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

FILED
09/22/23
08:00 AM
A1911019

September 22, 2023

Agenda ID #21888
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 19-11-019:

This is the proposed decision of Administrative Law Judge Patrick Doherty. 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 November 2, 2023 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/ MICHELLE COOKE _
Michelle Cooke
Acting Chief Administrative Law Judge

MLC:smt

Attachment

Decision **PROPOSED DECISION OF ALJ DOHERTY (Mailed 9/22/2023)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company to Revise its Electric Marginal Costs, Revenue Allocation and Rate Design.	Application 19-11-019

DECISION RESOLVING PETITION FOR MODIFICATION AND PREMATURE E-TOU-D MODIFICATIONS

Summary

This decision addresses two issues that emerged in this proceeding subsequent to the original closure of this proceeding in Decision (D.) 22-09-002. First, this decision grants a petition for modification concerning commercial rate schedules B-19 and B-20 filed in February 2023. Second, this decision addresses modifications made by Pacific Gas and Electric Company to residential rate schedule E-TOU-D that were contrary to the orders of D.21-11-016. This decision finds that the customers that were adversely affected by the modifications should be made whole, and that the expenses for doing so should be borne by the shareholders of Pacific Gas and Electric Company.

This proceeding is, once more, closed.

1. Petition for Modification Related to Commercial Rate Schedules B-19 and B-20

On February 22, 2023, California Large Energy Consumers Association (CLECA), the California City-County Street Light Association (CALSLA), the

California Manufacturers & Technology Association (CMTA), Direct Access Customer Coalition (DACC), Energy Producers and Users Coalition (EPUC), Energy Users Forum (EUF), Federal Executive Agencies (FEA), and Pacific Gas and Electric Company (PG&E) filed a petition for modification (petition) of Decision (D.) 21-11-016 seeking to modify the Commercial and Industrial Rate Design Supplemental Settlement Agreement (C&I Settlement Agreement) adopted by D.21-11-016. The modification would adjust the distribution rate design for PG&E commercial rate schedules B-19 and B-20. No party filed a response to the petition.

The petition argued that the proposed modification "is needed to address an intra-class cost-shift impacting high load factor customers receiving service under these base schedules."[1] All of the parties to the C&I Settlement Agreement either joined in the petition or confirmed that they did not oppose the petition's proposed modification.[2]

The proposed modification would authorize PG&E to adjust distribution rates to recover wildfire hardening recovery bond revenue requirement collected on commercial rate schedules B-19 and B-20 (excluding Option R and Option S customers on those rates) through customer and demand charges, rather than through energy charges. The petition asserted that "the proposed modification is intended to correct for a cost-shift caused by the wildfire hardening fixed

[1] Petition at 2.

[2] The settling parties not joining the petition are the Public Advocates Office of the California Public Utilities Commission, Solar Energy Industries Association, Small Business Utility Advocates, and the Joint Community Choice Aggregators.

recovery charge (WHFRC) that was adopted subsequent to the C&I Settlement Agreement, in D.21-06-030."[3]

The petition was not filed within one year of the effective date of D.21-11-016, as required by Rule 16.4(d) of the Commission's Rules of Practice and Procedure (Rules). The petition argued that it should nonetheless be accepted by the Commission for consideration "since the delay is relatively minor, was necessary to construct a revenue neutral rate design solution that aligns PG&E's wildfire hardening recovery methodology with the intent of the C&I [Settlement Agreement] and is not opposed by any of the [parties to the C&I Settlement Agreement]."[4]

At issue is the collection of certain bond costs by PG&E from its commercial customers. D.21-06-030 in Application (A.) 21-02-020 authorized PG&E to collect the recovery bond costs included in the distribution revenue requirement through the WHFRC, which is an energy-based charge. The petition claims that "[t]he simplified energy charge approach in [D.21-06-030] represents a material change to the base Schedules B-19 and B-20 rate design that is inconsistent with the C&I Settlement Agreement, and results in a cost-shift to the detriment of high load factor customers within those schedules."[5]

In essence, the C&I Settlement Agreement dictates that increases in PG&E's distribution revenue requirement be reflected in equal increases across distribution rate components, including customer charges and demand charges, while the bond recovery authorized by D.21-06-030 is solely volumetric and not applied to customer charges and demand charges. The petition seeks to resolve

[3] Petition at 3.

[4] Petition at 4.

