

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Commission Information Collection
Activities, Proposed Collection (FERC-580)**

Docket Nos. IC 10-580-000, IN79-6

**COMMENTS OF
PACIFIC GAS AND ELECTRIC COMPANY**

Pursuant to the notice of proposed information collection and request for comments (“NOIC”) issued on December 4, 2009 and published on December 14, 2009 in the above-referenced proceedings¹, Pacific Gas and Electric Company (“PG&E”) offers the following comments.

I. EXECUTIVE SUMMARY.

The Commission seeks public comment on its proposed revisions to information collection FERC-580, “Interrogatory on Fuel and Energy Purchase Practices”. The purpose of FERC-580 is to enable the Commission to determine whether automatic adjustment clauses (“AACs”) in wholesale rate schedules used by public utilities provide effective incentives for efficient use of resources, and reflect only costs that are either “subject to periodic fluctuations” or “not susceptible to precise determinations”.

The proposed questions are intended to identify all types of AACs through which costs have been flowed during the current reporting period and elicit more complete information about fuel procurement practices and adjustment clause treatment of purchased power. The Commission proposes to redesign FERC-580 to eliminate the need for confidential treatment

¹ Commission Information Collection Activities, Proposed Collection (FERC-580), [Federal Register: December 14, 2009 (Volume 74, Number 238)] [Notices] [Page 66114-66115]

requests, eliminate unnecessary questions, and allow the submission of information electronically.

While PG&E generally supports the Commission's efforts to increase the transparency of its regulatory process, confidential treatment may still be required to protect some of the requested information. In addition, the burden of responding to certain interrogatories so clearly outweighs the usefulness of information obtained that the Commission should adopt a threshold for applying the interrogatory. The reporting obligation should not apply to a respondent for which costs subject to AACs represent a *de minimis* percentage of total billed revenues.

The NOIC specifically invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) terms and definitions in the interrogatory and glossary; (3) the accuracy of the agency's burden estimate; (4) suggestions for enhancing the quality, utility and clarity of the information to be collected; and (5) suggestions for minimizing the burden of collecting responsive information.

PG&E's comments on the Commission's identified issues of interest are summarized as follows:

(1) The proposed collection of information should be limited to tariffs covered by Federal Power Act ("FPA") § 205(f)(4) in accordance with the Commission's authority to review automatic adjustment clauses set forth in the FPA. FPA § 205(f)(4) applies to "[a] provision of a rate schedule which provides for increases or decreases (or both) in costs incurred by an electric utility. Such term does not include any rate which takes effect subject to refund and subject to a later determination of the appropriate amount of such rate." To conform with § 205(f)(4), the many rate tariffs on file at the Commission which are subject to public review or refund should

not be treated as AACs for FERC-580 reporting requirements. Moreover, the proposed collection of information is not necessary and useful for the Commission's performance because it would require reporting by respondents whose costs collected through AACs are so *de minimis* that the Commission could not reasonably determine whether the AAC impacts the respondent's decisions to use its resources in an efficient manner.

(2) The terms and definitions in the proposed interrogatory and glossary require the submission of market sensitive information so the Commission should not suggest that requests for confidential treatment will be unnecessary.

(3) The Commission's estimate of the burden of data collection is reasonable, from PG&E's perspective, for prior years. However, the NOIC proposes to expand the FERC-580 during the current reporting cycle to include questions related to all automatic adjustment clauses and additional questions regarding fuel procurement practices. This expansion may increase the filing burden for FERC-580 respondents. The filing burden should be weighed against the value of the information to be obtained;

(4) No revision to the interrogatory is necessary.

(5) Utilities should be exempt from FERC-580 reporting requirements if they recover less than one percent (1%) of their total billed revenues from AACs. PG&E's average billed revenues under the AAC for were approximately 0.0015% of total revenues.

II. PG&E'S INTEREST.

PG&E is required to respond to FERC-580 because PG&E currently collects certain fuel and other costs through the AAC in Rate Schedule FERC No. 114.

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III. COMMUNICATIONS.

All communications with PG&E regarding this matter should be addressed to:

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PG&E requests that any overnight deliveries be made to:

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PG&E further requests that an additional copy of any correspondence and orders be sent to:

Pacific Gas and Electric Company Regulatory File Room
77 Beale Street, Room 3120, B30A
San Francisco, CA 94105
E-mail: LawFercCases@pge.com

IV. COMMENTS.

A. Burden.

The Commission has specifically asked FERC-580 respondents to comment upon the Commission's estimate of the burden required to prepare FERC-580 and ways to reduce this filing burden. PG&E believes that the Commission's estimate of 103 hours per respondent represents the number of hours previously required by PG&E employees to prepare FERC-580.

However, the re-designed form imposes a burden that far outweighs any reasonable benefit from the Commission's access to the information that PG&E would be required to provide. The

² Person designated for official service pursuant to Rule 2010. *See* 18 C.F.R. § 385.2010.

burden of responding to FERC-580 should be evaluated not in absolute dollar terms but in relation to the value of the submitted information. As PG&E explains below, the expenses reported in its last FERC-580 report were so small compared to PG&E's total sales that the Commission could not reasonably determine whether the AAC impacts the respondent's decisions to use its resources in an efficient manner. In this case, the burden on PG&E is not justified.

For example, PG&E currently has one wholesale customer that regularly purchases power subject to a fuel cost adjustment clause. PG&E's 2008 fuel cost adjustment ("FCA") revenues related to this customer only amounted to \$35,006.³ PG&E's total billed revenues for 2008 were \$11,550,507,109.⁴ Thus, FCA revenues in 2008 represented only 0.0003% of total revenues.⁵ As a result, PG&E proposes that the Commission consider implementing a materiality threshold for respondents required to prepare FERC-580, such as one percent (1%). Respondents with FCA or other AAC billings who do not meet the materiality threshold should be exempt from completing the interrogatory.

Alternatively, PG&E recommends that a threshold be implemented for the reporting of information at individual contract levels (see proposed Questions 3 and 6). The problem arises from the fact that information for all fuel supply contracts must be reported, for each calendar year, regardless of the relative or absolute size of the fuel supply contract. The resources expended to obtain the information requested is identical for each contract, yet contracts below a certain cost or volumetric threshold will not contain pass-through costs of any consequence.

B. Confidentiality.

The NOIC suggests that the FERC-580 questions have been re-drafted to eliminate the need

³ FERC Form 1 for the Year Ended December 31, 2008, page 311.

⁴ Id. at 304.3

⁵ FERC estimates that the total cost per respondent to prepare FERC-580 is approximately \$3,393.82. Stated as a percentage of FCA revenues, PG&E's FERC-580 filing burden is approximately 10% of the cost of FCA revenues.

for confidential treatment of FERC-580 responses. However, confidential treatment may still be required if the response constitutes “market sensitive information”; that is, information that, if obtained by a market participant, could be used to increase the price of electricity paid by a utility’s customers. This principal has been adopted by the California Public Utilities Commission (“CPUC”)⁶ to limit public access to information filed at the CPUC and is appropriate for determining the need for confidential treatment of information requested by FERC-580.

For example, Question 5.a. requires submission of an electronic version of all Utility fuel procurement policies and practices. One of PG&E’s practices is to minimize the risk of above-market procurement through a hedging strategy, the effectiveness of which would be compromised if it were made public. For the benefit of its customers, PG&E would respond to Question 5.a. by either seeking a waiver of the requirement to file its hedging strategy or requesting confidential treatment of its hedging strategy. The Commission should allow for confidential treatment of information if it is necessary to prevent the disclosure of information that could be used to affect the prices faced by the utility’s customers.

However, it is clear that Question 6.b., “Delivered characteristics - fuel cost” seeks market sensitive information that must be treated confidentially. Disclosure of the “actual weighed average fuel price paid FOB - origin/year and plant/year (in cents/MMBtu)” - could be used by market participants to establish a floor for fuel prices and may encourage potential fuel sellers to bid consistently above this average, leading to an overall increase in bid prices and higher costs to consumers.

PG&E has identified obvious examples of market-sensitive information that would be

⁶ CPUC Rulemaking (R.)05-06-040, *Order Instituting Rulemaking to Implement Senate Bill No. 1488 (2004 Cal.,Stats., Ch. 690 (Sept.22,2004)) Relating to Confidentiality of Information*; Decision (D.) 06-06-066 *Interim Opinion*; and D.08-04-023 *Decision Adopting Model Protective Order and Non-Disclosure Agreement, Resolving Petition for Modification and Ratifying Administrative Law Judge Ruling*.

publicly disclosed under the current draft of FERC-580, but because the circumstances of each respondent are likely to vary, PG&E recommends that the current confidential treatment process be retained when FERC-580 is adopted. Flexibility to request confidential treatment is important, because each utility's response to a particular question may, or may not, be market sensitive.

V. CONCLUSION.


PG&E respectfully requests that FERC-580 not be adopted as proposed because in its present form, it imposes an undue burden on regulated utilities and exposes utility customers to potential economic harm by assuming that certain market sensitive information should be publicly available. The final FERC-580 should exempt from its terms utilities that recover less than one percent (1%) of their total billed revenues from AACs; alternatively, *de minimis* transactions should not be reported. The Commission should clarify that confidential treatment may still be requested because as drafted, FERC-580 seeks market sensitive information.

Dated: February 12, 2010

Respectfully Submitted,

PACIFIC GAS AND ELECTRIC COMPANY

By: _____



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