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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company to Revise Its Electric Marginal Costs, Revenue Allocation, and Rate Design, to Revise its Customer Bills, and to Seek Recovery of Incremental Expenditures.

Application 10-03-014  
(Filed March 22, 2010)

**OPENING BRIEF OF THE CITY AND COUNTY OF SAN FRANCISCO  
IN THE RESIDENTIAL RATE DESIGN PHASE**

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## I. INTRODUCTION AND SUMMARY

The City and County of San Francisco (“CCSF”) hereby submits this post-hearing brief in the residential rate design phase of this case. CCSF’s primary interest in this case relates to its plan to begin offering services under its Community Choice Aggregation (“CCA”) program in 2011.<sup>1</sup> Consistent with that interest, CCSF focused its testimony and cross-examination in this phase on the proposal of Pacific Gas and Electric Co. (“PG&E”) to replace its current tiered residential generation rates with a single flat rate across all tiers and to create a new, non-bypassable tiered rate element called the Conservation Incentive Adjustment (“CIA”) (“the CIA proposal”). PG&E’s justification for this proposal is the claimed need to “level the playing field” between PG&E and CCA providers. In fact, the record shows that PG&E’s justification is unsupported and that, if adopted, the CIA proposal would impose a severe and unfair competitive handicap on CCA programs.<sup>2</sup>

PG&E has failed to meet its burden of proving that the CIA proposal is necessary to remedy a problem with its current residential rate design. Although PG&E claims that flat generation rates are needed to accurately reflect its cost of service, PG&E has conspicuously failed to present any supportive evidence demonstrating that its per unit cost of generation does not vary as customers’ usage increases.<sup>3</sup> Even though CCSF had previously questioned the cost basis for the CIA proposal and the Commission ordered the CIA proposal to be evaluated in evidentiary hearings, PG&E chose not to introduce any cost of service study to support its assertion. PG&E’s inability to furnish an analysis showing that generation costs are flat across tiers is not surprising because the record shows that PG&E’s cost of supply likely increases as usage increases. Contrary to being a problem that needs fixing, tiered generation rates are fully consistent with generation costs that increase with usage.

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<sup>1</sup> On behalf of San Francisco residents, CCSF’s testimony also expressed concerns about the impacts of PG&E’s proposed rate design on low income customers, concerns also expressed by other parties including the Division of Ratepayer Advocates (“DRA”), The Utility Reform Network, Disability Rights Advocates, and the Greenlining Institute. CCSF expects these other parties to address the low income rate design issues in their briefs.

<sup>2</sup> This brief will be limited to addressing the CIA proposal and its many problems. In the common briefing outline agreed to by the parties, the CIA proposal is Section VIII.

<sup>3</sup> Throughout this brief, as was the convention in the parties’ written and oral testimony, references to generation cost of service and generation costs will indicate per unit costs. In addition, CCSF will use the phrase “cost of supply” to refer to the cost of generation.

The CIA proposal would also harm CCAs by effectively foreclosing them from building conservation incentives into their rates. CCAs that attempt to use conservation-promoting tiered rates would be at a severe disadvantage in competing for customers with relatively high usage, precisely the customers that PG&E is most concerned about losing. The absence of any cost justification for the CIA proposal exposes its real, anti-competitive purpose – to take away options that CCAs could use to mount a competitive threat to PG&E.

Moreover, contrary to PG&E’s professed goal of bill and tariff simplicity, the CIA proposal would add a confusing new rate element to customer bills. The bill change would impose significant costs on ratepayers to re-program PG&E’s billing system. More significantly, it would require an extensive customer education effort to explain the new rate element and the related changes to generation and distribution rates – including distribution charges that, by virtue of the CIA, would confusingly appear as negative charges for some customers. PG&E would not even provide an estimate of the costs that the customer education program would require, essentially asking the Commission to give it a blank check.

In sum, PG&E has failed to show that its proposal would yield any public policy benefits that would justify such customer confusion and costs of unknown amount. The Commission should reject the CIA proposal and otherwise adopt the recommendations set forth in Appendix A to this pleading.

## **II. BACKGROUND**

### **A. The Commission Determined that the Issues Raised by CCAs Concerning the CIA Proposal Should Be Addressed in These Evidentiary Hearings.**

PG&E first presented its proposal to flatten generation rates in a December 17, 2009 Petition for Modification of Decision 07-09-044 in Application (A.) 06-03-005.<sup>4</sup> In comments on a proposed decision that would have granted the petition, CCSF pointed out the lack of cost support for PG&E’s assertions, stating:

. . . the Petition and the PD point to no evidence in the record showing that the resulting flattened generation rates would accurately reflect the cost of service

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<sup>4</sup> PG&E was joined in that petition by DRA, TURN, and the Western Manufactured Housing Communities Association. None of these parties submitted testimony in support of PG&E’s CIA proposal in this docket.

or even that such rates would be more cost-based than tiered rates. A cost of service study, for example, may show that, on average, higher usage customers cause more per-unit generation costs to be incurred than do lower usage customers.<sup>5</sup>

In Decision (D.) 10-06-030, the Commission rejected the petition and ordered that the proposal be addressed in evidentiary hearings in this docket:

MEA [Marin Energy Authority] and CCSF have cited problems and potential issues associated with the Petition request, and PG&E has responded. However, because the request as it relates to PG&E is new and is being proposed through a petition for modification of a previous decision, there has been no formal process (testimony, hearings and briefs) for evaluating parties' positions. . . . That is, the Petition request is opposed and was never subjected to a formal evidentiary process. Because of the nature of the request and opposition, we feel such a process is necessary to fairly consider issues and potential problems. (D.10-06-030, p. 10).

The Commission thus put PG&E on notice that its factual assertions supporting the proposal – including the challenged claim that flattened generation rates more accurately reflect cost of service – should and would be tested in evidentiary hearings. In this docket, the Commission gave PG&E an opportunity to substantiate its assertions regarding the cost of generation with evidence. As will be shown below, PG&E chose not to present any such evidence.

#### **B. Summary of Changes that Would Result from PG&E's CIA Proposal**

The nature of the changes to PG&E's rates that would result from the CIA proposal is shown in Appendix C to PG&E's Exhibit 1. Appendix C shows that, under PG&E's current residential rate design, both distribution and generation rates are tiered. In the E-1 tariff used by most residential customers, approximately 45 percent of the rate differentials among tiers is built into distribution rates and 55 percent is in generation rates.<sup>6</sup> Under the CIA proposal, 100 percent of the rate differential

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<sup>5</sup> *Comments of the City and County of San Francisco on the Proposed Decision of ALJ Fukutome*, A.06-03-005, filed May 24, 2010, pp. 1-2.

<sup>6</sup> These percentages were calculated as follows. Under present rates shown in Ex. 1, App. C, the total difference between bundled baseline and Tier 4/5 rates is approximately 28 cents. Of this 28 cents, approximately 12.5 cents (or 45 percent) of the difference is found in distribution rates and the remaining 15.5 cents (or 55 percent) is reflected in generation rates. It should be noted that, under PG&E's proposal and most other parties' proposals, the 28 cent bundled rate difference would be reduced considerably. Thus, if the CIA proposal were not adopted, generation rates would be flattened to some extent, depending on the adopted rate differential. For example, under PG&E's proposal, the

would be captured in the new CIA rate element, leaving both generation and distribution rates completely flat, *i.e.*, the same regardless of tier.

PG&E states that it will re-program its billing systems to show the CIA as a separate line item on customer bills. Until then, the CIA will be merged into distribution rates. (Ex. 1/PG&E, p. 3-30, fn 28). In any event, because the CIA is non-bypassable, the CIA will become part of PG&E's delivery, (*i.e.*, non-generation) charges, billed (or credited) to all customers, including bundled, CCA and Direct Access ("DA") customers.<sup>7</sup> Thus, if the CIA proposal is adopted, the entirety of PG&E's rate differential among tiers would be reflected in delivery charges, with none of the differential in generation rates.

