Decision 09-11-018 November 20, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for a Two-Year Extension of the ClimateSmart (TM) Program and Tariff Option. (U39M)	Application 09-05-016 (Filed May 18, 2009)

DECISION GRANTING DAY-TO-DAY EXTENSION OF CLIMATESMART PROGRAM AND TARIFF OPTION

Summary

This decision grants a request by Pacific Gas and Electric Company (PG&E) to continue operating the ClimateSmart Program and Tariff Option past December 31, 2009 until a decision is reached on PG&E's application to extend the program until December 31, 2011. The extension shall be on a day-to-day basis. During this day-to-day extension period, PG&E may expend the unspent administrative and marketing funds collected from ratepayers for only essential administration and compliance activities.

Discussion

On December 14, 2006, the Commission issued Decision (D.) 06-12-032, which granted, with modifications, an application by Pacific Gas and Electric Company (PG&E) to establish the ClimateSmart Program (Program) and Tariff Option, the Climate Protection Tariff. The Program is a voluntary program, whereby PG&E customers could elect to pay a monthly premium to offset the greenhouse gas (GHG) emissions associated with their electricity usage. D.06-12-032 further determined that, since this was a demonstration project, administrative and marketing (A&M) costs would be recovered from all PG&E

ratepayers. Finally, D.06-12-032 set a sunset date for the Program of December 31, 2009, but allowed PG&E to file an application seeking continuation of the Program past that date.[1]

On May 18, 2009, PG&E filed an application seeking an extension of the Program. In its application, PG&E stated that the Program will not meet the contracting and enrollment goals established in D.06-12-032 by December 31, 2009 due to various challenges. Therefore, it requested that the Program be extended until December 31, 2011. PG&E further proposed that it would not recover additional Program A&M costs from PG&E ratepayers during the extension period, but rather use the unspent A&M costs collected in 2008 and 2009 to fund the extension. PG&E's recorded A&M subaccount balance as of March 31, 2009 was approximately $1.6 million.

The Utility Reform Network (TURN) filed a timely protest to the application. A prehearing conference (PHC) was noticed and held on July 29, 2009. At the PHC, PG&E, TURN, and the Division of Ratepayer Advocates (DRA) requested that the parties be given time to meet and seek consensus on some or all aspects of the proceeding prior to setting a firm procedural schedule. A second PHC was noticed and held on September 23, 2009.

At the second PHC, parties informed the assigned Administrative Law Judge (ALJ) that they were unable to reach any consensus, but agreed that the proceeding could be resolved through a workshop, followed by a round of comments. During this PHC, PG&E also raised a concern that resolution of this

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[1] D.06-12-032 at 52 [OP 13].

proceeding will likely not occur until after the sunset date adopted in D.06-12-032. Therefore, to ensure continuity of the Program until the Commission resolves its application, PG&E requested that the Commission issue a day-to-day extension order until the Commission reaches a decision on the merits of the application.

The Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge (Scoping Memo) issued on September 29, 2009 requested comments from parties on the requested day-to-day extension order. The Scoping Memo was also served on the service list of Application 06-01-012, the proceeding which resulted in D.06-12-032.

DRA/TURN filed comments in support of the day-to-day extension. However, they opposed PG&E using any of the unspent A&M funds during the extension period. DRA/TURN express concern that if PG&E were authorized to use unspent A&M funds beyond 2009, a significant portion of the remaining money could be consumed by the time the Commission adopted a final decision in this proceeding.[2] DRA/TURN note that disposition of the unspent A&M funds is a disputed issue in this proceeding. Thus, they believe allowing use of those funds would unfairly prejudice the outcome of the pending application. DRA/TURN further assert that requiring PG&E to maintain the status quo during the extension period is warranted in order to preserve the underlying issues until the Commission can decide them.

