FILED
12-20-10
04:59 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF

THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U-39-M) To Revise Its Electric Marginal Costs, Revenue Allocation, and Rate Design, including Real Time Pricing, to Revise its Customer Energy Statements, and to Seek Recovery of Incremental Expenditures	Application 10-03-014 (Filed March 22, 2010)

OPENING BRIEF OF DISABILITY RIGHTS ADVOCATES

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December 20, 2010

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I. INTRODUCTION AND GENERAL BACKGROUND

In accordance with Rule 13.11 of the California Public Utilities Commission's ("CPUC" or "the Commission") Rules of Practice and Procedure, Disability Rights Advocates ("DisabRA") submits this Opening Brief regarding residential rate design issues in Phase 2 of Pacific Gas and Electric Company's ("PG&E") Test Year 2011 General Rate Case. This proceeding will set the rate structure for PG&E's residential customers over the next three years.

Outside of the hearing room, California is facing an ongoing economic crisis, high unemployment rates, and rising income inequality. Low-income households are struggling, and some are already suffering greatly. Inside the hearing room, in contrast, PG&E has urged policymakers to avert their eyes from the harmful impacts to the most vulnerable Californians that will surely follow if its residential rate design proposals are adopted, and to focus instead on historical trends, graphs, and averages. This technocratic focus is the only way the utility can justify its residential rate design proposals, which seek to collect more money from the poorest customers and the customers who use the least energy in order to reduce rates for those customers who use the most energy.

PG&E attempts to justify its unconscionable efforts to raise revenue from California's poorest residents by ignoring questions of affordability.[1] In fact, PG&E's representatives blanch when the discussion turns to the real impact of the utility's rate design proposals on real people, while insisting that the harms that would inevitably follow are not the utility's problem. PG&E's witness Ahmad Faruqui stated: "I am not saying that this [PG&E's proposed rate design] will solve the problem of people who have either disabilities or low income. I think that's a social

[1] *See* Testimony of Ahmad Faruqui ("Faruqui Testimony"), Evidentiary Hearing Transcript ("Tr.") Vol. 1 at p. 63:4-17 (explaining that PG&E did not look at affordability when developing its rate proposal; it looked at trends in rates over time).

and humanitarian issue, and lowering the price of electricity is not going to solve that problem."[2] Of course, this proceeding is not about solving humanitarian problems; it is about setting electricity rates. And while lower rates alone will not solve the problems of California's poorest residents, increased electricity rates will aggravate them. Dr. Faruqui argues that he does not know how a lower price of electricity will make life easier for poor Californians;[3] DisabRA points to the obvious. Lower electricity prices will make it easier for poor Californians to pay their energy bills and maintain some degree of comfort and safety. The Commission can, and should, avoid worsening the energy burden on struggling households.

It cannot be denied that PG&E's proposals, most significantly the request to create a third rate tier for CARE customers, will harm poor Californians.[4] The historical context of rates for low-income customers is meaningless in light of the immediate struggles faced by these households. Whether or not CARE rates have been low over time, now is not the time to raise them; certainly now is not the time to raise them by the substantial margin sought by PG&E.

PG&E argues that low-income customers may be able to mitigate the impact of increased CARE rates by highlighting potential sources of assistance for certain customers or suggesting that customers might be able to conserve energy in ways that do not impact their health or

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[2] Faruqui Testimony, Tr. Vol. 1 at p. 63:20-25. Dr. Faruqui also suggested that other social programs are available to assist poor Californians. Of course, CARE is one of the programs that is supposed to support the specific policy goal of affordable energy for low-income Californians. *See* § II.C, below, for a more detailed discussion of California's stated policies regarding affordable energy.

[3] Faruqui Testimony, Tr. Vol. 1 at p. 67:24-28.

[4] As set forth in detail below, virtually all of PG&E's residential rate proposals aim to collect more from CARE customers in order to reduce rates for those who use energy in the highest tiers. PG&E attempts to justify this as a way to encourage conservation among CARE customers (while accepting that its proposed rate structure would actually discourage conservation among those who already use the most energy). Of course, low-income customers already have incentives to reduce their energy use simply because they cannot afford to pay more. The record includes substantial information about low-income customers who reduce their energy use by such extremes that their health and safety are compromised.

safety.[5] But its efforts to cherry-pick potential mitigation measures for low-income customers are undercut by the very structure of the proposed rate design, which depends on increased revenue from CARE customers as its foundation. If all CARE customers were able to mitigate the rate increases they would face, PG&E would see a revenue shortfall which it would then seek to address in later proceedings before the Commission.[6] While there certainly may be some customers who can effectively mitigate the impact of the proposed rates, for the rate structure that the utility has proposed to achieve the results projected, the vast majority of CARE customers must simply find a way to pay more.

In R.10.02.005, the Commission has indicated its concern about the high numbers of PG&E customers, and particularly CARE customers, who are facing service disconnection due to inability to pay their energy bills. In that proceeding, the Commission has looked with support on efforts to provide assistance to customers who need help.[7] Similarly, the Commission has repeatedly made clear its obligation to protect the comfort and safety of low-income ratepayers, most notably in the context of the Low Income Energy Efficiency ("LIEE") program.[8] It would be counterproductive, if not perverse, for the Commission to take steps to protect low-income customers from unaffordable energy costs in other proceedings while approving a rate design proposal from PG&E that would directly undermine those efforts by raising rates on the same low-income customers.

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[5] Evidentiary Hearing Testimony of Alicia Reyes ("Reyes Hearing Testimony"), Tr. Vol. 4, at p. 636:22-27; Testimony of Orson Aguilar ("Aguilar Testimony"), Tr. Vol. 2 at p.232:5-28.

[6] *See* Testimony of Phillip Quadrini ("Quadrini Testimony"), Tr. Vol. 5 at p. 915:6-20.

[7] *See, e.g.* D.10-07-048, issued on July 29, 2010 at pp. 7-8 (discussing use of CARE funds to match federal emergency grants available through the TANF Emergency Fund).

[8] *See, e.g.* Decision Providing Direction for Low-Income Energy Efficiency Policy Objectives, Program Goals, Strategic Planning and the 2009-2011 Program Portfolio and Addressing Renter Access and Assembly Bill 2140 Implementation ("D.07-12-051"), Rulemaking 07-01-042 and Application 07-05-010, issued December 24, 2007; Decision on Large Investor-Owned Utilities' 2009-11 Low Income Energy Efficiency (LIEE) and California Alternative Rates for Energy (CARE) Applications, ("D.08-11-031"), issued November 10, 2008.

As seen in the Disconnections proceeding and the various LIEE proceedings, the Commission is charged with ensuring that all California households can access energy that is affordable, because energy is a basic necessity. The Commission must continue to respect its own policies by rejecting calls to increase the burden of residential rates on low-income Californians. The Commission should deny PG&E's proposed residential rate design application, and instead pursue a rate structure that honors its obligation to ensure that low-income Californians are able to meet their energy needs in an affordable manner.

II. OVERALL RESIDENTIAL RATE DESIGN

In the pending application, PG&E is asking the Commission to impose a customer charge on every residential account, to institute a third rate tier for CARE and to change the baseline quantity allocation from 60% of average use to 55%. By collecting more revenue from these mechanisms, each of which will have a regressive impact on low-income and/or low use customers, PG&E then seeks to reduce the rates for residential customers who use the most energy, specifically by collapsing its current four-tier structure into three tiers. While DisabRA will address these individual proposals separately below, the Commission must not get so focused on the specifics of each individual item in the proposal that it loses track of the big picture. Overall, this proposal amounts to a plan to increase the energy burden on those who can least afford it in order to help those whose energy use is highest. It is a reverse-Robin Hood plan, taking from the poor to give to the rich.[9] Adoption of the PG&E plan would be a shameful

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[9] Of course, this is a generalization. DisabRA does not doubt that there are some households on CARE that could reduce their energy usage without facing risks to health and safety, nor does DisabRA doubt that there are some households who currently face meaningful hardship due to very high energy bills in the upper tiers based on circumstances that they cannot easily control. None of this changes the overall picture in which those with the least are being asked to do more so that the utility can respond to the concerns of those who consume the most. Furthermore, PG&E's Witness Faruqui acknowledged the general correlation between household wealth and energy use. Faruqui Testimony, Tr. Vol. 1 at p. 62:17-21.

acquiescence in a proposal that disregards the difficult circumstances of the most vulnerable Californians.

A. California's Low Income Households, Including Many People With Disabilities, Currently Struggle Under Substantial Energy Burdens

The record in this proceeding and the undeniable evidence of California's ongoing economic struggles make clear beyond doubt that times are hard in California, and times are particularly hard for those who are already on the lowest rungs of the economic ladder. CARE participation has increased substantially over the past several years, due to increasing numbers of people who qualify for the low-income program.[10] Of the CARE households in PG&E's territory, 58% of these households include a member who is elderly and/or disabled.[11] In 26% of the low-income households in PG&E's territory, the adult members of the household are non-working due to temporary or permanent disability.[12] According to the KEMA Report, 43% of low-income households face a high energy burden of over 5% of their total household income. The "average energy burden is about 8.4% for the highest category of energy burden among electric and gas households," with an even higher burden for the lower number of electric-only households.[13] For households containing a person with a disability, which includes 27% of all low-income households,[14] 56% spend more than 5% of their household income on energy.

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[10] *See* Turnipseed Testimony, Tr. Vol. 5 at p. 981:13-982:28 (citing data from Evidentiary Hearing Exhibit 55).

[11] Final Report on Phase 2 Low Income Needs Assessment, September 7, 2007 ("KEMA Report"), attached as Exhibit E to Testimony of Alicia Reyes, Outreach and Communications Coordinator, Disability Rights Advocates ("Reyes Testimony"), Evidentiary Hearing Exhibit 19, A.10-03-014, October 29, 2010 at p.4-22. Specifically, Table 4-16 in the KEMA Report shows that, among PG&E low-income households, 20% contain an elderly household member, 19% contain a disabled household member, and 18% contain an elderly and disabled household member; only 42% contain no elderly/no disabled household members. Moreover, in PG&E's territory, 35% of low-income households report that a household member with a disability is responsible for paying the utility bill.

[12] KEMA Report at p. 4-23, Table 4-17.

[13] KEMA Report at 5-12. *Id.* at 5-14, Table 5-9 (stating that these households have an energy burden of 14.3%).

[14] This figure comes from Table 5-7 of the KEMA Report; it appears to show a lower level of disability among low-income households than reported elsewhere in the same Report, *cf.* Table 4-16.

Based on outreach conducted by DisabRA's Outreach Coordinator, "many people with disabilities and others on low or fixed incomes are barely able to pay their utility bills now, and many are forced to juggle any combination of vital living expenses such as: rent, energy utility payments, other utility bills, medicine and food."[15] Consumers with disabilities have reported having to choose between paying their PG&E bill or paying for other vital services such as rent, water, or medication; some PG&E customers have resorted to extreme conservation measures that compromise their comfort and safety to minimize their PG&E bills. Representatives of Independent Living Centers and other community-based organizations serving people with disabilities report a spike in the numbers of clients seeking assistance with utility payments and report a theme of concern among their clients that they do not have enough money to afford basic necessities and must select among vital services each month.[16]

The hardships identified through the outreach conducted by DisabRA are consistent with the fears articulated by PG&E consumers through other forums in which their input was solicited, including public participation hearings ("PPHs") and ratepayer comments solicited by The Utility Reform Network ("TURN").[17] At every opportunity, customers have made clear their fear of being pushed over the brink in an environment in which they are barely getting by today.[18]

[15] Reyes Testimony at Q/A 5, p. 5.

[16] Reyes Testimony at Q/A 7 at pp. 10-12 and supporting Exhibits.