The CIA proposal would create some highly counter-intuitive and confusing results. Flat generation rates would create such a steep tiering of delivery charges that -- even under PG&E's proposed rate design -- in some rate schedules, delivery charges for lower usage customers would be significantly negative. For example, delivery charges for E-7, Summer Peak, Baseline Usage, would be negative 11.8 cents per kWh, by virtue of the CIA of negative 27.2 cents. Similarly, the delivery charges for EL-7 (CARE) Summer Peak, Baseline Usage would be negative 14.0 cents, primarily because of the CIA of negative 23.6 cents.<sup>8</sup> For other rate schedules, delivery charges for baseline usage would also be negative, albeit in smaller amounts. Thus, for customers under these schedules who take service from a CCA, it will confusingly appear that PG&E provides its delivery services without charge, and that PG&E even provides a credit against the generation charges imposed by the CCA.

It should be noted that the problem of negative delivery charges would be even more pronounced if the Commission were to adopt a rate design for PG&E that featured a larger rate differential than PG&E proposes between baseline and top tiers. For example, under PG&E's proposal, delivery charges for baseline CARE customers taking service under Schedule EL-1, the most

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total difference between baseline and top tier rates would fall to 16 cents; under the current 55/45 percent split between distribution/generation rates, the variation in generation rates would be only 9 cents.

<sup>7</sup> Ex. 5/CCSF, Att. B, PG&E Data Request ("DR") Response CCSF 001-04.

<sup>8</sup> *Id.*

popular CARE tariff, would be just 2 cents per kWh. Under a more tiered rate design, these CARE customers could also see negative delivery charges. The way to address this problem is not to avoid adopting appropriately tiered rates, but rather to reject the source of the problem, the CIA proposal.

### **III. PG&E HAS FAILED TO MEET ITS BURDEN OF PROVING THAT FLAT GENERATION RATES ARE NECESSARY TO ACCURATELY REFLECT ITS COST OF SERVICE**

PG&E acknowledges, as it must under Public Utilities Code Section 454, that it bears the burden of proof on its CIA proposal. (Tr., p. 328: 11-13). The crux of PG&E's argument for the CIA proposal is that tiered generation rates do not "accurately reflect cost of service and send[] an inappropriate price signal to customers seeking to acquire supply from non-utility sources, i.e., those making choices between utility bundled service and either Direct Access (DA) or Community Choice Aggregation (CCA) service." (Ex. 1/PG&E, pp. 3-26 to 3-27). Thus, to demonstrate that there is a problem with its current rate design that requires the supposed "solution" of the CIA proposal, PG&E needs to show that its cost of generation does not change as residential customer usage increases. PG&E has completely failed to meet this burden.

At hearing, PG&E's witness Keane admitted that the company had done no cost study to support its CIA proposal. (Tr., p. 345: 16-20). Lacking such a cost study, all that PG&E could do was to try to pass off a facile discussion of its rates as a cost analysis:

Currently, the average generation rate paid by PG&E's Schedule E-1 customers is 8.2 cents per kWh. Yet the generation rate component on this schedule ranges from 4.6 cents per kWh in Tier 1 to 20.3 cents per kWh in Tier 4. So the rate in Tier 1 does not cover the average *cost* of generation, while the rate in Tier 4 is far more than the average *cost*. In other words, PG&E's current tiered generation rate structure produces results whereby households consuming in the upper tiers *are subsidizing* households with consumption limited to the lower tiers. (Ex. 1/PG&E, pp. 3-27 to 3-28, emphasis added, footnote omitted).

This testimony attempts to blur the vital distinction between costs and rates, as Mr. Keane admitted:

Q. So you are equating the average rate to the average cost?

A. Yeah. I'm using that as a proxy for the average cost. (Tr. p. 325: 10-13).

By using rates as “a proxy” for costs determined through a cost study, PG&E assumes away the issue. PG&E can only validly claim that Tier 4 customers are subsidizing Tier 1 customers if it can show that Tier 4 rates are above cost and Tier 1 rates are below cost. To make this showing, PG&E needed to analyze its cost of generation at varying levels of usage, an analysis it did not do. Without actual cost numbers in the record, PG&E’s assertions amount to the meaningless arithmetic truism that, under tiered rates, some customers pay less than the average rate and some pay more.

PG&E’s failure to sustain its burden of proving that generation costs do not vary with usage is sufficient for the Commission to reject the CIA proposal. However, the record further shows that, contrary to PG&E’s naked assertions, PG&E’s unit generation costs are likely to increase as usage increases. On this point, CCSF presented the testimony of Margaret Meal, who for twenty years has been an electric power industry analyst advising businesses, public agencies, investors, lenders and regulators on financial and economic issues. (Ex. 5/ CCSF, p. 1). Ms. Meal presented the following unchallenged testimony:

Contrary to PG&E’s unsupported hypothesis that generation costs do not vary with increased usage, it is far more likely that generation costs increase as usage increases. Typically, power supplies are dispatched in order from lowest cost to highest cost. As load (usage) increases, more expensive supplies are utilized. Conversely, as load decreases, the most expensive resources will be ramped off first. In any given time interval, unit costs will increase as the load increases and unit costs will decrease as the load decreases. Thus, a tiered generation rate reflects cost causation -- prices increase as usage increases. A flat generation rate, where prices do not increase with higher levels of usage, does not reflect generation cost causation. (Ex. 5/CCSF, p. 4).

Witnesses for PG&E and Southern California Edison (“SCE”) corroborated Ms. Meal’s testimony. PG&E’s expert, Mr. Faruqi, testified that a utility’s costs to furnish electricity could, in fact, increase as usage increases. (Tr. 59: 3-6). On the issue of whether distribution or generation would be responsible for such increasing costs, Mr. Faruqi acknowledged that distribution costs tend to “have a declining shape.” (Tr. p. 61: 24-27). SCE’s witness Garwacki concurred that he would expect delivery per unit costs to decline as usage increases. (Tr. p. 456: 1-7). When aggregate costs increase with usage, as PG&E’s expert conceded is possible, and distribution (delivery) costs decrease, it follows that, just as Ms. Meal testified, generation costs would increase with usage.

In his written rebuttal, PG&E's witness Keane did not dispute Ms. Meal's testimony that utilities tend to dispatch more costly sources of power as loads increase. Instead, he argued that this analysis only supports time-of-use rates, not tiered rates. (Ex. 2/PG&E, pp. 1-18 to 1-19). This testimony completely misses the point. As an initial matter, very few PG&E customers take service under time of use tariffs; PG&E conceded that 94% of its residential sales are under rates that do not vary by time of use. (Tr., p. 321: 10-20). Moreover, the issue presented by the CIA proposal is not what is the most important driver of generation costs – CCSF does not dispute that generation costs are sensitive to time of use. Rather, the issue is whether generation costs also vary – even if to a lesser extent – in relation to customers' cumulative usage, regardless of the time of use. PG&E can only sustain its claim that flat generation rates accurately reflect costs by making the counter-intuitive showing that generation costs are insensitive to cumulative demand. PG&E refused to even try to make such a showing, most likely because it could not do so.

Furthermore, by acknowledging that increased usage during peak periods causes generation costs to increase, PG&E concedes the point it tries to deny. After all, peak usage would be part of cumulative usage, so higher unit costs to serve increased peak load would have the effect of increasing the unit costs to serve the overall load. For example, consider a situation in which on-peak generation costs PG&E 15 cents per kWh and off-peak generation costs the utility 5 cents per kWh. Assume also that the customer pays a flat generation rate (as PG&E requests) of 8 cents per kWh under Schedule E-1 and that the customer increases her customary usage of 500 kWh by adding 100 kWh of peak usage in the month. Under this scenario, PG&E's costs have increased by \$15, but the customer pays only an additional \$8. In contrast, with a tiered generation rate, some or all of the increased costs can be recovered from that customer.

Without cost support, PG&E's complaint that it is losing revenue as a result of competition from Marin Energy Authority ("MEA") (Ex. 2/ PG&E, pp. 1-24 to 1-26) proves nothing. PG&E's explanation of the supposed problem only highlights the need for a real cost showing:

. . . because generation rates are tiered *while costs are not*, when upper-tier consuming households . . . depart to a third party provider, such as a CCA, the resulting revenue shortfall . . . must be picked up by PG&E's remaining bundled service customers. (Ex. 2/PG&E, pp. 1-25 to 1-26, emphasis added).

The italicized words highlight the gaping hole in PG&E's argument – PG&E's failure to present any evidence showing that generation costs do not vary with usage. Absent such a showing, PG&E cannot prove that there is any "shortfall" that affects ratepayers, because the lost upper-tier revenues may be fully offset by associated generation costs that PG&E no longer needs to pay. In light of the record evidence showing that, in fact, generation costs increase with usage, PG&E's grumblings about MEA's competitive inroads amount to nothing more than sour grapes about the impact of competition.

#### **IV. THE CIA PROPOSAL WOULD HARM CCAs AND THE PUBLIC INTEREST BY FORECLOSING CCA RATE DESIGNS TO PROMOTE CONSERVATION**

As noted, the CIA proposal would move all of the tiering in PG&E's rates into delivery charges. As explained by CCSF's witness Meal, the result would be to effectively foreclose CCAs from adopting rates to promote conservation:

There are good reasons for a CCA to adopt tiered rates, as such a rate design would (i) reflect the CCA's cost of supply and customer cost causation, and (ii) send price signals to customers that encourage lower usage through efficiency and conservation. However, in the face of PG&E's market dominance, a CCA that implemented such rates would be at a competitive disadvantage to PG&E. Because PG&E would have a (non-cost-based) flat generation rate structure, a CCA offering tiered rates would risk losing higher usage customers to PG&E. CCAs would thereby be pressured to offer flat rates to remain competitive, but in so doing would undermine the economic efficiency of their programs, as flat rates would require cross subsidies and result in improper price signals. (Ex. 5/CCSF, pp. 5-6).

At hearing, Ms. Meal further explained that CCSF anticipates that it may need to enter into a "banded" contract for its electricity supply. Under such a contract, CCSF would pay a certain price as long as demand did not exceed a prescribed level, but then pay a higher price if usage reached a higher band. (Tr., p. 179:19 to 180:3). As a result, CCSF expects to have a cost of supply that increases as load increases. (Tr., p. 179: 14-18). PG&E would gain an unfair competitive advantage if it were able to force CCAs to compete against a non-cost-based generation rate that insulates the utility from competition for its highest usage customers.

**V. THE CIA PROPOSAL WOULD CAUSE UNNECESSARY RE-PROGRAMMING COSTS, CONFUSE CUSTOMERS, AND REQUIRE SIGNIFICANT CUSTOMER EDUCATION EXPENDITURES OF UNKNOWN AMOUNT**

The CIA proposal would burden ratepayers with significant additional costs, some that PG&E has estimated and others – customer education costs – that PG&E has not even begun to estimate. In addition, the counter-intuitive impacts of the proposal will inevitably cause considerable customer confusion.

**A. The CIA Would Require Significant Billing System Re-Programming Costs, Which PG&E, Improperly, Has Already Claimed From Ratepayers**

To include a new CIA rate element on customer bills, PG&E has budgeted billing system re-programming costs of \$3.6 million, broken down between \$3.2 million of capital costs and expenses of \$0.4 million.<sup>9</sup> This is a significant burden to impose on ratepayers for a rate design change that has no demonstrated need and that benefits PG&E’s shareholders, not its customers.

PG&E admits that it already incorporated this \$3.6 million cost into its General Rate Case (“GRC”) Phase 1 request in A.09-12-020, even though the CIA proposal has not been approved.<sup>10</sup> Including such costs for a contested, unapproved proposal in its GRC request was blatantly improper. Ratepayers should not have been asked to pay for a project that may be rejected. If the Commission (as it should) rejects the CIA proposal, it should also order PG&E to correct its Phase 1 revenue requirement and/or make necessary refunds to prevent PG&E’s shareholders from gaining a windfall at the expense of ratepayers.

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<sup>9</sup> Ex. 47, DR CCSF 001-01(a) and Att. 1; Tr. p. 330: 1-5. Attachment 1 to Ex. 47 offers a telling description of the CIA proposal: “Modify the 5-tiered residential rate structure *to address Community Choice Aggregation and related issues.*” (Emphasis added). This description accurately reflects that the CIA proposal is targeted at CCA programs. In this respect, the CIA proposal is just another in a series of PG&E efforts in recent years to undermine CCA programs. For a discussion of PG&E’s many efforts in opposition to CCA programs, see, e.g., CCSF’s *Petition to Modify D. 05-12-041*, R.03-10-003, January 11, 2010, pp. 5-9 and D.10-05-050, pp. 2-3.

<sup>10</sup> Ex. 47, DR CCSF 001-01 (b),(c); Tr. p. 134: 2-4. When pressed on whether, in the event its proposal is rejected, PG&E should take steps to prevent ratepayers from being charged for a rejected project, PG&E’s witness Keane speculated that the recently filed settlement in Phase 1 “has language . . . that says what happens.” (Tr., p. 334: 28 to 335: 8). In its review of the settlement, CCSF could not find any such language.

**B. The CIA Would Create Significant Complications and Confusion Regarding Electric Bills**

A new CIA rate element would make already confusing electric bills even more confusing, as CCSF's witness Meal pointed out in her testimony. For example, customers will find it difficult to compare their distribution and generation charges before and after the change, as the tiering element that is now built into those rates will be moved to the CIA. (Ex. 5/CCSF, p. 7). Ms. Meal further explained some of the strange complications -- in addition to the negative delivery charges described above<sup>11</sup> -- that the CIA would produce on customer bills:

. . . the odd outcomes produced by the CIA proposal would create billing complications that in some cases could even penalize CCA customers. PG&E acknowledges that one by-product of its contorted rate design proposal is the 'significant potential' for negative PG&E charges for CCA and DA customers taking CARE service. [citation to Ex.1/PG&E, p. 7). PG&E's proposed fix to this problem is to set the minimum charge to zero, which means that, in situations where positive generation charges do not fully offset negative non-generation charges, customers would not get the full benefit of the negative non-generation rates produced by the CIA. In other words, such customers would get an unwelcome "back-door" rate increase thanks to the CIA proposal. Negative charges for electricity bill components are counter-intuitive and extremely difficult to explain to customers. When the impact of the negative charges is an effective rate increase, it will be even more difficult to explain the correctness and fairness of such results to ratepayers. (Ex. 5/CCSF, pp. 7-8).

Ms. Meal explained yet another problem caused by the CIA proposal, a problem that would particularly target customers who switch to a CCA:

. . . if a CCA had lower generation rates than PG&E in a particular rate tier, it is possible that customers could effectively pay a penalty for switching to a CCA. For example, suppose a customer in a given month had non-generation PG&E charges of negative \$5.00. If the customer remained a bundled PG&E customer, suppose that the PG&E generation charged totaled \$6.00, for a total bill of \$1.00. However, suppose that, if that customer switched to a CCA, the CCA generation charges for that same usage would be only \$4.00. In that case, the customer would pay a zero bill under PG&E's proposal (rather than negative \$1.00) and the customer would lose the full benefit of the \$5.00 negative non-generation charges. In effect, the customer would be prevented from getting the full value of the CCA's lower generation rates in that tier. (Ex. 5/CCSF, p. 8).

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<sup>11</sup> See Section II.B. above.

PG&E did not dispute any of this testimony, either in its rebuttal testimony or at the evidentiary hearings. Back-door rate increases and penalties on customers who switch to a CCA program are serious problems with the CIA proposal for which PG&E clearly has no answer. Because these problems particularly affect customers who switch to a CCA, PG&E may not find them troubling, but the Commission should.

**C. The Confusing Impacts of the CIA Proposal Would Require Extensive Customer Education, for Which PG&E Is Asking the Commission to Write a Blank Check**

The foregoing has shown that the CIA proposal would cause a dramatic change in all customer bills, rendering it difficult to compare distribution and generation charges before and after the change. In addition, the negative delivery charges produced by the CIA for certain customers will create confusion and some serious problems, as explained in the previous section. Just some of the many questions that customers will surely pose include: (1) What is this new (positive or negative) charge on my bill? (2) What service am I getting in exchange for this charge? (3) Is the negative charge a credit because I paid too much last month? (4) Why is the charge negative some months and positive other months? (5) [If a CCA customer] The PG&E part of my bill shows I'm owed a credit, but the CCA part wipes out my credit – why is that? (6) [If a CCA customer] My bill says I'm supposed to get a credit of \$x.xx but I only got part of my credit – why is that? (7) Is this CIA charge causing my bill to go up?

To answer these and the many other questions flowing from the bill change will require an extensive customer education program. In addition, particularly in light of some of the CIA's strange and counter-intuitive bill impacts, PG&E will need to conduct detailed and costly training for its service representatives. CPUC Consumer Affairs Branch representatives would also need to be trained on the CIA proposal and its unusual impacts.

PG&E's extensive rebuttal did not dispute CCSF's testimony that the CIA proposal would require an "extensive" customer education program that "could be quite expensive." (Ex. 5/CCSF, p. 7). Nor did PG&E attempt to rebut CCSF's testimony that, even after a comprehensive education program, it is "inevitable" that many customers would be confused by the new rate element. (*Id.*)

Nevertheless, the record shows that PG&E has not given any thought to what an education and training program would entail and what it would cost. A CCSF data request yielded the following PG&E responses:

Q1.f. Please provide any customer education efforts PG&E anticipates it will carry out if the CPUC approves the CIA proposal.

A1.f. PG&E has not specifically formulated the customer outreach plan for the CIA proposal. There are a number of rate variables in the 2011 GRC Phase II application that may impact PG&E's approach to customer rate education. PG&E expects to formulate the outreach plans related to Residential and CARE rates when the portfolio of pricing plans likely to be approved is better understood.

Q1.g. What is PG&E's estimate of the cost of any anticipated customer education efforts regarding the CIA proposal?

A1.g. PG&E has not estimated these costs.

Q1.h. Please provide all documents relating to anticipated customer education efforts regarding the CIA proposal.

A1.h. PG&E has not estimated these costs and has no related documents.<sup>12</sup>

These responses show that PG&E: (1) has chosen to wait before formulating any customer education plans related to the CIA; (2) does not even have any documents relating to potential customer education efforts; and (3) has no estimate of what a customer education program would cost. In short, PG&E appears not to have put any effort into addressing this important issue.<sup>13</sup> The inevitable customer confusion and the unknown costs and scope of customer education and service representative training programs are further reasons to reject the CIA proposal.

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<sup>12</sup> Ex. 47, DR CCSF 001-01.

<sup>13</sup> This would not be the first time that PG&E had poorly planned a necessary customer education program. PG&E has recently been criticized for poor customer information and communications regarding its SmartMeter deployment. See the Structure Group's *PG&E Advanced Metering Assessment Report*, September 2, 2010, Commissioned by the California Public Utilities Commission, available at <http://www.cpuc.ca.gov/PUC/energy/Demand+Response/solicit.htm>.

## VI. SETTLEMENTS INVOLVING OTHER UTILITIES ARE NOT A REASON TO ADOPT FLAT GENERATION RATES FOR PG&E

PG&E relies heavily on four separate settlements regarding rate designs for San Diego Gas and Electric Co. (“SDG&E”) and Southern California Edison (“SCE”) as support for its CIA proposal.<sup>14</sup> This reliance is contrary to the Commission’s rules regarding settlements and otherwise misplaced in light of the evidentiary record in this proceeding.

PG&E’s invocation of settlements as precedent that should influence the Commission is directly contrary to Commission Rule of Practice and Procedure 12.5, which states:

Commission adoption of a settlement is binding on all parties to the proceeding in which the settlement is proposed. *Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.* (Emphasis added).

Here, in direct contravention of Rule 12.5, PG&E asserts that the prior settlements should be viewed as a Commission determination that flat generation rates are warranted for PG&E. Consistent with its settlement rules, the Commission should ignore PG&E’s reference to these settlements and view them as irrelevant to its consideration of PG&E’s CIA proposal.<sup>15</sup>

In the event that (contrary to its own rules) the Commission considers the settlements appropriate for consideration, none of the decisions adopting the settlements lend support to PG&E’s position, particularly in light of the unique and extensive evidentiary record in this case. A review of the three decisions involving SDG&E reveals that they contain no discussion whatsoever of the merits of flat generation rates. Accordingly, they offer no assistance to PG&E.

The SCE decision is also of no persuasive value because SCE’s proposal was materially different from PG&E’s. Prior to the settlement, 100 percent of the rate differential among SCE’s tiers

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<sup>14</sup> The decisions adopting the four settlements are: D.05-12-003 (SDG&E), D.08-02-034 (SDG&E), D.09-08-028 (SCE), and D.09-09-036 (SDG&E).

<sup>15</sup> PG&E may argue that, because the decision adopting the SCE settlement (D. 09-08-028) rejects certain proffered arguments challenging the CIA provision, it is appropriate to cite as precedent on the CIA issue. Such an argument would be wrong. Rule 12.5 is clear that settlements are not precedential *unless the Commission expressly provides otherwise*. Finding that a settlement provision for a particular utility is consistent with Commission policy does not constitute an express Commission determination that the settlement provision should be precedential with respect to other utilities.

was reflected in generation rates. (D.09-08-028, p. 18). Based on this fact, SCE argued that the distribution rates for CCA and DA customers would not include an incentive to conserve. (*Id.*) The Commission found this argument persuasive, stating that “signals to encourage conservation should be provided to all customers, regardless of their energy provider.” (*Id.* at 19). Here, as previously shown,<sup>16</sup> there is already a significant differential among the tiers in PG&E’s distribution rates (12.5 cents for E-1 customers), ensuring that all customers already have an incentive to conserve.

Furthermore, the SCE decision lacked the evidentiary record that has been developed here and failed to address the serious problems with the CIA raised by CCSF. First, the SCE decision did not make any determination regarding the relationship between tiered generation rates and the cost of generation service.<sup>17</sup> Second, the SCE decision did not address any of the issues regarding the cost of re-programming or the issues regarding customer education that have been developed in this record. From the SCE decision, there is no indication that SCE even encountered the issues related to negative delivery charges that PG&E’s CIA proposal raises. Third, apparently no party in the SCE case raised the serious anti-competitive problem of preventing CCAs from adopting the most efficient and desirable rate design. For all these reasons, the SCE decision is of no persuasive value with respect to PG&E’s CIA proposal.

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<sup>16</sup> See Section II.B and fn. 6, above.

<sup>17</sup> On this point, PG&E’s testimony is blatantly misleading. PG&E states that the four settlements show that the Commission has recognized that tiered generation rates do not “accurately reflect the cost of service.” (Ex. 1/PG&E, p. 3-26). The SCE decision at no point makes such a statement and, in fact, never even discusses utility costs to supply generation. As noted above, the SDG&E decisions do not discuss tiered generation rates, let alone generation cost of service.

**VII. CONCLUSION**

For the reasons set forth above and as set forth in the Summary of Recommendations in Appendix A, the Commission should reject PG&E’s CIA proposal. In addition, the Commission should order PG&E to take the necessary steps to ensure that any revenues that may be approved in A.09-12-020 that are attributable to the CIA proposal are not collected from ratepayers.

Dated: December 20, 2010

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## APPENDIX A

### **Summary of Recommendations of City and County of San Francisco in A.10-03-014 (Residential Rate Design Phase)**

1. Reject the proposal of PG&E to adopt flat generation rates by implementing a new, non-bypassable conservation incentive adjustment (“CIA”) rate element. Instead, PG&E’s residential rates should continue the current practice of reflecting some of the tier differential among rates in generation rates and some in distribution (delivery) rates, in the same proportion as in current rates.

2. [Assuming the CIA proposal is rejected] In light of PG&E’s inclusion of \$3.6 million in capital and expense costs in its 2011 General Rate Case application in A.09-12-020 and the failure to exclude such costs for an **un**approved proposal from the proposed settlement in A.09-12-020, PG&E should be ordered to take the necessary steps to remove such costs from its ratemaking and all revenues attributable to such costs from its rates.

CERTIFICATE OF SERVICE

I, PAULA FERNANDEZ, declare that:

I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen years and not a party to the within action. My business address is City Attorney's Office, City Hall, Room 234, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102; telephone (415) 554-4623.

On December 20, 2010, I served the **OPENING BRIEF OF THE CITY AND COUNTY OF SAN FRANCISCO IN THE RESIDENTIAL RATE DESIGN PHASE** by electronic mail on all parties of service list A10-03-014.

Addressees without email were served as follows:

**BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

Jerry O. Crow  
Kerntax  
4309 Hanh Ave.  
Bakersfield, CA 93309

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on December 20, 2010, at San Francisco, California.

\_\_\_\_\_  
/S/  
PAULA FERNANDEZ