PG&E contends that DRA/TURN's proposed condition is unnecessary and unreasonable. It asserts that if no ratepayer funds were available to administer

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[2] DRA/TURN Comments, October 6, 2009, at 5.

the Program, it would have to either shut down the Program or continue the Program at shareholder expense. Further, it refutes DRA/TURN's claims that almost all A&M funds could be expended during the extension period. PG&E states that it is forecasting at most $1.5 million in marketing expenditures for the Program during 2010. While the pro-rata share of these expenditures during the extension period would be about $250,000, PG&E expects the actual marketing expenditures would be at a lower level due to the time of the year and the fact that there is uncertainty as to whether the Program would be continuing for another two years. Further, PG&E states that its costs to administer the Program during the extension period would be nominal.[3]

We agree that a day-to-day extension should be granted. However, we believe that PG&E should not be allowed to use ratepayer funds during this period for marketing expenses. As part of this proceeding, we will be considering how PG&E should modify the Program to meet its enrollment goals. Since we will be considering the extent to which PG&E's current marketing program should be modified if the application is granted, we do not believe any additional funds should be expended for this purpose until after such a determination is made. To the extent PG&E believes marketing expenditures are necessary during the extension period, funding for these expenditures shall come from its shareholders. We believe that this requirement is reasonable, especially since D.06-12-032 strongly encouraged PG&E to consider using shareholder funding to bear costs of the Program.[4]

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[3] PG&E Response, October 13, 2009, at 2-3.

[4] D.06-12-032 at 20. PG&E estimates that it will require approximately $6,200 per month in funding to maintain its current marketing communications and infrastructure

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Nonetheless, we believe PG&E should be allowed to expend the A&M funds for essential administration and compliance activities. As PG&E notes, these funds will include development of the 2009 ClimateSmart Annual Report and continuing its efforts related to development and execution of contract agreements for procurement of GHG emissions reductions. We agree with PG&E that it is reasonable to allow PG&E to continue to utilize ratepayer funds for these non-marketing activities during the extension period because these administrative expenses are necessary for the day-to-day functioning of the Program, and we do not anticipate a lengthy extension period. This conclusion does not prejudge any pending issue in the final decision in this proceeding.

The ALJ's proposed decision recommended that PG&E be authorized to spend no more than $20,000 per month of the unspent A&M expenses during the extension period on administrative expenses. This amount was based on multiplying the $1.6 million balance in the A&M subaccount as of March 31, 2009 by the percentage of A&M costs associated with administrative expenses and dividing that result by 24 (the number of months in the two-year extension period).[5]

PG&E disagrees with the pro-rata allocation of unspent funds proposed by the ALJ. PG&E believes this allocation is arbitrary and not reflective of the budget necessary to operate the program. PG&E states that if a cap on A&M expenses were imposed, it must include costs necessary to perform key

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and characterizes these expenditures as "limited and minimal." (PG&E Opening Comments to Proposed Decision, November 10, 2009, at 4.)

[5] Of the $16.26 million authorized for A&M costs in D.06-12-032, approximately 30% was budgeted for administrative expenses.

compliance activities. PG&E proposes a bottoms-up approach to determine these necessary costs and estimates it would require funding of approximately $91,700 per month for essential administrative, compliance, customer communication and GHG reduction project costs. This amount would consist of: (1) $35,500 per month to support administration of the Program; (2) a one-time cost of $36,000 to produce and distribute annual reports and charity tax letters (materials costs); and (3) $38,000 per month for costs associated with GHG emission reduction procurement and management activities.[6] Alternatively, PG&E states that if a pro-rata allocation were utilized, the pro-rata monthly amount in the proposed decision should be revised to reflect the updated projected unspent A&M funds as of December 31, 2009 (approximately $4.078 million). In addition to that pro-rata amount, PG&E proposes that $36,000 in materials costs and $6,200 per month for marketing costs also be included.