[5] Petition at 5.

this conflict authorizing PG&E to adjust the distribution rates for base commercial rate schedules B-19 and B-20, to establish a negative distribution energy charge exactly equal to the WHFRC, and a corresponding equal percent increase to customer charges and demand charges to collect the otherwise-applicable WHFRC revenues assigned to the large commercial class. The petition claimed that "[t]his approach would maintain revenue neutrality within the base [commercial rate schedules] B-19 and B-20, so as to ensure that other customer classes, as well as B-19 and B-20 Option R customers, would not be impacted by the change."[6]

The specific modification sought is to insert the following paragraph immediately after the first paragraph in Section C.1 of the C&I Settlement Agreement approved by D.21-11-016:

> For Schedules B-19 and B-20 only, and excluding Option R and Option S, PG&E will establish a negative distribution energy charge component exactly equal to the Fixed Recovery Charge associated with wildfire hardening recovery bonds and a corresponding equal percent increase to distribution-related customer, time-related demand charges, and non-time-related demand charges such that the net effect of the increase and decrease to distribution charges is revenue neutral.

Additionally, a clause would be added to the following paragraph of the C&I Settlement Agreement clarifying that Option R and Option S customers will not pay the adjustment created by the preceding paragraph.

As a threshold matter, this decision exercises the discretion granted to the Commission by Rule 16.4(d) to accept the petition for consideration despite the fact that it was filed more than one year after the effective date of D.21-11-016. The petition's reasoning that the delay was necessary to construct a revenue-

[6] Petition at 7.

neutral rate design solution is reasonable and should excuse the tardiness of the petition.

With respect to the merit of the petition, no party objected to the petition's proposal, and the proposal will not change the amount of revenue collected from PG&E's large commercial customers for WHFRC purposes. While ideally the C&I Settlement Agreement would have proposed a rate design for the WHFRC revenue at the time the settlement was filed with the Commission for review, this is excused by the fact that the C&I Settlement Agreement was filed with the Commission two months prior to D.21-06-030.[7] This decision accepts as implicit that the C&I Settlement Agreement would have proposed the petition's proposed rate design for WHFRC revenue had the C&I Settlement Agreement been filed after the issuance of D.21-06-030. For these reasons, the modification sought to the C&I Settlement Agreement (and therefore D.21-11-016) by the petition is reasonable and should be adopted.

Furthermore, the rate design solution proposed by the petition is revenue neutral and does not affect other classes beyond PG&E's large commercial class. This will ensure that PG&E's large commercial class continues to pay its fair share of bond recovery costs authorized by D.21-06-030, albeit through a modified rate design. Because the terms of D.21-06-030 are affected by this decision, the proposed version of this decision was served on the service list for A.21-02-020, and parties in that proceeding were allowed to comment on the proposed version of this decision.

[7] Petition at 9.

2. Premature Modification to E-TOU-D

2.1. Background

PG&E's testimony in this proceeding proposed that the peak versus off-peak price (POPP) differentials for residential rate schedule E-TOU-D be increased by 4.0 cents per kilowatt-hour (kWh) in summer and by 2.1 cents per kWh in winter, to move the POPP differentials closer to the full marginal cost differentials. PG&E also proposed implementing these changes no earlier than January 1, 2023. No party opposed PG&E's proposal, and a Residential Rate Design Settlement submitted to the Commission on March 29, 2021, supported approval of PG&E's E-TOU-D proposals. The Commission approved the Residential Rate Design Settlement in D.21-11-016.[8]

On February 18, 2022, PG&E submitted Advice Letter 6509-E that included rate design changes from D.21-11-016, including the change to the POPP differentials in E-TOU-D. No party protested these changes, and Advice Letter 6509-E was approved by the Commission's Energy Division on March 16, 2022. As a result, the E-TOU-D rates with wider POPP differentials went into effect March 1, 2022 instead of January 1, 2023, or later.[9] The Advice Letter filing and its approval was therefore not in accordance with D.21-11-016.

The Commission became aware of this sequence of events in early 2023, and an ALJ's Ruling of May 5, 2023 (May 5 ruling) sought party comment on the facts and possible remedies. The May 5 ruling proposed that any E-TOU-D customer that was overcharged between March 1, 2022, and December 31, 2022 compared to what they would have been charged had E-TOU-D not been

[8] PG&E Opening Comments on Administrative Law Judge's (ALJ) Ruling of May 5, 2023 at 2.

[9] *Ibid*.

changed until January 2023 as ordered by D.21-11-016 be refunded the amount they were overcharged. Refunds for each eligible customer were proposed to match the amount that particular customer was overcharged.

