

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

Order Instituting Rulemaking on the Commission's
Own Motion to Consider Revising Energy Utility
Tariff Rules Related to Deposits and Adjusting
Bills as They Affect Small Business Customers.

R.10-05-005
(Filed May 6, 2010)

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 M)
OPENING COMMENTS ON THE PROPOSED DECISION
REVISING TARIFF RULES FOR SMALL BUSINESS
CUSTOMERS**

ANN H. KIM
DANIEL F. COOLEY

Pacific Gas and Electric Company
77 Beale Street
San Francisco, CA 94105
Telephone: (415) 973-6646
Facsimile: (415) 973-0516
Email: DFC2@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

Dated: October 18, 2010

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

Order Instituting Rulemaking on the Commission's
Own Motion to Consider Revising Energy Utility
Tariff Rules Related to Deposits and Adjusting
Bills as They Affect Small Business Customers.

R.10-05-005
(Filed May 6, 2010)

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 M)
OPENING COMMENTS ON THE PROPOSED DECISION
REVISING TARIFF RULES FOR SMALL BUSINESS
CUSTOMERS**

I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, Pacific Gas and Electric Company ("PG&E") files these Opening Comments on the Proposed Decision ("PD") of Commissioner John A. Bohn and Administrative Law Judge Bruce DeBerry issued on September 28, 2010.

This Rulemaking was opened on May 6, 2010, to determine whether any revisions in the utilities' tariffs or customer billing was needed in the area of back-billing and whether the utilities' deposit rules needed to be revised. The proceeding was opened to consider whether to treat small business customers as defined in Government Code Section 14837 under the definition of micro-business the same as residential customers for back-billing and deposit purposes. Opening and Reply comments were submitted on June 14, 2010, and June 28, 2010, respectively. A workshop was held on July 6, 2010, and a Small Business Program Staff Report was distributed on July 28, 2010, summarizing the position of the parties and staff at the workshop. General consensus was reached among the attending parties on the back-billing and deposit issues. However, Comments and Reply Comments were requested and submitted on the Staff

Report on August 5, 2010, and August 17, 2010, respectively. The PD was issued on September 28, 2010.

In these comments, PG&E raises the following issues with the PD: In Section A, PG&E indicates that an annual review to determine whether customers fall within the small business definition is not needed to achieve the objectives of the Commission and that taking such action would be costly with no commensurate benefit. In Section B, PG&E proposes certain clarifying language concerning the scope of the back-billing limitation. In Section C, PG&E requests that the language of the Final Decision be modified to track the language of the Staff Report and permit qualification based on usage or demand. In Section D, PG&E requests the Commission to determine whether the new rules defining small business should be applicable to agricultural accounts and other non-residential metered accounts. In Section E, PG&E proposes an annual Tier 3 Advice Letter process be adopted to review and approve costs tracked in the memorandum account and an application process for any annual costs tracked in the memorandum account which exceeds \$5 million.

II. DISCUSSION

A. The PD Should Be Modified to Eliminate the Annual Review of Each Business Customer's Status, as Determining Whether a Customer is a Small Business is Only Relevant When a Customer is Back-billed.

The PD proposes to limit back-billing of small commercial customers from a maximum of three years to a maximum of three months under Rules 17 and 17.1. All of the Investor Owned Utilities (IOUs) are supportive of this change in policy. However, in Section 4.1 of the PD, the Commission proposes certain business practices which would be extremely costly and wholly unnecessary for the achievement of the PD's objectives. Specifically, the PD states "...we expect that the utilities will annually review the electric and gas usage of small business customers or their qualification through Section 14837,

and notify these customers if they no longer qualify.”^{1/} PG&E opposes the PD’s language regarding this annual review.

There is no need to require an annual review of each business customer’s status to determine whether such customers are small businesses. To prepare such an annual notice would be administratively burdensome. Further, most customers would be completely unaware of the significance of such a determination. It is only when a customer is subject to back-billing that the small business status is relevant. PG&E proposes that before any potentially qualifying customer is presented with a back-bill, it will initiate a review of customer usage.

Under PG&E’s proposed methodology, customers will not be subjected to an annual evaluation which will raise many questions at a significant expense to ratepayers without any corresponding benefit. If the Commission adopts PG&E’s proposed methodology, customers will have all pertinent information at a time which is relevant to their business enterprise. To do otherwise would be inconvenient and easily misunderstood by the customers. Therefore, PG&E respectfully requests that the final paragraph of section 4.1 be modified in accordance with this request.

B. The PD Should be Modified to Clearly State Throughout that the Back-billing Limitation Applies to Rules 17 and 17.1 Conditions.

While the PD clearly limits the three-month back-billing parameters established herein to PG&E’s Rule 17 and 17.1 and the other IOUs’ equivalent tariffs, certain modifications would be helpful to assist the reader in digesting and interpreting the new back-billing parameters. The modified language in Findings of Fact 5 and 6 are set forth in Attachment A.

C. The PD Should be Clarified to Permit Qualification Based on Demand or Usage.

The PD states under Section 4.1 “Defining Small Business Customers” that the Commission “adopt[s] the Reports definition of small business customers as those non-

1/ PD, p. 7.

residential electrical customers who use 40,000 kwh or less annually *and* whose demand is 20 kw or less....”^{2/} However, the PD’s language is inconsistent with the unanimous recommendation of the utilities as set forth in the Staff Report, which provided as follows: “The utilities unanimously agreed that small businesses should be defined as follows: For electric utilities: 1. Any non-residential customer with annual consumption of 40,000 kwh or less *or* with an energy demand of 20 kw or less.”^{3/} It appears that this language modification was inadvertent and PG&E respectfully requests that the Final Decision be modified to comport with the recommendation of the Staff Report. In other words, some IOUs will have demand information and some IOUs will have usage information. The IOUs should not be required to maintain both the demand information and usage information for each customer. If the customer qualifies under either the demand or usage definition under each IOU’s tariff/rate schedule, that customer should be deemed to qualify. It should be also understood that not each IOU will have the same criteria. Some will base qualification based on usage and others will base qualification on demand.

The PD also states under Section 4.1, that “annual usage” is measured by electric or gas use in the twelve (12) billing months ending in the most recent calendar year, and if twelve months of usage information is not available, a customer can qualify by demonstrating they meet the definition in Section 14837.^{4/} As an alternative, PG&E recommends that, if less than twelve months of electric and gas usage information is available, the IOUs be given the latitude to use reasonable measures to estimate the customer’s annual usage for the purpose of determining a customer’s qualification. Such measures may be based upon a calculation which considers the customer’s prior usage (e.g. average daily use), PG&E’s experience with other customers of the same class in that area, and the general characteristics of the customer’s operations. If a customer does

2/ PD, pp. 6-7 (Emphasis Added).

3/ Small Business Program Staff Report, p. 13 (Emphasis Added).

4/ PD, p. 7, Footnote 6.

not qualify based upon the IOU's estimate of their annual usage, the customer may still qualify by demonstrating they meet the definition in Section 14837. This recommended approach would be less burdensome for both the customer and utility.

D. The PD Should Be Modified To Clearly Delineate the Scope of the Back-billing Limitation.

While the parties failed to address the issue as to whether certain non-residential customers should be included within the scope of the three-month limitation, in the interest of clarity and to avoid future disputes in this area, such parameters should be included in the Final Decision. Specifically, the PD fails to address whether the small agricultural customers that would otherwise meet the usage or small business parameters as set forth under Government Code Section 14837 will be within the scope of the three-month back-billing limitation. PG&E recommends that customers on an agricultural rate schedule should be included within the new back-billing limitations period.

The PD also fails to address whether the PD applies to metered accounts only. PG&E recommends that the new rules should only be applied where meters have been installed by the utilities to measure such usage. In other words, for customers who are on a fixed usage or unmetered rate schedule, the newly developed limitation on billing rules should not be applicable.

If the Commission fails to address these issues, it is likely that there will be future billing disputes which will require Commission intervention. If this occurs there will be significant expense incurred by the customers and utilities in an effort to obtain the necessary direction from the Commission. Therefore, to avoid such expense and potential for litigation, PG&E respectfully requests that the Commission provide direction in these areas.

E. The PD Should Be Revised to Ensure a Mechanism for Utilities to Recover the Incremental Costs of Implementing Decision Directives and to Allow for Adequate Time to Implement the Decision.

There will be costs incurred to implement the Final Decision's directives. Specifically at the outset, those costs will be associated with manually determining whether a customer qualifies as a small business utilizing the consumption data and the Government Code declaration. Over time, information technology programming will be performed which will automate portions of this process. However, developing the programming associated with that automation will carry with it certain costs which are yet to be determined. There will also be costs associated with communicating with customers on each billing matter to determine whether the customer in fact meets the new small business definition whenever a back-billing of potentially qualifying customers is at issue. Additional costs will be incurred associated with the training of PG&E employees and other related systems and documentation modifications. Finally, it should be understood that there should be sufficient time allowed for the IOUs to establish processes to implement the new parameters. PG&E would request that the Commission provide 90 days following the Final Decision before any directives are given effect.

1. The General Rate Case is the Least Appropriate Mechanism to Review the Reasonableness of Costs Already Incurred

PG&E does not believe that the costs associated with implementing practices and procedures adopted in this proceeding should be recovered in the utilities' General Rate Cases. In many ways, the General Rate Case is the least appropriate mechanism to review the reasonableness of costs already incurred. The general rate case is a large, complex proceeding that is focused on forecasting activities and costs that expect to be incurred at least two years out into the future. To add a reasonableness review to this forward-looking case would only add to its complexity. More importantly, the General Rate Case is a long process that would substantially delay cost recovery. For PG&E, the recovery of costs incurred in 2010, 2011, 2012, and 2013 would not be recovered until 2014. Although the PD indicates that cost recovery should take place in future General

Rate Cases,^{5/} there are no operating and maintenance costs recovered in a General Rate Case on a recorded basis, and no balancing and memorandum accounts are reviewed as part of a General Rate Case. As such, the General Rate Case is not the most appropriate mechanism to review the reasonableness of costs in most instances. Indeed, it is probably the least appropriate given its scope and infrequency. PG&E urges the Commission to adopt a cost recovery mechanism that will timely return funds reasonably expended to implement the policies and procedures adopted in this proceeding through an appropriate annual cost recovery vehicle as requested herein.

2. Advice Letter Cost Recovery Mechanisms Should be Utilized Where Annual Costs are \$5 Million or Less

PG&E maintains that Tier 3 Advice Letters provide parties with ample opportunity to challenge the cost recovery showing. Thus, PG&E proposes a tiered approach to cost recovery that will provide adequate review, and address the utility's concern for timely resolution of cost recovery requests. PG&E recommends a recovery mechanism that is loosely modeled after the process adopted for the Commission's Public Utilities Code Section 851 Pilot Program.^{6/} Pursuant to that program, transactions valued at \$5 million or less may use an advice letter process for approval, while transactions valued at more than \$5 million must file a complete Application for Commission approval of the transaction. The Commission should adopt a similar approach here for the IOUs. Specifically, the annual advice letter process proposed by PG&E would be used where the annual balance in the memorandum account is \$5 million or less; and where the utility seeks to recover a balance greater than \$5 million, it would do so through the Commission's formal application process. From a resource perspective, it makes sense to expend more resources evaluating recovery of larger costs than smaller costs. This reasoning underlies the Commission's 851 Pilot Program, and makes sense to apply here.

5/ PD, p. 12

6/ See PU Code § 851; Resolution ALJ-244.

Thus, PG&E requests approval of the following process:

1. Provide the IOUs the opportunity to establish a memorandum account and recover the reasonable costs prudently incurred in R.10-05-005;
2. If the annual balance in the memorandum account is less than \$5 million, allow the IOUs to file a Tier 3 Advice Letter seeking recovery of the costs. Once approved, allow PG&E to recover these costs through PG&E's annual revenue requirement and rate consolidation process (i.e. Annual Electric True-Up filing); and
3. If the memorandum account balance is greater than \$5 million, PG&E will seek recovery of the costs recorded in the memorandum account through an application.

The Commission's decision in this Rulemaking should also allow each of the other IOUs a similar recovery mechanism.

If the Final Decision requires recovery of costs to be considered in each of the IOU's General Rate Cases, the extent and form of review should be established in this proceeding so as to guide the Commission in the subsequent General Rate Case reasonableness review. The Commission should clearly state that any subsequent review should be based on whether the costs are reasonably and prudently incurred. Such language should be incorporated into the Final Decision.

III. CONCLUSION

PG&E appreciates the cooperative environment that was established in this proceeding. The unanimous support for the three-month limitation on back-billing demonstrates the parties' commitment to ensuring the viability and well-being of small businesses in California. PG&E requests that the modifications outlined above in this decision are incorporated into the language of the Final Decision to ensure clarity and to minimize the possibility of future litigation. Finally, PG&E requests that the Commission ensure that the Final Decision establishes a viable path for cost recovery and that the cost recovery language be modified in accordance with section E above.

///
///
///

Respectfully submitted,

ANN H.KIM
DANIEL F. COOLEY

By: _____ /s/
DANIEL F. COOLEY

Pacific Gas and Electric Company
77 Beale Street
San Francisco, CA 94105
Telephone: (415) 973-6646
Facsimile: (415) 973-0516
E-Mail: DFC2@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

October 18, 2010

CERTIFICATE OF SERVICE

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is 77 Beale Street, San Francisco, CA 94105.

On October 18, 2010, I served a true copy of:

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 M)
OPENING COMMENTS ON THE PROPOSED DECISION REVISING
TARIFF RULES FOR SMALL BUSINESS CUSTOMERS**

- [XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for R.10-05-005 with an e-mail address.

- [XX] By U.S. Mail – by placing the enclosed for collection and mailing in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service list for R.10-05-005 without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 18th day of October, 2010, at San Francisco, California.

/s/
PATRICIA A. KOKASON

Attachment A
Strikeout/Underline of Findings of Fact and Ordering Paragraphs to Reflect
PG&E's Comments

Findings of Fact

5. No party opposes changing the length of time a utility may back-bill a small business customer for billing errors and meter errors from three years to three months, and this change is reasonable. This rule does not alter the parameters of the utilities' tariffs on unauthorized use of gas and electricity.
6. Revising the billing error and meter error back-billing rule or rules from three years to three months should not impact the electric and gas use definitions of a small business.
18. The IOUs may track costs in a memorandum account and seek recovery of those costs through an annual advice letter if the annual costs do not exceed \$5 Million. Recovery of annual costs in the memorandum account in excess of \$5 Million shall only be recoverable through an application process. Reasonable costs prudently incurred shall be recoverable.

Order

2. Alpine Natural Gas Operating Company, Golden State Water Company, Mountain Utilities, PacificCorp, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Sierra Pacific Power Company, Southern California Edison Company, Southern California Gas Company, Southwest Gas Company, and West Coast Gas Company shall file Tier I Advice Letters implementing the revised tariff rules specific herein within ~~60~~ 90 days of the effective date of this order. The Advice Letters shall be effective on the date filed, pending disposition by the Energy Division staff pursuant to General Order 96-B.