DRA/TURN oppose expenditure of any ratepayer funds during the extension period. They state that D.06-12-032's authorization to allow PG&E to use unspent A&M funds to purchase the offsets needed to meet its performance guarantee was premised on the Program ending in 2009.[7] DRA/TURN argue that since PG&E is now seeking a two-year extension of the Program, one of the issues to consider is whether the unspent A&M funds should be used during the extension period or returned to ratepayers. Accordingly, they argue that the remaining A&M funds should be preserved until the Commission determines

[6] PG&E Opening Comments to Proposed Decision, November 10, 2009, at 3-9.

[7] DRA/TURN's Reply Comments to Proposed Decision, November 16, 2009, at 2.

whether to grant the requested extension and the disposition of the unspent A&M funds.

With regard to the use of unspent A&M funds on general program administration and marketing costs, DRA/TURN have raised a valid concern. However, we disagree with DRA/TURN that PG&E's application to extend the program and the ultimate disposition thereof has any bearing on the Commission's prior decision authorizing PG&E to use unspent A&M funds for purposes of procuring offset to meet its minimum obligation. Had PG&E not filed its extension request, the monies PG&E proposes spending here to conduct solicitations to secure additional offsets to meet its minimum obligations would have been fully consistent with D.06-12-032. Nothing in D.06-12-032 suggested that PG&E's authority to spend unspent A&M monies for this purpose ended upon conclusion of the Program. Rather the issue to be considered in this proceeding is whether the unspent A&M funds should be used for general administrative and marketing expenses.

PG&E states that prohibiting ratepayer funding during the extension period would effectively deny the day-to-day extension request and terminate the Program.[8] While we agree with DRA/TURN that unspent A&M funds should be preserved during the extension period, this must be balanced with the need to ensure that, if PG&E's application is ultimately approved, the ClimateSmart Program is still viable. Therefore, we continue to believe that PG&E should be allowed to utilize unspent A&M funds during the extension period to maintain the Program.

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[8] PG&E's Reply Comments to Proposed Decision, November 16, 2009, at 2.

PG&E's Opening Comments to the proposed decision describes the essential functions that need to be performed during the day-to-day extension period. These include:

1. Program administration activities related to enrollment of customers, responding to customer inquiries and operational aspects of the Program.
2. Preparation of the prior year's annual report for the Commission, annual report for Program customers and the charity tax letters sent to all ClimateSmart Program customers.
3. Limited marketing-related funds to maintain the Program's customer communication and enrollment infrastructure, such as the Program's website and quarterly e-newsletter.
4. Negotiations with shortlisted bidders from PG&E's fourth and fifth requests for proposals (RFP) with the goal of securing additional emissions reduction contracts.
5. Preparing and seeking bids through a sixth RFP.
6. Managing existing contracts for emission reductions.
7. Administration of the ClimateSmart Charity.
8. Meetings of the ClimateSmart External Advisory Committee.

Upon review, we find that all of these activities, with the exception of the limited marketing-related funds, should be funded using the unspent A&M funds during the extension period. The administrative activities would ensure the continued day-to-day operation of the Program, while the activities associated with the procurement and management of GHG emission contracts will help PG&E meet its GHG emission reduction target. We shall not impose a specific dollar limitation on the amount that PG&E may spend during the extension period. However, PG&E may only spend the minimum amount necessary on these activities to maintain the ClimateSmart Program. With regard to expenditures related to procurement and management of additional GHG emission reduction contracts, PG&E is authorized to spend only insofar as is necessary to meet its minimum procurement obligation under D.06-12-032.

We remind parties that our decision to allow PG&E to utilize A&M funds during the day-to-day extension does not prejudge our ultimate determination on the disposition of the unspent A&M funds as of December 31, 2009, except for those spent pursuant to this decision.

Comments on Proposed Decision

The proposed decision of the assigned 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 on November 10, 2009 by PG&E and jointly by DRA and TURN. Reply comments were filed on November 16, 2009 by PG&E and DRA/TURN. The decision has been revised in response to comments.

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Amy C. Yip-Kikugawa is the assigned ALJ in this proceeding.

Findings of Fact

1. The Program was adopted in D.06-12-032 and has a sunset date of December 31, 2009 unless PG&E files an application to seek continuation of the Program past that date.

2. D.06-12-032 determined that A&M costs for the Program should be recovered from all PG&E ratepayers.

3. PG&E filed an application to seek extension of the Program on May 18, 2009.

4. PG&E seeks to extend the Program for an additional two years, until December 31, 2011.

5. PG&E does not seek any additional ratepayer funding for A&M costs during the two-year extension period.

6. It is projected that there will be approximately $4.078 million of unspent A&M funds as of December 31, 2009.

7. PG&E's application to extend the Program will not be resolved before December 31, 2009.

8. PG&E seeks a day-to-day extension of the Program until the Commission reaches a decision on the merits of its application.

9. TURN/DRA do not oppose the day-to-day extension request.

10. Disposition of the unspent A&M funds is an issue in this proceeding.

11. Ordering Paragraph 6 in D.06-12-032 authorized PG&E to spend unspent A&M funds to procure GHG emission reduction contracts in order to meet its minimum procurement obligation of 1.5 million tons of carbon dioxide equivalent reductions.

12. If PG&E is not allowed to use the unspent A&M funds during the day-to-day extension period, it would not be able to continue operating the Program during the day-to-day extension period.

13. This proceeding shall consider whether and the extent to which PG&E's current marketing of the Program should be changed to meet the enrollment goals adopted in D.06-12-032.

14. Approximately 30% of the A&M budget adopted in D.06-12-032 for the Program would be for administrative expenses.

Conclusions of Law

1. It would be reasonable to grant a day-to-day extension of the Program until the Commission reaches a decision on PG&E's application for a two-year extension of the program.

2. It would be unreasonable to allow PG&E to expend any funds to continue its current marketing program during the day-to-day extension period.

3. PG&E should be allowed to use the unspent A&M funds for those activities that are necessary to maintain the ClimateSmart Program during the day-to-day extension period.

4. PG&E should be allowed to use the unspent A&M funds for those activities associated with the procurement and management of GHG emission contracts insofar as these procurement and management activities are necessary in order for PG&E to achieve its minimum procurement obligation pursuant to D.06-12-032.

5. PG&E be allowed to spend the minimum amount necessary to maintain the Program during the day-to-day extension period.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company's (PG&E) request for a day-to-day extension of the ClimateSmart Program is granted. The extension shall run from January 1, 2010 until the Commission issues a decision on PG&E's request to extend the ClimateSmart Program until December 31, 2011.

2. During the day-to-day extension period of the ClimateSmart Program, Pacific Gas and Electric Company may not expend any of the unspent administrative and marketing funds collected from ratepayers for marketing expenses.

3. During the day-to-day extension period of the ClimateSmart Program, Pacific Gas and Electric Company is authorized to spend the minimum amount

necessary to maintain the Program. Unspent administrative and marketing funds may be spent on the following activities:

a. Program administration activities related to enrollment of customers, responding to customer inquiries and operational aspects of the ClimateSmart Program.

b. Preparation of the prior year's annual report for the Commission, annual report for ClimateSmart Program customers and the charity tax letters sent to all ClimateSmart Program customers.

c. Negotiations with shortlisted bidders from Pacific Gas and Electric Company's fourth and fifth requests for proposals (RFP) with the goal of securing additional emissions reduction contracts.

d. Preparing and seeking bids through a sixth requests for proposals.

e. Managing existing contracts for emission reductions.

f. Administration of the ClimateSmart Charity.

g. Meetings of the ClimateSmart External Advisory Committee.

4. For those activities associated with procurement and management of greenhouse gas emission reduction contracts (Items c, d, and e in Ordering Paragraph 3), Pacific Gas and Electric Company is only authorized to expend the amount necessary to meet its minimum procurement obligation pursuant to Decision 06-12-032.

This order is effective today.

Dated November 20, 2009, San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners