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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of San Diego Gas and Electric Company (U 902), Southern California Gas Company (U 904) and Pacific Gas and Electric Company (U 39 G) to Reallocate the Costs of Natural Gas Public Purpose Programs and Other Mandated Social Programs Among Customer Classes	Application. 07-12-006 (Filed December 11, 2007)

BRIEF OF
THE DIVISION OF RATEPAYER ADVOCATES

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SUMMARY OF RECOMMENDATIONS

The Division of Ratepayer Advocates ("DRA") opposes the Application herein and supports the Commission's current allocation methodologies for gas public purpose program ("gas PPP"or "gas PPPs") costs.[1]

The costs for state-mandated natural gas PPPs are collected through a surcharge on all natural gas consumed in this state. *See* Cal. P.U. Code § 890 *et seq.* These programs include low-income assistance programs, such as the California Alternate Rates for Energy ("CARE") program, which provides a 20% discount on utility bills for low-income customers and to commercial establishments which house low-income residents. *See* Cal. P.U. Code §§ 739.1, 739.2. The gas PPP surcharge also recovers costs associated with natural gas low-income energy efficiency ("LIEE") programs, other natural gas energy efficiency ("EE") and conservation activities and public interest research and development. *See* Cal. P.U. Code § 890 *et seq.* The Commission has also required utilities to recover funds for other statewide public purpose programs, such as the Self-Generation Incentive Program ("SGIP") and the California Institute for Climate Solutions ("CICS").[2]

On a case-by-case basis, the Commission has determined how to allocate the costs of these programs in a way consistent with the statutory provisions. For 19 years, the Commission has recovered the costs for the natural gas CARE program on an equal cents per therm ("ECPT") basis, which spreads the costs equally over all non-exempt therms or throughput transported over the utilities' systems and which results in the lowest per unit rate for recovering these costs (i.e., approximately $.02/therm for each of the non-exempt customers). Similarly, the Commission has determined to use the ECPT methodology to recover the gas-associated costs involving the SGIP and CICS programs, but has used other allocation methodologies, such as the Direct Benefits methodology to recover LIEE and EE program costs.[3]

In the present case, Pacific Gas and Electric Company ("PG&E"), Southern California Gas Company ("SoCalGas") and San Diego Gas & Electric Company

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[1] For the sake of convenience, attached hereto in the Appendix is a document entitled "Parties, Glossary and Measurements," which lists and explains most of the acronyms used herein.

[2] Exhibit No. 65, pp. 9-12.

[3] Exhibit No. 65, pp. 9-12 and Attachment A.

("SDG&E") (collectively "Joint Applicants") have filed a joint application proposing to change the allocation methodology for recovering the costs for all the natural gas public purpose programs to an equal percent of base revenues ("EPBR") methodology, which would be based upon the transportation and service costs currently allocated to the various classes. The result of the proposed allocation would be to shift a substantial portion of all gas PPP costs from the utilities' commercial and industrial customers to their residential customers. According to the Joint Applicants' own numbers, in total, under EPBR there would be more than a $100 million per year cost shift just to the residential customers by the third year.[4]

The lion's share of this cost shift would be from the changed allocation for the CARE program costs,[5] which for 19 years the Commission has found must be allocated under the ECPT methodology, based upon its interpretation of the statutory requirement that no single class should bear these costs. *See* Cal. P.U. Code § 739.1(a). In Decision (D.) 06-05-019 (2006), pp. 7-10, the Commission rejected the argument that the ECPT allocation has a disproportionate impact on large users, and reaffirmed that it has consistently found that the ECPT methodology was the most equitable way to allocate the costs to all ratepayers. Last year, in D.07-09-016 (2007), pp.13-14, the Commission rejected the utilities' attempt to discount the electric or gas PPP surcharge, because it could lead to more and more industrial and commercial customers not paying their full share of these public purpose program costs and ultimately threatening the funding of these vital programs.

Joint Applicants and their supporters do not base their proposed EPBR allocation on any rational ratemaking principle, and base most of their arguments on the need to lower the costs to their business customers, so that they do not close down or move out-of-state. However, there was no evidence in record in this proceeding of any business closing down or moving out of the State of California based upon a $.03/therm or $.04/therm gas PPP surcharge, which is understandable given that it is such a small price compared to their total delivered cost of gas. For example, in July, 2008 just the price of natural gas was between $1.18/therm and $1.22/therm. Moreover, the evidence in the record showed that California's natural gas prices to industrial customers was lower than in neighboring states. In addition,

[4] *See* Exhibit 65, p. 33.

[5] *See* Exhibit 1, p. 1-1:13-15.

notwithstanding the gas PPP surcharge, SoCalGas was forecasting an increase in its industrial customers' use of natural gas between 2009 and 2011, and one of PG&E's largest natural gas users, the Chevron Richmond refinery, is expanding its refinery which would increase its use of natural gas by 33%.

In contrast to the utilities' commercial and industrial customers, their residential class of customers would be severely impacted by the cost shift which would result from the switch to the proposed EPBR methodology. The residential customers, who participate in the CARE program are the only residential customers who do not have to pay for it, because they are exempt from paying for their own discount. However, there are many residential customers who have to pay for the CARE costs and the other costs in the gas PPP surcharge, including approximately 15% of the California population, who are above the CARE eligibility limits, but not by much. The residential customers, who would incur the extra cost shift from EPBR, are already struggling to pay for all of their life necessities. To shift to these residential customers the extra burden of making up for the commercial and industrial customers' share of the gas PPP costs would cause great hardship. Particularly hard hit would be the senior citizens on fixed incomes, people with disabilities, and the people just above the eligibility limits.

Joint Applicants try to minimize the impact to these customers with baseless claims that EPBR would only increase PG&E's average residential customers' monthly bills by $.69 by the third year, SoCalGas' average residential customers' monthly bills by $.96 by the third year or SDG&E's average residential customers' monthly bills by $1.20 by the third year. These numbers, however, did not hold up during cross-examination in the hearing, because they were based upon the following erroneous assumptions:

- Forecasts of natural gas prices of $.516/therm (SDG&E), $.56/therm (SoCalGas) and $.76/therm (PG&E), which were unreasonably low considering that the prices had reached $1.22/therm by the time of the hearing, and even if they decreased thereafter, nobody projected the decrease for the annual average to come close to being that low again;
- The participants in the CARE program would remain the same, never factoring in a growth of customers participating in the programs;

- The gas PPP surcharge only contained the current costs of CARE, and they did not factor in program cost increases and other programs utilizing an ECPT methodology;
- The EPBR methodology would stay the same when, in fact, in present and future biennial cost allocation proceedings ("BCAP"), Joint Applicants can and are already trying to increase the base revenues allocated to residential customers, which would have a snowballing effect on the gas PPP costs allocated to them under EPBR;
- The average usage of customers stays the same throughout the year, when it actually doubles during the winter; and
- No core commercial or industrial customers would migrate to noncore status, even though there would be an increased incentive in gas PPP rates under EPBR for core commercial and industrial customers to switch to noncore status. This would leave fewer and fewer customers in the core class to make up for the increased cost shifts under the proposed EPBR methodology.

In view of the above, not only were Joint Applicants' monthly rate impact amounts proven to be baseless, it also revealed that the Joint Applicants' projected yearly cost shift of $100 million to the residential customers was severely underestimated as well. It further gave credence to the Commission's fear in D.07-09-016 (2007), p.14, that giving discounted rates to industrial and commercial customers could ultimately lead to decreased funding for these vital programs.

Although there are admittedly growing costs in the CARE and other programs allocated on an ECPT basis, that is not a reason for the Commission to switch to EPBR. It is a reason to maintain the ECPT allocation to spread these costs over the largest volumes of natural gas possible to keep the per unit rate from significantly increasing. As the Joint Applicants' graphs showed, the increases in the gas PPP surcharges never came lose to the order of magnitude of the increases in natural gas commodity prices during the time that CARE program costs have been allocated on an ECPT approach. This would be far different under EPBR for the residential class to the extent they have to pay at least 10 times more than the industrial class for gas PPP costs, which is the effect that SoCalGas' workpapers show would occur under EPBR.

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BRIEF OF
THE DIVISION OF RATEPAYER ADVOCATES

I. INTRODUCTION

Pursuant to Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the Division of Ratepayer Advocates ("DRA") files this Opening Brief for Application ("A.") 07-12-006 filed by San Diego Gas and Electric Company ("SDG&E"), Southern California Gas Company ("SoCalGas") and Pacific Gas and Electric Company ("PG&E") (collectively referred to as "Joint Applicants") to Reallocate the Costs of Natural Gas Public Purpose Programs (" gas PPPs") and Other Mandated Social Programs Among Customer Classes.

The Joint Applicants request that the Commission modify the current Equal Cents Per Therm ("ECPT") cost allocation methodology and adopt their proposed Equal Percent of Base Revenue ("EPBR") methodology. As DRA will demonstrate, the Commission should reject the application because the Public Utilities Code and 19 years of Commission precedents mandate the use of ECPT allocation. Additionally, the Joint Applicants have not met their burden to prove the reasonableness of the proposed EPBR and have failed to provide any evidence to substantiate their claim that the ECPT has a negative impact on California's business climate. And last, the Commission should not adopt the EPBR because the resulting cost impact on residential customers is much greater than what the Joint Applicants have estimated.

II. THE STATUTORY LANGUAGE AND 19 YEARS OF COMMISSION PRECEDENTS MANDATE AN EQUAL CENTS PER THERM ALLOCATION FOR CARE PROGRAM COSTS

A. Background

In 1988, the Legislature enacted Senate Bill ("SB") 987, which, among other things, required the Commission to set up a Low-Income Ratepayer Assistance ("LIRA") program to provide financial assistance to the California utilities' low-income electric and gas customers to help them afford essential utility services. In Decision ("D.") 89-09-044 (1989), 32 CPUC 2d 406, 415-417, the Commission provided that the utilities recover the LIRA costs through a surcharge on volumetric rates on an equal cents per therm ("ECPT") basis for natural gas and an equal cents per kiloWatt hour ("kWh") basis for electricity, because SB 987 required that program costs not be borne by a single ratepayer class. Although there originally were some exemptions, the Commission found that spreading the costs in volumetric rates over all of the non-exempt customers was consistent with the goal of minimizing the burden on any one class of ratepayers. The Commission explicitly rejected an equal percentage of marginal cost approach ("EPMC") as inappropriate, because EPMC assumes that every cost has a functionality that allows it to be attributable to a certain class. *See id.,* 32 CPUC 2d at 417. However, as a benefit to society, which benefits all businesses and individuals, the CARE costs cannot be functionalized to any particular class.[6]

In 1989, the Legislature added section 2790 to the Public Utilities Code, which required low-income energy efficiency ("LIEE") assistance, as well.

In 1993, SB 491 (Chapter 947) changed the name of the LIRA program to the California Alternate Rates for Energy ("CARE") program. SB 491 and Assembly Bill ("AB") 3429 (Chapter 946) also authorized the energy utilities to offer discounts to "eligible facilities" where low-income ratepayers might be located. *See* D.94-12-049 (1994), 58 CPUC 2d 278, 279. These CARE program requirements are provided in sections 739.1 and 739.2 of the California Public Utilities Code.

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[6] D.05-06-029 (2005), p. 16.

B. The Statutory Mandate that All Non-Exempt Customer Classes Must Pay for CARE

The CARE program is a legislatively-mandated, financial assistance program to help low-income electric and gas customers pay for their utility bills. *See* Cal. P.U. Code §§ 739.1, 739.2. The allocation methodology for the CARE program is also statutorily mandated: "The commission *shall* establish a program of assistance to low-income electric and gas customers, the cost of which *shall not be borne solely by any single class of customer*." Cal. P.U. Code §§ 739.1(a) (emphasis added). The word "shall" makes these statutory provisions mandatory. Indeed, in the general provisions governing construction of the California Public Utilities Code, the Legislature has explicitly provided: "'Shall' is mandatory and 'may' is permissive." Cal. P.U. Code § 14.

In 2000, the Legislature enacted AB 1002, which added sections 890, *et seq.* to the California Public Utilities Code. In AB 1002, the Legislature mandated the costs of CARE and other natural gas public purpose programs be recovered in a surcharge on all natural gas consumed in this state, unless a specific exemption was provided by the legislation. Throughout AB 1002, the Legislature made it clear that it did not intend for the residential customers to bear a disproportionately high amount of the CARE program costs. Instead, AB 1002 supports an allocation of costs, such as the ECPT methodology, which is based upon the amount of *natural gas consumed* (e.g., equal cents per therm). *See, e.g.,* California Public Utilities Code § 890(a) ("there shall be a surcharge on *all natural gas consumed* in this state"); § 890(b)("Except as specified in Section 898, a public utility gas corporation … shall collect the surcharge … from *any* person *consuming natural gas*"); § 890(c) ("Except as specified in Section 898, *all persons consuming natural gas* ... that has been transported by an interstate pipeline … shall be liable for a surcharge"); § 890(e ("The commission shall determine the *total volume of retail natural gas transported* ...for the purpose of establishing the surcharge rate.") (Emphasis added.)

It is generally true that in AB 1002, the Commission can set a different rate for different classes for its gas PPP surcharges when it has a logical reason for doing so and it does not contravene another statutory provision. *See* California Public Utilities Code § 890(e).[7] In

[7] All statutory references herein are to the California Public Utilities Code unless otherwise indicated.

its D.06-05-019 (2006), p. 5, the Commission referred to section 890(e), and found that it did not support a deviation from ECPT for the CARE program. The Commission declared in this regard: "The section does not, however, explicitly provide any relief for a customer class that feels it is shouldering an unfair burden of the public purpose program costs. Essentially, all customers pay the same per therm rate for the CARE program."

The fact that section 890(e) implies that there can be different rates for different classes is consistent with how the Commission has determined that different gas public purpose programs can have different allocation methodologies. Therefore, the total gas PPP surcharge for different classes is not the same. Thus, while the Commission has approved an ECPT methodology for CARE program costs and the costs for the California Institute for Climate Solutions ("CICS"),[8] the Commission has approved other allocation methodologies on a case-by-case basis for other gas PPP program costs. For example, energy efficiency program costs and LIEE costs are allocated to the gas PPP surcharge on a direct benefits basis.[9] Accordingly, each utility's gas PPP surcharge is different for each class, because of the variety of current allocation methodologies used for the gas PPP surcharge, but the CARE component is the same for all non-CARE customers.[10]

There is nothing explicit or implicit in AB 1002, when it was enacted in 2000, to suggest that the Legislature had intended to repeal the mandatory requirement that the CARE program costs should not be borne by any single class. Indeed, section 890(a) explicitly cross-references sections 739.1 and 739.2 and requires a surcharge on all natural gas consumed to fund the low-income assistance programs. Therefore, although the gas PPP surcharges currently are different per class, the CARE component of each gas PPP surcharge is and must be the same for non-exempt customers.

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[8] *See* D.08-04-039 (2008), pp. 26-27.

[9] *See* Exhibit 65, p. 28.

[10] *See, e.g.,* Exhibit 5, PG&E'S Gas Schedule G-PPS Tariff listing: a $.04844/therm gas PPP rate for residential class (not including CARE customers); a $.03595/therm rate for small commercial class; a $.05140/therm rate for large commercial class; a $.03/therm rate for industrial distribution class and a $.0265/therm rate for its industrial transmission class. However, subsumed in each of these gas PPP surcharges is the CARE component of $.01976/therm for all non-CARE customers regardless of class. *See* Exhibit No. 25, p.10, Preliminary Statement first line.

C. 19 Years of Commission Precedents Support ECPT

For approximately 19 years, the Commission has consistently allocated the costs of the CARE program on an ECPT basis, finding that methodology was the most equitable and statutorily justifiable. *See* D.06-05-019(2006), pp. 7-10 citing D.00-04-060 (2000), D.98-07-101 (1998), D.97-04-082 (1997), D.96-04-050 (1996), and D.89-09-044 (1989). Nothing has changed to make it inequitable. In many of these decisions, the Commission rejected proposals by the utilities or large industrial customers to change this methodology or cap their payments.

For example, in PG&E's most recent Biennial Cost Allocation Proceeding ("BCAP"), the cost for PG&E's natural gas CARE program had grown from $10.2 million in 2000 and was estimated to be $80 million in 2005 (or $99 million if an undercollection from 2004 were added). *See* D.05-06-029, pp.14-15. In its BCAP, PG&E proposed to change the CARE PPP surcharge on natural gas rates from the traditional ECPT allocation to an equal-percent-of-transportation-revenue ("EPTR") allocation, which would have shifted approximately $21 million per year from PG&E's large industrial and commercial customers to its residential customers. *See* D.05-06-029, p 15. In D.05-06-029, p. 16, when the Commission rejected this enormous cost shift, it explicitly rejected PG&E's claim that CARE program benefits "inure entirely to residential customers." The Commission also stated that it believes "all businesses and individuals benefit from the economic welfare of the greater community. Moreover, we would not assume that all residential customers are potentially CARE customers…" *See id.*

Just last year, in D.07-09-016, p.13, when the Commission rejected the natural gas and electric public utilities' attempts to discount their PPP surcharges, the Commission stated:

> The objectives of the PPP surcharge go to the core of providing basic electricity and natural gas service in California. 'Both the CPUC and the Legislature have recognized that electricity is an essential commodity. (Pub. Util. Code §§ 330(r), 391(a); D.97-10-087, p. 41; D.97-05-040, p. 49.) As an essential commodity that 'is of utmost importance to the safety, health, and welfare of the states' citizenry,' we intend to ensure that every residential energy consumer in California be able to afford the cost of electricity and natural gas.[11]' The California Legislature's purpose in mandating all of the utilities' customers to pay nonbypassable PPP surcharges was to ensure funding for these

[11] (D.99-10-065, 3 CPUC 3d 150, 185 (October 21, 1999).

> essential public purpose programs. *See* Pub. Util. Code §§ 381(a), 382(a) and (b), 399(c) and (e), 399.4, 399.6, 399.7, 399.8, 399.9, and 890(a), (b) and (e).

In the present case, Joint Applicants once again are trying to change the allocation methodology by proposing an equal percent of base revenues ("EPBR") methodology, which, as discussed below, makes no sense whatsoever for the recovery of gas PPP costs. Their EPBR proposal is based solely upon the base revenues which a utility recovers for transportation costs from customers, which is heavily weighted by allocating most of these costs to the residential class of customers. In this way, it is essentially the same as the EPMC methodology, which the Commission found was inappropriate 19 years ago and the EPTR, which the Commission just rejected in 2005 and, on rehearing, in 2006. The EPBR approach for CARE is precisely what section 739.1(a) had attempted to avoid by not requiring one class to bear the CARE program's costs, which benefit society in general.

D. Joint Applicants' Technical Interpretation Defies the Purpose of the Statutory Provisions on Allocation Issues

The position of Joint Applicants is that technically, they could comply with the sections 739.1(a) and 890, *et seq.* by allocating some CARE costs to their industrial or commercial classes, even if it is a minimal amount. This argument rests on the assumption that under these provisions, a natural gas utility could allocate 95% of the CARE costs to its core customers (and specifically 78% of CARE program costs to its residential customers not in the CARE program) and only 5% of the CARE program costs to its the noncore industrial customers.[12] According to Joint Applicants, the residential customers would not be solely bearing all of the costs of the CARE program, and, therefore, it would allegedly comply with section 739.1(a). However, it does not matter whether or not this may arguably seem as a technical matter not to violate the statute, because it clearly violates the purpose and the spirit of these statutory

[12] This is exactly what SoCalGas has attempted to do in the present case. *See, e.g.,* SoCalGas' effect of adopting its proposed EPBR in Year 3 in Exhibit No. 1, p. 3-4, Table 3-4, lines 2-4, which follows its EPBR allocation set forth in Exhibit No. 1, p. 3-3, Table 3-3, lines 1-5. According to SoCalGas' workpapers, under EPBR, the CARE component of its gas PPP surcharge would result in a $.04/therm rate for its residential class, which would be 10 times the CARE component of its gas PPP surcharge of $.004/therm, which would be the rate for its noncore industrial class. Under the current EPCT allocation, all non-exempt classes currently pay $.024/therm for their fair share of paying for the CARE program. *See* Exhibit No. 65, pp. 4-43.

provisions. (8 RT 549-551/DRA Appling) Therefore, Joint Applicants' interpretation of this language is not reasonable, because it flies in the face of the purpose and the spirit of this provision, which was not to burden any single class with the costs of the CARE program.

As the Court stated in *County of Sacramento v. State Water Resources Board* (2007) 153 Cal. App. 4th 1579, 1588, "a fundamental premise of statutory and regulatory interpretation" is that the language must be construed in the context of the statutory framework as a whole, "keeping in mind the policies and purposes of the statute, and where possible the language should be read so as to conform to the spirit of the enactment." (citations omitted).

Indeed, because the ECPT approach (as opposed the EPBR approach) is consistent with these statutory provisions, CMTA witness Rothrock tried to get the Legislature to change the allocation in the law, but was unsuccessful.[13] Having failed in her efforts to get the Legislature to change the law, she has turned her attention to this proceeding apparently under the misconception that the Commission could change the law.

Although the Commission has far-reaching powers to set utility rates, its exercise of its ratemaking authority cannot be contrary to legislative directives or statutory limits on the Commission's authority. *See Southern California Edison Co. v. Peevey* (2003) 31 Cal. 4th 781, 801; *Assembly v. Public Utilities Com.* (1995) 12 Cal.4th 87, 103.

As a general rule, the Commission's interpretation of the Public Utilities Code should not be disturbed, unless it fails to bear a reasonable relationship to the statutory language and purpose. *Greyhound Lines, Inc. v. Public Utilities Commission* (1968) 68 Cal.2d 406, 410-411; *Southern California Edison Co. v. Public Utilities Comm.* (2004) 117 Cal.App.4th 1039, 1044. The Commission's interpretation cannot be controlling if it is inconsistent with the plain language of the statute. *See Southern California Edison Co. v. Public Utilities Comm.* (2000) 85 Cal.App.4th 1086, 1105.

In addition, when "the construction in question is not 'a contemporaneous interpretation' of the relevant statute and in fact 'flatly contradicts the position which the agency had enunciated at an earlier date, closer to the enactment of the . . . statute[,]' it cannot command significant deference." *Henning v. Industrial Welfare Com.* (1988) 46 Cal. 3d 1262, 1278, *quoting, General Electric Co.* v. *Gilbert* (1976) 429 U.S. 125, 142.

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[13] 7 R.T. 322/CMTA Rothrock

After 19 years of Commission precedents consistently interpreting the statutory mandate as requiring an ECPT allocation for CARE program costs, if the Commission were now to find that it could change its allocation for its CARE program, it would lose any deference and face being reversed by the courts, as well as incur the wrath of the Legislature. In addition, it is inequitable as a policy matter to attempt to shift most of the CARE costs to the residential class customers, who do not receive the direct benefit of this societal program.[14] Although the costs of the CARE program are growing due to higher prices for natural gas and legislatively-mandated increases in enrollment (*see, e.g.,* Cal. Pub. Util. Code §§ 739.1(c), 739.1(d)), in D.05-06-029, p. 14-16), the Commission rejected a switch in allocation methodologies. Indeed, since the original purpose of the Legislature and the Commission was to minimize the burden on any one class of ratepayers, the fact that program costs may be growing is a reason to retain the ECPT allocation for CARE program costs, not to change it. By spreading all of the CARE costs over the maximum non-exempt therms, it minimizes the rate impact of these increased costs, which results in the lowest per unit rate.

III. JOINT APPLICANTS HAVE NOT MET THEIR BURDEN TO JUSTIFY CHANGING THE COMMISSION'S ALLOCATION METHODOLOGY FOR GAS PPP COSTS

A. Joint Applicants and Their Supporters Have Not Shown That the Allocation of All Gas PPP Costs Should be Changed

Assuming solely for the sake of argument that it were lawful for Joint Applicants to switch from an ECPT allocation methodology for the CARE program, the Joint Applicants and the parties supporting the Application are charged with the burden to demonstrate by clear and convincing evidence that that the proposed EPBR methodology is more reasonable than the current ECPT methodology the Commission has used for the past 19 years.[15] They have not met this burden.

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[14] The CARE customers, who receive the CARE subsidy (i.e., 20% of their natural gas and transportation costs) do not pay for their own subsidy. The only residential customers, who pay for the CARE component of the gas PPP surcharge, are the customers who do not receive any direct benefit from it. *See* Exhibit No. 64, p. 5.

