

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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In the Matter of the Application of
Pacific Gas and Electric Company for
Approval of Economic Development
Rate for 2013 – 2017 (U39E).

Application No. 12-03-001
(Filed March 1, 2012)

PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES

ROBERT LEVIN

Analyst for the Division of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-1862
Fax: (415) 703-1151
E-mail: rl4@cpuc.ca.gov

GREGORY HEIDEN

Attorney for the Division of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 355-5539
Fax: (415) 703-2262
E-mail: gregory.heiden@cpuc.ca.gov

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Pursuant to Rule 2.6 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure, the Division of Ratepayer Advocates (“DRA”) hereby protests Application 12-03-001 (“Application”) filed by Pacific Gas and Electric Company (“PG&E”) for a new Economic Development Rate (“EDR”). In the Application, PG&E proposes new EDRs for the period 2013 to 2017, to replace the existing EDR due to be closed to new customers December 31, 2012.

I. BACKGROUND

In D. 05-09-018, the Commission established EDR tariffs as a way to retain and attract business to California. In order to receive the discounted rate, customers had to attest that, but for the discounted rate, they would not retain, expand, or locate their load in California. Initially, a price floor was established to include “marginal costs for transmission, distribution, and, if a bundled-service customer, marginal costs for generation.”¹ Later², the Commission modified D.05-09-018 by ordering that all outstanding ED contracts be modified to include all nonbypassable³ charge components in the floor price.

¹ D.05-09-018.

² D.07-09-016.

³ Nonbypassable charges added to the price floor included public purpose program charges, nuclear

In late 2009, SCE and PG&E filed applications⁴ to extend the EDRs, which were then set to close for new EDR applicants at the end of 2009. On May 3, 2010, SCE, PG&E, the Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN) and the Energy Users Forum (EUF) filed a settlement agreement to resolve the issues in these proceedings, and the Commission approved the settlement in D.10-06-015. Pursuant to D.10-06-015, each utility's EDR was extended to December 31, 2012 and, among other things, the incentive (for new contracts) was revised to a maximum 12 percent per year for five years.

II. ISSUES TO BE ADDRESSED

A. The Commission Should Carefully Review PG&E's Proposal to Eliminate the Price Floor and Provide Enhanced Discounts of 35% in Areas of High Unemployment

PG&E proposes new EDRs effective 2013-2017, replacing the current EDR which is scheduled to expire at the end of 2012. DRA believes that this new EDR program poses increased risks to ratepayers relative to the current, expiring program; it deserves proper examination and should be carefully considered.

DRA is not opposed to the concept of discount rates for businesses which are at risk of failure or of relocation out of state, or if such rates would attract businesses which would otherwise locate elsewhere. If structured perfectly with a minimal opportunity for free riders, an EDR program would contribute to utility margin⁵, create and retain jobs, and generate other economic benefits for the state.

DRA is concerned, however, that PG&E's EDR proposal would abolish key safeguards that have been part of EDR programs since their inception. In particular,

decommissioning charges, Department of Water Resources (DWR) Bond Charges, and Competition Transition Charges.

⁴ A.09-10-012 and A.09-11-010.

⁵ That is, incremental revenues would exceed marginal costs, thereby generating contribution to margin which can be applied toward defraying utility fixed costs.

PG&E proposes to eliminate the marginal cost price floor⁶ which has been a standard feature of ED contracts. The marginal cost price floor is needed to ensure that EDR customers do, in fact, pay a contribution to margin in their rates, and thereby benefit other ratepayers. PG&E states that the constraint of the price floor, combined with the after-the-fact annual review of contract revenue, “proved unworkable for its customers” due to lack of cost certainty⁷. DRA appreciates that customers would like greater certainty in their costs. Accordingly, DRA will evaluate PG&E’s proposal and may suggest modifications that would retain a price floor while providing greater certainty to prospective customers.

PG&E also is asking for an enhanced discount rate of 35% to apply only in areas with 125% of the statewide unemployment rate. While DRA supports the goal of creating jobs in areas with high unemployment, DRA will examine whether the proposed level of discounting is appropriate and consistent with the economic interests of all ratepayers.

Finally, DRA finds PG&E’s treatment of the proposed EDR discounts problematic. PG&E’s testimony states: “PG&E proposes to calculate the EDR discount based on the customer’s net charges under the Otherwise Applicable Tariff. Net charges are the final amount before application of Energy Commission Taxes and Utility Users Taxes.”⁸ Later, PG&E also states that the company “proposes to identify the EDR discount as a reduction to the distribution charge for bundled, DA and CCA customers.”, and “[t]he resulting distribution charges will be allowed to be negative, if necessary, in order for the full discount to be provided to the customer.”⁹ It is unclear to DRA that a negative distribution rate is consistent with sound ratemaking practice. DRA intends to investigate this issue.

⁶ PG&E, A.12-03-001, p. 2-7.

⁷ Id.

⁸ PG&E, A.12-03-001, p. 3-1.

⁹ PG&E, A.12-03-001, p. 3-2.

B. The Commission Should Examine Whether PG&E Should Do More to Screen Out “Free Riders”

Before the Commission extends the EDR program, increases the size of the EDR program, or increases the discount, the Commission should examine whether PG&E should do more to screen out “free riders”, or customers who would receive an unjustified benefit from the proposed discounts¹⁰. In particular, the Commission should:

- 1) Require PG&E to report on the success of the EDR programs to date. Have they in fact aided in retaining business or attracting business to California? Have any EDR customers gone out of business after signing up for and benefitting from the rate?
- 2) Strengthen the screening process. The current process merely requires potential EDR customers to sign an affidavit stating that, but for the discount, they would leave the state or locate new load elsewhere. This process is unverifiable, unenforceable and ultimately insufficient to screen out free riders. DRA also has concerns that CalBiz may not be the most appropriate third party verifier.
- 3) Require EDR customers to show that electricity makes up a threshold percentage of operating costs. It is hard believe that even a 35% discount to the otherwise applicable tariff for a customer for whom electricity represents 2% of operating costs would make a significant difference in that customer’s decision to continue operations in California.

C. The Commission Should Adopt Additional Safeguards That Limit Ratepayer Exposure.

PG&E’s proposed EDR discount would run for a guaranteed five years, but PG&E has not explained why five years is the appropriate term for the contract. PG&E states that it expects the proposed ED contracts to have a positive 10-year contribution to margin (CTM).¹¹ Yet it is entirely possible that, without a marginal cost floor, the CTM

¹⁰ “Free riders” could include customers who would relocate to California even without the proposed discount, as well as existing PG&E customers who would remain in business or expand their operations without the proposed discount.

¹¹ Id.

could be negative for the proposed five-year contract period. DRA intends to investigate the additional risk to ratepayers posed by PG&E's EDR proposals.

In order to minimize risk for ratepayers that do not receive EDR rates, DRA may recommend that Commission retain a marginal cost price floor for new EDR contracts, and either shorten the length of the discounted rate from 5 years to 3 years or require PG&E to revisit the discount with EDR customers after 3 years in the event that economic conditions improve. Alternatively, risk could be reduced by capping the amount of aggregate sales to which the discount could be applied.

Finally, DRA may recommend that the Commission require PG&E shareholders to contribute to the program. Requiring shareholders to pay for a percentage of the undercollections that result from EDR discounts would reduce the risk to ratepayers and provide more assurance that PG&E's interest in screening out free riders is aligned with ratepayers' interest.

DRA reserves the right to address and raise other issues that may be presented by the Application as the proceeding progresses.

III. PROCEDURAL ISSUES

PG&E filed the Application on March 1, 2012.¹² CPUC Rules of Practice and Procedure 2.6(a) provides that "a protest or response must be filed within 30 days of the date the notice of the filing of the application first appears on the daily calendar." Notice for A.12-03-001 first appeared in the "New Filings" section of the Commission's daily calendar on March 5, 2012. Accordingly, protests and responses are due on Wednesday, April 4, 2012.

DRA agrees with PG&E that the proceeding should be treated as Ratesetting.

DRA believes that hearings may be necessary and presents below its proposed schedule, which includes modifications to PG&E's proposed schedule. DRA requests more time to present its testimony. The rest of the schedule should be changed

¹² A.12-03-001.

accordingly. DRA is involved in many rate design proceedings and proceedings with rate design implications. Currently, DRA still has staff working on SCE's GRC Phase II, SDG&E's GRC Phase II, PG&E's 2010 Rate Design Window (on peak-time rebate), PG&E's Default Residential PDP Application, PG&E's 2012 Rate Design Window Application, and other rate design proceedings. The additional time is necessary for DRA to perform effective analysis in this proceeding, particularly on the potential revenue shortfall and its impact on rates for other customers. Pending the results of that analysis, DRA reserves the right to request evidentiary hearings.

DRA's Proposed Schedule

Application Filed	3/1/2012
Daily Calendar Notice Appears	3/5/2012
Protests and Responses Due	4/4/2012
Reply to Protests and Responses due	4/16/2012
Prehearing Conference	Late April or early May, 2012
Testimony	8/9/2012
All Parties - Rebuttal Testimony	8/30/2012
Evidentiary Hearings (if needed)	10/3-4/2012
Opening Briefs	10/16/2012
Reply Briefs	10/30/2012
ALJ Proposed Decision (PD)	1/30/2013
CPUC – Final Decision Expected by	March 2013

IV. CONCLUSION

For the foregoing reasons, DRA protests PG&E's filing.

Respectfully submitted,

/s/ GREGORY HEIDEN

Gregory Heiden
Staff Counsel

Attorney for the Division of
Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 355-5539
Fax: (415) 703-2262
Email: gxh@cpuc.ca.gov

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