BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Rulemaking Regarding Whether, or Subject to What Conditions, the Suspension of Direct Access May Be Lifted Consistent with Assembly Bill 1X and Decision 01-09-060	Rulemaking 07-05-025 (Filed May 24, 2007)

JOINT RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E), SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) AND SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) TO MOTION TO STAY IMPLEMENTATION OF 2011 PCIA

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The Joint Parties[1] have filed a motion requesting that the Commission stay implementation of the 2011 Power Charge Indifference Amounts ("PCIA") that are based on a Commission-approved methodology and instead freeze the PCIA at 2010 levels for an unknown period of time ("Motion"). Notably, the Joint Parties do not dispute that Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company ("SCE") and San Diego Gas & Electric Company ("SDG&E") (collectively "Joint Utilities") have properly implemented the current, Commission-approved PCIA methodology that is used to calculate the departing customers' share of the above-market costs of an Investor-Owned Utility's ("IOU's") portfolio. Nor do the Joint Parties provide any evidence as to why it is appropriate to continue to use the 2010 PCIA instead of the 2011 PCIA. Instead, the Joint Parties simply argue that the PCIA methodology is flawed and that the 2010 PCIA should continue to be used until the Commission is able to resolve issues pending in this proceeding concerning the PCIA methodology.[2]

While it is possible that the requested stay may be beneficial to Energy Service Provides

[1] The Joint Parties include the Direct Access Customers Coalition, the Alliance for Retail Energy Markets, the Marin Energy Authority, California State University, Retail Energy Supply Association, and the California Municipal Utilities Association.

[2] Since PG&E's 2011 PCIA is already in place, the Joint Parties argue that amounts collected above the 2010 PCIA should be tracked, and returned to direct access and community choice aggregation customers once the Commission issues its decision regarding the PCIA methodology in this proceeding.

and Direct Access ("DA") customers, it would likely do so at the expense of other customers. Furthermore, the Motion is factually and legally flawed and thus should be denied. As the Joint Utilities explain in more detail below, the Motion does not address the alleged PCIA flaws asserted by the Joint Parties, is based on illusory claims of competitive harm, and would potentially be detrimental to the California Department of Water Resources ("DWR"). The Joint Parties also request that the revised PCIA methodology ultimately approved by the Commission in this proceeding be implemented within thirty days of a final Commission decision. This request should also be denied because it is unnecessary and will only complicate an already complex regulatory process.

I. BACKGROUND

In 2006, the Commission approved a methodology for calculating cost responsibility surcharge ("CRS") obligations for DA and departing load customers.[3] The adopted methodology is used to determine the difference between the costs of an IOU's portfolio of resources and the market value of that portfolio. Customers that depart from bundled service are required to pay a portion of these "above-market" costs associated with the IOU's portfolio so that the remaining bundled service customers are kept "indifferent" to such departing load. The above-market component, or indifference amount, is in turn divided into two CRS charges: statutory CTC and the power charge indifference amount, or PCIA. Each year, the three IOUs establish their respective CRS in their Energy Resource Recovery Account ("ERRA") proceedings. In May 2010, PG&E filed its 2011 ERRA Forecast application, which included setting the 2011 PCIA based on the methodology approved in Decision ("D.") 06-07-030. PG&E's 2011 PCIA forecast was approved in December 2010 and implemented on January 1, 2011.[4] In August 2010, SCE

[3] *See* D.06-07-030, as modified by D.07-01-030.

[4] *See* D.10-12-007.

filed its 2011 ERRA forecast application, which included the 2011 PCIA. SCE's forecast was updated in November 2010, and on March 1, 2011 Administrative Law Judge Barnett issued his proposed decision which SCE expects to implement on June 1, 2011. In October 2010, SDG&E filed its 2011 ERRA forecast application including the 2011 PCIA. A hearing is scheduled for April 5 and a decision is expected in June.

The Joint Parties have not demonstrated or even asserted in any of the IOUs' respective ERRA proceedings that the 2011 PCIA was improperly calculated, nor do they make this claim in the Motion. Instead, the Joint Parties simply assert that the current PCIA methodology is flawed and, on that basis, request that the Commission stay the implementation of the 2011 PCIA and require the IOUs to continue to use the currently effective 2010 PCIA.

II. ARGUMENT

A. Setting The PCIA At Its 2010 Level Does Not Address Concerns About The Methodology.

The Joint Parties premise their Motion on a claim that the currently approved CRS methodology is flawed. The Joint Utilities do not dispute that the current methodology should properly be reviewed and updated by the Commission. D.06-07-030 anticipated that the methodology adopted in that decision would be periodically updated. In fact, that very issue is being addressed in Phase 3 of this proceeding. Nevertheless, the methodology supporting the 2011 PCIA is exactly the same methodology as that supporting the 2010 PCIA. Substituting one rate for the other still does not address the problem Joint Parties are looking to solve and instead shifts costs to bundled service customers under the premise that once the flawed methodology is corrected, the 2011 PCIA will be the same or lower than the 2010 PCIA. However, it is highly possible the issues being addressed in this proceeding may not be the primary cost drivers contributing to the 2011 PCIA increases for all three utilities. There are many factors that can

contribute to the increase (or decrease) of an IOU's PCIA. For example, the 2011 Commission-approved Market Price Benchmark ("MPB") is lower than the 2010 benchmark as a result of lower gas prices which would result in higher above market costs for generation resources whose costs are not directly tied to gas prices.

The bottom line is that gas price changes or significant changes to the resource portfolio mix, including the addition (or elimination) of new renewable and non-renewable generation resources in the total portfolio also influence the level of the PCIA and in fact, are likely deterministic in terms of whether the PCIA increases or decreases. The Joint Parties are advocating holding the 2011 PCIA at the 2010 level because it is lower and the Joint Parties are simply shopping for a lower amount of above-market costs for their customers to pay. The Joint Parties do not provide any evidence that, when the flaws they allege to exist in the current methodology are fixed, the revised PCIA amount will be closer to the 2010 PCIA. Reducing the 2011 PCIA to 2010 levels certainly will lower the amount of PCIA departing customers will be required to pay in the short term; however, it is still possible and highly probable that the 2011 PCIA will be higher than the 2010 PCIA, if the cost drivers fall outside of the adjustments being addressed in this proceeding.

It is also notable that the Joint Parties do not propose that, if their proposal were adopted, departing customers paying above-market costs should pay to SCE and SDG&E the difference between the 2010 PCIA and that established through any revised methodology ultimately approved by the Commission in this proceeding. For example, the Commission may approve revisions to the PCIA methodology that ultimately would result in a 2011 PCIA that is higher than the 2010 PCIA. In this case, customers departing from SCE and SDG&E will have benefitted because they will have been paying the lower 2010 PCIA rates while this proceeding is pending. The Joint Parties do not appear to suggest that in this circumstance, the departing

customers should have to reimburse SCE or SDG&E for the difference between the 2010 PCIA and the PCIA ultimately approved in this proceeding. Similarly, the Joint Parties argue that, for PG&E, amounts collected at the 2011 PCIA rates relative to the 2010 PCIA rates should be tracked and refunded to the DA and Community Choice Aggregation ("CCA") customers once the Commission issues its decision on the PCIA methodology. Besides procedural flaws with this proposal to refund amounts already collected in Commission-approved rates, this suggestion may well over-refund amounts collected because the final 2011 PCIA may exceed the 2010 level.

B. Staying Rates that are Set Pursuant to a Commission-Approved Method is Not Good Public Policy.

The Commission should decline to establish any precedent of staying the implementation of a rate calculated based on a final, Commission-adopted method when a party alleges the method to be flawed. Such a precedent would introduce too much uncertainty into final Commission decisions on such matters. The Commission should evaluate the merits of parties' allegations through a substantive rehearing or modification process,[5] and implement any modifications arising out of such a process prospectively, consistent with longstanding Commission practice.

C. The Joint Parties' Claims Of Competitive Harm Are Illusory.

To bolster their argument, the Joint Parties claim that the higher 2011 PCIA will result in competitive harm to CCAs and ESPs.[6] However, the Joint Parties fail to provide any actual evidence to support their claims. In fact, the Motion demonstrates the exact opposite. As the Joint Parties concede, the Marin Energy Authority ("MEA") commenced operation as a CCA in

[5] *See* Article 16 of the Commission's Rules of Practice and Procedure.

[6] Motion at p. 8.

2010 and MEA has announced that it intends in 2011 to expand the number of customers it will serve.[7] The Joint Parties provide no evidence that the 2011 PCIA implemented by PG&E on January 1, 2011 has prevented or impaired MEA's plans to expand. Furthermore, even after PG&E's 2011 PCIA rates were approved and implemented, MEA announced that it was decreasing its rates to its customers.

The Joint Parties also concede that customer interest in the limited re-opening of DA has been "exceptionally" high and that the available DA enrollment capacity has filled within minutes of opening.[8] Clearly, the 2011 PCIA has not competitively harmed ESPs, nor has it reduced the interest in DA.[9] The Joint Parties' claim that CCAs and ESPs will be harmed if the IOUs implement the 2011 PCIA is unsupported by any facts and is contrary to statements made in the Motion.

D. Payments Made To DWR By PG&E Cannot Be Refunded To Customers.

PG&E has already implemented the 2011 PCIA for departing customers. However, under the current accounting protocols adopted in D.06-07-030, PG&E does not retain the PCIA above-market costs collected from these customers. Instead, the PCIA above-market costs are remitted directly to DWR. In their Motion, the Joint Parties request that PG&E record all PCIA collections in excess of the 2010 PCIA and refund to customers amounts "in excess of the 2010 levels" upon issuance of a final decision in this proceeding.[10] This proposal would effectively require PG&E to seek a refund from DWR of PCIA payments made to date. Under the Commission's Rate Agreement with DWR as well as DWR's bond indenture, it is unlikely that

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[7] *See* http://www.marinij.com/sananselmo/ci_17186476 (describing MEA plans to expand service in 2011).

[8] Motion at p. 8.

[9] The proposed 2011 PCIA for all IOUs were available prior to the most recent DA enrollment period in January 2011, which completely subscribed in minutes.

[10] Motion at p. 11.

the Commission can require a refund from DWR of the 2011 PCIA amounts without further DWR revenue requirement proceedings consistent with the Commission-DWR Rate Agreement. Even if the Commission could, the Commission should not order a peremptory refund without providing notice to DWR and other interested parties and holding a hearing on the financial impact this refund would have on DWR and those parties. The Commission should not require this type of retroactive adjustment to the 2011 PCIA, especially given the legal uncertainty concerning obtaining refunds from DWR and the potential detrimental impact on DWR and its bondholders.

E. The Joint Parties' Motion Should Be Rejected As Procedurally Defective.

The PCIA methodology is already being considered in this proceeding by the parties and the Commission, and the Joint Parties are participating in that consideration, consistent with the scope of this proceeding. The Commission has not completed the record or rendered a decision on the merits of substantive issues raised by the Joint Parties in this proceeding. Consequently, the Motion is nothing more than a back-door impermissible attempt to prejudge the Commission's consideration of the merits of the PCIA methodology in this proceeding prior to the completion of the record and the submission of the proceeding for decision. Given the procedural status of the PCIA issues, the Motion should be rejected.

III. CONCLUSION.

For the foregoing reasons, the Joint Utilities respectfully request that the Commission deny the Motion.

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PG&E is authorized to sign on behalf of the Joint Utilities.

Respectfully submitted on behalf of the Joint Utilities,

By: /s/
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On Behalf of the Joint Utilities:
Pacific Gas and Electric Company,
Southern California Edison Company, and
San Diego Gas & Electric Company

Dated: March 21, 2011

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL OR U.S. MAIL

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 Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, CA 94105.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On the 21st day of March 2011, I caused to be served a true copy of:

JOINT RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E), SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) AND SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) TO MOTION TO STAY IMPLEMENTATION OF 2011 PCIA

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for R.07-05-025 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.07-05-025 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 21st day of March 2011 at San Francisco, California.

/s/
DONNA LEE

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: March 15, 2011

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