[15] Opinion Regarding Proposed General Rate Increase (2004) D.04-03-034, mimeo, p. 7; Application of Southern California Edison Company (2004) D. 04-07-022, mimeo, p. 10;

The Joint Applicants, supported by CMTA, IP, AECA, and CLFP, would simply prefer that the Commission adopt the EPBR cost allocation methodology, because it would result in lower rates to them at the expense of residential customers. However, outside of this result-oriented preference, they have not argued why ECPT is unreasonable, particularly in light of the statutory requirements that no single class should bear the CARE program costs, and all non-exempt customers, which consume natural gas in California, should pay for the gas PPP costs. *See* Cal. Pub. Util. Code §§ 739.1(a), 890, *et seq.*

In addition, once Joint Applicants have allocated gas PPP costs between the classes under EPBR based upon their percentage of base transportation revenue requirements,[16] Joint Applicants have no problem allocating the costs within each class on an equal cents per therm basis. Indeed, Joint Applicants confirm that under EPBR, after "you calculate the rate for each class, you divide it by the same therms for each customer class."[17] Essentially, under EPBR, base transportation revenue requirements are only considered to determine gas PPP costs to be allocated to each class. However, once these costs are allocated, then within each class the customers' PPP contributions are still based on therms used. Therefore, the Joint Applicants' criticism of ECPT allocating costs based on gas usage "which allocates more costs to customers using the most gas" still holds true under EPBR at least within the class.[18]

Joint Applicants also ignore that EPBR results in inconsistent cost allocations within PG&E and SDG&E's electric and gas CARE programs.[19] PG&E and SDG&E currently allocate their electric CARE program costs on an "equal cents per kilowatt hour" basis, which is the electric equivalent of ECPT.[20] [21] Joint Applicants never explain why it makes any sense to use two different methodologies for allocating CARE program costs depending upon whether they are recovering the costs from their natural gas customers or their electric customers. It is irrational for the Joint Applicants to ask the Commission to adopt inconsistent

[16] Exhibit 35, 7:11-12.

[17] 6 R.T. 171:20-23/PG&E Blatter.

[18] 2 R.T. 24:26-28/SoCalGas/SDG&E Wright.

[19] 6 TR 198/PG&E Blatter.

[20] *Id.*

[21] 7 R.T. 285:23-26/SoCalGas/SDG&E Wright.

cost allocators for a utility's CARE program, especially considering that the Joint Applicants advocate that EPBR would result in a consistent cost allocation methodology.[22]

B. Joint Applicants' Proposed EPBR Has No Consistent Principle or Rationale Supporting its Allocation of Gas PPP Costs

1. The EPBR proposal is premised on an allocation methodology for transportation base revenues which has no connection with allocating the gas PPP costs

EPBR fails to achieve the logical and rational framework claimed by the Joint Applicants.[23] Although CMTA witness Schneider attempted to offer a rationale for EPBR that transportation customers should not pay for commodity costs in their transportation rates,[24] her attempt fell flat. There are five basic reasons why a transportation cost allocation methodology does not make sense for allocating gas PPP costs.

First, CARE's program costs are largely driven by the discount of the commodity price and the volumes purchased by CARE customers, and not the cost of transportation. The Joint Applicants agree that the commodity cost is the single most important force that determines a discount for a CARE customer[25] and that the CARE rate changes "*primarily* because of the cost of gas" or commodity.[26]

To illustrate the strong correlation between commodity and the CARE surcharge, DRA asked PG&E to explain how the CARE discount is calculated for a PG&E residential customer.[27] The calculation is material to determine the amount non-CARE and nonexempt customers pay for the CARE discount. The CARE discount is 20% off a CARE customer's procurement and transportation rate.[28] As of July 1, 2008, the procurement, mainly composed

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[22] Exhibit 3, p.5

[23] Exhibit 35, 11:8-10.

[24] Exhibit No. 36, 2-3.

[25] 6 R.T. 169:12-13/PG&E Blatter

[26] *Id.*

[27] Exhibit 8.

[28] *Id.*

of commodity, rate for a PG&E CARE customer is $1.54.[29] The transportation rate for the same customer is 37 cents.[30] The total CARE discount per/therm for an individual customer is 38 cents, over 100% of their transportation rate. Of the 38 cent discount, 31 cents is based on the commodity because 20% of $1.54 is 31 cents. And, the remaining 7 cents results from 20% of the transportation rate of 37 cents. Clearly, the CARE discount, that determines the costs allocated to customers, is primarily a function of the commodity price and the volumes of gas purchased. Therefore, it is unreasonable to conclude that CARE program costs should be allocated based upon the base transportation revenue requirements and ignore the volumes of the commodity. Indeed, under CMTA Schneider's logic, noncore transportation customers should not have to pay for any of the CARE program costs. However, as discussed above, CMTA already lost that battle and could not get the Legislature to change the law.

Second, implicit in this argument is that EPBR makes sense because large commercial and industrial customers do not purchase natural gas from the utilities. However, that is not true, because there are large core commercial and industrial customers who purchase gas from utilities.[31] Therefore, the Joint Applicants incorrectly assert that EPBR would assign gas PPP costs in proportion to a commercial customer's obligation to a utility.[32] Parties supporting EPBR also incorrectly assume that all commercial and industrial customers only receive transportation service from the utilities.[33] All three Joint Applicants have industrial and commercial customers that purchase commodity from them.[34] For example, PG&E alone has over 152 large core commercial customers, for whom PG&E's utility obligations include both commodity and transportation costs.[35]

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[29] *Id.*

[30] *Id*.

[31] 6 R.T. 153:10-13/PG&E Blatter.

[32] 6 R.T. 224:5-8/SoCalGas/SDG&E Wright.

[33] Exhibit 57, 2:17-20; Exhibit 36, 2:22; CMTA's testimony also states that "The simple fact of the matter is the only service provided by noncore customers that is within the Commission's jurisdiction is the transportation service." *See* Exhibit 36, 3:18-20.

[34] Exhibit 7; Exhibit 23; Exhibit 32, p. 2.

[35] 6 R.T. 156:17-20/PG&E Blatter.

Third, EPBR also fails to assign costs proportionate to a residential or small commercial customers' utility obligation, as the Joint Applicants claim,[36] because all three gas utilities have residential and small commercial customers that purchase their commodity from core aggregators, and the utilities obligation is limited to providing transportation service only.[37] With the proposed EPBR methodology, these customers would still be allocated the same proportion costs for the CARE program that would be allocated to a residential customer that buys commodity from the utility.

The fourth reason EPBR does not make sense is that residential customers, who pay for the CARE program costs, do not receive any direct benefits from the CARE program. The supporters of EPBR assume that the residential customers that pay for CARE benefit from CARE.[38] However, the Commission has clearly stated that the residential customers that pay for CARE do not benefit any more than the commercial customers that pays for CARE.[39] The CARE beneficiaries do not pay for the CARE program and so it is not possible for the Commission to assign CARE costs to the CARE beneficiaries. These are societal benefits that cannot be functionalized to any particular class.[40]

Last, even if it were possible to assign CARE costs to the CARE beneficiaries, EPBR would continue to be unreasonable, because the CARE program also provides direct benefits to certain commercial and industrial customers of the utilities. The Commission provides CARE discounts for employees housed by certain industrial customers.[41] Pursuant to Cal. Pub. Util. Code §§ 739.2, the low-income assistance discount also applies to certain commercial and industrial facilities.[42] Therefore, parties err when they advocate that the Commission adopt EPBR because "large commercial and industrial customers neither cause costs nor benefit from the [CARE] program.[43] The CARE subsidy provides a monetary subsidy for the commercial

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[36] Exhibit 36, 2:21-22.

[37] Exhibit 6, pp. 1-3; Exhibit 19, pp. 8-10.

[38] Exhibit 35:15-23.

[39] D.05-06-029, p. 16.

[40] Exhibit No. 64, 5.

[41] Exhibit 22, sheet 5; Exhibit 23, sheet 4.

[42] *See* Exhibit No. 23, Schedule G-10, Core Commercial and Industrial Tariff, Sheet 4.

[43] Exhibit 35, 8:10-12.

customers' employees, reducing their employee expenses, resulting in their ability to provide relatively lower wages.

In addition to benefits from CARE, industrial and commercial customers benefit from other ECPT allocated programs, like the Self Generation Incentive Program ("SGIP"). In D.01-03-073, the Commission illustrated that "a commercial customer could be receiving an interruptible rate discount**,** while at the same time utilizing incentives from the self-generation program to assist in the purchase of on-site generation for use during interruption periods."[44]

2. It is misleading to attempt to justify EPBR by asserting there is a small rate impact to residential customers by looking at the total delivered price of gas, but claiming large impacts to commercial and industrial customers by only comparing the gas PPP surcharge to their transportation rate

During PG&E's last BCAP decision in 2005, the Commission addressed the same issue presented now, whether it should change from ECPT to equal-percent-of-transportation revenue, which would allocate less costs to industrial customers.[45] The Commission found that PG&E, IP, and CMTA, parties in that proceeding, did not meet their burden.[46] IP and CMTA appealed the decision and on rehearing, the Commission reaffirmed its prior holding.

The Commission found unconvincing IP and CMTA's claims that the ECPT allocation has a disproportionate impact on large users, and that it makes no more sense to calculate CARE as a percentage of gas commodity costs than it does to calculate CARE as a percentage of the customer's total cost of doing business.[47] More to the point, the Commission in D.06-05-019, pp. 7-8, its rehearing order in PG&E's BCAP, stated:

> In fact, we found applicants' analysis misleading, in that the use of transmission rates alone overstates the impact of CARE rates on large customers. . . . CMA improperly compares large customer transmission billings with total bills of residential customers. The CARE rate component is not 55% of a transmission customer's total bill, only the transmission portion,

44 2001 Cal. PUC LEXIS 218 , *64

45 *See* D.05-06-029, pp.14-15.

46 *Id.*

47 *Id.*.

> which is a small part of most industrial customer bills. Assuming a gas price of $ 0.60 cents per therm, the average CARE rate component of a transmission-level industrial customer is 3.5% of the delivered cost of gas, while it is 2.2% of the delivered cost of gas for a residential customer.

Yet, the record in the present case continues to be filled with misleading comparisons such as when an industrial customer's PPP surcharge was stated as 14.7% of their 'bill' and 40% of their bill in 2008.[48] In fact, PG&E's witness could not be more misleading when he states, 508 large customers "pay 25 % or more of their gas transportation bill, . . . *excluding* gas commodity, for social programs."[49] Two sentences later when he discusses residential customers, he states "a typical residential customer pays about 9% of their gas bill for social program costs --- *Again, that's **not excluding*** natural gas commodity.[50]" Why would this witness first exclude commodity costs to calculate a proportion of bills, but then intentionally include commodity costs to calculate the same item to determine the proportion, if not to ensure that the latter results in a small proportion? This mischaracterization alone should convince the Commission to make sure that each conclusion made in this proceeding is substantiated by evidence.

This type of misrepresentation is not only limited to the testimony of the Joint Applicants, but also CMTA and IP, to whom the Commission directed its "misleading" remarks in PG&E's last BCAP.[51] CMTA witness Schneider states "when the surcharge to fund those programs approaches half (or multiples) of the cost of service without the surcharge, there is something seriously wrong with the current allocation."[52]

[48] 2 R.T. 35:4-7.

[49] 3 R.T. 51:9-12/PG&E Blatter.

[50] 3 R.T. 51:16-19/PG&E Blatter.

[51] CMA is the predecessor of CMTA. 7 R.T. 405:9-13, stipulation of CMTA's counsel.

[52] Exhibit 35, 4:14-46.

IV. THE JOINT APPLICANTS AND THEIR SUPPORTERS FAIL TO PROVE THAT THE OUTCOME OF THE INSTANT PROCEEDING WILL HAVE ANY SIGNIFICANT IMPACT ON CALIFORNIA'S BUSINESS CLIMATE

A. PG&E, SDG&E, SoCalGas, CMTA, IP, and AECA Failed to Provide Evidence That a Single Business Has Left or Will Leave Because of ECPT

Joint Applicants stated in the executive summary of their application that ECPT "has had a negative impact on the business environment in California and is one of the reasons many businesses consider leaving the State.[53]" Their supporters made similar claims.[54] However, there is no evidence on record that any business has ever relocated or closed as a result of the PPP surcharge, or specifically the CARE component of the surcharge under ECPT. Indeed, Joint Applicants admitted they are not aware of any customers that had closed their doors because of the CARE rate.[55] In their rebuttal testimony, Joint Applicants backpedaled and stated that they had "never claimed that the gas PPPS costs, or even social program costs in total, are forcing businesses out of California."[56] CMTA, which represents over 30,000 industrial customers, could not name even one business that has closed its doors because of the PPP costs.[57]

It is quite understandable why a business would not claim that the gas PPP surcharge was the reason why that it was thinking about moving or closing down its business in California. As a percentage of the industrial customer's total delivered cost of gas from 2005-2007, the gas PPP surcharge (including the CARE component on an ECPT basis) was 4.3% for PG&E, 4.0% for SoCalGas, and 2.3% for SDG&E.[58]

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[53] Exhibit 1, ES-1.

[54] *See, e.g.,* Exhibit 35, p. 9.

[55] 6 R.T. 194:11-19/PG&E Blatter.

[56] Exhibit 3, p. 20:20-22.

[57] 7 R.T. 325:6-10/CMTA Rothrock

[58] Exhibit 65, p.60, Table IV-1. Therefore, if a large industrial spent $200,000 per year on social program costs, that would mean the customer would have spent $5 million on the total delivered cost of gas, because the $200,000 would be 4% of the total. 7 R.T. 319-320/CMTA Rothrock. This is not inequitable; it is simply that 4% of a large amount of dollars results in a larger amount of dollars than 4% of a smaller amount of dollars. 7 R.T. 320:19-24CMTA Rothrock.

With the total delivered cost of gas to California more than $1.20/therm[59], it is hard to understand why a business would close or move due to a $.03/therm to $.04/therm gas PPP surcharge. In fact, during cross-examination of CMTA witness Rothrock, when asked whether her members were more concerned in July, 2008 about paying the $1.22 commodity price or a 3 or 4 cent gas PPP surcharge, she gave an evasive answer about not knowing if the word "concerned" is even appropriate.[60]

IP's witness, who represents the Joint Applicants' largest business customers, Chevron, BP, and Conoco Phillips, stated that he never even discussed with these large users whether they were even concerned with the current PPP cost allocation.[61] IP's witness admits that its statement that the current cost allocation would result in "production migration" did not apply to his constituents, but in general to business customers that he does not represent, that he does not have any contact with, and of whose business practices he has no first hand knowledge.[62]

For businesses that actually closed or moved out of PG&E's service territory in recent years, PG&E witness Blatter had previously testified in its 2005 BCAP, that he did look at some information at PG&E as to what was the reason the business had given for closing its account with PG&E. He further stated that it would have surprised him if any of these businesses had stated that they were closing, because PG&E's "CARE rate was too high."[63]

With the price of natural gas so much larger than the gas PPP costs, it is illogical for anyone to even compare these costs, nonetheless argue that PPP costs influence major business decisions. All parties in this proceeding agree that natural gas commodity costs are substantially greater than their associated PPP costs.[64] In response to DRA's opening testimony proving that businesses will not relocate as a result of the small PPP costs, the Joint Applicants, in their rebuttal testimony, agree that the PPP "costs are relatively low compared to some other costs faced by businesses."[65]

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[59] Exhibit 11, sheet 1; Exhibit 20.

[60] 7 R.T. 320-321/CMTA Rothrock.

[61] 8 R.T. 502/IP Schoenbeck.

[62] 8 R.T. 503:4-7/IP Schoenbeck.

[63] Exhibit 9, Feb. 14, 2005 transcript, second to last page: 25-27.

[64] 6 R.T. 181/PG&E Blatter.

[65] Exhibit 3, 20:27-29.

B. The Joint Applicants forecast a growth in industrial customers' use of natural gas

There are many reasons why businesses may leave California, move to California, or close down their businesses. However, the evidence is clear that the gas PPP costs are not one of them.[66] Indeed, according to the U.S. Department of Energy's Energy Information Administration ("EIA") Industrial Natural Gas Price Data, the average price for natural gas in 2007 for industrial users in California (i.e., $9.02/Dth) was lower than in neighboring states, such as Arizona (i.e., $10.45/Dth), Nevada (i.e., $11.77/Dth) or Oregon (i.e., $9.31/Dth).[67]

According to the most recent evidence in the record, except for the Rocky Mountain Basin which is a producing basin with increasing supplies, the price of marketers selling gas to California was lower than virtually everywhere else in the United States. According to Gas Daily Price Guide, July 2008, for market center spot gas prices, the California Prices to PG&E's border was $12.07 MMBtu from the southwest and $12.17 MMBtu at Oregon. And SoCalGas border price was $12.28/MMBtu. In contrast, the border prices in the northeast were between $13.64/MMBtu to $14.34/MMBtu. Similarly, in the upper Midwest, the prices were between $12.91/MMBtu and $13.41/MMBtu. California prices were even lower than the Henry Hub price of $13.11/MMBtu.[68] Thus, even with the gas PPP surcharge, California's natural gas prices for industrial customers are competitive.

According to Gas Daily Price Guide, July 2008, market point averages for the month of June in a category called CityGates, PG&E's price was $12.07/MMBtr which was lower than every other Citygate listed in the United States, except for Kern River, where Rocky Mountain gas is located. (*See* Exhibit 27, p.2 under 'CityGate' heading.) The next cheapest for CityGate was Chicago CityGate at $12.50/MMBtu, and all other CityGates were higher than that.