[17] Reyes Testimony at Q/A 6 at pp. 6-8 and attached Exhibits ("People with disabilities and the elderly as well as other low-income groups, have expressed their concern and despair about rate increases and rate design impacts in various arenas, including public participation hearings, through the submission of letters opposing these changes to customer groups such as TURN, and in response to DisabRA's outreach. The various forums in which these concerns have emerged demonstrate the relevance and wide-reaching implications of these issues.").

[18] At hearing, counsel for the Energy Producers and Users Coalition ("EPUC") argued that information concerning the experiences of real low-income and disabled customers should be given less weight than other information in the record. Tr. Vol. 4 at p. 656:3-10. Needless to say, DisabRA strenuously disagrees. [continued on next page]

At a public participation hearing in San Francisco, a PG&E customer named Sheila Cockshott, who described herself as getting by on a "very, very small fixed pension," asked "What are you going to do if [a rate increase] happens? I don't know what I'm going to do. I don't have a plan B."[19] In Oakland, a representative of the Bay Area Workers Benefit Council described how the Council's "members fall behind on PG&E bills because they lose their job, the jobs are minimum wage or the jobs are only part time . . . The Bay Area's low-income service and domestic workers are faced with the awful decision of eviction or living without a refrigerator, lighting, hot water, stove, warmth in the winter."[20] Numerous witnesses at the PPHs described how funds from REACH and other programs that are intended to help low-income customers pay utility bills are exhausted and unavailable.[21] Sharp rate increases on these customers will push some over the edge.

The feedback concerning the impact of PG&E's proposed rate design on low-income customers should not be given less weight than that of large energy users. These customers are the most vulnerable members of the public whose interest the Commission is charged to serve. As stated at hearing, most of the information in the hearing room concerns "formulas and statistics and quantitative analysis as a general rule. It is very important that the real world impact of the results of those formulas and statistical analyses not be forgotten . . . Not all people are capable of traveling to public participation hearings. The people [DisabRA] represent[s] in particular often have limited ability to come and make their voices heard. We are their voice." Tr. Vol. 4 at p. 657:4-17.

[19] Transcript of Public Participation Hearings ("PPH Tr."), Vol. 1 at p. 19:25-20:40 (cited in Exhibit D to Reyes Testimony).

[20] PPH Tr. Vol. 5 at pp. 496:20-497:5 (cited in Exhibit D to Reyes Testimony).

[21] *See, e.g.,* Testimony of Archbishop Aurea Lewis, speaking for the California Council of Churches, PPH Tr. Vol. 5 at p. 469:18-20 ("REACH is unreachable. HEAP is heaped upon . . . the phone just rings"); Testimony of Max Villet of the Bay Area Workers Benefit Council, PPH Tr. Vol. 5 at p. 496:18-23; George Read with Western Service Workers Association, PPH Tr. Vol. 5 at p. 501:1-2; Aaron Peter with Western Service Workers Association, PPH Tr. Vol. 5 at pp. 513:16-514:21; Trisha Smith with Shasta County Workers Benefit Council, PPH Tr. Vol. 7 at p. 732:20-23; and Liz Moreno from Central Coast Energy Services, PPH Tr. Vol. 10 at p. 887:11-14 ("existing programs that are provided through PG&E or through other avenues are not sufficient to meet the needs that exist in our region, especially in these harsh economic times.") In all, 82% of the witnesses who spoke in opposition to PG&E's proposed rate design at the public participation hearings addressed low-income issues. *See also* Exhibit D to Reyes Testimony, summarizing and analyzing PPH Comments. All of these witnesses spoke about hardships that low-income customers face before any increases that would go into effect if PG&E's proposed rate design were adopted. All of these witnesses came voluntarily to the PPHs, on their own time, in an attempt to have their voices heard.

The fears and concerns set out at the Public Participation Hearings are echoed in the responses to DisabRA's direct outreach to the disability community. Low-income and disabled PG&E customers are eating out of food pantries, going without prescription medication because they cannot afford their co-pays, shutting off water service and bathing at friends' homes, and taking other extreme measures.[22] One stated in an email to DisabRA that the proposed new rate design "will make it nearly impossible for people with disabilities to afford [their energy bills] especially those who use electricity all the time for their medical equipment."[23] A deaf woman who lives with her 93 year-old mother says "home care for her is hard for me with my severe back problem, a way to save money. I'm deaf and have lumber [sic] degeneration. My retirement money is not enought [sic] to support me n [sic] Mom."[24] Another describes: "I can NOT afford to take a bath! I operate with one light on after dark, the TV . . . I have no where else to cut!"[25] Finally, one notes how counterproductive it is to try to get more from those with the least: "In short, increasing my energy bills will decrease my ability to find employment and get off my fixed income, and if I can get off the fixed income I will be happy to pay the regular energy rates offered to the general public."[26]

In the Central Valley, where high energy users face the most substantial decrease in energy bills and low-income customers face the highest increase if PG&E's proposals are adopted, DisabRA gathered details of impending hardship. A customer in Bakersfield with multiple sclerosis and other disabilities who lives on a fixed income cannot adjust his thermostat

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[22] *See* Reyes Testimony, Exhibit B (detailing responses to outreach by DisabRA).

[23] Reyes Testimony, Exhibit B at p. 2 (Respondent 1).

[24] Reyes Testimony, Exhibit B at pp. 2-3 (Respondent 3).

[25] Reyes Testimony, Exhibit B at p. 4 (Respondent 6).

[26] Reyes Testimony, Exhibit B at p. 6 (Respondent 12).

or his health will suffer; he is already facing bankruptcy while struggling to pay for his energy use under the existing rate schedule.[27] A Fresno resident with cerebral palsy and other disabilities spends large amounts of time in bed with a heating pad because it is the only way she can avoid leg spasms when she cannot afford to heat her entire home.[28] She also eats from food pantries or goes without in order to pay her utility bills, even before any increases she would face from PG&E's proposed new rate design.[29] A Clovis resident who is quadriplegic will have to cut back on food and/or forgo transportation to medical appointments to absorb an increase in his PG&E bill, while another Bakersfield resident with multiple sclerosis, diabetes, epilepsy and osteoporosis, who already only cooks one hot meal a day to minimize her energy use, will have to forgo medication.[30] These and other examples of severe hardship come from customers who already take extreme measures to reduce their usage because they simply cannot afford to pay their current energy bills.

In addition to these hardships described by PG&E customers, the Commission has already noted with concern that service disconnections for customers who are unable to pay their bills are high, and disconnections for CARE customers are even higher.[31] Yet PG&E offers no plan to assist these customers who will face even greater hardship under its residential rate design proposal, beyond simply telling them to install compact fluorescent lightbulbs

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[27] Reply Testimony of Alicia Reyes, Outreach and Communications Coordinator, Disability Rights Advocates ("Reyes Reply Testimony"), Evidentiary Hearing Exhibit 20, A.10-03-014, October 29, 2010 at pp. 4-5.

[28] Reyes Reply Testimony at p. 5.

[29] Reyes Reply Testimony at p. 5.

[30] Reyes Reply Testimony at pp. 7, 9.

[31] In R.10-02-005, the Commission is taking steps to reduce the rate of service disconnections in general, and the rate for CARE customers in particular. *See generally* D.10-07-048, issued on July 30, 2010, discussed in greater detail at §II.D below. PG&E's disconnection rates as of August 2010 were not meaningfully different than they were when the proceeding commenced. *See* Pacific Gas and Electric Company's Monthly Disconnect Data Report Through August 2010, filed on October 8, 2010, with the California Public Utilities Commission in Docket No. R.10-02-005, Evidentiary Hearing Exhibit 34, at Appendix A, Table 1-A.

("CFLs").[32] DisabRA fully supports low income energy efficiency; however the hardships that will be faced by these customers under PG&E's proposed rate design cannot be cured with energy-efficient lighting. CARE customers will inevitably face even greater rates of service disconnections if their rates are increased.

B. PG&E Is Relying on Collecting More from Those With the Least, Without Regard to the Hardship This Will Create

PG&E's witness responsible for addressing anticipated bill impacts from PG&E's proposed rates, Phillip Quadrini, agreed in cross-examination that there are PG&E customers who cannot afford to pay much for energy use, and who act in a frugal manner simply to maintain affordability.[33] Moreover, Mr. Quadrini agreed that some of these customers take steps to reduce energy use in a way that might compromise their comfort and safety, simply in order to reduce their bills.[34] This might include people who significantly reduce the level of heating or cooling that they use, and it would also include people who make trade-offs on other necessities in order to pay for their energy use.[35]

Notwithstanding PG&E's acknowledgement of the difficulties that low-income people already face in paying their utility bills, PG&E did not make any effort to investigate the actual impact that bill increases of the level proposed in its rate design would have on the behavior of these customers, preferring instead to speculate or wish that the increases will lead only to reasonable conservation efforts that do not compromise safety.[36] PG&E has done no studies on

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[32] Witness Quadrini: I would be happy if CARE customers conserved more.

Q. Even if they used conservation methods that compromised their comfort or safety?

A. No. I would wish that they would use conservation methods such as CFLs, taking advantage of our low-income energy efficiency measures. There's lots of ways to reduce consumption.

Quadrini Testimony, Tr. Vol. 5 at p. 891:3-12.

[33] Quadrini Testimony, Tr. Vol. 5 at p. 886:2-13.

[34] Quadrini Testimony, Tr. Vol. 5 at p. 886:14-21.

[35] Quadrini Testimony, Tr. Vol. 5 at pp. 886:28-887:21.

[36] Quadrini Testimony, Tr. Vol. 5 at p. 897:20-27 ("Q: What do you think that a household that lives solely on its social security payments and hasn't seen a cost-of-living increase during the current economic crisis can reasonably do without in order to pay additional increases to their PG&E bills? A: They would have to take some energy efficiency measures, the safe ones"); *See also* Faruqui Testimony, Tr. Vol. 1 at pp. 63:4-64:17.

the impact that bill increases would have on the spending habits of its customers.[37] PG&E has no information on changes its customers might have to make to their spending habits in order to pay for bill increases, including any information on whether customers might forgo other necessities to pay for energy.[38] PG&E's witness Quadrini agreed that, for customers who already eat out of food pantries in order to pay their bills, "obviously any increase they can't afford."[39] However PG&E took no action to investigate the actions CARE customers would have to take to absorb bill increases of the size projected in its proposed rate design.[40] While PG&E has no information on the steps that customers may be required to take to meet their increased energy costs, it is relying on its projections that most low-income customers will simply come up with the money somehow, thus increasing PG&E's revenue share from its CARE customers. This projection disregards the impact of rate increases on low-income customers. PG&E recognizes that the average bill increase for low-income customers will be 14%, with 46% of CARE customers seeing an increase ranging from $2.40 to $4.20, an additional 15% seeing average increases of $5.20, and nearly 40% of CARE customers seeing increases of over 14%, averaging $11.60 per month.[41] These dollar figures may seem small to PG&E's witness,[42] but they represent substantial sums for low-income Californians who are budgeting to the dime for every gallon of gasoline and meal for their families. Nevertheless,

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[37] Quadrini Testimony, Tr. Vol. 5 at p. 888:7-11. *See also* Faruqui Testimony, Tr. Vol. 1 at p. 79:2-11.

[38] Quadrini Testimony, Tr. Vol. 5 at p. 888:12-21. *See also* Quadrini Testimony, Tr. Vol. 5 at p. 899:25-28; Faruqui Testimony, Tr. Vol. 1 at p. 72:26-73:1.

[39] Quadrini Testimony, Tr. Vol. 5 at p. 894:13-19.

[40] Quadrini Testimony, Tr. Vol. 5 at p. 894:24-28; *see also* Faruqui Testimony, Tr. Vol. 1 at pp. 70:23-71:16.

[41] Pacific Gas and Electric Company 2011 General Rate Case Phase 2 Residential Rate Design Rebuttal Testimony ("PG&E Rebuttal Testimony"), A.10-03-014, October 29, 2010, Evidentiary Hearing Exhibit 2 at p. 2-25.

[42] *See* Quadrini Testimony, Tr. Vol. 5 at p. 889:23.

PG&E seeks to use "the additional revenue from [low-income] households in the aggregate [as] a crucial factor to reduce upper-tier rates from their very high current levels."[43]

PG&E's witness agreed that "residential rates [are] a zero sum gain [sic], that more revenue must come from low-use or low-income residential customers in order to provide rate relief to higher use customers.[44] If PG&E's rate design proposal were adopted and then CARE and lower-tier customers were able to mitigate their energy use such that their bills did not increase (thus denying PG&E its anticipated revenue), PG&E would have to seek the projected revenue that failed to materialize from its higher tier customers instead.[45] Yet the reason that PG&E is proposing this rate design in the first place is to reduce the bills of the highest-tier customers. If rates on high-use customers had to be increased instead, the entire goal of PG&E's proposal would not be met.

C. The Commission is Charged With Implementing California's Stated Policy Goals of Ensuring that the Essential Service of Electricity Remains Affordable to All Californians

The California state legislature has embedded in statute the pronouncement that "[t]ransmission and distribution of electric power [are] essential services imbued with the public interest."[46] Because electricity is an essential service, the Commission is responsible for ensuring that all residential customers, including those with low incomes, can access electricity without experiencing undue financial hardship. Specifically, the legislature has stated that "the commission shall ensure that low-income ratepayers are not jeopardized or overburdened by

[43] PG&E Rebuttal Testimony at p. 2-26.

[44] Quadrini Testimony, Tr. Vol. 5 at pp. 914:26-915:5.

[45] Quadrini Testimony, Tr. Vol. 5 at p. 915:6-20.

[46] Cal. Pub. Util. Code § 330(r).

monthly energy expenditures, recognizing that electricity is a basic necessity, and that all residents of the state should be able to afford essential electricity and gas supplies."[47]

The "principle that electricity and gas services are necessities, for which a low affordable rate is desirable"[48] is one of the paramount policy statements guiding the Commission as protector of the state's ratepayers, and, as such, support for this principle can be found throughout the Public Utilities Code. For example, the Commission requires electrical and gas corporations to perform cost-effective home weatherization services for low-income customers if the Commission finds a need for such services in a given service territory, in light of "the policy of reducing energy-related hardships facing low-income households."[49] Similarly, in constructing a prioritized list of electricity and gas customers to be used in the event of an energy shortage, the Commission is tasked with considering such factors as "the economic, social, and other effects of a temporary discontinuance in electrical or gas service" and "unacceptable jeopardy or imminent danger to public health and safety that creates substantial likelihood of severe health risk requiring medical attention."[50] Finally, in mandating that the Commission establish the CARE program for low-income residential customers, the legislature ordered the Commission to "ensure that the level of discount for low-income electric and gas customers correctly reflects the level of need."[51] If the Commission allows PG&E to implement the regressive rate changes proposed in this application, which would increase the burden of energy costs on those least able to afford them, the Commission will be ignoring the public policy goals

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[47] Cal. Pub. Util. Code § 382(b).

[48] Cal. Pub. Util. Code § 739(d)(2).

[49] Cal. Pub. Util. Code § 2790(c).

[50] Cal. Pub. Util. Code § 2772(c), (e).

[51] Cal. Pub. Util. Code § 739.1(b)(1).

it is required to observe and shirking the statutory responsibilities placed upon it by the state legislature.

D. <u>The Commission Has Acted to Protect the Interests of Low-Income Customers in Other Proceedings, and Adopting PG&E's Proposal Here Would Thwart The Commission's Efforts In Other Areas.</u>

As noted above, the Commission is governed by policy objectives set forth within the Public Utilities Code that require it to address the needs of low-income customers in order to ensure affordability and promote customer comfort and safety. The Commission has taken seriously its responsibility to implement these policy objectives in the context of its work to reduce levels of service disconnections for customers who are unable to pay their energy bills[52] and in its recent redesign of the Low Income Energy Efficiency (LIEE) program.[53]

In the proceeding focused on reducing levels of service disconnections, the Commission has noted with concern that PG&E's rates of service disconnections are higher than those of the Sempra Utilities, and that its rates of service disconnections are significantly higher for CARE customers than for non-CARE customers.[54] The Commission specifically encouraged PG&E to take voluntary action to reduce service disconnections by adopting practices similar to those used by the Sempra utilities.[55]

[52] The Commission has taken up the issue of service disconnections in R.10-02-005, focusing on efforts that the IOUs can take to reduce the levels of service disconnections in the short term while investigating additional options for implementation after a review of potential costs and benefits. *See generally* D.10-07-048, issued on July 30, 2010.

[53] The Commission's policy goals for LIEE, including the need to protect customer comfort and safety, as well as the goal of using efficiency as an energy resource, are described in detail in the Commission's two most recent decisions to address the program. *See* D.07-12-051, issued on December 20, 2007, at pp. 21-24; *see also* D.08-11-031, issued on November 6, 2008, at pp. 7-11.

[54] D.10-07-048 at pp. 9-10.

[55] D.10-07-048 at p. 10 (noting reduced disconnection levels in May of 2010, which do not appear in the data submitted by PG&E (*see* Pacific Gas & Electric Company's (U 39 M) Monthly Disconnect Data Report Through August 2010 at Appendix A, Table A-1, Evidentiary Hearing Exhibit 34). While the Rulemaking has been underway and disconnection data has been reported, monthly service disconnection figures for CARE customers have gone up and down, but have never substantially dropped. *Id.* (PG&E data shows 5001 CARE disconnections in January, 2010, 7364 CARE disconnections in May, 2010, and 7251 CARE disconnections in August, 2010.) DisabRA has filed a motion seeking judicial notice of more recent disconnection data, which is filed in the rulemaking proceeding and available to the public, so that it will be part of the record in this proceeding.

This decision and admonishment followed almost a year of prior action by the Commission to reduce the rates of service disconnections, first seeking voluntary action by the IOUs and then initiating a formal proceeding when it did not obtain a satisfactory informal response.[56] This rulemaking, including the action that preceded its initiation as well as the ongoing work taking place, shows the Commission's dedication to serving the needs of low-income households who rely on continued access to energy to meet their basic needs.

Notwithstanding the dedicated work by the Commission in the context of R.10-02-005 and PG&E's awareness of the efforts to reduce service disconnections, PG&E did not consider the impact that its proposed residential rate design now under consideration would have on the level of service disconnections among its CARE customers. PG&E witnesses Ahmad Faruqui and Phillip Quadrini both admit that PG&E did no studies or investigation of any sort whatsoever to determine the effect of rising CARE rates on service disconnections.[57] Of course, in the context of low-income households facing service disconnections due to inability to pay, and in the face of an ongoing economic crisis in California, the only reasonable expectation is that increased CARE rates will lead to greater numbers of service disconnections. If the Commission were to permit this to take place, it would effectively be working at cross-purposes to its own actions in R.10-02-005, and undermining the very policies that it is elsewhere working to support.

The broader policy interests of affordability, comfort, and safety for low-income energy consumers are also given center stage in the Commission's recent work regarding the LIEE

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[56] *See* D.10-07-048 at pp. 4-6 (reviewing background of proceeding, including a prior petition by TURN to open a rulemaking, a status report produced by DRA, an en banc meeting by the Commission to address service disconnections late in 2009, a workshop on best practices early in 2010, and the subsequent conclusion by the Commission that more formal action was needed to address concerns about service disconnections).

[57] *See* Faruqui Testimony, Tr. Vol. 1 at p. 66:18-26; Quadrini Testimony, Tr. Vol. 5 at p. 895:1-15.

program. In D.07-12-051, the Commission focused the emphasis of the LIEE program on its potential to serve as an energy resource, but in doing so, it was careful to emphasize that this shift should not be seen as a move away from efforts to promote customer comfort and safety. Specifically, the Commission stated:

> The needs of LIEE program participants remain important to us and certainly to the broader community LIEE programs are designed to serve. Energy rates have increased substantially over the past 10 years while the average incomes of low-income customers have not.[58] As the parties observe, low-income customers need LIEE programs and those programs serve important social objectives. We do not intend to downplay those needs or objectives.[59]

These policy goals are as imperative in setting residential rates as they are in setting the policy goals and budget for the LIEE program and in working to reduce service disconnections.[60] It does not help low-income Californians to have the Commission look out for their interests in some contexts, while ignoring the same needs when setting rates.

III. PROPOSED MONTHLY CUSTOMER CHARGE

In its Application, PG&E has requested authorization to create a new customer charge for each residential account. In its Motion to Strike the portions of the application concerning the customer charge, TURN persuasively argued that PG&E's proposal is contrary to law, specifically as a violation of Public Utilities Code Sections 739.1(b)(2) and 739.9(a), as well as

[58] [Footnote in the original quotation] See for example, "A Generation of Widening Inequality: The State of Working California 1979-2006," published August 2007 by the California Budget Project, which states that the wages of the state's low income earners fell by 7.2% between 1979 and 2006. In addition, analysis conducted by the UC Berkeley Center for Labor Research and Education, using data from the Current Population Survey (Census Bureau and Bureau of Labor Statistics) estimates that between 2003 and 2006, real wages declined by 1.2% for the members of California's workforce who earn amounts less than the lowest third of wage levels.

[59] D.07-12-051 at p. 23.

[60] The ongoing effort to promote conservation among low-income Californians through LIEE as an energy resource, an effort that has been supported by DisabRA as it has been developed by the Commission, is more appropriate and more likely to be effective in lowering usage by low-income customers, while still promoting comfort and safety, than a blunt price signal directed at those with the least ability to absorb increased costs. Similarly, a customer who simply cannot afford to pay for the energy needed by his or her household will not be better served by a more effective outreach and education program, unless affordable rates are also provided.

Section 739.7.[61] DisabRA fully supports TURN's argument that the proposed customer charge would increase baseline rates beyond the maximum amount of annual increase permitted by SB 695 and now codified at Sections 739.1(b)(2) and 739.9(a) of the Public Utilities Code. The Commission has already granted PG&E its maximum permissible Tier 2 rate increases for 2010 in D.09-12-048, and that decision also outlined the methodology by which future Tier 2 rate increases for all IOUs would be calculated. DisabRA agrees with TURN and the legislative counsel, whose opinion on the subject was attached to the direct testimony of Michel Peter Florio,[62] that PG&E cannot legally bypass this established structure for Tier 1 and 2 rate increases by imposing a new customer charge and then claiming, contrary to long-standing Commission precedent, that such a charge does not constitute part of PG&E's residential rates.

A second statutory basis on which the customer charge should be rejected, as also set forth in the TURN Motion, is that instituting such a charge on Tier 1 customers would increase many of those customers' bills to the point that the differential between Tier 1 and Tier 2 rates would be less than 10%. In fact, for customers in certain climate zones the difference between the tiers could become as little as 3%.[63] However, the Commission has previously held that the differential between tiers must be greater than 10% in order to meet the objective of Public Utilities Code Section 739.7 that "an appropriate inverted rate structure" be maintained.[64] Thus

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[61] Motion of The Utility Reform Network to Strike the Portion of the Application Proposing a Residential Customer Charge ("TURN Motion"), filed on June 16, 2010. On August 23, 2010, the Assigned Commissioner issued a ruling denying the TURN Motion on procedural grounds and indicating that the question of whether the proposed customer charge would violate the Public Utilities Code would be resolved based on the full record developed in this proceeding.

[62] Prepared Direct Testimony of Michel Peter Florio of The Utility Reform Network, filed October 6, 2010, at p. 3 and Attachment A.

[63] TURN Motion at p. 10.

[64] *See* D.93-06-087 (cited in TURN Motion at p. 9).

PG&E's customer charge would violate the Commission's own interpretation of Public Utilities Code Section 739.7.

In addition to the legal issues raised by TURN, the proposed monthly customer charge should be rejected as a matter of policy, in that it is a regressive mechanism that would shift costs from upper tier users to CARE customers and customers that only use energy in the lower tiers. As proposed, the revenue generated by a monthly customer charge would be used to reduce Tier 3 non-CARE rates. By definition, CARE customers will pay the additional charge,[65] but will receive no offset. Similarly, non-CARE customers whose energy use is only in Tiers 1 and 2 will pay the full customer charge but receive no offset.[66] Customers with limited usage in Tier 3 will see some offset, and the net effect on their bill will vary based on whether they use enough energy in Tier 3 to obtain an offset greater than the amount of the customer charge. The highest energy users, in contrast, will all see an offset of an amount greater than the customer charge, resulting in a bill reduction. As with PG&E's other proposals, the customer charge will have the greatest negative impact on those least able to pay.

IV. PROPOSED CARE TIER 3 RATE

PG&E's proposal to create a third rate tier for CARE customers is the most significant component of its overall plan to raise more revenue from low-income customers in order to reduce rates for those who use the most energy. While SB 695 permits the introduction of a Tier 3 rate for CARE customers under defined parameters, it does not require creation of a new rate tier. Given the Commission's obligation to ensure that low-income customers can afford to meet

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[65] PG&E has proposed that the monthly customer charge for CARE customers would be $2.40, compared to $3.00 for non-CARE customers.

[66] *See* Faruqui Testimony, Tr. Vol. 1 at p. 24:15-18 ("If there were customers who were smaller customers, then the introduction of a customer charge would represent a higher average price for those customers").

their basic energy needs and the financial crisis facing low-income households in California today, the Commission should reject this proposal.

Supporters of PG&E's proposed rate design are unable to justify this regressive proposal except through arguments that create clear double standards for CARE and non-CARE customers. PG&E argues that a third tier for CARE will encourage conservation, neglecting completely the fact that low-income households already minimize energy use due to financial hardship, even to the extent of compromising their comfort and safety.[67] At the same time, PG&E is diligently working to reduce the current price signals that encourage conservation among the households that already use the most energy.[68]

Of course, DisabRA recognizes that non-CARE households also seek to use energy in a way that satisfies their need for comfort and safety; this is the basis of the argument that PG&E should take steps to reduce upper-tier costs specifically to help non-CARE households in the Central Valley. However, the rate design proposed by PG&E (and supported by Kern County and the Kern Taxpayers Association) will help these upper-tier non-CARE users at the expense of the many low-income households in the same climate regions, who face the same hardships but with less money. This is not an appropriate outcome for a region in which poverty rates are higher than average, per capita income is lower than average, and unemployment levels are severe.[69]

Michael Turnipseed of the Kern Taxpayers Association ("Kern Tax") purported to speak on behalf of all Kern County ratepayers and taxpayers in support of PG&E's proposal; however,

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[67] Reyes Testimony at Q9/A9 at pp. 15-16.

[68] *See* PG&E Rebuttal Testimony, at p. 1-13:18-20 ("For example, the customer charge, by reducing rates for non-CARE upper-tier consumption, would provide an incentive for those households to consume more.").

[69] *See* Testimony of Abbas P. Grammy for Kern County ("Grammy Testimony"), Evidentiary Hearing Tr. Vol. 3 at p. 558:8-18.

Mr. Turnipseed admitted that Kern Tax did not consider the needs of Kern County's CARE customers in preparing its testimony.[70] Nevertheless, Mr. Turnipseed is aware that the majority of Kern County ratepayers would see a bill increase based on PG&E's proposals,[71] conceding that "it will adversely affect [CARE customers], but it would help the people who are paying regular rates who face the same, on fixed income, that have the same challenges."[72] While also supporting PG&E's proposed rate design, Dr. Abbas Grammy, representing Kern County, was not even aware that that rate design would lead to higher bills for all CARE customers.[73] This large and growing base of CARE customers in Kern County and elsewhere in the Central Valley face the same extreme temperatures as the non-CARE customers, yet they will also see the largest average price increases of any customers in PG&E's service territory.[74]

These households already experience energy insecurity at an extremely high rate.[75] They face high levels of service disconnection. Low-income residents of the Central Valley, including people with disabilities and other vulnerable households, already report severe compromises to health, comfort and safety as they struggle to get by.[76] Nevertheless, the official representative of Kern County stated plainly that "the board of supervisors, upon whose behalf I'm testifying,

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[70] Testimony of Michael Turnipseed for Kern Taxpayers Association ("Turnipseed Testimony") at Evidentiary Hearing Tr. Vol. 5 at pp. 963:15-964:21.

[71] Turnipseed Testimony, Tr. Vol. 5 at p. 966:22-26.

[72] Turnipseed Testimony, Tr. Vol. 5 at p. 968:1-9; *see also id.* at pp. 976:26-977:10 (Kern Tax's expressed concerns about customer "capabilities to pay" their energy bill were focused on non-CARE customers, not CARE customers").

[73] Grammy Testimony, Tr. Vol. 3 at p. 562:4-8.

[74] Prepared Direct Testimony of Gary B. Marcus on Behalf of The Utility Reform Network, A.10-03-014, October 6, 2010, pp. 66-67.

[75] *See* KEMA Report at pp. 5-17 ("Overall, the results indicate that the majority of eligible low-income households are classified as either 'in crisis' (28%) or 'vulnerable' (38%), the two most insecure categories on the scale.").

[76] *See generally* Reyes Reply Testimony.

they believe based on their support for PG&E that it's possible that CARE customers could pay slightly more in order to provide rate relief to certain classes of non-CARE customers."[77]

High end energy users are more likely to be affluent and to use energy to power non-necessities.[78] CARE customers, by definition, are low income, and are much more likely to limit all consumption to necessities, simply because they do not have resources that permit extravagance. Because basic energy needs are a necessity, and because the Commission is charged with ensuring that low-income Californians can afford to meet their energy needs, it is inappropriate to add to the energy burden on CARE customers to provide rate relief for those who consume the most energy. This lapse in priorities is made more severe when it also reduces incentives for conservation by those who consume the most.

V. PROPOSED REDUCTION IN BASELINE PERCENTAGE FROM 60% TO 55%

As with the other items proposed by PG&E, the proposed reduction in baseline quantity allocations from 60% of average to 55% of average represents an effort to generate more revenue from those customers who use the least energy in order to reduce the rates of those customers who use the most energy.[79] The effect of this proposal would be to shift a quantity of energy that is currently billed at Tier 1 rates into Tier 2. For those customers whose usage does not exceed Tier 2, the only result would be to add some additional incremental cost of extra Tier 2 usage. Only customers whose usage is well into Tier 3 will see a corresponding reduction based on a lower Tier 3 rate such that there would be no net change to those customers' rates. Customers whose usage is well into the upper tiers would see a greater reduction in rates.

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[77] Testimony of Allan Krauter ("Krauter Testimony"), Evidentiary Hearing Tr. Vol. 3 at p. 579:17-22.

[78] Faruqui Testimony, Tr. Vol. 1 at pp. 34:24-35:1.

[79] *See* Testimony of Dennis Keane, Evidentiary Hearing Tr. Vol. 3 at pp. 293:14-294:23 (PG&E will seek yearly increases to Tier 1 and Tier 2 rates consistent with SB 695 because "we think that Tier 1 and 2 rates are too low").

For those customers whose usage is already confined to the lower tiers, there would thus be some "conservation incentive" based on increased costs; however, these are already customers with low usage. Their remaining conservation efforts are more likely to be steps that compromise their comfort or safety, since their low usage suggests that they are likely already efficient energy consumers. In contrast, large users who likely have greater efficiency options still available will see reduced rates and thus reduced conservation signals. Again, as a matter of policy, this simultaneously seeks more from the most vulnerable while reducing the burden on those who consume the most. The Commission should reject this proposal.

VI. PROPOSED TIER CHANGES FOR NON-CARE CUSTOMERS

All of PG&E's efforts to raise additional revenue from low-income and low usage customers are intended to be put to the use of lowering rates for customers who consume the most energy, with the greatest rate reductions proposed for those who consume energy in what used to be the fifth tier and in the fourth tier.[80] CARE customers would bear the brunt of these rate proposals; as PG&E admits, if its rate proposals are adopted, virtually every CARE customer will see increases in their energy bills.[81] The average bill increase for CARE customers will be 14% of their monthly bill.[82] PG&E seeks to minimize the impact of such increases for its low-income customers, arguing that high percentages are not significant when the base numbers are

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[80] PG&E acknowledges that this change in rate structure would reduce the incentive for conservation among upper-tier energy customers. Faruqui Testimony, Tr. Vol. 1 at pp. 84:28-86:23.

[81] *See* PG&E Residential Rate Design Rebuttal Testimony, Exhibit 2, at p. 2-26:22-25. The customers who face the greatest increase in rates are CARE customers in the Central Valley; the customers who would see the greatest benefit from PG&E's proposal are the highest energy consumers from the same climate zones.

[82] *See id.*, p. 2-25:7-10.

low, and that CARE customers should be able to afford average increases of up to $11.60 per month. [83]

Even before introducing this rate design proposal, PG&E has diligently sought to reduce rates for consumers who use the most energy; this past summer, the utility entered into an agreement supported by TURN and DRA to collapse its fifth energy tier into the fourth tier and reduce rates for the summer cooling season.[84] PG&E has also reduced its upper tier rates in conjunction with decreasing rates for Tier 1 and Tier 2, as permitted by SB 695. Now it seeks to provide further assistance to the largest residential energy consumers at the expense of the poor.

Within the residential rate structure, the only way that PG&E can reduce rates on the highest energy consumers is to increase the revenue it generates from low-income and low-use consumers. For all the reasons set forth in the discussion of the proposed methods for increasing CARE and low-use revenue above, these changes violate state policy requiring affordable basic energy supplies for low-income customers. The highest use customers consume far more than basic energy levels; while they have the right to do so, their ability to consume more than any other PG&E customers cannot be favored as requested in this application. If, in the allocation phase of this proceeding, the Commission determines that the overall share of revenue coming from residential customers should be reduced, any effort to flatten the residential rate tiers and either reduce the differential between tiers or to reduce the number of tiers would take place in a different policy context. Now, however, the Commission's obligation to protect access to affordable energy for the most vulnerable customers must be paramount. Because the effort to

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[83] *See id.*, p. 2-25:10-19. PG&E states that 46% of CARE customers will have average bill increases up to $4.20 per month, 15% of CARE customers will have bill increases averaging $5.40 per month and 40% of CARE customers will have bill increases averaging $11.60 per month.

[84] *See* PG&E's Application 10-02-029 and resulting Decision 10-05-057 (approving settlement between PG&E, TURN, and DRA to consolidate Tiers 4 and 5).

collapse Tier 3 and Tier 4 comes primarily at the expense of disabled, low-income and vulnerable consumers, it must be rejected.

VII. PROPOSED TOU RATES, AND PROPOSALS FOR E-A7, EL-A7, BASELINE CREDIT FOR E-7 AND EL-7, AND E-9A AND E-9

DisabRA has not addressed this issue.

VIII. PROPOSAL FOR FLAT GENERATION AND DISTRIBUTION RATES WITH TIERED CONSERVATION INCENTIVE ADJUSTMENT

DisabRA has not addressed this issue.

IX. OTHER ISSUES

DisabRA has no additional issues to address.

X. CONCLUSION

In closing, for the reasons set forth in this brief, DisabRA strongly urges the Commission to reject PG&E's proposal for residential rate design issues in Phase 2 of PG&E's Test Year 2011 General Rate Case.

Signed: December 20, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have, by electronic mail to the parties to which an electronic mail address has been provided, served a true copy of "Opening Brief of Disability Rights Advocates" on all known parties to A.10-03-014.

Dated December 22, 2010, at Berkeley, California.

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