

PUBLIC UTILITIES COMMISSION

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April 15, 2014

Advice Letter 4371-E

Brian K. Cherry
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SUBJECT: Rejection of Advice Letter 4371-E, Electric Rate Changes to Introduce GHG Allowance Costs and GHG Allowance Revenues, Due to Noncompliance with Previous Commission Decisions

Dear Mr. Cherry:

Pacific Gas and Electric Company (PG&E) Advice Letter (AL) 4371-E, with substitute sheets, does not comply with Decision (D.)12-12-033 and is rejected. PG&E must file an advice letter that complies with D.12-12-033 no later than April 25, 2014.

PG&E is also out of compliance with D.13-12-003, which required that the "Large IOUs shall be prepared to return GHG costs and revenues in rates on January 1, 2014..." (p. 15). PG&E was not prepared to correctly implement the small business Climate Credit by January 1, 2014, as the Commission had required. This failure to comply with a Commission decision will be referred to the appropriate Commission divisions for possible enforcement action.

Background

On December 28, 2012, the Commission issued D.12-12-033, which addressed how the electric utilities should use revenue generated from the sale of greenhouse gas (GHG) allowances. As PG&E itself correctly and helpfully explains on page 1 of its advice letter, in D.12-12-033,

"the Commission ordered the [investor-owned utilities (IOUs)] to return these revenues to customers using the following revenue return methodology: (1) first to energy-intensive and trade-exposed (EITE) customers, in a manner to be determined separately; (2) then to small business customers (defined as entities with monthly demand not exceeding 20 kW in more than three months in a twelve-month period) through a volumetrically calculated rate adjustment; (3) next, to residential customers (in order to neutralize their rate impacts of the cap-and-trade program) also through a

volumetrically calculated rate adjustment; and (4) finally, any residential revenue amounts are returned to residential customers on an equal per residential account basis delivered as a semi-annual on-bill credit.” (Emphasis added.)

The electric utilities, parties and the Commission worked throughout 2013 and the first quarter of 2014 to implement D.12-12-033. Among other actions, the Commission adopted a decision on the formula utilities will use to allocate revenues to small businesses (D.13-12-002); the Commission adopted a decision on the utilities’ plans to implement D.12-12-033 (D.13-12-003); and the Commission adopted forecasts of the GHG costs and allowance revenues that should be included in 2014 rates (D.13-12-041). The Commission and its Energy Division also specified dates by which the utilities shall be prepared to introduce GHG costs and allowance revenues in rates. PG&E is required to begin introducing GHG costs and volumetric allowance revenues in electric rates beginning on May 1, 2014.¹ The purpose of AL 4371-E was to implement these various orders and authorizations, not to introduce new policy proposals.

Unfortunately, PG&E disregarded the Commission’s express definition of small business eligibility,² and instead proposed a new one of its own. Despite referencing the correct definition on page 1 of AL 4371-E, in the actual tariff sheets (where the definition matters most), PG&E offered a new and different definition of small business that has no basis in any Commission decision.

In AL 4371-E, Attachment 1, Electric Rule No. 1, Definitions, PG&E adds to the small business eligibility definition the following: “For customers that do not have demand billing data available, the customer’s 20 kW monthly threshold requirement will be replaced by an average usage of 110 kWh per day for the month.” The Commission has no procedural record about the appropriateness of using an energy usage limit as a proxy for a demand limit, much less the appropriateness of using a 110 kWh per day limit as a proxy for a 20 kW maximum monthly electricity demand. PG&E’s addition to the small business eligibility definition is non-compliant with D.12-12-033.

Scale of Customer Impact

Energy Division and the Commission only learned of PG&E’s inability or unwillingness to comply with D.12-12-033 upon reviewing PG&E’s Tier 1 compliance advice letter 4371-E. Even now, a mere two weeks before May 1, 2014, when PG&E is required to begin implementing this credit, PG&E’s ability (or inability) to implement D.12-12-033 is unclear.

¹ Energy Division Letter incorporated into the record of R.11-03-012 via ALJ ruling on February 5, 2014, available at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M087/K349/87349916.PDF>.

² D.12-12-033, Ordering Paragraph (OP) 1.

During a phone call with Energy Division and Office of Ratepayer Advocates (ORA) staff on April 3, 2014, PG&E claimed that 68% of the customers that PG&E had previously forecasted would qualify for the small business Climate Credit would only qualify if PG&E used its new energy-usage definition, and that only 32% would qualify under the definition approved in D.12-12-033.³ During a subsequent phone call with Energy Division staff on April 7, 2014, PG&E revised this estimate and claimed that it lacks sufficient demand data for 14% of the customers it had originally forecasted would qualify for the credit.⁴

During the April 3, 2014, phone conversation, PG&E staff asserted to Energy Division staff that its decision to define small business eligibility based on energy usage (which would primarily affect its A-1, A-6, and A-15 small general service tariffs that lack demand charges) was based in part on PG&E's assessment that the costs to infer a customer's demand usage from meter data were too high to be practicable. Nevertheless, PG&E's IT cost forecast for implementing D.12-12-033 was \$1.162 million for 2013. PG&E's recent assertions are cause to question whether its IT cost forecast includes costs to implement the small business credit as D.12-12-033 ordered, or whether PG&E has recently decided not to make the IT changes it originally forecast would be necessary. PG&E has had ample opportunities to inform the Commission that data limitations or implementation costs could be an issue for its compliance with D.12-12-033, but it did not do so.

Opportunities to Seek Approval for Deviations

PG&E has had 15 months to implement D.12-12-033 or to identify any specific challenges that require special consideration, such as a lack of demand data. Since D.12-12-033 was adopted, the Commission adopted three additional decisions that expressly addressed the small business Climate Credit,⁵ but PG&E made no effort, formally or informally, to propose a change to the Commission's definition of small business eligibility. PG&E also made no effort to identify or seek relief from Commission orders due to technical challenges or limitations that PG&E may have identified since December 2012. Instead, PG&E submitted an Implementation Plan (in R.11-03-012) and testimony (in A.13-08-002, et al) that gave every indication that PG&E was implementing D.12-12-033's definition of small business as the Commission had ordered. Rather than bring any concerns to the Commission or to Energy Division staff, PG&E included the change deep in a tariff attached to an apparently innocuous Tier 1 advice filing.

³ Percentages refer to PG&E testimony in A.13-08-002, et al.

⁴ PG&E provided several rounds of testimony and workbooks in A.13-08-002, et al, which included forecasts by tariff schedules of the number of customers expected to be eligible for the small business Climate Credit and their corresponding sales forecast and revenue amounts needed for this purpose. Insofar as Energy Division is aware, this testimony did not indicate that these forecasts were based on a small business definition that deviates from D.12-12-033.


⁵ D.13-12-002 adopts the final small business revenue allocation formula; D.13-12-003 adopts IOU implementation plans required by D.12-12-033; and D.13-12-041 adopts IOU forecasts of 2014 GHG costs and allowances revenues for inclusion in rates.

This is particularly baffling since the Commission has shown its willingness to consider reasonable requests to deviate from D.12-12-033's definition of small business. In its Implementation Plan filed in R.11-03-012, PacifiCorp highlighted specific challenges it faced to implement the small business credit, and in D.13-12-003 the Commission allowed PacifiCorp reasonable deviations. In their own Plan, PG&E, SCE and SDG&E explained that they would identify small business customers based on D.12-12-033 Conclusions of Law 11 and 12, and they would "establish an automated process to identify, on a monthly basis, all service accounts on non-residential General Service and Agricultural tariffs that meet these criteria."⁶ In a footnote, the IOUs further explained that "customers with less than 12 months of demand will be identified based on the best available data, which may include rate schedule or demand data."⁷ In its Tier 1 Compliance Advice Letter, SCE implemented this special case as one would reasonably expect: "For customers that lack twelve months of billing data, Small Business Customer eligibility is based on the customer's rate schedule in addition to the number of times the customer has exceeded 20 kW."⁸

Energy Division Rejection for Non-Compliance

To include such a deviation from a Commission order in AL 4371-E demonstrates, at best, gross incompetence and naiveté about what can be included in a Tier 1 Advice Letter, and at worst, intent to disregard a Commission order and deceive the Commission. Even if for some reason it could not comply with the Commission's clear order, PG&E's approach is irresponsible. Rather than work with the Commission to arrive at a reasonable solution to these issues over the last 15 months, PG&E has chosen an approach that places some customers at risk of facing costs that the Commission had not intended those customers to face. PG&E should be more solicitous of the welfare of its customers.

Energy Division rejects PG&E AL 4371-E in its entirety with prejudice and directs PG&E to file a new advice letter that complies with D.12-12-033, D.13-12-002, D. 13-12-003, and D.13-12-041 to implement the small business Climate Credit and GHG costs in rates for all applicable customers beginning in the May 2014 billing cycle. PG&E must file this Tier 1 AL no later than April 25, 2014, with an effective date of May 1, 2014. This matter is being referred to the appropriate Commission divisions for possible enforcement action.



Edward Randolph
Director, Energy Division
California Public Utilities Commission

⁶ Amended Joint Investor-Owned Utility Cap-and-Trade Greenhouse Gas Revenue Allocation Return Implementation Plan, Filed June 19, 2013, pages 16.

⁷ Ibid.

⁸ SCE Advice Letter 3008-E, Attachment A, Rule 1, Definitions.

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