

Decision 08-02-018 February 28, 2008

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

Application of Pacific Gas and Electric Company for Adoption of Its 2008 Energy Resource Recovery Account (ERRA) Forecast Revenue Requirement and for Approval of Its 2008 Ongoing Competition Transition Charge (CTC) Revenue Requirement and Rates.

(U 39 E)

Application 07-06-006  
(Filed June 1, 2007)

**OPINION ON 2008 ELECTRIC PROCUREMENT COSTS AND SALES FORECAST**

**1. Summary**

For Pacific Gas and Electric Company (PG&E), the Commission adopts a 2008 electric procurement cost forecast of \$3,290.6 million, which is \$332.0 million higher than 2008 revenue would be at present rates. The total 2008 electric procurement cost forecast of \$3,290.6 million consists of PG&E's 2008 Energy Resources Recovery Account (ERRA) forecast revenue requirement of \$3,060.5 million, its ongoing Competition Transition Charge (CTC) forecast revenue requirement of \$245.9 million, and a Power Charge Indifference

Adjustment (PCIA) credit of \$15.8 million.<sup>1</sup> The \$332.0 million in increased 2008 revenue requirement will be consolidated with revenue requirement effects of other recent Commission decisions. Application (A.) 07-06-006 is closed.

## **2. Procedural Summary**

A prehearing conference was held on July 25, 2007. Other than PG&E, the only active parties in this proceeding have been the Merced Irrigation District and Modesto Irrigation District appearing jointly, referred to herein as the Districts. The parties agreed that evidentiary hearings would not be necessary and the proceeding should be submitted for decision based on the pleadings. Opening briefs and reply briefs were filed by the Districts and PG&E on October 12 and October 19, 2007, respectively. Following an update to PG&E's testimony, this matter was submitted for decision on November 7, 2007.

## **3. ERRA Forecast Revenue Requirement, Sales and Rates**

The ERRA records fuel and purchased power billed revenues against actual recorded costs for an electric utility. The ERRA regulatory process includes: (1) an annual forecast proceeding, to adopt a forecast of the utility's fuel and purchased power and revenue requirements and electricity sales for the upcoming year, and (2) an annual compliance proceeding, to review the utility's compliance in the preceding year regarding energy resource contract administration, least cost dispatch, fuel procurement, and the ERRA balancing

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<sup>1</sup> The PCIA was adopted in D.06-07-030 and applies to those direct access and departing load customers who pay the Department of Water Resources' Power Charge component of the Cost Responsibility Surcharge.

account. In this 2008 ERRA Forecast proceeding, the Commission adopts a forecast of PG&E's fuel and purchased power revenue requirements for 2008.

There is no dispute regarding PG&E's November 7, 2007 updated 2008 ERRA forecast revenue requirement, ongoing CTC forecast requirement, and associated rates, which are fully supported by detailed testimony. Accordingly, we adopt PG&E's revised electric procurement forecast of \$3,290.6 million, consisting of: (1) the ERRA forecast of \$3,060.5 million and (2) the ongoing CTC forecast of \$245.9 million and a related downward adjustment of \$15.8 million for the PCIA.

Also, there is no dispute regarding PG&E's 2008 sales forecast, including the detailed departing load sales forecasts. Accordingly, we adopt PG&E's 2008 sales forecast, which should be used for all rate charges for the test year 2008.

#### **4. Long-Term Procurement Memorandum Account**

PG&E requests Commission authorization to recover through the ERRA \$5,839,000 in costs recorded in the Long-Term Procurement Memorandum Account (LTPMA). These costs comprise 2005 and 2006 Long-Term Request for Offer costs (LTRFO<sup>2</sup>), Acquisition of Gateway Generation Station (formerly known as Contra Costa 8 (CC8)<sup>3</sup>), 2005 and 2006 Renewables Portfolio Standard (RPS) costs solicitations,<sup>4</sup> and 2005 and 2006 Independent Evaluator costs.<sup>5</sup>

Pursuant to Resolution E-3914 dated April 21, 2005, the Commission established the LTPMA, with specific criteria, to track costs associated with new

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<sup>2</sup> See Decision (D.) 06-11-048.

<sup>3</sup> See D.06-06-035.

<sup>4</sup> See D.05-07-039.

<sup>5</sup> See D.06-05-039.

long-term resource procurement activities that were not included in PG&E's 2003 General Rate Case (GRC) Settlement Agreement. PG&E's request is limited to long-term procurement activities directly associated with acquiring or purchasing resources either through acquisition of utility owned generation facilities or through the execution of long-term procurement contracts with third parties. These types of activities were not included in the 2003 GRC because, at the time, PG&E did not have long-term contracting authority and was only planning for short-term procurement transactions.

Resolution E-3914 defines the criteria that PG&E needs to meet to recover costs in the LTPMA. It states that recovery of LTPMA costs "... is not guaranteed nor assured. PG&E will need to demonstrate to the satisfaction of all parties that the tracked costs are in fact incremental to what was included in the 2003 GRC." In addition, it says "... PG&E should provide support that the authority to enter into long-term procurement has caused the procurement-related administrative expenses to exceed the GRC approved revenue requirement." (Resolution E-3914, p. 7.)

PG&E states that the costs recorded in the LTPMA were incremental to the types of costs included in the 2003 GRC decision and that total long-term procurement costs exceeded amounts adopted in the 2003 GRC, and therefore meet the criteria for recovery as defined by the Commission. In response to the Commission's concerns, PG&E points out that it seeks recovery of outside consulting and legal services only. PG&E is not requesting recovery of any internal labor cost associated with long-term procurement activities.

As required by Resolution E-3914, PG&E addressed the Commission's criteria for LTPMA cost recovery in its prepared testimony. There is no

opposition to PG&E's request. We conclude that PG&E should be allowed to recover LPTMA costs of \$5,839,000 through the ERRRA.

**5. Ongoing CTC Revenue Requirement and Charges Related to Municipal Departing Load**

PG&E seeks approval of its updated ongoing CTC<sup>6</sup> forecast of \$245.9 million and a related downward PCIA of \$15.8 million. These numbers are supported by detailed testimony and comply with statutory authority and Commission decision and orders. Except for the Districts' arguments addressed separately below, PG&E's request is unopposed. Accordingly, we will adopt PG&E's ongoing CTC forecast of \$245.9 million and downward PCIA adjustment of \$15.8 million.

**6. The Districts' Recommendations**

The issues raised by the Districts in their testimony and opening brief focus on PG&E's proposed ongoing CTC revenue requirement and charges related to Municipal Departing Load (MDL). These issues are discussed below.

**6.1. PG&E and the Districts' Request for Further Proceedings on the "Stand Alone" CTC Exemption under Public Utilities Code Section 369 Should Be Denied**

The Districts made six recommendations regarding PG&E's proposed ongoing CTC revenue requirement and charges related to MDL. One of the recommendations was that the Commission confirm that the new MDL of the

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<sup>6</sup> Ongoing CTC refers to certain uneconomic utility costs that resulted from the transition to a competitive retail electric market. These costs are enumerated in Pub. Util. Code § 367(a)(1)-(a)(6).

Districts is not subject to ongoing CTC pursuant to Section 369<sup>7</sup> and Resolution E-4064, under the so-called “stand alone” exemption. PG&E opposes the Districts’ position.

After testimony was served, the Districts and PG&E reached agreement that Rulemaking (R.) 02-01-011 is the proper forum for resolving the test for the stand alone CTC exemption under Section 369. In the interim, parties proposed that PG&E would include new MDL in setting ongoing CTC charges, subject to refund depending on the outcome of the stand alone exemption phase of R.02-01-011.

On December 21, 2007, the Commission issued D.07-12-056 which disposed of the Districts’ application for rehearing of Resolution E-4064. In that decision, the Commission rejected the request by the Districts and PG&E to open a new phase in R.02-01-011 to address the stand alone exemption, noting that the language in Section 369 was clear and not subject to interpretation. As such, consistent with Resolution E-4064, PG&E shall use the language in Section 369 to determine whether new MDL is exempt from ongoing CTC. Accordingly, we do not adopt Districts’ and PG&E’s proposal. If, however, the application of the statutory language to the District’s customers remains in dispute, PG&E or the Districts are free to file a formal pleading with the Commission asking the Commission to resolve the dispute. Any such pleading should explain precisely the nature of the dispute, what kind of procedural vehicle should be used to resolve the dispute, and why it is appropriate to resolve it at this time, rather than in a complaint proceeding after bills have been rendered.

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<sup>7</sup> All statutory references are to the Public Utilities Code, unless otherwise stated.

**6.2. The Districts' Request that PG&E Change its CTC Calculation for MDL Should Be Denied**

The Districts contend that PG&E's proposed ongoing CTC calculation for MDL does not comport with applicable law. The Districts acknowledge that PG&E's proposed ongoing CTC calculation for MDL and cost responsibility surcharge (CRS) for MDL follow the methodologies approved by the Commission, and that the Districts' challenges to these Commission rulings have been unsuccessful, but the Districts "emphasize that there is no reason the Commission cannot now correct" its past decisions.