In fact, in SoCalGas' most recent forecast in its 2009 BCAP, although SoCalGas forecast a slight decrease in its core commercial and industrial natural gas throughput from 2009 to 2011, it forecast a slight increase in its noncore commercial and industrial throughput

[66] Exhibit 65, pp. 50-61; Exhibit No.66, pp. 7-9.

[67] Exhibit 65, Attachment D.

[68] *See* Exhibit 27, p. 1.

from 2009 to 2011.[69] If SoCalGas' commercial and industrial customers were really making business decisions to leave California as a result of the ECPT cost allocation, SoCalGas would not have forecasted an increase in their noncore natural gas throughput.

It is also significant that Chevron is going forward with a massive upgrade project for its Richmond refinery in Northern California that will result in a 33% increase to natural gas consumption.[70] Chevron expansion of its operations in California and the resulting increase in natural gas usage clearly indicates that the PPP surcharge did not have a negative impact on their decision to remain in California.

C. Commercial and Industrial customers will be at a disadvantage if they relocate from California

In addition to the lower natural gas costs, California provides other significant advantages and therefore it would be unreasonable for most commercial or industrial customers to leave the state because of a \$.03/therm to \$.04/therm gas PPP surcharge. The IP, CLFP, and AECA witnesses affirmed that many businesses would not leave because it would be difficult to duplicate certain advantages that businesses have in California.[71]

Most, if not all, of the commercial and industrial customers are unregulated and the laws of market economics dictate their prices. Therefore, the market, and not the input cost, determines the price of their products.[72] Substantial evidence shows that that many of the commercial constituents represented in this proceeding actually experiencing a period of increased sales at the present time.[73]

With respect to the agricultural industry, California provides benefits that other states simply cannot match. For example, AECA's witness stated that 100% of all figs grown in the United States are grown in one part of California.[74] When pressed with the evidence of the

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[69] Exhibit 30, p.5 of Emmrich's testimony, Table 2, lines 8 and 12; 7 R.T. 395/SoCalGas/SDG&E Lenart.

[70] Exhibit No. 61, p. 2-4.

[71] 7 R.T. 424-426/AECA Geis; 8 R.T. 448/CLFP Yates; 8 R.T. 508/IP Schoenbeck.

[72] 7 R.T. 423/AECA Geis.

[73] "The weakening dollar has improved the export market for agricultural products in California." 7 R.T. 422:25-27/AECA Geis; *See* Exhibit 62.

[74] 7 R.T. 424:1-5/AECA Geis.

substantial benefits that California provides to farmers, the AECA witness admitted that farmers "would not move out of state.[75]"

CLFP also admitted that its constituents' "product quality reputation is *enhanced* by the close proximity of [] facilities with local farming operations" and that "over 70% of the contracted fields are within 30 miles of [the] processing facility.[76]" CLFP further provided testimony that "*most* of the fruit and vegetable processing plants in California have been located fairly close to the growing area to minimize the cost of transport of the raw product and to enhance the peak freshness when they are preserved by thermal heat.[77]" If farmers will not move out of the California, then that necessarily means that the food processors will be within a close proximity to them and therefore not relocate either.

As CLFP stated, proximity to the growing area allows its constituents to incur minimal transportation costs to move their products.[78] Such is true not only for food processor and farmers, but all commercial businesses that need to transport their products within California. It would be very unreasonable for a business to move its operations out of state for $.03/therm to incur record high transportation fuel costs.[79]

In view of the above, it is clear that the current ECPT cost allocation will not cause commercial and industrial businesses to leave California or close their operations.

V. JOINT APPLICANTS' EPBR ALLOCATION METHODOLOGY WOULD RESULT IN SIGNIFICANT AND HARSH IMPACTS TO THEIR RESIDENTIAL CUSTOMERS

A. The Cost Shift from ECPT to EPBR Is Very Substantial

As previously discussed, the wisdom underlying the statutory provisions governing the CARE programs and the gas public purpose program surcharges (*see* Cal. P.U. Code §§ 739.1, 739.2, 890 *et seq.*) is that spreading all of the program costs equally over the largest amount of therms or throughput, which are not exempt by statute, results in the lowest per unit rate charged to the customers. Consequently, for the CARE program, for 19 years the Commission

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[75] 7 R.T. 426:1-5/AECA Geis.

[76] (emphasis added) 8 R.T. 448:4-12/CLFP Yates

[77] (emphasis added) 8 R.T. 448:21-27/CLFP Yates

[78] 8 R.T. 448:21-27/CLFP Yates

[79] *See* EIA's petroleum prices, http://www.eia.doe.gov/oiaf/archive/aeo07/aeohighprice.html.

has consistently relied upon the ECPT methodology, so that each class of customers paying for the program would pay the same, lowest per unit rate possible. For example, under the ECPT approach, SoCalGas' net CARE program costs (approximately $111 million) were divided by the total CARE non-exempt volumes (approximately 4.6 million Mth) to compute a CARE surcharge of approximately $.02392/therm for all customer classes.[80]

Residential customers, therefore, already pay their fair share of the gas PPP costs, including the CARE program which Joint Applicants claim "by far" is the largest component of state-mandated social program costs.[81] However, Joint Applicants have proposed to switch to an EPBR methodology for all state-mandated social programs, including CARE, which would substantially increase the residential customers' gas PPP surcharge as a result of allocating to them a disproportionately high amount of all gas PPP costs in the numerator for the residential class divided by just the residential customers' therms instead of all non-exempt therms. In contrast, under EPBR, Joint Applicants would allocate much smaller amounts of gas PPP costs to their numerators for their core commercial and industrial classes and for their noncore commercial and industrial classes to be divided by their respective therms.[82] [83]

Under the current allocation methodologies authorized by the Commission in various decisions, including ECPT for the CARE program, SoCalGas' residential customers bear 50.8% of all PPP costs.[84] Under the Joint Applicants' EPBR proposal, most of SoCalGas' $111 million CARE budget (and most of all other PPP program costs) would be allocated to the residential customers. Indeed, by the third year under the Joint Applicants' EPBR proposal,

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[80] Exhibit 31; 7 R.T. 374, 376 SoCalGas/SDG&E Lenart.

[81] Exhibit 1. p.1-1, lines 13 -15.

[82] 7 R.T. 374-376SoCalGas/SDG&E Lenart.

[83] *See, e.g.,* SoCalGas' October 29, 2007 advice letter implementing its current gas PPP surcharge, which reveals that its current calculation under ECPT of its CARE component of its gas PPP surcharge was divided by 4,646,440 Mth of total non-exempt volumes and the breakdown in the volumes (i.e., Mth) between residential and commercial or industrial classes. *See* Exhibit No. 32, p.2, Table on top of the page or under column "CARE Costs." Under EPBR, most of the CARE costs would be allocated to the residential customers and divided by only the 2,068,124 Mth for non-CARE residential customers, whereas much smaller amounts of the CARE program costs would be allocated to G-30 (i.e., noncore) commercial and industrial customers (i.e., divided by 1,521,345 Mth) and to G-10 (i.e., core) commercial and industrial customers (i.e., di under column "CARE Costs vide by 1,036,608 Mth).

[84] *See* Exhibit No. 1, p.3-4, Table 3-4, line 2.

78.4% of all of SoCalGas' PPP costs would be allocated to its residential customers, only 15.9% of SoCalGas' PPP costs would be allocated to its commercial customers, and only 5.4% of SoCalGas' PPP costs would be allocated to its industrial customers.[85]

According to the tables in the Joint Applicants' prepared testimony, for SoCalGas this change to an EPBR allocation by the third year would shift more than $65 million just to its residential ratepayers (i.e., $185.4 million minus $120.2 million).[86] Similarly, changing to an EPBR allocation for SDG&E would require its residential ratepayers, who currently bear 57.1% of all of SDG&E's PPP costs, to bear by the third year, 83.8% of its PPP costs. This would shift approximately $8 million just to SDG&E's residential ratepayers (i.e., $24.9 million minus $17 million).[87] For PG&E this change to EPBR would require its residential ratepayers, who currently bear 53.9% of PG&E's PPP costs, to bear by the third year 68.3% of its PPP costs. This would shift more than $27 million to residential ratepayers (i.e., $129 million minus $101.6 million).[88] Therefore, according to the Joint Applicants' own numbers, in total, under EPBR there would be more than a $100 million per year cost shift just to the residential customers by the third year.[89]

Under an ECPT methodology, the CARE component of the gas PPP surcharge presently is approximately $.024/therm for *all* classes of SoCalGas' customers and $.027/therm for *all* classes of SDG&E's customers.[90] It is also slightly less than $.02/therm (i.e., $.01976/therm) for *all* classes of PG&E's non-exempt customers.[91] Using Joint Applicants' workpapers, under the proposed EPBR methodology, the rate component of the gas PPP surcharge for the CARE program would increase to $.037/therm for PG&E's residential class (excluding the CARE participants), but would decrease to $.01/therm for its large commercial and industrial distribution customers and to $.005/therm for its industrial

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[85] *See* Exhibit No. 1, p.3-4, Table 3-4, Year 3, lines 2-4.

[86] *See* Exhibit No. 1, p. 3-4, Table 3-4 at line 2; *see also* 7 RT 367-368/ SoCalGas/SDG&E Lenart.

[87] *See* Exhibit No. 1, p. 3-4, Table 3-4 at line 8.

[88] Exhibit 1, p. 2-4, Table 2-2, line 14; and p. 4-3, Table 4-3 at line 1; *see also* PG&E Helgens RT 313-314.

[89] Exhibit 65, p. 33.

[90] Exhibit 65, pp. 40-41.

[91] Exhibit 25, p. 10, Preliminary Statement, first line.

transmission customers.[92] Similarly, using Joint Applicants' workpapers, under the proposed EPBR methodology, the rate component of the gas PPP surcharge for the CARE program would increase to approximately $.04/therm for SoCalGas' and SDG&E's residential class (excluding the CARE participants), but would decrease to $.018/therm for SoCalGas' core commercial class and $.004/therm for SoCalGas' noncore industrial distribution class and would decrease to approximately $.01/therm for SDG&E's core commercial class and noncore industrial class.[93]

To attempt to minimize this huge cost shift, Joint Applicants allege that the monthly impact for the average usage of residential ratepayers would not be very substantial. They also propose to phase-in this cost shift over three years and then they just discuss the impact during the first year. Therefore, according to SoCalGas and SDG&E's rate impact witness Lenart, the Joint Applicants' proposal would only increase the average residential customer's monthly bill by 1% per month (i.e., $.32 for SoCalGas or $.40 per month for SDG&E) during the first year, which means 3% (i.e., $.96 or $1.20 per month) by the third year.[94] Similarly, according to PG&E's rate impact witness Blatter, PG&E's average residential customer's monthly bill would only increase by .4% per month (i.e., $.23 per month) during the first year, which means 1.2% (i.e., $.69 per month) for PG&E residential customers by the third year.[95] However, as discussed below, during the hearing, the assumptions underlying the Joint Applicants' monthly rate impact analysis were proven to be baseless. This not only means that the actual monthly impacts on residential customers from switching from ECPT methodology to the proposed EPBR methodology are far greater than Joint Applicants' witnesses claimed, it also means that the Joint Applicants' $100 million in total, annual cost shifts is a severe underestimate, as well.

[92] Exhibit 65, pp. 42.

[93] Exhibit 65, pp. 42-43.

[94] Exhibit 1, p. 3-1:20-22 and p. 3-5:10-11, and p.3-6:1-2, and Table 3-6.

[95] Exhibit 1, p. 4-1:12-14 and p. 4-4:17-19.

B. Joint Applicants' Claims Of a Minimal Impact On Residential Ratepayers Are Fictional

1. Joint Applicants relied upon an unreasonably low weighted average cost of gas

The CARE program is a 20% discount on utility bills for all low-income customers who participate in the programs. The 20% discount applies to both the core procurement rate and the transportation rate, which utilities charge to the participants in the CARE program.[96] For purposes of providing the rate impact of the EPBR methodology, SoCalGas and SDG&E's witness assumed an "illustrative" weighted average cost of gas (WACOG) of $5.60/Dth (i.e., $.56/therm) for SoCalGas and $5.16/Dth (i.e., $.516/therm) for SDG&E.[97] PG&E's witness assumed an "illustrative" WACOG of $7.616/Dth (i.e., $.7616/therm).[98] As the record reflects, however, by July 1, 2008, SoCalGas' WACOG had risen to $1.22/therm (*see* Exhibit No. 20) and PG&E's WACOG had grown to $1.18/therm.[99] Moreover, Joint Applicants were fully aware of this large increase in their WACOG when they filed their rebuttal testimony on July 3, 2008 in response to DRA witness Sabino's testimony.[100] This is evident from the fact that Joint Applicants had filed tariffs effective July 1, 2008, which reflected the higher procurement charges.[101] However, rather than admit that their rate impact analysis was too low and update the prices of natural gas, in their July 3, 2008 rebuttal testimony, Joint Applicants merely asserted that DRA, TURN and Disability Rights Advocates had not demonstrated that Joint Applicants' EPBR proposal would cause harsh results.[102]

It is obvious that a 20% discount based upon a WACOG of more than $1.00/therm (multiplied by all of the therms of natural gas used by CARE customers) is a much larger

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[96] Exhibit 8, p.2; 6 RT 162-163/PG&E Blatter.

[97] Exhibit 1, p. 3-5:7-9.

[98] Exhibit 1, p. 4-4:7-9.

[99] Exhibit 26.

[100] DRA witness Sabino had referred to the Joint Applicants' suggested rate impacts on residential ratepayers resulting from a switch to EPBR as "illusory," because, among other things, they had not considered increases in program costs. *See* Exhibit 65, p 35. She further noted that there had been dramatically increasing gas commodity costs. *See* Exhibit 65, p 37.

[101] Exhibit 8; Exhibit 20 (reference to Tariff Schedule G-CP effective 7/1/2008); Exhibit No. 23, Sheet 4 (CARE 20% discount reflected in $.98130/therm procurement charge for GN-10L Schedule).

[102] Exhibit 3, pp. 16-18.

amount to recover in the PPP surcharge than a 20% discount based upon a WACOG of $.56/therm or $.76/therm (multiplied by all of the therms of natural gas used by CARE customers). Nevertheless, Joint Applicants continued to rely in their rebuttal upon an outdated WACOG. It was not until cross-examination when they were confronted with Exhibit Nos. 8, 20, and 26 that Joint Applicants had to admit that their WACOG was much higher than what their testimony had assumed.[103]

The significance of the substantial increase in their WACOG is two-fold. First, it is totally unrealistic to assume that in the future, natural gas prices will ever be as low as $.56/therm again. Therefore, the future advice letter filings by the Joint Applicants to implement the CARE portion of their gas PPP surcharge would reflect a 20% discount of a much higher WACOG than $.56/therm. By shifting most of the CARE costs to their core customers, and, in particular their residential customers, the impacts upon them would be much larger than the 3% monthly impact that SoCalGas and SDG&E witness Lenart had estimated by the third year (which was based upon only a $.56/therm WACOG).

Secondly, it is inevitable that there will be a substantial undercollection this year due to the fact that the Joint Applicants had forecasted in their October 31, 2007 advice letters a much lower WACOG of natural gas in their calculations of the CARE portion of their gas PPP surcharge than what appears to be a WACOG of over $1.00/therm. For example, PG&E had forecast a WACOG of $7.32/Dth (i.e., $.732/therm) to calculate the CARE revenue shortfall of $91 million from the 20% discount given to CARE customers to be recovered from all non-exempt customers using the current ECPT methodology.[104] Therefore, there would likely be a substantial undercollection that would also increase the next CARE portion of the gas PPP surcharge.[105]

It is noteworthy that in PG&E's 2005 BCAP, there was an undercollection of $19 million for CARE, which had caused the total CARE amount of $99 million to be recovered in the next year's PPP surcharge. Consequently, when the Commission rejected PG&E's proposal to similarly switch from ECPT to an equal percent of transportation revenue

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[103] 6 R.T. 284/SoCalGas/SDG&E Wright; 6 R.T. 347/PG&E Blatter.

[104] Exhibit 25, p. 4; 7 R.T. 340-342/PG&E Blatter.

[105] PG&E witness Blatter admitted that there probably will be an undercollection that will need to be recovered in PG&E's CARE surcharge next year. 7 R.T. 349/PG&E Blatter.

methodology in its BCAP, the Commission stated, among its reasons, that the CARE program costs and the undercollection would have caused a $21 million cost shift to residential ratepayers.[106]

In the present case, Joint Applicants' forecast of cost shifts to residential customers from switching to their proposed EPBR methodology was already at $100 million per year, including $27 million just to PG&E's residential customers. Since those estimates were based upon WACOG forecasts, which were significantly underestimated and did not include the substantial undercollections, the cost shift which the Commission rejected in D.05-06-029 would pale in comparison to the much more significant cost shift in the present case just from the rising natural gas costs alone.

