

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA

Application of Pacific Gas and Electric  
Company for the Recovery of Costs Associated  
with the Acquisition and Transfer of the Assets  
of the Hercules Municipal Utility

(U39E)

Application 13-07-001  
(Filed July 1, 2013)

RESPONSE OF THE CITY OF HERCULES IN SUPPORT OF GRANTING THE  
RELIEF REQUESTED IN APPLICATION AND REQUEST FOR EXPEDITED  
CONSIDERATION

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Pursuant to Rule 2.6(c) of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, the City of Hercules (the “City”) hereby provides this response in support of the Application of Pacific Gas and Electric Company (“PG&E”) for the recovery of costs associated with the Acquisition and Transfer of the Assets of the Hercules Municipal Utility (“HMU”) (“PG&E Application”). The City urges the Commission to grant PG&E the authority necessary to purchase the HMU and to grant such authority on an expedited schedule.

**I. BACKGROUND**

The City of Hercules is a California general law city, incorporated in 1900. A mostly suburban, residential community, the City is located in western Contra Costa County along the shore of San Pablo Bay. It has a current population of approximately 24,000, occupying almost 9,000 households within the corporate limits.

In January 2001, the Hercules City Council approved the creation and operation of a municipal utility pursuant to Section 9(a) of Article XI of the California Constitution and California Public Utilities Code Section 10002. The HMU began operations in early 2003. The HMU was expected to become a profitable enterprise for the City by 2008 based on anticipated development within the HMU service area. As discussed in Section III.D of the PG&E Application, the projected growth did not materialize, and revenues from electric sales have

fallen far short of the City's costs to operate the HMU.<sup>1</sup> The HMU continues to operate at a loss, and must be subsidized by the City's general funds.

The HMU provides electric service to customers within a limited portion of the City, roughly 580 acres of developed and undeveloped land.<sup>2</sup> At present, the HMU provides electric service to approximately 800 residential and commercial customers through 825 meters.<sup>3</sup> PG&E provides both natural gas and electrical service to the rest of the City, and also provides natural gas services to customers within the HMU service area.

The City issued bonds ("HMU Bonds") to build facilities for HMU. The HMU Bonds are secured by revenues from the HMU. Approximately \$13.2 million of the payment obligations for the HMU Bonds remain outstanding. The City must make semi-annual payments for principal and interest on the bonds in February and August of each year.

However, revenues generated by the limited HMU customer base have been insufficient to (i) cover the HMU's operational costs; and (ii) fully service the payment obligations on the HMU Bonds. Moreover, the City lacks reserve funds to make up the difference. Following the 2008-09 economic downturn, overall revenues for the City have fallen far short of its overall operational costs, largely due to decreased property tax revenues and the State's elimination of redevelopment funding. The City has thus been struggling to recover from a substantial budget deficit and to avoid insolvency.

This ongoing shortfall of HMU revenues relative to the operating expenses and bond payment obligations continues to strain the City's already challenged financial condition. Recently, the City converted bond proceeds intended for HMU capital projects to pay debt

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<sup>1</sup> See PG&E Application, at 5.

<sup>2</sup> See PG&E Application, at 4.

<sup>3</sup> See PG&E Application, at 4.

service on the HMU Bonds themselves.<sup>4</sup> Otherwise, the City would have incurred additional general fund losses of nearly \$750,000 in fiscal year 2012-2013. Paying bond debt service, interest and amortization, with bond proceeds is not a sustainable option. The City determined it was imperative to sell the HMU and thereby retire the HMU Bonds as soon as possible to avoid a growing gap between HMU operating revenues and HMU-associated costs.

The City held a special election on Measure N, seeking voter approval to sell the HMU in order to retire the HMU bonds. Measure N was unopposed on the June 2012 ballot, and over three-quarters of those voting supported the sale of the HMU. The City has moved forward to implement the sale of the HMU in accordance with the bidding requirements of the California Public Utilities Code.

The City received bids in January 2013, and determined that PG&E's bid to purchase the HMU for \$9.5 million was the "highest and best bid." In fact, of the three bids submitted to the City, the PG&E bid was the *only* bid that offered a purchase price sufficient to retire the HMU Bonds.

On May 28, 2013, the City and PG&E executed the Asset Purchase Agreement ("APA") by which the City shall sell, and PG&E shall purchase, the HMU. PG&E's payment of the \$9.5 million purchase price and the cash remaining from the bond financing (\$4.7 million) will enable the City to pay off the HMU Bonds, provided that the transaction is able to close promptly.

Prior to purchasing the HMU, PG&E must obtain certain approvals from this Commission. The PG&E Application seeks the necessary Commission approvals to enable PG&E to complete the purchase of the HMU. The City thus urges this Commission to grant

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<sup>4</sup> See Exhibit K to the PG&E Application (The City of Hercules Staff Report to the City Council for the May 28, 2013 City Council Regular Meeting).

PG&E the authority necessary for PG&E to proceed with the purchase of the HMU and to grant such authority on an expedited basis.

**II. ADDITIONAL SUPPORT FOR THE COMMISSION TO GRANT THE AUTHORITY THE PG&E APPLICATION REQUESTS AND NEED FOR EXPEDITION**

The PG&E Application delineates the multiple reasons why PG&E's proposed purchase of the HMU benefits both current HMU customers and current PG&E customers. The PG&E Application also provides PG&E's perspective why it is important that the Commission grant PG&E the relief it requests and grant it on a timely basis.

The City files this Response to express its compelling need for the Commission to grant PG&E the necessary authority to purchase the HMU on the expedited basis requested.

For the City, an expedited grant of the authority necessary for PG&E to proceed with the purchase of the HMU is of *absolute critical importance* – the City's financial stability depends on the timely close of the sale of the HMU and the concurrent retirement of the outstanding HMU Bonds. The City has no reserves to continue covering the HMU's operating losses or the looming debt on the HMU Bonds. The City has already cut its general fund expenditures by forty percent (40%) through staff and service reductions. The City has no other options to reduce expenditures other than to further reduce basic municipal services, which have already been drastically pared down.

The sale of the HMU and the corresponding ability to pay off the HMU Bonds is a critical component of the City's efforts to return to, and maintain, financial health and stability. However, the City's ability to pay off the HMU Bonds with the proceeds from the sale of the HMU to PG&E is entirely dependent on the sale of the HMU being timely completed.

With respect to the debt service on the HMU Bonds, Table 1 of the PG&E Application (reproduced immediately below) provides the schedule and amounts of the next three payments:

TABLE 1		
CITY OF HERCULES HMU BOND PAYMENT SCHEDULE		
<u>Line No</u>	<u>Date</u>	<u>Payment Amount</u>
1	August 2013	\$589,657
2	February 2014	\$316,419
3	August 2014	\$591,419
4	Total of Lines 1, 2, and 3	\$1,497,495

If the HMU sale is not able to close before February 2014, it will cost the City an additional \$316,419 in debt service. If completion of the sale is delayed until August 2014, it will cost the City an additional \$591,419.

In addition to being relieved of its obligations to make payments on the HMU Bonds, the sale of the HMU will also enable the City to avoid any further losses due to the ongoing operations of the HMU. In contrast, any extended delay will cause continued losses in operating the HMU.

Any prolonged maintenance of these dual financial burdens (payments on the HMU Bonds and losses from operating the HMU) will expose the City to serious and adverse financial conditions. The City has no reserve funds. If the PG&E sales transaction does not close on a timely basis, the City is likely to exhaust its capacity to service its bond debt.<sup>5</sup> Thus, it is imperative that the Commission grant PG&E the authority necessary to complete its purchase of the HMU and grant such authority on an expedited basis.

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<sup>5</sup> See Declaration of Nickie Mastay, at ¶ 7, Exhibit D to PG&E Application.

### III. PG&E'S PROPOSED SCHEDULE

The PG&E Application requests that the Commission adopt a schedule which would enable the Commission to issue its decision granting PG&E the relief necessary to complete the transaction during January 2014.<sup>6</sup> The City is confident that a Commission decision by that date should allow timely extinguishment of the HMU Bond payment obligations and enable the City to complete the sale of the HMU to PG&E. However, any appreciable delay beyond that date would subject the City to serious financial risk.

Each month that the PG&E purchase is delayed imposes the following costs on the City and the current HMU customers:

- (i) Payment of electric rates higher than the comparative PG&E rates;
- (ii) Continued losses from operating the HMU which diverts funds from essential City services; and
- (iii) Continued obligations to make principal and interest payments on the HMU Bonds, but insufficient revenues from HMU customers to meet the debt service.

Conversely, each month that completion of the sale of the HMU to PG&E can be advanced saves the City substantial funds which are needed for police, fire and other essential City services.

The City thus urges that the Commission:

- (i) in no event, defer approval of PG&E's requests beyond the schedule PG&E has proposed; and
- (ii) in all events, endeavor to expedite the schedule PG&E proposes and allow the HMU sales transaction to close on the earliest possible schedule.

### IV. PROPOSED CATEGORY, NO NEED FOR HEARINGS

The PG&E Application is appropriately categorized as "ratesetting."<sup>7</sup> The City concurs with PG&E that hearings are not necessary as there should be no material issues of contested fact

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<sup>6</sup> See PG&E Application at 27.

<sup>7</sup> See PG&E Application, at 26.

and the requested sale of the HMU to PG&E is not controversial. Moreover, requiring hearings in this matter would delay the issuance of a decision and thus subject the City to the financial risks and uncertainties associated with a delay in the closing of the sale of the HMU.

The City accordingly urges that the Commission reverse the initial and preliminary ruling suggesting that hearings are necessary.<sup>8</sup>

## V. CORRESPONDENCE

The City requests that all correspondence, pleadings, notices, orders, rulings and other communications concerning this proceeding be provided to the following:

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## VI. CONCLUSION

The City of Hercules respectfully requests that the Commission:

- (i) Designate the City as a party in this proceeding;

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<sup>8</sup> See Resolution ALJ-176.



- (ii) Vacate the initial and preliminary ruling indicating that evidentiary hearings are required to be able to grant PG&E the authority the PG&E Application requests;
- (iii) Grant PG&E the authority necessary for it to proceed to complete the purchase of the HMU;
- (iv) Issue its decision granting such relief in all events absolutely no later than its first decision conference in January 2014; and
- (v) In light of the absolute critical importance of the sale of the HMU to the City of Hercules, grant PG&E such relief on an expedited and ex parte basis and issue its decision at the Commission's November 14, 2013 decision conference. Such timely action would enable the sale transaction to be completed before January 1, 2014 and would provide all constituents the greatest benefits.

Respectfully submitted,

/s/

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