



**Pacific Gas and
Electric Company**

Brian K. Cherry
Vice President

Regulatory Relations

Pacific Gas and Electric Company
77 Beale St., Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177

415.973.4977

Fax: 415.973.7226

July 27, 2012

Edward Randolph
Director, Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

Re: Energy Division Request for Copies of E-31 Bona Fide Offer Letters

Dear Mr. Randolph,

In your July 16, 2012 letter, you have requested PG&E to produce “copies of the bona fide offer letters supporting the customer-signed affidavits for all Schedule E-31 contracts entered into by PG&E” pursuant to Public Utilities Code §§ 314 and 582. PG&E staff has checked our response to the Energy Division’s prior request for these offers, and realize that our response was indirect at best; I apologize the for the confusion that it has created.

The short answer is that PG&E does not have “bona fide offer letters” supporting the customer-signed affidavits for E-31 contracts, for reasons addressed in D.09-06-025, which resolved a complaint brought forward by Modesto Irrigation District (MID). Specifically, the requirement for “bona fide offer letters” for individual customers was not articulated until the 2009 settlement between Modesto Irrigation District (MID) and PG&E was approved in Decision (D.) 09-06-025, Case 07-08-027. That decision noted that “the settlement eliminates ambiguity in Schedule E-31 and establishes a framework of rules regarding PG&E’s provision of service pursuant to Schedule E-31.” (D.09-06-025, p. 4.) The settlement contained the pertinent provisions, which are attached to this letter.

These settlement terms approved in D.09-06-025 clearly articulate that a Bona Fide Offer is to be made in a letter directly addressed to individual customers. This represents the first time that a letter was required for a bona fide offer to a specific customer, and PG&E has not entered into any E-31 contracts since that decision.

Of course, the E-31 rate existed long before the MID complaint case. In 2003, Resolution E-3801 authorized PG&E to offer discounted rates under Schedule E-31 based on “the customer receiving a bona fide offer for electric service from an irrigation district at rates less than PG&E’s tariff”¹. (page 6.) PG&E implemented this authorization with a service agreement that

¹ Resolution E-3801 implemented Public Utilities Code § 454.1, allowing an investor-owned utility like PG&E to discount its non-commodity rates to customers with a maximum peak demand exceeding 20 kW, if the customer received a bona fide offer from an irrigation district at rates below the utility’s tariffed rates.

included an information requirement for a “[w]ritten rate offer from Competitor or Competitor’s tariff (in the case of a Customer already taking service from a Competitor)”. (Form No. 79-995, approved in Resolution E-3801, September 2003; D.09-06-025, p. 3.)

Nothing in the statute, the resolution or the E-31 service agreement, however, required the bona fide offer to be made in a letter directed to the individual customer. Instead, PG&E understood that a written tariff offering electric service to customers in the irrigation’s service area (or other written indicia of an offer), satisfied the bona fide offer requirement. The irrigation district tariff was a bona fide offer to serve, and it was in writing. In some instances, PG&E received or saw other documents showing that the customer had received a bona fide offer from an irrigation district, usually MID. However, PG&E does not have a repository of these documents.

MID disagreed with PG&E’s interpretation and file a complaint in C.07-08-027 alleging, among other things, that it did not extend bona fide offers to some of the customers receiving service under E-31. However, PG&E’s pleadings in C.07-08-027 pointed out that MID’s service rules and regulations (Rules) permitted MID to enter into service contracts based on its published Rules, without preparing a separate bona fide offer document:

More specifically, MID’s service rules and regulations (“Rules”) do not require MID to prepare a document called “Bona Fide Offer,” and MID can enter into contracts based on the published Rules, i.e. without preparing what it subjectively defines (and would have the Commission define) as a “bona fide offer.”

(C.07-08-027, PG&E Motion to Dismiss Modesto Irrigation District’s Complaint, p. 2, copy attached.) In effect, MID’s Rules amounted to a bona fide offer “to serve any customers in the area it serves that meet its rules and regulations.” (*Id.* p. 9.)

MID and PG&E eventually determined that Schedule E-31 contained substantial ambiguity, including that the tariff failed to define the critical term “bona fide offer”. (C.07-08-027, Joint Motion for Approval of Settlement Agreement, Section II. D, [attached].) To resolve their differences, MID and PG&E negotiated a settlement of C.07-08-027 that established a framework for “bona fide offers” that relied on letters to individual customers. The Commission agreed with the parties that Schedule E-31 was ambiguous, and approved the framework of rules in the settlement, including Sections 2.3, 2.4 and 2.5, which are attached to this letter. (D.09-06-025, FOF 1.) Consistent with its established principles for approving settlements, the Commission found the settlement reasonable in light of the whole record, consistent with law, and in the public interest. (*Id.* COL 3.)

This history of Schedule E-31 demonstrates that the term “bona fide offer” was ambiguous and subject to different interpretations, including PG&E’s belief that MID’s Rules were a “bona fide offer” to customers in its service area. The ambiguity was eliminated when the settlement implemented specific “bona fide offer letter” requirements in Sections 2.3, 2.4 and 2.5.

PG&E has not entered into any E-31 contracts in the period after D.09-06-025. And prior to D.09-06-025, the MID Rules functioned as MID’s bona fide offer to customers that was required under the E-31 tariff. For those reasons, PG&E does not have any “bona fide offer letters”.

For the period prior to D.09-06-025, PG&E may have possessed MID's then-effective Rules, or information on the Rules, which was used for E-31. With the conclusion of the MID complaint case and the resolution of the procedural review, there would have been no reason to retain the MID material. However, PG&E is reviewing surviving files associated with C.07-08-027 and will work with your staff regarding the material found therein.

Please let me know if you have additional questions about this matter.

Very truly yours,



Brian K. Cherry
VP, Regulatory Relations

Attachments:

Excerpt of Bona Fide Offer Terms from PG&E and MID Settlement
PG&E Motion to Dismiss Modesto Irrigation District's Complaint
Joint Motion for Approval of Settlement Agreement

cc: Don Lafrenz, Energy Division
Laura Martin, Energy Division
Redacted Legal Division