

Decision 09-08-015 August 20, 2009

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

Application of Pacific Gas and Electric Company (U39E) and Power and Water Resources Pooling Authority for Approval of Nonbypassable Charge Agreement.

Application 09-05-017  
(Filed May 19, 2009)

**DECISION APPROVING PROPOSED AGREEMENT**

**1. Introduction**

By this decision, we grant the application of Pacific Gas and Electric Company (PG&E) and Power and Water Resources Pooling Authority (PWRPA)<sup>1</sup> for approval of their "Nonbypassable Charge Agreement," (Agreement) attached as Appendix 1 of this decision. The Agreement resolves parties' prior disputes concerning Schedule E-NWDL charges to PWRPA customers for payment of the Public Purpose Programs surcharge which collects the costs of state-mandated low-income, energy efficiency and renewable generation programs. The Agreement calls for a lump-sum payment by PWRPA on behalf of its customers who owe nonbypassable charges under PG&E's Electric Rate Schedule E-NWDL.

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<sup>1</sup> PWRPA operates as a local publicly owned electric utility, as defined by Public Utilities Code Section 9604(d), and provides electric service to its end-use customers under a master rate and service agreement.

## 2. Discussion

The proposed Agreement resolves disputes between PG&E and PWRPA concerning amounts billed pursuant to Schedule E-NWDL by PG&E on August 21, 2008, to PWRPA and certain designated NWDL customers as specified in the application. PG&E filed Schedule E-NWDL in compliance with Decision (D.) 06-05-018.

In D.06-05-018, the Commission ordered PG&E to “promptly file an advice letter with the appropriate amendments to its tariff to bill and collect CRS [cost responsibility surcharge] and other applicable nonbypassable charges from preference power customers consisting of ‘Additional Customer Load’ relating to the specific delivery points listed in Appendix C of the WDT Agreement [Service Agreement for Wholesale Distribution Service to Western Area Power Administration (WAPA)], that have taken bundled service from PG&E on or after February 1, 2001, and subsequently reduced or terminated such service to take electric service from WAPA or another similarly situated entity.”<sup>2</sup>

Special Condition 2 of Schedule E-NWDL provides certain exemptions from the various nonbypassable charges, including the following: “Departing customers which leave PG&E’s service to be served by an entity which must impose a Public Purpose Programs surcharge pursuant to Public Utilities Code Section 385 shall not thereafter be required to pay PG&E’s Public Purpose Programs charge.”

On September 3, 2008, counsel for PWRPA provided written notice to PG&E under Special Condition 3.e. of Schedule E-NWDL of PWRPA’s

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<sup>2</sup> D.06-05-018, at 21, Ordering Paragraph 5.

disagreement with PG&E's bills. Specifically, PWRPA indicated: "The statements provided to PWRPA's customers include amounts related to PG&E's Public Purpose Program (PPP) charge. PWRPA disagrees with the applicability of PG&E's PPP charge to PWRPA's customers." Citing the PPP exemption in Special Condition 2.c, PWRPA's counsel stated: "PWRPA's customers are being served by PWRPA, an entity which must impose a PPP surcharge pursuant to Public Utilities Code Section 385. . . ." Accordingly, PWRPA's customers are exempt under Special Condition 2.c. from PG&E's PPP charge."

On April 16, 2009, after several months of discussions among representatives of PG&E and PWRPA, an agreement was reached in principle on the nonbypassable charges owed by the NWDL customers served by PWRPA. The parties signed the Nonbypassable Charge Agreement on May 15, 2009.

Appended to the Agreement as Exhibit 1 is the declaration from W. Kent Palmerton, PWRPA general manager, providing facts in support of the claim that PWRPA is an entity which must impose a PPP surcharge pursuant to Public Utilities Code Section 385. Based on the assertions contained in the Palmerton Declaration, PWRPA and PG&E agree that the new WAPA Departing Load of the NWDL Customers is exempt from PG&E's PPP charge.

Applicants thus request approval of a bilateral Agreement resolving their disputes (attached as an appendix to this decision.) whereby PWRPA would pay a lump-sum amount in four installments on behalf of its customers who owe nonbypassable charges under PG&E Electric Rate Schedule E-NWDL. Parties agree that \$3,398,603 represents a reasonable figure for the lump-sum amount.

We recognize that the Agreement represents a compromise among the parties' respective litigation positions, but does not constitute agreement to, or endorsement of disputed facts and law presented by the parties in Rulemaking

(R.) 02-01-011 and its successor advice letter proceedings. Accordingly, we do not address the merits of the underlying factual disputes in other proceedings, as referenced by the parties, but focus on the overall outcome produced by the agreement.

As discussed above, we conclude that the proposed Agreement is reasonable in light of the information shared by the parties, consistent with law, and in the public interest. Accordingly, we approve the application.

### **3. Categorization and Need for Hearing**

The application for approval of the Agreement was filed on May 19, 2009. This matter was categorized as ratesetting by Resolution ALJ 176-3235, dated June 4, 2009, and we confirm this categorization. No party filed a response to the application. The matter is uncontested, and we thus determine that no hearings are necessary.

### **4. Comments on the Draft Decision**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6 (c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is being waived.

### **5. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Thomas R. Pulsifer is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. PG&E and PWRPA signed a bilateral agreement on May 15, 2009, whereby PWRPA would pay a lump-sum amount on behalf of PWRPA's customers who owe nonbypassable charges under NWDL.

2. The document attached to this decision as Appendix 1 sets forth the text of the bilateral agreement between the parties for which Commission approval is being requested.

3. The bilateral agreement represents a compromise among the parties' respective litigation positions, but not agreement to, or endorsement of disputed facts and law presented by the parties in R.02-01-011 and its successor advice letter proceedings.

4. The Declaration of W. Kent Palmerton, attached as Exhibit 1 to the Agreement, sets forth facts to support the claim that PWRPA is an entity that must impose a PPP surcharge pursuant to Public Utilities Code Section 385.

5. The parties have investigated the past, present, and future estimated nonbypassable charges under Schedule E-NWDL, historic usage amounts, and other relevant factors as a basis to reach agreement that \$3,398,603 represents a reasonable lump-sum payment under Schedule E-NWDL for the NWDL accounts.

6. The parties to the bilateral agreement seek Commission approval of the agreement pursuant to Application 09-05-017.

7. No party protested the application for approval of the bilateral agreement.

8. The bilateral agreement provides for an expedient and cost-effective resolution of all past, present and future nonbypassable charge obligations for NWDL customers served by PWRPA.

### **Conclusions of Law**

1. The bilateral agreement between PG&E and PWRPA, signed on May 15, 2009, is reasonable in light of the information shared by the parties, consistent with law, and in the public interest.

2. The bilateral agreement does not constitute precedent regarding any principle or issue in R.02-01-011, its successor advice letter proceedings, or in any future proceeding.

3. In accordance with its provisions, the bilateral agreement fully satisfies the NWDL charge obligations of the NWDL customers, and under the terms of the agreement, PG&E will have no right to seek further payment or pursue any claim against NWDL customers for charges under Schedule E-NWDL.

4. The bilateral agreement, as proposed by the applicants, and as attached in Appendix 1 of this decision, should be approved.

5. The ratesetting categorization of this application is affirmed and no hearings are necessary.

6. Since this is an uncontested matter in which the decision grants the relief requested, the otherwise applicable 30-day period for public review and comment may be waived.

## **O R D E R**

### **IT IS ORDERED** that:

1. The bilateral agreement between Pacific Gas and Electric Company and Power and Water Resources Pooling Authority, attached as Appendix 1 of this decision is hereby approved.

2. In accordance with the provisions of the approved agreement, Pacific Gas and Electric Company shall invoice Power and Water Resources Pooling Authority for the agreed-upon lump-sum amount within a reasonable period of time, and Power and Water Resources Pooling Authority shall pay the lump-sum amount in four installments pursuant to the payment schedule set forth in the

agreement. Such payment shall constitute full and complete settlement of Pacific Gas and Electric Company's past and future claims against the PG&E Electric Rate Schedule E-NWDL customers for charges under Schedule E-NWDL.

3. In accordance with the provisions of the approved agreement, the Lump-Sum Amount represents a binding estimate of charges, except that to the extent that the duration or level of the Energy Cost Recovery Amount charges for 2010 through 2012 differs from the assumptions reflected in the Lump-Sum calculations, the installment payments shall be adjusted to reflect such differences.

4. In accordance with the provisions of the approved agreement, PG&E Electric Rate Schedule E-NWDL accounts shall not be eligible for Pacific Gas and Electric Company's energy efficiency program and other programs funded by the Pacific Gas and Electric Company Public Purpose Programs charge.

5. All other provisions of the proposed agreement, as set forth in Appendix 1 of this decision, are hereby approved and made effective.

6. Application 09-05-017 is closed.

This order is effective today.

Dated August 20, 2009, at San Francisco, California.

MICHAEL R. PEEVEY  
President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners