

Decision 06-01-045 January 26, 2006

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

Application of Pacific Gas and Electric  
Company for Recovery of Pre-  
Deployment Costs of the Advanced  
Metering Infrastructure (AMI) Project  
(U 39 M)

A.05-03-016  
(Filed on March 15, 2005)

**ORDER DENYING REHEARING**  
**OF DECISION (D.) 05-09-044**

**I. INTRODUCTION**

On March 15, 2005, Pacific Gas & Electric Company (“PG&E”) filed application (A.) 05-03-016, seeking authorization to spend up to \$49 million over six months for pre-deployment costs for its proposed Advanced Metering Infrastructure (“AMI”) Project. In Decision (D.) 05-09-044 (“Decision”), we approved pre-deployment funding for the proposed AMI Project in the amount of \$49 million.<sup>1</sup> The Decision also adopted specific ratemaking and cost recovery treatment for the authorized funds. The Utility Reform Network (“TURN”) filed a timely application for rehearing challenging the Decision on the grounds that it violates Public Utilities Code Sections 451, 1701.3, 1705, and 1757(a).<sup>2</sup> In particular, TURN contends that the Decision errs because: (1) the record does not support a conclusion that the need for demand response justifies the approved funding; (2) the policy guidelines of the Energy Action Plan II

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<sup>1</sup> On June 16, 2005, PG&E filed A.05-06-028 requesting approval of its full AMI Project. That application is pending before the Commission. Decision 05-09-044 does not prejudge issues, including cost-effectiveness, to be determined in that proceeding. Today’s decision also does not prejudge any of those issues.

<sup>2</sup> All other section references are to the Public Utilities Code, unless otherwise stated.

(“EAP II”) are insufficient to justify the approved funding; and (3) it fails to determine the reasonableness of the pre-deployment activities independent of the AMI Project as a whole. A response was filed by PG&E.

We have carefully considered each and every the argument raised in TURN’s application for rehearing and we believe no grounds for granting rehearing have been demonstrated. Accordingly, rehearing of D.05-09-044 is denied.

## II. DISCUSSION

### A. The Need for Demand Response

In its rehearing application, TURN argues that the Decision determined that the need for demand response justifies approval of PG&E’s request for pre-deployment funding. TURN contends this conclusion errs because it is not supported by the record and is arbitrary and capricious.<sup>3</sup> (Rhg. App., at p. 5.)

TURN’s argument is flawed in two key respects. First, for TURN to be correct that the record does not support the Commission’s determination, it must first establish that the issue of meeting 2007 demand response goals was material to approving the requested funding consistent with Section 1705. However, demand response was not a material issue upon which a finding was required, under Section 1705.<sup>4</sup>

Second, even if meeting 2007 demand response goals was a material issue, TURN is incorrect with respect to our conclusion. The Decision does not conclude that the proposed AMI pre-deployment will meet 2007 demand response goals and it does not contain a finding of fact or conclusion of law stating that pre-deployment activity will do

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<sup>3</sup> In its rehearing application, TURN cites to Sections 1701.3, 1705 and 1757(a) in support of its sufficiency of record challenge.

<sup>4</sup> The material issues for the purpose of evaluating PG&E’s pre-deployment request were established by the Assigned Commissioner’s Ruling Establishing Scope, Schedule, and Procedures for Proceeding (ACR) dated July 19, 2005. Demand response was not one of the eight listed material issues. Only for those material issues were findings of fact and conclusions of law required. (See Pub. Util. Code, §1705.) Section 1705 requires that a decision contain findings of fact and conclusions of law on all issues material to the decision.

so. The Decision only goes so far as to establish that AMI pre-deployment is consistent with demand response policy directives reflected in the vision statement described in D.03-06-032<sup>5</sup> as well as the Energy Action Plan (EAP) of 2003 and the EAP II.

No record is needed to support a finding that was not required or made. Therefore, TURN's argument has no merit.

In addition, TURN asserts that according to the record, the proposed AMI Project is not critical to meet 2007 resource needs,<sup>6</sup> and only a small fraction of the total meter deployment would be completed by summer 2007.<sup>7</sup> Consequently, pre-deployment will not expedite the achievement of demand response or Energy Action Plan goals for 2007. TURN states the Decision fails to address this contradiction and instead maintains that pre-deployment will meet these goals despite evidence to the contrary. (Rhg. App., at p. 5.) By this assertion, TURN is attempting to relitigate issues, asking the Commission to reweigh evidence in the record, and reach a different policy determination on whether to give PG&E pre-deployment funding. TURN has offered no legal basis to require such a reweighing of the evidence. Thus, there is no legal error.

**B. The Policy Guidelines of the Energy Action Plan II  
("EAP II")**

TURN contends that the Decision relies on policy guidelines of the EAP II in approving the \$49 million funding request and that policy guidelines are insufficient to justify funding approval. TURN states that EAP II merely provides guidelines for the coming years and does not trump existing statutory requirements of reasonableness. Accordingly, TURN contends the Decision violates Section 1757(a) which requires decisions be supported by substantial evidence. (Rhg. App., at pp. 5-6.)

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<sup>5</sup> *Order Instituting Rulemaking on Policies and Practices for Advanced Metering, Demand Response, and Dynamic Pricing ("Advanced Metering Decision")* [D.03-06-032] (2002) \_\_\_ Cal. P.U.C.3d \_\_\_, 2002 Cal. P.U.C. LEXIS 955.

<sup>6</sup> Citing to RT Vol. 1, p. 10 (Bortoff/PG&E); RT Vol. 1, p. 105 (Corey/PG&E); also Exh. 8.

<sup>7</sup> Citing to RT Vol. 1, p. 105 (Corey/PG&E).

TURN characterizes its argument as a challenge to sufficiency of the record. In fact, TURN is again asking the Commission to reweigh the evidence in the record, by giving the EAP II (that is part of the record in this proceeding) less consideration in considering whether to approve the \$49 million funding request. It is true that the Decision discusses and clearly gives some weight to the fact that AMI pre-deployment is consistent with the policy directives of EAP II. (D.05-09-044, at pp. 12-13.) However, we routinely consider and weigh our own policy objectives in reaching our determinations and that does not constitute legal error.

Further, TURN is wrong that the record for this proceeding does not contain cost-effectiveness information on which to make a determination. PG&E provided cost information in the record. (See discussion in II.C of today's order.) We properly relied on this record evidence,<sup>8</sup> which included the policy considerations discussed in the EAP II, to reach a determination regarding the AMI pre-deployment funding. Thus, our Decision was based on a reasonable weighing of the record evidence in making a determination.

### **C. Reasonableness of the Pre-Deployment Activities**

TURN contends that whether pre-deployment activities are cost-effective independent of the benefits of the project as a whole is an issue material to the Decision. To that end, TURN contends there is no evidence in the record to suggest that the pre-deployment activities are independently cost-effective and that the Commission failed to specifically address the cost-effectiveness of the pre-deployment activities in violation of Section 1705. TURN goes on to state that the Decision determined the \$49 million funding level was reasonable based on the cost-effective analysis in A.05-06-028 for the entire project. Thus, TURN contends the Decision errs because it is based on evidence not in the record in violation of Section 1701.3. (Rhg. App., at pp. 6-7.)

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<sup>8</sup> See Exhs. 1, C-1, C-2, 3, 4, 5, 5A, 9.

At the outset it should be noted that TURN's arguments are inherently contradictory. On the one hand, TURN argues that we failed to address whether the pre-deployment activities are cost-effective and to make the requisite finding. On the other hand, TURN argues that we did make such a finding, but based on information not in the record. Either way, TURN's arguments that the Decision violates Sections 1705 and 1701.3 are without merit.

Section 1705 requires that a decision contain findings of fact and conclusions of law on all issues material to the decision. According to the ACR setting the scope of the proceeding, reasonableness of the requested expenditures is a material issue. Consistent with Section 1705, the Decision contains a finding of fact and conclusion of law regarding the issue of reasonableness. The Decision finds that "[t]he reasonable AMI pre-deployment activities are estimated to cost \$49.0 million." (D.05-09-044, at p. 20 [Finding of Fact 5].) Additionally, the Decision concludes that "[t]he fact that TURN and ORA chose not to evaluate the cost-effectiveness of PG&E's proposed expenditures does not preclude the Commission from independently assessing the expenditures that PG&E has proposed for reasonableness (D.05-09-044, at p. 21 [Conclusion of Law 3].) Accordingly, there is no legal error as to Section 1705.

Contrary to TURN's contention, the Decision is based on evidence in the record. A review of the record in this proceeding reveals multiple exhibits submitted by PG&E containing pre-deployment activity cost information,<sup>9</sup> all of which were subject to hearings and cross-examination. No evidence was submitted in this proceeding to contend that the requested funding level was not reasonable.

TURN's position throughout the proceeding was simply that no pre-deployment activities should be funded until a cost-effectiveness determination regarding the entire AMI project is reached. (TURN Opening Brief, at pp. 1-4 and Comments on Proposed Decision of ALJ Cook, at pp. 1-2.) TURN did not submit evidence on cost

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<sup>9</sup> See Exhs. 1, C-1, C-2, 3, 4, 5, 5A, 9.

issues or contradict specific aspects of PG&E's showing. In the Decision we noted the resulting situation, stating:

“The fact that TURN and ORA chose not to evaluate the cost-effectiveness of PG&E's proposed expenditures places the Commission in an awkward position with respect to the robustness of the record, but does not preclude the Commission from independently assessing the expenditures...

TURN and ORA argue on policy grounds that it is unwise for the Commission to separate review of the proposed pre-deployment expenditures and scope proposed by PG&E from review of the deployment decision.” (D.05-09-044, at p. 7.)

We went on to conclude:

“The bulk of these arguments again go to the proper scope and definition of pre-deployment activities, not whether or not any pre-deployment activities should be funded by ratepayers. Therefore, we find that there is no legal impediment to authorizing pre-deployment activities and we will consider the scope of activities on the merits.” (D.05-09-044, at p. 8.)

Relevant case law indicates that even if TURN had submitted evidence to contest the cost issue, there was evidence in this proceeding to support approval of the \$49 million funding request. In *Lorimore v. State Personnel Board* (1965) 232 Cal. App. 2d, 183, at pp. 186-187, the court stated:

“[i]t is well established that courts generally defer to the broad discretion vested in administrative agencies when the evidence is conflicting, or even when reasonable men might well differ on questions of the credibility of witnesses, or upon the proper inferences to be drawn from the evidence, subject to the requirements, of course, that the finding be supported by substantial evidence. In fact, the decisions generally have equated the review of administrative determination with the substantial evidence rule applicable to appellate review, i.e., the function of the appellate court

begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which supports the conclusion reached, disregarding any evidence in the record contrary to the trier's finding.”

The record in this proceeding contains evidence regarding the cost of pre-deployment activities to support a determination.

Finally, TURN cites to the following discussion from the Decision to assert that we relied on the cost-effectiveness information not in this record, but submitted in A.05-06-028 (regarding the full AMI Project) to approve the pre-deployment expenditures:

“With this in mind, and although we have not yet thoroughly evaluated PG&E's cost-effectiveness claims in A.05-06-028, our sense is that PG&E's AMI deployment, if approved, will have at least some significant benefits to the utility beyond demand response. Therefore, and for all the reasons stated above, we will approve PG&E's request for \$49 million in pre-deployment expenses for AMI...” (D.05-09-044, at p. 14.)

As indicated above, there was evidence submitted in this proceeding regarding cost-effectiveness of the pre-deployment activities to support a determination. To assert its position, TURN ignores the context of the discussion. The quoted language was taken from the policy discussion regarding the role of AMI in relation to EAP II demand response goals and potential benefits of AMI. In that context, we noted that the full AMI Project proceeding may ultimately prove that operational benefits reduce the need to demonstrate demand response peak demand cost savings. (D.05-09-044, at pp. 13-14.) The Decision merely makes an observation regarding related issues of cost-effectiveness and operational benefits raised in A.05-06-028. However, we did not rely on evidence in A.05-06-028 to make a determination in the Decision.

For the reasons stated above, there is no legal error. That said, whether it is prudent to approve pre-deployment funding prior to evaluating cost-effectiveness of the entire AMI Project is another issue. TURN argued that it is bad policy to do so. (TURN

Opening Brief, at pp. 1-4.)<sup>10</sup> However, that allegation does not constitute legal error as required by Section 1732.

### III. CONCLUSION

Because TURN has failed to demonstrate that the Commission erred, its application for rehearing is denied.

**THEREFORE, IT IS ORDERED** that:

1. The application for rehearing of Decision 05-09-044 filed by TURN is denied.

This order is effective today.

Dated January 26, 2006, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
Commissioners

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<sup>10</sup> See also, Exh. 200, p. 3 (Jeffrey A. Nahigian/TURN).