will be available for the Commission’s consideration. Also, the Commission can determine whether or not the proposed rate design is flawed or

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<sup>13</sup> See Finding of Fact 4.

<sup>14</sup> See D.09-07-045, pp. 8-9.

whether or not an effective customer outreach program will be available to the affected customers and can respond accordingly.

## **8. Assignment of Proceeding**

Rachelle B. Chong is the assigned Commissioner and David K. Fukutome is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. In D.08-07-045, the Commission provided a timetable for implementing dynamic pricing for each customer class.

2. By the provisions of D.08-07-045, the Commission could decide to adopt different dynamic pricing rates or a different dynamic pricing timetable based on the information presented to the Commission at the time, and in the proceedings in which, the Commission considers PG&E's specific rate proposals.

3. PG&E is proposing specific CPP/PDP rates, and the Commission will be considering those rates, in A.09-02-022.

4. Addressing substantive issues raised by the Petition and responses at this time would necessitate the use of potentially incomplete information that is not tested by cross-examination.

5. Addressing proposed timetable changes in A.09-02-022 will allow parties to raise related issues in direct testimony, parties to respond in rebuttal testimony, and parties to test the evidence through cross examination in evidentiary hearings.

6. The appropriate means for determining whether or not A.09-02-022 should be bifurcated is through the Scoping Memo in A.09-02-022.

7. The Scoping Memo in A.09-02-022 has already been issued, and DRA's proposal to bifurcate the proceeding was not adopted.

**Conclusions of Law**

1. The appropriate effective date for default critical peak pricing rates for small and medium C&I customers should be determined in A.09-02-022.

2. Petitioners request for the Commission to modify the D.08-07-045 timetable for implementing dynamic pricing, to change the effective date for default critical peak pricing rates for small and medium C&I customers, should be denied without prejudice to the determination of such appropriate date in A.09-02-022.

3. Petitioners request for the Commission to bifurcate A.09-02-022 is moot and should be denied.

**O R D E R**

**IT IS ORDERED** that:

1. The April 3, 2009 Petition for Modification of Decision 08-07-045, filed by the Division of Ratepayer Advocates, the California Small Business Association and California Small Business Roundtable, is denied. Denial is without prejudice to the determination of the appropriate effective date for default critical peak pricing rates for small and medium commercial and industrial customers in Application 09-02-022.

2. This Application remains open to consider the May 12, 2009 Petition of Pacific Gas and Electric Company and California City-County Street Light Association for Modification of Decision 07-09-004 and Decision 07-12-036.

This order is effective today.

Dated July 9, 2009, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners

