STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

FILED
04/29/22
01:37 PM
R2011003

April 29, 2022

Agenda ID #20590
Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 20-11-003:

This is the proposed decision of Administrative Law Judge Brian Stevens. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's June 2, 2022 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ ANNE E. SIMON
Anne E. Simon
Chief Administrative Law Judge

AES:sgu
Attachment

Decision <u>**PROPOSED DECISION OF ALJ STEVENS**</u> **(Mailed 4/29/2022)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish Policies, Processes, and Rules to Ensure Reliable Electric Service in California in the Event of an Extreme Weather Event in 2021.	Rulemaking 20-11-003

DECISION GRANTING IN PART THE JANUARY 31, 2022 PETITION FOR MODIFICATION OF VALLEY CLEAN ENERGY, POLARIS ENERGY SERVICES, AND TEMIX INC.

Summary

On January 31, 2022, Valley Clean Energy, Polaris Energy Services, and Temix Inc. (Pilot Partners) filed a petition for modification requesting that the Commission modify specific provisions of Decision (D.) 21-12-015 (the 2022 and 2023 Summer Reliability Decision) that relate to the Valley Clean Energy (VCE) Dynamic Rate Pilot (VCE Pilot) that was authorized in that decision. This decision resolves that petition for modification.

D.21-03-056 is modified to allocate an incremental $690,000 to VCE for the purpose of carrying out administrative activity in the implementation and execution of the VCE Pilot. All other requests for modification that the Pilot Partners made in the petition for modification are denied.

1. Background

In August 2020, California experienced a series of rolling blackouts caused by inadequate energy supply, an extreme heat wave, and market factors. This

Commission (CPUC), the California Independent System Operator (CAISO) and the California Energy Commission (CEC) issued a Root Cause Analysis of the reasons for the outages and concluded that additional supply and demand measures were required to avoid a repeat of the 2020 experience in summer 2021 and beyond.

The Commission opened this rulemaking on November 19, 2020. During the proceeding's first phase, the Commission issued two decisions, Decision (D.) 21-02-028[1] and D.21-03-056,[2] focused on ensuring the State has adequate electric supply for 2021. The Commission ordered procurement of additional energy resources and created innovative demand response (DR) programs to help curb energy use during the critical hours of the day when the sun is setting but energy use remains high.

The Commission then issued the Phase 2 decision in this proceeding, D.21-12-015, that focused on increasing electric supply and reducing demand for 2022 and 2023.

In D.21-12-015, the Commission authorized numerous measures including two pilots that test how dynamic rates can incent customers to shift energy usage to off peak times, which can enhance system reliability in times of emergency. One authorized pilot, proposed by Valley Clean Energy (VCE), focuses on shifting agricultural water pumping to off peak times for reliability purposes using dynamic rates and incentives (VCE Pilot).

On January 31, 2022, VCE, Polaris Energy Services, and Temix, Inc. (Pilot Partners) filed a petition for modification (PFM) of D.21-12-015 to explicitly

[1] *Reh. denied,* D.21-05-036.

[2] *Modified,* D.21-06-027.

authorize funding for administrative costs that VCE estimates it will incur for the VCE Pilot approved in D.21-12-015.

On March 2, 2022, The Public Advocates Office of the California Public Utilities Commission (Cal Advocates) and Pacific Gas and Electric Company (PG&E) served and filed responses to the PFM. On March 14, 2022, the Pilot Partners served and filed a reply to the responses to the PFM.

2. Issues Before the Commission

This decision address the January 31, 2022 PFM of the Pilot Partners. The scope of the January 31, 2022 PFM includes the agricultural irrigation pumping dynamic rates pilot and the VCE Pilot, adopted in D.21-12-015.

3. Administrative Cost Issues Raised in the PFM

3.1. Overview of the VCE Administrative Costs Issues in the Petition for Modification

In the PFM, the petitioning parties request an order modifying D.21-12-015 that explicitly authorizes funding for administrative costs that they estimate VCE will incur to implement and execute the VCE Pilot approved in that decision.

Attachment 1 to D.21-12-015 outlines the Commission's initial direction regarding the VCE Pilot.

> PG&E is directed to collaborate with Valley Clean Energy (VCE) in administering and evaluating a dynamic transactive pilot rate for agricultural pumping loads in VCE's territory with the attributes described in this section. The design and execution of this pilot is intended to be modeled on the concepts and technologies implemented in the CEC EPIC-funded pilots involving dynamic rates: EPC-15-054 and EPC-16-045. This pilot shall be administered under PG&E's

> DR Emerging Technologies program authorized in D.17-12-003 with incremental funding described below.[3]

The Attachment to the decision further outlines the funding parameters for the VCE Pilot.

> PG&E is authorized a budget of up to $3.25 million for the administration and execution of the 3-year pilot to be used in the manner specified in the table below.
>
> | Expense Type | Amount ($) |
> |---|---|
> | Integration and automation* of pumping loads with the pilot price signal | $1,000,000 |
> | Vendor fees, Systems & Technology | $1,500,000 |
> | Program Administration, including Billing, and Evaluation | $750,000 |
>
> *For pump integration and automation, in lieu of Auto DR funds, customers could be funded up to $200 per kW of shiftable load as a one-time payment with a minimum three-year participation requirement, or for the duration of the pilot if it is extended up to a maximum of five years.
>
> VCE shall be primarily responsible for the recruitment, integration, and automation of the pumping loads. PG&E shall coordinate with VCE to fund customer integration and automation expenses.[4]

The Pilot Partners note in the PFM that the Decision does not explicitly allocate funding for VCE administrative costs, nor does it clarify how PG&E would reimburse VCE for such costs. The Pilot Partners assert in the PFM that "PG&E has taken the position that the entire administrative budget established

[3] D.21-12-015 at Attachment 1, page 7.

[4] D.21-12-015 at Attachment 1, page 10.

in D.21-12-015 must be allocated to PG&E for PG&E's own administrative costs."[5] In turn, the Pilot Partners "request modification of D.21-12-015 to authorize an increase to the Pilot budget to include reasonable VCE administrative costs for the Pilot and allow their recovery in PG&E rates and to clarify the reimbursement process for such costs."[6]

The Pilot Partners assert that the administrative costs incurred by VCE for the three-year pilot are estimated to be $690,000.[7] This includes costs for program management staff, marketing, education and outreach, shadow bill development, testing, implementation, support and postage, customer support and legal expenses. The Pilot Partners submit that these costs are just and reasonable and necessary for implementation of the Pilot as ordered in D.21-12-015.

In addition to the requested $690,000 budgeted for administrative costs, the Plot Partners also put forth a request for $200,000 to conduct necessary Demand Response Emerging Technology Program (DRET) reporting. The Pilot Partners assert that "[i]f in its disposition of VCE's Advice Letter 11-E and in light of PG&E's Protest thereto the Energy Division determines that VCE must prepare the semiannual Demand Response Emerging Technology Program (DRET) reporting on the Pilot required of the three utilities in D.12-04-045, that will increase the requested VCE administrative costs by up to another approximately $200,000 (in addition to the $690,000, for a total of $890,000)."[8]

The Pilot Partners also assert that their need for funding is incremental to the funding authorized in D.21-12-015 because PG&E expressed in its comments

[5] January 31, 2022 Petition for Modification at 2.

[6] January 31, 2022 Petition for Modification at 2.

[7] January 31, 2022 Petition for Modification at 2.

[8] January 31, 2022 Petition for Modification at 3.

on the Proposed Decision (D.21-12-015) that it will need the full $750,000 for both its administrative costs and the third-party evaluation of the VCE Pilot.

The Pilot Partners request that an additional row be added to the table referenced above that appears in the Attachment 1 of D.21-12-015 at page 10, with the following entry:

Expense Type	Amount ($)
VCE Program Administration, including program management, marketing, education and outreach, billing and customer care	$690,000

This would result in the total authorized budget for the program increasing from $3,250,000 to $3,940,000. The Pilot Partners request that these amounts be increased by $200,000 if the DRET reporting requirement is placed on VCE.

The Pilot Partners also ask for an additional Conclusion of Law to be made that indicates that "It is reasonable to approve an administrative budget amount of $690,000 for VCE to manage and implement the Pilot, including program management, customer care, shadow billing, and marketing, education and outreach shadow bill development, testing, implementation, support and postage and legal costs." Presumably the dollar figure in this finding would be increased by $200,000 if the Commission granted the relief relative to the cost incurred for DRET reporting.

3.2. Party Positions on the Additional Funding Requested by the Pilot Partners

Cal Advocates opposes the request for additional funding made by the Pilot Partners in the PFM. Cal Advocates argues that the Pilot Partners fail to show why existing funding is not adequate and approval of the request for additional funding would cause undue cost shifting to occur between unbundled and bundled PG&E customers.

Cal Advocates argues that the existing funding of $3.25 million, as already authorized by the Commission, is sufficient to cover the costs of the Pilot. Cal Advocates notes that the existing decision adopted three buckets of cost recovery authorization: 1) integration and automation of pumping loads with the pilot price signal; 2) vendor fees, systems, and technology; and 3) program administration, including billing and evaluation.[9] Cal Advocates asserts that the "vendor fees, systems, and technology" category is primarily for activities that would be directed by VCE, based on a data response from PG&E that Cal Advocates received on February 11, 2022.

Cal Advocates also asserts that because "these costs will be recovered from all ratepayers, additional administrative costs could result in cost shifts between participants and non-participants. Any such cost shifts could violate California Public Utilities (Pub. Util.) Code Section 366.2(d)(1), which prohibits shifting recoverable costs between bundled utility ratepayers and Community Choice Aggregator (CCA) customers."[10]

PG&E outlined its position on the Pilot Partners' requests.

PG&E agrees that VCE needs funding for its administrative costs. PG&E acknowledges the Pilot Partners' request for $690,000.

PG&E also does not dispute that VCE needs funding to support the DRET efforts. PG&E rejects VCE's proposal to treat the measurement and evaluation report as a substitute for the DRET report. PG&E believes that the

[9] D.21-12-015 at 95 and Attachment 1.

[10] Cal Advocates March 2, 2022 Response to the PFM at 3.

request for $200,000 of funding to create the DRET report is excessive by several fold, and for this reason believes that VCE should be required to track and bill the DRET report costs on an itemized separate basis and that cost recovery should be the actual costs for the creation of the DRET report.

PG&E is clear that its position on funding VCE's pilot and administrative costs is strictly limited to this unique time-sensitive pilot, which has been authorized under DRET, without requiring the CCA to be retained by the jurisdictional utility. PG&E stresses that funding of a CCA's administrative costs and programs is normally the CCA's responsibility.

3.3. Commission Direction Regarding the Additional Funding Requested by the Pilot Partners

Examining the intent of D.21-12-015 to support the implementation of the VCE Pilot as an element of supporting broader grid reliability, we acknowledge that the program needs sufficient funding to be successful and fulfil its initial purpose.

There are diverging positions in the record on the need for additional administrative funding; Cal Advocates that does not support the additional funding and PG&E that acknowledges that the request for an additional $690,000 for administrative costs is reasonable. Both parties do take the clear position that the request for $200,000 in incremental funding for VCE to conduct the DRET reporting obligation is unreasonable.

Weighing the justification provided in the PFM and responses and reply, we agree that for the VCE pilot to be successful, it should be allocated an incremental $690,000 for "program administration, including program management, marketing, education and outreach, billing and customer care."

Regarding the request for an additional $200,000 in funding for VCE to conduct the DRET reporting, we are convinced by the position of PG&E and Cal Advocates and determine that the request is excessive and should be denied.

Energy Division Staff discussed DRET reporting for the VCE Pilot in the Non-standard Disposition Letter (NSDL) it issued on April 12, 2022 in response to VCE's Advice Letter 11-E. Here, the Commission further clarifies the applicable reporting requirements. In D.21-12-015, the Commission provided a budget and direction for PG&E, in coordination with VCE, to contract with an independent evaluator to submit mid-term and final evaluations of the VCE Pilot. These independent evaluator reports satisfy a majority of the DRET reporting requirements. The remaining DRET reporting requirements placed on PG&E and VCE are regarding the "project and activities undertaken as a part of the project," which can be satisfied in the simple manner described in the NSDL. As this remaining reporting element is not highly involved, existing funding is sufficient to cover the reporting obligation.

The question of whether the Commission can authorize the VCE Pilot, which Cal Advocates raised in response to this PFM, was previously decided in D.21-12-015 and is final and unappealable. In D.21-12-015, the Commission authorized VCE to administer a limited pilot and specifically allocated funding for expenses associated with the program, including administrative costs. The argument that the Commission cannot use ratepayer funds for the pilot is a collateral attack on D.21-12-015, barred by Cal. Pub. Util. Code Section 1709.

Given that additional funds are needed to administer the VCE Pilot, a denial of such funds would effectively be a rejection of the Pilot itself, reversing the authorization given in D.21-12-015. As such, we find that the authorization for additional funds under the subject PFM is a necessary extension of the authorization provided in D.21-12-015.

The Pilot Partners' request that the following additional row be added to the table that appears in the Attachment 1 of D.21-12-015 at page 10 is granted, and that table shall include the following text:

Expense Type	Amount ($)
VCE Program Administration, including program management, marketing, education and outreach, billing and customer care	$690,000

Additionally, D.21-12-015 shall be modified to include the finding that "it is reasonable to approve an administrative budget amount of $690,000 for VCE to manage and implement the Pilot, including program management, customer care, shadow billing, and marketing, education and outreach shadow bill development, testing, implementation, support and postage and legal costs."

4. Other issues raised in the PFM

4.1. Pilot Partners' Additional Requests Regarding Implementation Issues Addressed in VCE's Advice Letter regarding the VCE Pilot.

In Section II of the PFM, the Pilot Partners request numerous additional modifications to the ordering paragraphs of D.21-12-015 that relate to the VCE Pilot. The additional requested modifications pertain to the adequacy of DRET reporting regarding previous Commission direction in D.12-04-045, the Commission's Energy Division's role in overseeing the VCE Pilot, PG&E's role in the administration of the VCE Pilot, and the invoice process that will be conducted relative to the VCE Pilot.

The Pilot Partners provided minimal and unsystematic justification for the requests. The justification provided by the Pilot Partners for the Section II requests are not concise; the Pilot Partners simply outline the modifications to D.21-12-015 that they seek and attach the reply it issued in response to the protests of VCE Advice Letter 11-E as justification.

4.2. Party Positions on the Other Issues Raised in the PFM

PG&E raised various areas where it agrees or disagrees with the requests that the Pilot Partners made in Section II of the PFM.

For instance, PG&E notes that VCE has accepted ratepayer funding and must be accountable to an appropriate authority for its use of those ratepayer funds for the Pilot. PG&E also opposes VCE's proposal in a new ordering paragraph that would indicate it does not need to enter into a contract with PG&E to receive payment.

Cal Advocates also opposed the requests that the Pilot Partners included in Section II of the PFM.

4.3. Commission Direction Regarding Other Issues Raised in the PFM

Rule 16.6(b) states 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. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit."

In this circumstance, the justification that VCE is asserting to support the requested additional modifications stem from a reply it issued to protests on its own Advice Letter. The appropriate venue to resolve those matters is the advice letter process from which VCE's justification stems.

The Pilot Partners did not provide sufficient context nor concise justification for the requested modifications to D.21-12-015 that it outlined in Section II to meet the threshold necessary to justify the relief. For this reason, we deny the requests made in Section II of the PFM without prejudice.

5. Comments on Proposed Decision

The proposed decision of ALJ Brian Stevens 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 __________, and reply comments were filed on _____________ by ________________.

6. Assignment of Proceeding

Alice Reynolds is the assigned Commissioner and Brian Stevens is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In August 2020, California experienced a series of rolling blackouts caused by inadequate energy supply, an extreme heat wave, and market factors. The CPUC, CAISO and CEC issued a Root Cause Analysis of the reasons for the outages and concluded that additional supply and demand measures were required to avoid a repeat of the 2020 experience in summer 2021 and beyond.
2. In D.21-12-015, the Commission authorized numerous measures including two pilots that test how dynamic rates can incent customers to shift energy usage to off peak times, which can enhance system reliability in times of emergency. One authorized pilot, initially proposed by VCE, focuses on shifting agricultural

water pumping to off peak times for reliability purposes using dynamic rates and incentives.

3. California Pub. Util. Code Section 1709 prohibits collateral attacks on existing Commission decisions.

4. D.21-12-015 authorized PG&E a budget of up to $3.25 million for the administration and execution of the 3-year VCE pilot.

5. Of the $3.25 million authorized in D.21-12-015 for the VCE pilot, $750,000 of the funds were budgeted for the costs PG&E will incur for administration and the third-party evaluation of the VCE Pilot.

6. In this PFM, the Pilot Partners requested a budget of $690,000 to be allocated to VCE for administrative costs that is in addition and incremental to PG&E's administrative costs. Additionally, the Pilot Partners requested a budget of $200,000 for costs to develop the necessary DRET reporting requirement.

7. It is likely that VCE will reasonably incur $690,000 of costs throughout the lifetime of the VCE Pilot for administrative activity, including program management staff, marketing, education and outreach, shadow bill development, testing, implementation, support and postage, customer support and legal expenses. These costs that will likely be incurred by VCE are just and reasonable and necessary for implementation of the Pilot as ordered in D.21-12-015.

8. It is not likely that VCE will reasonably incur $200,000 in costs to execute DRET reporting requirement activity.

9. The Pilot Partners requested additional modifications to D.21-12-015 in Section II of the January 31, 2022 PFM relating to the Commission's Energy Division's role in overseeing the VCE Pilot, PG&E's role in the administration of the VCE Pilot, and the invoice process that will be conducted relative to the VCE Pilot.

10. The Pilot Partners did not concisely state the justification for the requested relief in the additional modifications it requested to D.21-12-015 in Section II of the January 31, 2022 PFM.

Conclusions of Law

1. The question of whether the Commission can authorize the VCE Pilot was previously decided in D.21-12-015 and is final and unappealable; any collateral attacks on the VCE Pilot are prohibited pursuant to Cal. Pub. Util. Code Section 1709.

2. VCE should be authorized an incremental budget of $690,000 for administrative costs, including program management, customer care, shadow billing, and marketing, education and outreach shadow bill development, testing, implementation, support and postage and legal costs.

3. The sentence in the Attachment 1 of D.21-12-015 at the bottom of page 9 under the subheading "Pilot Funds" should be modified to the following text, "PG&E is authorized a budget of up to $3.94 million for the administration and execution of the 3-year pilot to be used in the manner specified in the table below and of which $0.69 million is allocated for VCE's administrative costs."

4. The table that appears in the Attachment 1 of D.21-12-015 at page 10 should be modified to include the following entry

Expense Type	Amount ($)
VCE Program Administration, including program management, marketing, education and outreach, billing and customer care	$690,000

5. D.21-12-015 should be modified to include the following text as finding of fact number 128, indicating that "It is reasonable to authorize PG&E a budget of

up to $3.94 million for the administration and execution of the 3-year VCE dynamic rates pilot, of which $0.69 million is allocated for VCE's administrative costs (VCE administrative costs will be incurred for activity to manage and implement the Pilot, including program management, customer care, shadow billing, and marketing, education and outreach shadow bill development, testing, implementation, support and postage and legal costs)."

6. All other relief requested in the January 31, 2022 PFM should be denied without prejudice.

O R D E R

IT IS ORDERED that:

1. Valley Clean Energy shall be allocated an incremental budget of $690,000 for administrative costs, including program management, customer care, shadow billing, and marketing, education and outreach shadow bill development, testing, implementation, support and postage and legal costs in the implementation and execution of the Valley Clean Energy Pilot.

2. The sentence in the Attachment 1 of Decision 21-12-015 at the bottom of page 9 under the subheading "Pilot Funds" shall be modified to the following text, "PG&E is authorized a budget of up to $3.94 million for the administration and execution of the 3-year pilot to be used in the manner specified in the table below and of which $0.69 million is allocated for VCE's administrative costs."

3. The table that appears in the Attachment 1 of Decision 21-12-015 at page 10 shall be modified to include the following entry:

Expense Type	Amount ($)
VCE Program Administration, including program management, marketing, education and outreach, billing and customer care	$690,000

4. Decision 21-12-015 shall be modified to include the following text as finding of fact number 128, indicating that "It is reasonable to authorize PG&E a budget of up to $3.94 million for the administration and execution of the 3-year VCE dynamic rates pilot, of which $0.69 million is allocated for VCE's administrative costs (VCE administrative costs will be incurred for activity to manage and implement the Pilot, including program management, customer care, shadow billing, and marketing, education and outreach shadow bill development, testing, implementation, support and postage and legal costs)."

5. All other relief requested in the January 31, 2022 Petition for Modification of Decision 21-12-015 shall be denied without prejudice.

6. Rulemaking 20-11-003 shall be closed.

This order is effective today.

Dated ______________________________, at San Francisco, California