The May 5 ruling also proposed that all revenue to pay for the refunds to eligible E-TOU-D customers shall be sourced from non-ratepayer funds. The May 5 ruling sought party comment on this proposal, including on whether the Commission should adopt an alternative approach where revenue to pay for E-TOU-D refunds should be sourced from residential customers generally.

2.2. Discussion

Two parties filed opening and reply comments on the May 5 ruling: PG&E and the Center for Accessible Technology (CforAT). PG&E's opening comments confirmed the facts as understood and added additional context, stating that "[t]he timing of when the POPP differential widening would occur for E-TOU-D was never a contested issue in the 2020 GRC Phase II proceeding…. When, in Advice 6509-E, PG&E inadvertently widened the POPP differentials on March 1, 2022, no party protested the early widening, nor did any customer complain when it occurred."[10] PG&E further asserted that the early rate change had a very small effect on customer bills and PG&E's revenues.[11] Nevertheless, it is apparent that PG&E erred in submitting a change to the rate design in Schedule E-TOU-D in Advice Letter 6509-E, and should not have submitted the changes for approval until January 1, 2023 at the earliest as ordered by D.21-11-016.

[10] *Ibid*.

[11] PG&E Opening Comments on ALJ's Ruling of May 5, 2023 at 3.

2.2.1. Bill Impacts

With respect to customer bill impacts, after running an analysis of E-TOU-D customer bills from March – December 2022, PG&E found that 29.2 percent of E-TOU-D customers would have seen smaller bills had the rate change not occurred: 28.2 percent would have experienced smaller bills of less than $1 per month while the other one percent would have seen smaller bills of between $1 and $5 per month.[12] PG&E noted that for 99.9 percent of E-TOU-D customers, the changes to their bills in either direction as a result of the premature rate change only amounted to an increase or decrease of one percent.[13]

PG&E estimated that 62,000 E-TOU-D customers overpaid as a result of the premature rate change (versus 142,000 E-TOU-D customers who underpaid), and that "these customers, over the ten-month period, were billed a total of $155,000 more than they would have if PG&E had not prematurely adjusted the POPP differentials."[14]

2.2.2. Remedies

PG&E supported the first element of remedy proposed by the May 5 ruling, but not the second element, stating that "PG&E supports providing tailored refunds to individual customers who were overcharged while not re-billing those who were undercharged, with the $155,000 revenue shortfall flowing through the normal revenue balancing accounts."[15]

[12] PG&E Opening Comments on ALJ's Ruling of May 5, 2023 at 5.

[13] PG&E Opening Comments on ALJ's Ruling of May 5, 2023 at 6.

[14] PG&E Opening Comments on ALJ's Ruling of May 5, 2023 at 7.

[15] PG&E Opening Comments on ALJ's Ruling of May 5, 2023 at 7-8.

PG&E did not support using non-ratepayer funds for the refunds and cited a recent similar case from 2020 regarding the implementation of Schedule D-CARE. In that case, PG&E refunded approximately 125 California Alternate Rates for Energy (CARE) customers taking service on Schedules E-6 and EM-TOU that were overcharged due to an error made by PG&E on their billing. The one-time refunds for these customers did not use non-ratepayer funds, and this approach was approved by the Commission's Energy Division.

PG&E also claimed that using shareholder funding for the rebates would be unfair. PG&E argued that "PG&E made an honest, inadvertent, error in prematurely moving [E-TOU-D customers] towards more cost-based rates for Schedule E-TOU-D and should not be penalized for this."[16] At the same time, PG&E acknowledged "its responsibility to calculate rates and bill customers correctly and takes this responsibility seriously."[17]

CforAT supported both elements of the remedy proposed by the May 5 ruling. CforAT argued that "the requirement that payments be sourced from non-ratepayer funds avoids equity issues that would accompany an attempt to recover payments from customers whom PG&E under-charged."[18] CforAT also stressed that the relatively small amount of revenue involved (approximately $155,000) should not persuade the Commission to allow the rebates to be sourced from ratepayers, as the underlying error was PG&E's responsibility and not that of its ratepayers.[19]

[16] PG&E Opening Comments on ALJ's Ruling of May 5, 2023 at 8.

[17] PG&E Opening Comments on ALJ's Ruling of May 5, 2023 at 9.

[18] CforAT Opening Comments on ALJ's Ruling of May 5, 2023 at 1.

[19] CforAT Opening Comments on ALJ's Ruling of May 5, 2023 at 1-2.

CforAT also distinguished this case from the CARE customer example cited by PG&E from 2020. CforAT pointed out that the amount of money at issue and the number of overcharged E-TOU-D customers "dwarfs those overcharged in 2020. Here, PG&E has overbilled 62,000 E-TOU-D customers, a group over four hundred times larger than the 125 to 130 affected D-CARE customers."[20]

2.2.3. Disposition

The first element of the remedy proposed in the May 5 ruling is uncontested and should be adopted. The second element of remedy from the May 5 ruling should also be adopted, despite being contested by PG&E, for the reasons discussed below.

Those E-TOU-D customers that were overcharged as a result of PG&E's error are not to blame and, as a matter of equity, PG&E should provide tailored refunds to individual E-TOU-D customers who were overcharged from March 1, 2022 to December 31, 2022. Specifically, PG&E shall provide tailored refunds to individual E-TOU-D customers who were overcharged that match the amount the individual ratepayer was overcharged from March 1, 2022 to December 31, 2022, with the funding for the refunds coming from funds that would otherwise be paid to PG&E's shareholders. PG&E shall issue these refunds no later than 90 days after the effective date of this decision.

Using shareholder funds to source the rebates for E-TOU-D customers is not, as PG&E believes, a penalty for making an honest, inadvertent error. In fact, it is not a penalty at all as the amount to be paid simply matches the amount that customers were overcharged. Rather, the Commission's determination that shareholders should fund the E-TOU-D customer refunds is based on the

[20] CforAT Reply Comments on ALJ's Ruling of May 5, 2023 at 1.

principle that when the Commission makes a certain order regarding rate design, and that order is not followed, and individual customers are overcharged as a result, a utility's shareholders – and not the utility's customers – should pay for the refunds to the overcharged customers. The principle ensures that the entity at fault pays for the harm caused.

While PG&E's comments suggest that PG&E's Electric Rule 17.1, which generally concerns how to make adjustments to customer bills after a billing error is discovered, requires that ratepayer funds be used to fund the rebates to E-TOU-D customers,[21] this decision disagrees. Electric Rule 17.1 makes no reference to either ratepayer or shareholder funding of rebates for billing errors, and requiring the rebates to be funded using shareholder funds is therefore not inconsistent with Electric Rule 17.1. Furthermore, it is not clear that Electric Rule 17.1 even applies to the billing error at issue in this decision as it is a broad error that applied to many thousands of PG&E customers simultaneously as a result of an Advice Letter filing that contradicted a Commission order, as opposed to the individual, one-off customer billing errors apparently contemplated by Electric Rule 17.1.[22]

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[21] PG&E Reply Comments on ALJ's Ruling of May 5, 2023 at 3.

[22] Electric Rule 17.1 defines a "billing error" as "the incorrect billing of an account due to an error by PG&E, the energy service provider (ESP), or its agents, or the Customer which results in incorrect charges to the Customer. Billing error includes, but is not limited to, incorrect meter reads or clerical errors, wrong daily billing factor, incorrect voltage discount, wrong connected load information, crossed meters, an incorrect billing calculation, an incorrect meter multiplier, an inapplicable rate, or PG&E's and/or the ESP's failure to provide the Customer with notice of rate options in accordance with Rule 12. Billing error shall also include errors or failures of PG&E, an Energy Service Provider (ESP), or its agent, to properly edit and validate meter data into bill quality data pursuant to meter data processing standards and protocols adopted by the Commission." *See* PG&E Electric Rule 17.1, available at: https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC_RULES_17.1.pdf (last accessed July 21, 2023).

Furthermore, the 2020 CARE billing error example cited by PG&E is not dispositive. As noted by CforAT, the scale of billing error at issue in this decision dwarfs the billing error rebated using ratepayer funds in 2020, and it would be inequitable to ask PG&E ratepayers to pay for PG&E's error in this case. While PG&E did alert the Commission to the billing error for E-TOU-D customers on its own motion, this does not mean that ratepayers should pay for disclosed error. Rule 1.1 required PG&E to make its disclosure after it discovered that Advice Letter 6509-E did not comply with the orders of D.21-11-016.

3. Submission Date

This matter was submitted on June 16, 2023 upon the submission of reply comments on the issue of modifications made by PG&E to residential rate Schedule E-TOU-D.

4. Comments on Proposed Decision

The proposed decision of ALJ Patrick Doherty 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 _____.

Because the terms of D.21-06-030 are affected by this decision, the proposed version of this decision was served on the service list for A.21-02-020, and parties in that proceeding were allowed to comment on the proposed version of this decision.

5. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Patrick Doherty is the assigned ALJ in this proceeding.

Findings of Fact

1. D.21-06-030 in A.1-02-020 authorized PG&E to collect the recovery bond costs included in the distribution revenue requirement through the WHFRC, which is an energy-based charge.

2. The energy charge approach taken by D.21-06-030 represents a material change to the base Schedules B-19 and B-20 rate design that is inconsistent with the C&I Settlement Agreement adopted in D.21-11-016, and results in a cost-shift to the detriment of high load factor customers within those schedules.

3. No party objected to the petition's proposal, and the proposal will not change the amount of revenue collected from PG&E's large commercial customers for WHFRC purposes.

4. The rate design solution proposed by the petition is revenue neutral and does not affect other classes beyond PG&E's large commercial class. This will ensure that PG&E's large commercial class continues to pay its fair share of bond recovery costs authorized by D.21-06-030, albeit through a modified rate design.

5. D.21-11-016 approved a rate design modification for Schedule E-TOU-D that increased the peak versus off-peak price (POPP) differentials by 4.0 cents per kWh in summer and by 2.1 cents per kWh in winter, to move the POPP differentials closer to the full marginal cost differentials, to take effect no earlier than January 1, 2023.

6. On February 18, 2022, PG&E submitted Advice Letter 6509-E that included rate design changes from D.21-11-016, including the change to the POPP differentials in E-TOU-D that D.21-11-016 had ordered not take effect until January 1, 2023.

7. Schedule E-TOU-D rates with wider POPP differentials went into effect March 1, 2022 instead of January 1, 2023, and this was not in accordance with D.21-11-016.

8. 29.2 percent of E-TOU-D customers would have seen smaller bills from March 1, 2022 to December 31, 2022 had the rate change proposed in Advice Letter 6509-E not occurred: 28.2 percent would have experienced smaller bills of less than $1 per month while the other one percent would have seen smaller bills of between $1 and $5 per month.

9. 62,000 E-TOU-D customers overpaid as a result of the premature rate change, and they were billed a total of $155,000 more than they would have if PG&E had not proposed to prematurely adjust the POPP differentials of Schedule E-TOU-D.

10. The scale of billing error at issue in this decision dwarfs the billing error rebated using ratepayer funds in 2020.

11. PG&E erred in submitting a change to the rate design in Schedule E-TOU-D in Advice Letter 6509-E, and should not have submitted the changes for approval until January 1, 2023 at the earliest as ordered by D.21-11-016.

Conclusions of Law

1. The modification sought to the C&I Settlement Agreement (and therefore D.21-11-016) by the petition is reasonable and should be adopted.

2. As a matter of equity, PG&E should provide tailored refunds to individual E-TOU-D customers who were overcharged from March 1, 2022 to December 31, 2022.

3. It would be inequitable to ask PG&E ratepayers to pay for PG&E's error in prematurely changing the rate design of Schedule E-TOU-D.

4. PG&E's shareholders should fund the E-TOU-D customer refunds based on the principle that when the Commission makes a certain order regarding rate design, and that order is not followed, and individual customers are overcharged as a result, a utility's shareholders – and not the utility's customers – should pay for the refunds to the overcharged customers.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) shall implement the terms of the Commercial & Industrial Settlement Agreement approved by D.21-11-016 as modified here: For Schedules B-19 and B-20 only, and excluding Option R and Option S, PG&E will establish a negative distribution energy charge component exactly equal to the Fixed Recovery Charge associated with wildfire hardening recovery bonds and a corresponding equal percent increase to distribution-related customer, time-related demand charges, and non-time-related demand charges such that the net effect of the increase and decrease to distribution charges is revenue neutral.

2. Pacific Gas and Electric Company (PG&E) shall provide tailored refunds to individual E-TOU-D customers who were overcharged from March 1, 2022 to December 31, 2022. The refund shall match the amount the individual ratepayer was charged from March 1, 2022 to December 31, 2022, minus the amount that would have been charged to them under Schedule E-TOU-D had the rate design sought by Advice Letter 6509-E not been applied. The funding for the refunds shall be sourced from funds that would otherwise be paid to PG&E's shareholders. PG&E shall issue these refunds no later than 90 days after the effective date of this decision.

3. Application 19-11-019 is closed.

This order is effective today.

Dated _____, at Sacramento, California.