Decision 19-03-002 March 14, 2019

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of California Solar & Storage Association, California Energy Storage Association (CESA), Enel X, ENGIE Services, ENGIE Storage, OHMConnect, Inc., Solar Energy Industries Association (SEIA) and STEM, Inc. to Adopt, Amend or Repeal a Regulation Pursuant to Pub. Util. Code Section 1708.5.	Petition 18-11-004

DECISION DENYING PETITION TO OPEN A RULEMAKING TO CONSIDER REAL TIME PRICING FOR ELECTRICITY AND DEMAND CHARGE REFORMS

Summary

This decision denies the petition for a rulemaking to consider the adoption of real-time electricity pricing and demand charge reforms for customers of the state's three large electric utilities. These issues were within the scope of rate design proceedings concluded in the previous 12 months. Furthermore, these issues are either scheduled for consideration in upcoming proceedings, or are otherwise more appropriately considered in normally scheduled rate design proceedings for the state's three large electric utilities. Petitioners are encouraged to raise the petition's recommended scoping issues in those proceedings.

1. Background

On November 6, 2018 the California Solar & Storage Association, California Energy Storage Association, Enel X, ENGIE Services, ENGIE Storage, OhmConnect, Inc., the Solar Energy Industries Association, and Stem, Inc. (together Joint Petitioners) filed a petition to adopt, amend, or repeal a regulation pursuant to Public Utilities Code (Pub. Util. Code) § 1708.5.

The petition requested that the Commission open a rulemaking to address two features of retail electricity rates: 1) whether to order the state's three large investor-owned utilities (IOUs) to offer real-time pricing (RTP) tariffs[1] to all customer classes, including less dynamic rates for residential and small business customers, and 2) whether to impose demand charge reforms on the IOUs that a) prohibit non-coincident demand charges[2] from collecting revenue that pays for distribution investments upstream of a customer's final line transformer, and b) explores alternatives to the calculation of demand charges based on the month's highest single interval of demand.

Several responses to the petition were received. The Mission:Data Coalition submitted a response on December 3, 2018. The California Large Energy Consumers Association (CLECA), Small Business Utility Advocates, Utility Consumers' Action Network, and Public Advocates Office (Public Advocates Office) submitted responses on December 5, 2018. Inspire Energy Holdings, LLC, San Diego Gas & Electric Company (SDG&E), Evolve

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[1] Defined in the petition as tariffs with hourly or sub-hourly retail prices that are based on wholesale prices and that are determined on either a day-ahead or day-of basis.

[2] Non-coincident demand charges are those that apply to a customer's peak load on a $/kW basis regardless of the time of day that peak load occurs. In other words, the customer pays the same amount for a peak load regardless of whether it occurs at 2:00 a.m. or 2:00 p.m. in a given month.

Energy, Inc., Southern California Edison Company (SCE), and Pacific Gas and Electric Company (PG&E) submitted responses on December 6, 2018. Joint Petitioners submitted a reply to the responses on December 17, 2018.

2. The Petition is Denied on Procedural Grounds

Joint Petitioners request that the Commission adopt a rulemaking pursuant to Pub. Util. Code § 1708.5. That section requires that the Commission implement its terms under the Commission's Rules of Practice and Procedure (Rules). Rule 6.3 governs petitions made pursuant to Pub. Util. Code § 1708.5. Rule 6.3(f) states that the Commission will not entertain a petition for rulemaking on an issue that the Commission has acted on or decided not to act on within the preceding 12 months.

The petition does not directly address the requirement of Rule 6.3(f); but it does review recent Commission decisions that address demand charge rate design issues. The petition states that "[t]he allocation of costs to non-coincident demand charges and other billing determinants is regularly revisited in each utility's triennial application on marginal costs, revenue allocation, and rate design, often referred to as the General Rate Case (GRC) Phase 2."[3] The petition notes that the most recent Commission decisions in GRC Phase 2 proceedings came in 2017 for SDG&E (Decison (D.) 17-08-030) and 2018 for PG&E (D.18-08-013).[4] Subsequent to the filing of the petition, the Commission issued a final decision in SCE's most recent GRC Phase 2 (D.18-11-027). For these three most recent decisions the petition generally reviews the litigated and settled

[3] Petition at 16-17.

[4] Petition at 17.

positions of the parties, and the outcomes of each decision, with respect to demand charge rate design.[5]

The petition argues that one of the justifications for the rulemaking is that over the past several years "parties have had to continually re-litigate the inclusion and/or magnitude of non-coincident demand charges across a wide range of the Utilities' non-residential tariffs, as demonstrated in the above-cited GRC Phase 2 cases."[6]

By the petition's own admission, the demand charge rate design issues for which a rulemaking is sought are regularly addressed by the Commission and were addressed by the Commission with respect to SCE and PG&E in the last 12 months. SDG&E's demand charge rate design will be considered in its upcoming GRC Phase 2 application which may be filed by March 4, 2019.[7] Several responses to the petition argue that Rule 6.3(f) therefore bars a granting of the petition on demand charge rate design issues.[8] Other responses did not specifically address the applicability of Rule 6.3(f).

Joint Petitioners argue in response that the issues raised in their petition are distinguishable from those addressed in the recent GRC Phase 2 proceedings. They state that the particular reforms to demand charge rate design sought by the petition (e.g., ex post coincident demand charges, "Top X-hour" demand charges, and dynamic demand charges) have not been litigated and specifically

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[5] Petition at 17-20.

[6] Petition at 21.

[7] SDG&E Response at 3.

[8] SCE Response at 3-7; SDG&E Response at 2-4; CLECA Response at 3-6; PG&E Response at 11.

addressed in the decisions disposing of the most recent GRC Phase 2 proceedings.[9]

The petition seeks a rulemaking containing within its scope the following demand charge rate design issues:

- Should the utilities be prohibited from including any non-coincident demand charges for Commission-jurisdictional costs in their tariffs?
- If not, should non-coincident demand charges be limited to the recovery of final line transformer and service connection costs?
- Should the utilities be required to convert their monthly maximum demand charges to daily coincident demand charges?
- Should other alternatives to monthly maximum demand charges be considered?
- If the Commission adopts a standard policy on demand charges, should updated tariffs be proposed in coordinated Rate Design Window applications?[10]

While not phrased as specifically as in the petition, the reasonableness of each utility's demand charge rate design was within the scope of each utility's previous GRC Phase 2 proceeding.[11] As noted by the petition itself, litigating the reasonableness of a utility's rate designs is the very purpose of a GRC Phase 2

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[9] Joint Petitioners' Response at 3.

[10] Petition at 23-24.

[11] Application (A.) 15-04-012 Scoping Memo and Ruling (filed April 19, 2016) at 4 ("[s]hould SDG&E's proposed changes in allocation of distribution customer costs, distribution demand charges, and peak generation capacity costs be adopted?"); A.16-06-013 Scoping Memo and Ruling (filed October 19, 2016) at 3 ("[a]re PG&E's rate design proposals reasonable and should they be adopted?"); A.17-06-030 Scoping Memo and Ruling (filed November 22, 2017) at 2 ("the following broad issue areas are within the scope of this proceeding:… Rate design including, but not limited to the following:… rates focused on achieving the goals of the Commission's Distributed Energy Resources action plan").

proceeding. Therefore, the demand charge rate design issues proposed for the scope of the rulemaking were implicitly part of the scope of the previous GRC Phase 2 proceedings and, in the case of PG&E and SCE, were disposed of in the previous 12 months.[12] The failure of the Joint Petitioners to litigate some of their proposed demand charge rate design reforms (e.g., ex post coincident demand charges, "Top X-hour" demand charges, and dynamic demand charges) in those proceedings does not mean the opportunity to consider those reforms was absent. Joint Petitioners were welcome to litigate those issues previously and are invited to do so in the future.

This analysis applies to the RTP tariff development sought by the petition as well. The petition seeks a rulemaking containing within its scope the following RTP rate design issues:

- Should the utilities be required to offer RTP tariffs, on an optional basis, to all customers?
- If so, should the tariff be based on day-ahead or real-time markets, or should both options be available?
- What marketing, education, and outreach efforts should be required to ensure that customers are aware of and understand RTP?
- Should the utilities include locational price signals in their RTP tariffs to account for local grid conditions, similar to SDG&E's vehicle grid integration rate?
- What, if any, hedging mechanism should be available to customers on RTP?

[12] The petition grants that demand charge rate design to incent specific energy storage behavior was litigated in the latest PG&E GRC Phase 2 proceeding, and the Commission's decision ruled in favor of the development of a demand charge structure specifically for PG&E's large non-residential customers with energy storage systems.

- Should the utilities be required to offer additional dynamic rate options, similar to SCE's existing RTP tariff?
- Should PG&E and SDG&E file Rate Design Window applications in coordination with SCE's 2021 GRC Phase 2 application to implement RTP and other dynamic rates?[13]

The general issue of the reasonableness of the rate designs for each IOU was within the scope of each utility's previous GRC Phase 2 proceeding. This includes the RTP-specific issues described in the petition. In the most recent SCE GRC Phase 2 proceeding RTP rates were explicitly considered. The Commission approved modifications to SCE's RTP tariffs and approved a settlement that schedules future consideration of SCE's RTP tariffs in its next GRC Phase 2 proceeding.[14]

As above, the failure of the Joint Petitioners to litigate their RTP proposals in those proceedings does not mean the opportunity to consider those proposals was absent. The RTP rate design issues proposed for the scope of the rulemaking were implicitly part of the scope of the previous GRC Phase 2 proceedings and, in the case of PG&E and SCE, were disposed of in the previous 12 months.

While Joint Petitioners may be tired of litigating rate design issues and fear inconsistency across the utilities' GRC Phase 2 proceedings, this does not justify ignoring the constraints of Rule 6.3(f). The petition for a rulemaking on demand charge rate design issues and RTP issues as described by the petition is denied as the Commission has acted on the reasonableness of the rate designs of PG&E and SCE within the previous 12 months.

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[13] Petition at 23.

[14] SCE Response at 11, citing D.18-07-006 and D.18-11-027.

3. The Petition is Denied on Substantive Grounds

As noted by responses to the petition, the analysis of a particular utility's costs and billing determinants in GRC Phase 2 proceedings is essential to the task of rate design, including the task of designing demand charges and RTP tariffs.[15] It would be duplicative and inefficient to open a rulemaking to undertake the design of demand charges and RTP tariffs outside of the proceedings that actually consider the utility-specific costs that would drive those designs.[16] It is more appropriate, and frankly more expedient, for these issues to be considered in each utility's GRC Phase 2 proceeding. The petition is denied on substantive grounds for this reason.

As an example of the expediency issue, SDG&E's next GRC Phase 2 proceeding is due to begin in March 2019. Demand charge rate design and RTP tariffs that specifically consider SDG&E's costs could be litigated in that proceeding and a decision on those tariffs could be issued by the end of 2020. The rulemaking sought by the Joint Petitioners would be unlikely to result in actual tariffs for SDG&E customers in that amount of time. Even if a rulemaking were to produce guidelines and policies for such tariffs by some time in 2020, the tariffs themselves would need to be created in a subsequent SDG&E GRC Phase 2 proceeding or Rate Design Window proceeding.[17] This would result in

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[15] CLECA Response at 3; SDG&E Response at 5-6; PG&E Response at 2-3; SCE Response at 6 ("the only way to effectively establish the demand charge policies requested in the Petition is by performing cost of service studies, which the Petition fails to acknowledge or consider").

[16] CLECA Response at 6; Public Advocates Office Response at 2 (concerns raised by the petition "would be more effectively addressed in the upcoming Rate Design Windows [] and [GRC] Phase 2 proceedings").

[17] The petition recommends that coordinated utility Rate Design Window or GRC Phase 2 proceedings create the tariffs based on the policies adopted by the rulemaking.

final demand charge or RTP tariff adoption for SDG&E customers by 2021, at the earliest, or more likely 2022 assuming that the rate design proceeding lasts as long as 18 months.[18]

As noted by CLECA in its response, all of the utilities are preparing revised demand charge rate designs, RTP designs, or both in preparation for their next GRC Phase 2 applications.[19] The Commission wishes to clearly indicate to Joint Petitioners, and the respondents supporting the petition, that their focus on demand charge reform and RTP development is welcome. Joint Petitioners and their supporters should endeavor to participate in the prehearing conferences in the GRC Phase 2 proceedings scheduled in 2019 for SDG&E and PG&E so that the rate design issues raised in their petition may be considered explicitly for the scope of each of those proceedings.

4. Conclusion

The petition is denied on procedural and substantive grounds. Joint Petitioners are encouraged to seek to explicitly include their issues of concern in the scope of the GRC Phase 2 proceedings scheduled for 2019.

5. Categorization and Need for Hearing

This proceeding is categorized as a petition for rulemaking. There is no hearing taken for such proceedings.

6. Comments on Proposed Decision

The proposed decision of Administrative Law Judge Doherty in this

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[18] *See also* SCE Response at 8-9 (noting that 2021 would be the earliest date for actual rate design proceedings to arise from the rulemaking, as opposed to the currently scheduled rate design applications in 2019 and 2020).

[19] CLECA Response at 3-6.

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 28, 2019 by Joint Petitioners, Small Business Utility Advocates, and CLECA, and reply comments were filed on March 5, 2019 by PG&E, CLECA, and SCE. No changes to the proposed decision were made in response to comments.

7. Assignment of Proceeding

Michael Picker is the assigned Commissioner and Patrick Doherty is the assigned Administrative Law Judge for this proceeding.

Findings of Fact

1. The allocation of costs to non-coincident demand charges and other billing determinants is regularly revisited in each utility's triennial application on marginal costs, revenue allocation, and rate design, often referred to as the GRC Phase 2.

2. The most recent Commission decisions in GRC Phase 2 proceedings came in 2017 for SDG&E (D.17-08-030) and 2018 for PG&E (D.18-08-013) and SCE (D.18-11-027).

3. Parties have litigated the inclusion and/or magnitude of non-coincident demand charges across a wide range of the utilities' non-residential tariffs, as demonstrated in the recent GRC Phase 2 proceedings.

4. Demand charge rate design issues for which a rulemaking is sought are regularly addressed by the Commission and were addressed by the Commission with respect to SCE and PG&E in the last 12 months.

5. SDG&E's demand charge rate design will be considered in its upcoming GRC Phase 2 application which may be filed by March 4, 2019.

6. Litigating the reasonableness of a utility's rate designs is the very purpose of a GRC Phase 2 proceeding.

7. The demand charge rate design issues proposed for the scope of the rulemaking were implicitly part of the scope of the previous GRC Phase 2 proceedings and, in the case of PG&E and SCE, were disposed of in the previous 12 months.

8. The general issue of the reasonableness of the rate designs for each IOU was within the scope of each utility's previous GRC Phase 2 proceeding. This includes the RTP-specific issues described in the petition.

9. In the most recent SCE GRC Phase 2 proceeding, RTP rates were explicitly considered.

10. In D.18-11-027 the Commission approved modifications to SCE's RTP tariffs and approved a settlement that schedules future consideration of SCE's RTP tariffs in SCE's next GRC Phase 2 proceeding.

11. The RTP rate design issues proposed for the scope of the rulemaking were implicitly part of the scope of the previous GRC Phase 2 proceedings and, in the case of PG&E and SCE, were disposed of in the previous 12 months.

12. The analysis of a particular utility's costs and billing determinants in GRC Phase 2 proceedings is essential to the task of rate design, including the task of designing demand charges and RTP tariffs.

13. All of the utilities are preparing revised demand charge rate designs, RTP designs, or both in preparation for their next GRC Phase 2 applications.

Conclusions of Law

1. Joint Petitioners request that the Commission adopt a rulemaking pursuant to Pub. Util. Code Section 1708.5, and that section requires that the Commission implement its terms under the Commission's Rules of Practice and Procedure.

2. Rule 6.3 governs petitions made pursuant to Pub. Util. Code § 1708.5.

3. Rule 6.3(f) states that the Commission will not entertain a petition for rulemaking on an issue that the Commission has acted on or decided not to act on within the preceding 12 months.

4. It would be duplicative and inefficient to open a rulemaking to undertake the design of demand charges and RTP tariffs outside of the proceedings that actually consider the utility-specific costs that would drive those designs.

O R D E R

IT IS ORDERED that:

1. The petition of California Solar & Storage Association, California Energy Storage Association, Enel X, ENGIE Services, ENGIE Storage, OhmConnect, Inc., Solar Energy Industries Association, and Stem, Inc. to adopt, amend or repeal a Regulation Pursuant to Public Utilities Code Section 1708.5 is denied.

2. Petition 18-11-004 is closed.

This order is effective today.

Dated March 14, 2019, at Coachella, California.

MICHAEL PICKER
President
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
Commissioners