BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U39E) for Approval of its 2010 Rate Design Window Proposal for 2-Part Peak Time Rebate and Recovery of Incremental Expenditures Required for Implementation (U39E)	A. 10-02-028 (Filed February 26, 2010)
And Related Matter	A.10-08-005 (Filed August 9, 2010)

JOINT MOTION OF PACIFIC GAS AND ELECTRIC COMPANY AND THE OFFICE OF RATEPAYER ADVOCATES FOR RECONSIDERATION AND REQUEST FOR EXPEDITED STAY OF RULING

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I. INTRODUCTION

Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission or CPUC), Pacific Gas and Electric Company (PG&E), supported by the Office of Ratepayer Advocates (ORA) (collectively referred to as the Joint Parties), respectfully file this Joint Motion for Reconsideration and Stay of the January 27, 2014 *Joint Ruling and Amended Scoping Memo of Assigned Commissioner and Administrative Law Judge* (Ruling). That Ruling denied the Joint Parties' November 1, 2013 Motion (November 1 Joint Motion[1/]) for leave to withdraw this default Peak Time Rebate (PTR) application, and instead set aside submission and reopened the record for the taking of additional evidence. The only other active party[2/] to the proceeding – the Center for Accessible Technology (CforAT) – filed a response supporting the request. At this time, no party appears to support approval of PTR for PG&E customers – either default or opt-in.

The Joint Parties apologize for any lack of clarity in our motion that may have led to misunderstandings upon which the Ruling appears to have based several of its conclusions. The Ruling assumes the Joint Parties thought that PG&E could withdraw its Application as a matter of right. (Ruling p. 4.) The Joint Parties acknowledge that the Application was required by a prior Commission decision, and thus the motion to withdraw is subject to discretion.[3/] We continue to believe that there are ample reasons to exercise that discretion. The Joint Parties respectfully request reconsideration of the January 27 Ruling. Instead of reopening the record to

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1/ *Joint Motion of Pacific Gas and Electric Company and the Office of Ratepayer Advocates for Leave to Withdraw Application and to Take Official Notice of Material Factual Changes Supporting Withdrawal*, filed November 1, 2013, in PG&E's 2010 Rate Design Window A.10-02-028, and PG&E's Default Residential Rate Programs A.10-08-005.

2/ Other parties who had intervened in the docket in its early phase, such as TURN and the Greenlining Institute, did not participate in the hearing or post hearing briefing, and did not respond to the joint motion for leave to withdraw.

3/ The Joint Motion noted that approval of the request to withdraw was subject to CPUC discretion, and was not a matter of right, thus the request was styled as a motion for "*leave* to withdraw." (November 1 Joint Motion, footnote 1, p. 1.)

consider opt-in PTR, we request a decision rejecting PG&E's default PTR application.[4/] The Joint Parties also request an expedited ruling staying the procedural deadlines set in the Ruling's schedule, pending further action.

II. BASIS FOR RECONSIDERATION

Much time has passed since PG&E's default PTR application was filed and heard, and during that time there have been changes in circumstances that warrant ending consideration of default PTR. First, new facts have come to light that have caused the CPUC to reject default PTR for the other two major utilities. Those facts by themselves would be grounds for the CPUC to grant the Joint Parties' request to abandon default PTR for PG&E. Second, the CPUC ordered PG&E to file a default PTR application back in 2009, but it was not until 2012 that the CPUC initiated its residential rate reform OIR (RROIR) in R.12-06-013. That proceeding includes the issue of what the end-state of residential rate design should be and what type of optional time-variant pricing programs make the best transition to that longer-term end-state. The RROIR has recently been recategorized as a ratesetting proceeding, and any party who wishes to propose additional optional time-variant pricing options (such as opt-in PTR for PG&E), has a forum in the RROIR for doing so – making this PG&E-only proceeding obsolete. Third, the only party which supported default PTR – ORA – has now revised its position. Each of these new facts will be discussed in turn.

A. Additional Information on Changed Factual Circumstances

Evidentiary hearings ended on April 27, 2012, and it has been over twenty months since the record was submitted on June 7, 2012. During that time, new developments regarding default PTR warrant granting this Joint Motion. Specifically, reported data from two southern California utilities' roll-outs of default PTR have caused the CPUC to order those utilities to discontinue their default PTR programs (D.13-07-003).

4/ In the alternative, PG&E's default PTR application could be dismissed without prejudice, based on the new facts discussed in Section II.A below. (*See* fn. 6 below.)

The most important new development is that, in **Decision 13-07-003,** the Commission considered the compelling data from a May 1, 2013 Staff Report (see below) showing disappointing performance for default PTR. The CPUC decision noted especially the Staff Report's conclusion that these statistics showed that a default PTR program experiences a large and costly "free ridership" problem, where customers receive incentives without significantly reducing load. Based on this information, the Commission directed SCE and SDG&E to revise their PTR programs from default programs to programs where the customer must choose to participate. (*See* D.13-07-003, OP 7; *see also* R.13-09-011, p. 23.)

The Joint Parties renew our request that CPUC, in this proceeding, take Official Notice under Rule 13.14 of the Staff Report that was the basis for D.13-07-003, entitled **Commission [Energy Division] Staff Report: *"Lessons Learned from Summer 2012 Southern California Investor Owned Utilities' Demand Response Programs*,"** filed on May 1, 2013 under Decision 13-04-017, Ordering Paragraph 31 (Staff Report) (*see esp.* pp. 39 – 41, 46, and 48-49). This Staff Report notes that Southern California Edison Company's (SCE) 2012 Load Impact Report found that customers who were defaulted into receiving PTR notifications did not produce statistically significant load impacts (p. 39). The Staff Report also noted that, in 2012, SCE paid a total of $27.3 million in PTR incentives for residential customers, but 95 percent of such incentives were paid to customers who were either not expected to or did not reduce load significantly (pp. 40, 41 and 47). The Report included similar findings related to San Diego Gas and Electric Company (SDG&E) (p. 47 and 49.)[5/]

Just as the disappointing results for default PTR have already caused the CPUC to order SCE and SDG&E to abandon default PTR,[6/] these results likewise support rejection of PG&E's

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5/ The free ridership and disappointing load results experienced in the Southern California default PTR programs in summer 2012 are consistent with what PG&E's independent expert, Dr. Steven George, testified would be expected based on his review of studies and reports on similar program pilots. (*See. e.g.*, Exhibit PG&E-2, pp. 9-7 to 9-9.)

6/ A decision not to move forward with default PTR now does not mean PG&E lacks any form of time-variant peak day pricing option for residential customers for summer 2014. Unlike SCE and SDG&E, PG&E already has a residential opt-in critical peak pricing (CPP) program called

pending default PTR application. None of these new facts considered by the Commission about the actual performance of these full roll-outs of default PTR in southern California could have been adduced before the record in PG&E's PTR proceeding was submitted, because those new facts were not available until after June 7, 2012.

While the Ruling does not object to consideration of these materials, it differs from the Joint Parties on what should happen next. It states that the implication of southern California data on the likelihood of success of default PTR in PG&E's service area "have not been tested by vigorous analysis" or "been subject to the litigation process in this proceeding" and therefore are "merely speculative." (Ruling, p. 8.) The Joint Parties respectfully disagree, and note that the CPUC found this same Southern California data showing the poor performance of default PTR to be an adequate basis for abandoning default PTR for those utilities. Taking official notice of the same data provides the CPUC an adequate basis to take action now to abandon default PTR for PG&E.

The Ruling states that the "Joint Parties offer no logical explanation why PG&E should be allowed to withdraw its application entirely" and concludes that this proceeding, instead of being withdrawn, should "*simply* be reopened" so that the Joint Parties can advocate for the same result as Southern California: "opt-in PTR." (Ruling p. 7, emphasis added.) Not a single party to this proceeding has ever advocated for "opt-in PTR," and the presentation of associated revised cost, implementation, and outreach evidence in such a reopened proceeding would not be a "simple" matter, but rather would carry significant administrative burdens for all parties as well as the CPUC itself.

SmartRate™. The CPUC can take official notice under Rule 13.12 of PG&E's 2013 SmartGrid Annual Report (at pp. 4 and 15) that this PG&E opt-in CPP rate has attracted **over 118,000 participants**. And, according to the 2013 post-event load impact analysis PG&E has reported to the California Independent System Operator (CAISO), SmartRate provided an average hourly impact of **36.2 MW**. (A complete load impact analysis is being conducted now, with a final load impact evaluation report to be filed at the CPUC April 1, 2014 under R.07-01-041.) It is important to note that, contrary to the Ruling (p. 8, fn. 9), PG&E's opt-in SmartRate CPP program does not rely solely on penalties to create incentives for ratepayers to take actions to reduce their usage, but a *combination* of penalties *and* rewards.

This is especially true given that, by the Ruling's April 1, 2014 deadline for PG&E's new testimony, no data would yet be available on the performance of the new opt-in PTR programs anticipated for the southern California utilities. Just as it has been useful having the results of the SCE and SDG&E default PTR programs, it would similarly be prudent to obtain the results of SCE and SDG&E's opt-in PTR programs as inputs to guide the implementation strategies and cost management for any other such opt-in PTR programs, if warranted. However, the Southern California opt-in PTR programs are not expected to begin until at least summer 2014, with performance results not likely to be available until the spring of 2015. It would be imprudent and administratively inefficient for the CPUC to require PG&E to present an opt-in PTR showing this spring, even before there is any data or lessons learned from other opt-in PTR programs in California expected to be run for the first time no earlier than summer 2014.

B. Plans for Residential Rate Reform are being Coordinated through the RROIR Ratesetting Proceeding.

The Ruling also states that the existence of the RROIR is not a "new" reason that could support a request to withdraw an application. (Ruling p. 6.) The Joint Parties respectfully disagree. In 2009, when the CPUC originally ordered PG&E to file this default PTR application, there was no residential rate reform proceeding, as it was only instituted in June 2012. Until very recently, the RROIR was proceeding forward as a rulemaking proceeding. Subsequent to the submittal of the November 1, 2013 Joint Motion, the CPUC re-categorized the RROIR proceeding from rulemaking to ratesetting. Early this month, the three major California utilities were ordered to present, by February 28, 2014, their residential rate design proposals for the 2015 – 2018 period. (*See* February 7, 2014 Assigned Commissioner's Ruling Requiring Utilities to Submit Phase 1 Rate Change Proposals (ACR).)[7/] This most recent ACR set forth numerous Rate Design Questions the parties are required to answer, including Question 10:

7/ This progress in the RROIR, as a ratesetting proceeding for all three utilities, came more than 6 months after the Commission directed the Southern California utilities to revise their default PTR program to replace them with an opt-in time-variant rate program.

> 10) What other optional residential tariffs are you proposing either in this proceeding or in other proceedings? Do you propose additional time-variant pricing options that would take effect between 2015 and 2018? If yes, they describe these rates (e.g. Critical Peak Pricing, electric vehicle rates, etc.) Include specific details on: peak event period timing and pricing, event notification, and rate structure.

Importantly, however, the February 7, 2014 ACR, expressly noted "responses to the[se] questions may be used to identify issues that should be addressed in a *later phase* of this proceeding or in a *new proceeding*." (ACR. p. 5) Although under the RROIR Phase 1 schedule, a formal scoping memo will not be issued until March 31, 2014, certainly the RROIR Phase 1 decision, expected by year end, will include the CPUC's policy determination on the preferred "end state" for residential rates under AB 327 – namely whether the utilities would ultimately be transitioned to default TOU.. (RROIR, January 8, 2014 PHC, Tr., pp. 105 - 107.) It would be premature and inefficient for the CPUC to consider a new residential peak day pricing program for PG&E – such as *any* form of PTR – before the outcome on the CPUC's choice of end-state is known. The Ruling would create a separate stand-alone proceeding that overlaps the RROIR. The CPUC can manage that inefficiency by granting a stay of the Ruling on an expedited basis and issue a decision rejecting this default PTR application. If any party wishes to propose opt-in PTR for PG&E, they can do so in response to the ACR question noted above.

C. Change in ORA's Position on PTR

Finally, another important development that was not adequately appreciated in the Ruling is that the main party supporting PTR for PG&E was ORA – and ORA has since revised its position. The Ruling is correct that PG&E had previously argued that it would be premature for the CPUC to hear and rule on a new residential peak day pricing program for PG&E, such as default PTR, before the outcome of the RROIR. (Ruling p. 6.) During hearings and in briefs, ORA opposed PG&E's position and supported default PTR. At that time, ORA argued that there was a window of opportunity to test default PTR before the Commission launched a comprehensive review of residential rate design. Now it is clear that such an opportunity clearly is behind us.

ORA's original support for default PTR also was based on two other considerations. First, ORA saw default PTR as a means of introducing customers to the concept of time-varying rates with a "carrot-only" program that could begin to educate customers without any associated penalty. ORA's original concept was that introducing time-varying rates in this manner might elicit positive customer response, and thus could facilitate a later transition to types of time-varying rates that can increase customer bills. Second, ORA had suspected that a default PTR program might require less marketing expense than an opt-in approach, because a default program does not require new participants to be recruited to participate, since all ratepayers would automatically be defaulted onto the rate.

Both of ORA's original considerations have been mooted by recent developments, in addition to the disappointing results of default PTR for SCE and SDG&E. Given that AB 327 does not permit CPUC implementation of default TOU rates until 2018, the issue of what opt-in programs the CPUC should consider in the interim is a major topic being coordinated through the RROIR. Indeed, the ACR issued on February 13, 2014 in Phase 1 of the CPUC's RROIR includes in Appendix A questions about the overall residential rate structure for the period 2015 – 2018, including whether default TOU should be adopted in 2018 (Questions 3 – 7) and what optional time-variant pricing options should take effect between 2015 and 2018, such as CPP. (RROIR February 13, 2014 ACR Question 9.) ORA now believes that it would be better for the CPUC to look at this question in a way that comprehensively evaluates many time-variant pricing options, not just PTR. All of these programs have marketing costs, which ORA believes should be evaluated concurrently rather than focusing solely on the costs of default PTR versus opt-in PTR, and then only for PG&E. Thus, ORA joined in the original motion to withdraw PG&E's default PTR application, and supports this motion to reconsider as well.

D. Conclusion

ORA and PG&E agree that it would not be administratively efficient for the CPUC to continue with any type of PTR proceeding at this time, on a PG&E-only basis. The Joint Parties

believe that it would best conserve the Commission's resources to reconsider the January 27, 2014 Ruling and prepare a proposed decision denying PG&E's default PTR application, upon which the full Commission can take action.[8/] Alternatively, PG&E's default PTR application could be dismissed without prejudice. Either way, the effect is "without prejudice" because, if any party wanted to propose opt-in PTR after the CPUC determines the end-state for residential rates, it would be free to do so in another ratesetting proceeding after Phase 1 of the RROIR (such as a subsequent phase of the RROIR , if appropriate). Granting this Joint Motion will have no adverse effect on any party, especially if there is an express acknowledgement that Greenlining/CforAT's intervenor compensation will not be affected, which the Joint Parties recommend be done as well.

III. THE JOINT PARTIES REQUEST AN EXPEDITED RULING STAYINGTHE PROCEDURAL DEADLINES PENDING A RULING ON THIS JOINT MOTION

The Ruling established a schedule requiring PG&E to file testimony on opt-in PTR and related issued on April 1, 2014, followed by a prehearing conference, intervenor testimony and hearings. Given the unique circumstances here, the Joint Parties request expedited issuance of a ruling granting a stay of that procedural schedule, to allow time for full consideration of this motion. Such a stay will avoid further administrative inefficiencies or the unnecessary expenditure of limited resources in the event this motion is granted. The Joint Parties believe the balance of interests weighs in favor of granting a stay pending resolution of this motion. The aggressive (and unworkable) two-month deadline for completely new and unexpected testimony would detract PG&E employee resources from the development of important deliverables for the

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8/ The Ruling stated that the Joint Parties' request for leave to withdraw the application would be "more appropriately made in a petition for modification" (PTM) of D.09-03-026 (which ordered PG&E to file the default PTR application). The Joint Parties do not believe a petition to modify is necessary here given that PG&E has already satisfied Ordering Paragraph 9 of that decision which only required PG&E to file an application for a program to implement two-part default PTR program (and Ordering Paragraph 13 of that decision expressly *closed* that proceeding). Nonetheless, if the CPUC concludes otherwise, it could direct the Joint Parties to file a petition to modify D.09-03-026 to formally remove Ordering Paragraph 9. The Joint Parties merely suggest that the approach recommended here appears to be a more administratively efficient way to proceed.

RROIR. Just as a Commission decision to abandon default PTR does not adversely affect any party, neither does issuance of an expedited ruling granting a stay pending further action by the CPUC.

IV. THE RULING'S DECISION TO DISMISS THE SEPARATE A.10-08-005 PROCEEDING, LINKED TO THIS APPLICATION, SHOULD BE AFFIRMED

The joint parties support the Ruling's decision (at p. 10) to dismiss without prejudice A.10-08-005, and to close that proceeding. We agree that A.10-08-005 was mooted by the opening of the RROIR and the passage of AB 327. Thus, even as the January 27, 2014 Ruling should be otherwise stayed, the Joint Parties recommend that the new Ruling once again find that A.10-08-005 should be dismissed without prejudice, and closed.

V. CONCLUSION

For the foregoing reasons, the Joint Parties respectfully request that the relief requested in this Motion for Reconsideration of the January 27, 2014 Ruling be granted, and that an expedited ruling be issued staying the Ruling's schedule for subsequent testimony, pending deliberations on this Motion.

Respectfully submitted,

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