We reject the Districts' request that we reconsider this matter one more time. In D.05-12-045, the Commission provided clarification of the method for calculating ongoing CTC, and the Districts' applications for rehearing and petitions for writ of review regarding the adopted method have been unsuccessful.<sup>8</sup> As for the Districts' claim that the CRS for MDL is calculated in a discriminatory manner, D.05-12-045 and D.06-07-030 concluded that this claim is equally without merit.<sup>9</sup> Accordingly, we reject the Districts' recommendation to direct PG&E to revise its proposed ongoing CTC revenue requirement and charges to comply with the Districts' understanding of applicable law and the prohibition against discriminatory ratemaking.

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<sup>8</sup> See *Merced Irrigation District et al. v. Pub. Util. Com.* (November 23, 2005, F049265) review den. July 26, 2007; *Merced Irrigation District et al. v. Pub. Util. Com.* (May 17, 2006, F050380) review den. July 26, 2007.

<sup>9</sup> See also *Merced Irrigation District et al. v. Pub. Util. Com.* (February 13, 2007, S150266) review den. June 13, 2007.

### **6.3. A CTC Limiter Is Not Needed**

The Districts argue that significant fluctuations in ongoing CTC charges from year to year should be avoided or minimized. There is no factual dispute about the ongoing CTC per kilowatt-hour charges themselves: \$0.00431 in 2006; \$0.00013 in 2007; and \$0.00417 (proposed) in 2008. However, the Districts focus on the increase from 2007 to 2008 and ask the Commission to require PG&E to incorporate an ongoing CTC “limiter [i.e., a maximum or minimum charge per kilowatt-hour] or other mechanism,” and to have PG&E update its projected year-end ongoing CTC balance several times throughout the year.

According to PG&E, a broader five-year perspective of prior ongoing CTC charges shows a general declining trend since 2004 with the exception of an extremely low charge in 2007, a year which was anomalous, due mostly to a very high balancing account overcollection that was carried forward from 2006 because of above normal hydro production. In PG&E’s view, the one anomalous year of 2007 – and that was on the low side – is not enough reason for the Commission to complicate matters by imposing a limiter or adding reporting requirements. PG&E points out that in the event of another above normal hydro year like 2006, a symmetric limiter actually would prevent ongoing CTC from going down enough to give back the full balancing account overcollection during the year.

We are not persuaded by the Districts’ recommendation that PG&E be required to incorporate an ongoing CTC limiter or other mechanism that eliminates or reduces the potential for significant fluctuations in the ongoing CTC charge from year to year. We believe that, absent extenuating circumstances, customers should receive accurate and timely price signals so that they may respond appropriately.

#### **6.4. Franchise Fee and Uncollectible (FF&U) Costs Should Be Recovered From MDL**

The Districts argue that the Commission should deny PG&E's request to recover FF&U costs from MDL customers. The Districts contend that Section 367 specifies the only costs that may be recovered from MDL customers and, since FF&U costs are not listed in Section 367, these costs should not be imposed on the Districts.

PG&E opposes the Districts' request and points out that the FF&U factor is applied to all of PG&E's revenues and, in particular, preliminary statement CQ of the Modified Transition Cost Balancing Account (MTCBA) explicitly provides that billed revenues to the MTCBA shall be marked-down by the FF&U amount. Also, PG&E argues that, as a matter of policy, all revenues should share in the cost burden caused by uncollectibles, and all revenues that are subject to franchise fees - as ongoing CTC revenues are - should share in those costs.

Briefly, we should explain that in exchange for the right to use public streets and roads, the utilities are required to pay franchise fees of ½%, 1% or 2% of gross receipts to the counties or cities, depending on whether the 1905 Broughton Act or the 1937 Franchise Act applies, or whether the city is a Charter City. For ratemaking purposes, the Commission sets a composite franchise fee factor in the general rate case proceeding of each utility so that the utility may recover its franchise fee costs from all customers. Also, the Commission sets a composite factor to enable the utility to recover its uncollectible accounts expense, a normal business cost, from all customers. The two factors are grouped together as an FF&U factor, which is used to determine the utility's revenue requirement and is set forth in each utility's tariffs.

Turning to the issue before us, we agree with Districts that FF&U is not a component of ongoing CTC. Nonetheless, these costs should be paid by MDL customers. PG&E is required to pay the cities and counties franchise fees based on all gross receipts, including ongoing CTC, and we are unaware of any provisions or statutes excluding revenue collected from MDL customers from the franchise fee calculation. Additionally, absent a showing by the Districts that there are no uncollectible amounts associated with MDL, we find no reasonable basis to exempt MDL customers from paying their share of the uncollectibles costs.

The Districts' proposal that MDL customers not be charged FF&U costs will shift the MDL customers' share of these costs to bundled service and direct access customers. Such a result would be contrary to Section 366.2(d)(1) and our policy against cost-shifting. Therefore, Districts' request should be denied.

#### **6.5. Natural Gas Price Hedging Costs Should Be Included in Ongoing CTC**

The Districts recommend that the Commission deny PG&E's request to include natural gas hedge prices in the ongoing CTC. Also, the Districts recommend that the Commission carefully review the reasonableness of the natural gas hedge price costs which PG&E has not publicly disclosed and adjust those costs if appropriate. The Districts say the Commission should deny PG&E's request to include natural gas price hedging costs in ongoing CTC, because PG&E cites no authority for including them and PG&E provides no public information about them.

PG&E responds that this recommendation runs counter to PG&E's 2007 ERRRA Forecast case, which included natural gas hedging costs and benefits for Qualifying Facilities (QFs). According to PG&E, all customers, including MDL,

are better served by including natural gas hedging costs and benefits in order to dampen ongoing CTC volatility. PG&E points out that all gas hedging is done pursuant to upfront standards contained in a Gas Hedging Plan reviewed and approved by the Commission. Also, actual gas hedging transactions are reviewed for compliance with these standards in the ERRA Compliance proceeding.

We reject the Districts' recommendation for the reason that it is an unnecessary additional review and natural gas hedge price costs are reviewed annually in the ERRA Compliance Proceeding.

**6.6. PG&E Did Provide Adequate Legal Notice of the Proposed Ongoing CTC Increase to Affected MDL Customers**

The Districts contend that PG&E has not provided adequate legal notice to MDL customers of the proposed increase in ongoing CTC. The Districts recommend that PG&E be required to notify each affected MDL customer of the proposed ongoing CTC increase and inform them of the opportunity to participate in this proceeding.

PG&E responds that it provided adequate legal notice by including an informational bill insert (approved by the Commission's Public Advisor) to all its customers and publishing a notice in newspapers, in compliance with Section 454 and Rules 3.2(c) and 3.2(d), in the same manner as in the past four ERRA and ongoing CTC revenue requirements and rate proceedings. According to PG&E, it provided an information bill insert about A.07-06-006 (with contact information for comments or questions) to all its customers - including MDL customers who formerly received electric and gas service from PG&E but now receive only PG&E gas service. In addition, PG&E sent notices to all its Transferred MDL (TMDL) customers about their departing load obligations -

including the ongoing CTC – with their TMDL bills this past spring. Therefore, PG&E contends it has provided adequate notice to its MDL customers of their obligations for ongoing CTC generally and of PG&E’s proposed ongoing CTC charge in A.07-06-006.

We deny the Districts’ request. PG&E published notice of filing this application in 55 newspapers in its service area. The notice states that “PG&E expects to increase rates to departing load customers (customers who receive electric generation from a non-utility supplier, as well as transmission and distribution service from a publicly-owned utility or municipality) by approximately \$2.5 million.” The notice also provides information on how customers may participate in Commission proceedings. We are not persuaded that additional notice is necessary.

#### **7. Information Filed Under Seal**

On September 18, 2007, the Administrative Law Judge (ALJ) issued a ruling granting PG&E’s request that confidential information provided with PG&E’s prepared testimony remain under seal for two years. We affirm the ruling and include the confidential information provided with PG&E’s November 7, 2007 update testimony. The material shall be placed under seal for two years from the effective date of this decision. If PG&E believes further protection is needed after that time, it may file a motion stating the justification for further withholding the material from public inspection at least one month before the expiration of this order.

#### **8. Comments on Proposed Decision**

The proposed decision of the 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 February 15, 2008 by PG&E. No reply comments were filed. We have reviewed the comments and made changes to the proposed decision where necessary.

## **9. Assignment of Proceeding**

John A. Bohn is the assigned Commissioner and Bertram D. Patrick is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. PG&E's 2008 electric procurement cost forecast, as updated on November 7, 2007, is \$3,290.6 million.
2. PG&E's 2008 sales forecast, including the detailed departing load sales forecasts, is undisputed.
3. The 2008 electric procurement cost forecast of \$3,290.6 million is \$332 million higher than 2008 revenue would be at rates in effect in December 2007.
4. Pursuant to Resolution E-3914, the Commission established the LTPMA, to track costs associated with new long-term resource procurement activities that were not included in PG&E's 2003 GRC Settlement Agreement.
5. PG&E's requested recovery of \$5,839,000 through the LTPMA, consists of outside consulting and legal services only, meets the criteria set by the Commission in Resolution E-3914 and is unopposed.
6. The agreement between PG&E and the Districts to use R.02-01-011 as the forum to resolve the test for the stand alone CTC exemption under Section 369 was rejected by the Commission in D.07-12-056.
7. Ongoing CTC per kilowatt-hour charges are not in dispute.
8. PG&E is required to pay cities and counties franchise fees based on all gross receipts, including ongoing CTC.

9. Districts have not shown there are no uncollectable costs associated with MDL.

10. Not requiring MDL customers be charged franchise fees and uncollectible costs would shift the MDL customers' shares of these costs to bundled service and direct access customers.

11. Natural gas hedge price costs are reviewed annually in the ERRA Compliance Proceeding.

12. PG&E published notice of this proceeding in 55 newspapers in its service area and testified it provided an informational bill insert to all of its customers, including MDL customers who formerly received electric and gas service from PG&E but now receive only gas service.

13. This Order's description of the amounts requested and approved does not reflect the fact that amortization of the forecast 2007 year-end ERRA and MTCBA balancing account balances is already taking place in 2008 in accordance with Resolution E-4121.

### **Conclusions of Law**

1. PG&E's revised electric procurement forecast of \$3,290 million, consisting of: 1) the ERRA forecast of \$3,060.5 million and 2) the ongoing CTC forecast of \$245.9 million and a related downward adjustment of \$15.8 million for the PCIA is reasonable and should be adopted.

2. PG&E's 2008 sales forecast, including the detailed departing load sales forecasts, is reasonable and should be adopted.

3. PG&E's request to recover LPTMA costs of \$5,839,000 through the ERRA is reasonable and should be approved.

4. In D.05-12-045 and D.06-07-030, the method of calculating ongoing CTC were addressed and the Districts corresponding applications for rehearing and

petitions for writ of review were unsuccessful; therefore, this should not be addressed again.

5. Neither an ongoing CTC rate limiter nor other mechanism to reduce or eliminate the potential for significant fluctuations in ongoing CTC charges from year to year is appropriate absent extenuating circumstances; customers should receive accurate and timely price signals.

6. Franchise fees and uncollectibles are not components of ongoing CTC.

7. There is no reasonable basis to exclude MDL from paying their share of uncollectibles costs.

8. Not requiring MDL customers be charged franchise fees and uncollectible costs would be contrary to Section 366.2(d)(1) and our policy against cost-shifting.

9. No additional notice of this proceeding beyond that already provided is necessary.

## **O R D E R**

**IT IS ORDERED** that:

1. Pacific Gas and Electric Company (PG&E) is authorized to recover a total 2008 electric procurement cost forecast of \$3,290.6 million, consisting of its 2008 Energy Resource Recovery Account (ERRA) forecast revenue requirement of \$3,060.5 million, its ongoing Competition Transition Charge forecast revenue requirement of \$245.9 million, and a downward Power Charge Indifference Adjustment of \$15.8 million.

2. PG&E is authorized to recover through the ERRA \$5,839,000 in costs recorded in the Long-Term Procurement Memorandum Account (LTPMA) that were incurred in 2005 and 2006 as part of the 2006 Long-Term Request for Offer,

the Acquisition of the Gateway Generation Station (formerly known as Contra Costa 8), the Renewables Portfolio Standard Solicitations, and the Independent Evaluator costs.

3. The revenue requirement and sales forecast adopted in this Order shall be consolidated with the revenue requirement effects of other recent Commission decisions. PG&E's proposed rate changes to collect the revenue requirement adopted in this Order are approved to become effective on or after January 1, 2008.

4. The request of PG&E to have the confidential information served with this application kept under seal is granted for two years from the effective date of this decision. During that period, the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

5. If PG&E believes that further protection of the information kept under seal is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission's rules may then provide. This motion shall be filed no later than one month before the expiration date.

6. Application 07-06-006 is closed.

This order is effective today.

Dated February 28, 2008, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

Commissioners

Commissioner Timothy Alan Simon, being necessarily absent, did not participate.