2. Joint Applicants failed to consider the state-mandated requirements for increased enrollment of eligible CARE customers

Due to the vital nature of the CARE program, the Legislature has imposed a duty upon the Commission and the utilities to maximize the enrollment of customers eligible to receive its benefits. *See* Cal. Pub. Util. Code §§ 739.1(b): ("The Commission shall work with the public utility electrical and gas corporations to establish penetration goals"); 739.1(c) ("The commission shall examine methods to improve CARE enrollment and participation);" 739.1(d)(1) ("The commission shall improve the CARE application process… to ensure that all gas and electric customers eligible for public assistance programs in California that reside within the service territory of an electrical corporation or gas corporation, are enrolled in the CARE program"); and 739.1(f) ("It is the intent of the Legislature that the commission ensure CARE program participants are afforded the lowest possible electric and gas rates and, to the extent possible, are exempt from additional surcharges attributable to the energy crisis of 2000-01.").

In view of the above, the Joint Applicants should have considered the impacts in rates from a growing enrollment of eligible customers in the CARE program in their analysis of the monthly impact on residential customers from switching from an ECPT allocation to their proposed EPBR allocation. In fact, as part of Joint Applicants' purported justification for their

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[106] *See* D.05-06-029 at 14-15; Exhibit 64, pp. 4-5.

filing of this application, they stated in their prepared testimony: "As more and more customers have received CARE discounts, the discount percentage has increased, and the cost of natural gas has increased, the subsidies that are borne by non-CARE customers have increased dramatically."[107] Although Joint Applicants' statement was referring to the CARE program costs through 2007, they were perfectly aware that there would be more CARE customers in the future. Nevertheless, Joint Applicants failed to take this fact into account when they performed their rate impact analysis due to their proposal to shift from the ECPT methodology.

For example, during cross-examination of SoCalGas witness Lenart, he was asked questions about SoCalGas' projections for increased CARE natural gas customer enrollment from 2008 to 2011. When confronted with SoCalGas' own data response showing a projected increase in the number of CARE natural gas customers from 1,364,235 in 2008 to 1,425,984 in 2011 (*see* Exhibit No. 34, p.3), SoCalGas witness Lenart could only say that he has "no knowledge of the CARE participation rates."[108] Yet, that never stopped him for claiming an unjustifiably low impact to residential ratepayers from the proposed EPBR methodology.

In view of the above, the Joint Applicants' alleged monthly rate impact on residential customers from switching from ECPT to an EPBR methodology is further unsubstantiated in light of their failure to take into account the growing enrollment in the CARE program. Due to the fact that the CARE participants do not pay for the CARE portion of the gas PPP surcharge, their increasing numbers both increase the costs in the numerator and decrease the therms of residential customers in the denominator for calculating the CARE portion of the gas PPP surcharge. Therefore, this oversight by the Joint Applicants further undermines their claims as to how minimal their proposed EPBR methodology would impact the rates of residential customers.

[107] Exhibit 1, p. 1-5.

[108] 7 R.T. 398:3-16/SoCalGas/SDG&E Lenart.

3. Joint Applicants failed to analyze their proposed switch to EPBR on the monthly rate impacts for residential customers from costs of public purpose programs other than the CARE program

As part of Joint Applicants' purported justification for their filing of this application, they also complained in their prepared testimony of the cost increases related to the expansion of existing non-CARE programs and the addition of new social programs.[109] For one of these programs, the California Institute for Climate Solutions ("CICS"), the Commission has recently rejected the arguments of the Joint Applicants and their large business customers, which had urged the Commission to use the same EPBR methodology as they have proposed in the present case. Instead, the Commission adopted the ECPT allocation methodology to recover the costs of the CICS. *See* D.08-04-039 (April 10, 2008), pp. 25-27.

As DRA witness Sabino pointed out, the Joint Applicants' impact analysis of the cost shift from ECPT to EPBR also failed to consider the costs of theses other public purpose programs, as well.[110] Both rate impact witnesses, PG&E witness Blatter, and SoCalGas and SDG&E witness Lenart, agreed that switching from ECPT to EPBR for these other public purpose programs would shift further costs to the residential ratepayers.[111] Moreover, Joint Applicants' proposal to use EPBR for the cost allocation for future public purpose programs that the Commission has not even thought about, let alone developed or adopted, makes this potential impact to residential customers impossible to even quantify. In addition, there is no logic or reason as to how the Commission could even adopt an allocator, like EPBR, for a new program which is not yet even on the drawing board. When asked how the Commission could adopt EPBR for a future state-mandated program it does not even know about, SoCalGas witness Lenart could only say that he was told to testify in favor of EPBR for all such programs, but he never answered the question as to why it made any sense.[112]

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[109] Exhibit 1, pp. 1-6 to 1-8.

[110] Exhibit 65, p. 34.

[111] 7 R.T. 350-351/PG&E Blatter; 7 R.T. 399-400/SoCalGas/SDG&E Lenart.

[112] 7 R.T. 362-363/SoCalGas/SDG&E Lenart.

4. Joint Applicants failed to quantify the snowballing effect on rate impacts if the Joint Applicants changed their allocation of base revenues in future BCAPs

As discussed above, the Joint Applicants' proposed EPBR methodology would assign all PPP costs to customer classes based upon the same percentages of base transportation revenue allocated to each class.[113] As explained by DRA witness Sabino, the natural gas utilities' base transportation revenue allocation may change in future BCAPs, and the Joint Applicants have not analyzed the snowballing effect on residential ratepayers' share of PPP costs if there are increases in their allocation of base transportation costs in the BCAP proceedings.[114] Indeed, in SoCalGas and SDG&E's current BCAP, SoCalGas and SDG&E have advocated an embedded cost allocation methodology for the transportation costs, which, if adopted by the Commission, could increase their core ratepayers' revenue requirements by 4.7% while decreasing by 16% revenue requirements for their noncore customers.[115] SoCalGas' proposed rates under its embedded cost allocation in its BCAP, if approved by the Commission, would cause a 6.9% increase in its residential rates and a 31.6% decrease in its rates for its noncore commercial and industrial customers.[116]

Notwithstanding SoCalGas and SDG&E's proposed change to an embedded cost allocation in base revenues in their current BCAP, their monthly rate impact analysis and total cost shift analysis in the present proceeding did not reflect or presume that their embedded cost proposal would be approved.[117] The point simply is that the Joint Applicants' proposed EPBR methodology is based upon the allocation of their base revenues. Therefore, in the current SoCalGas and SDG&E BCAP, in their future BCAPs, and in future PG&E BCAPs, to the extent that the Commission were to change the allocation of base revenues, there would be a compounding effect upon the allocation of PPP costs if the Commission were to adopt the EPBR allocation methodology proposed by the Joint Applicants in the present proceeding.

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[113] Exhibit 1, p. ES-1.

[114] Exhibit 65, p. 35.

[115] Exhibit 30, p. 13.

[116] Exhibit 30, second to last page, Table 1, lines 1 and 12.

[117] 7 R.T. SoCalGas/SDG&E Lenart.

Therefore, this is the fourth variable, which the Joint Applicants failed to consider when they tried to illustrate the monthly or total rate impacts upon their residential customers.

5. Joint Applicants failed to consider that their residential customers' usage doubles in the winter

In view of the above four factors, as to why the Joint Applicants' monthly rate impact analysis is faulty and significantly underestimates the true impacts which would occur to their residential customers if the Commission were to adopt the proposed EPBR methodology herein, it is clear that there is no record basis for assuming the monthly impact as of the third year would be only $.69 per month for PG&E's residential customers or only $1.20 per month for SoCalGas' residential customers. In fact, each of these four factors reveals that the monthly impact for the average residential customers would be far greater than the Joint Applicants have suggested.

In addition, the Joint Applicants' monthly rate impact analysis only looked at the average use of natural gas for residential customers.[118] However, the true harsh impacts on residential customers would mostly be felt during the winter months, when the residential customers' usage is approximately double their average monthly usage.[119] Therefore, whatever the real, larger impact on residential customers' rates would be, which would be attributable to the proposed switch to EPBR, those impacts would have to be doubled during the winter months.[120]

C. The Discrepancy in Rates between Core Customers and Noncore Customers under the Proposed EPBR Allocation Will Lead to Further Increases in the Remaining Core Customers' Rates and Threaten the Funding of the Public Purpose Programs

[118] Exhibit 1, p. 3-5 and 4-4.

[119] Exhibit 66, p. 4.

[120] Although the utilities may have programs to allow customers to have average rates throughout the year, there is nothing in the record in this proceeding, which shows how many residential customers even know about these programs, let alone utilize them.

In D.07-09-016, p.14, the Commission declared:

> Once one large customer is allowed a discounted PPP surcharge, others will follow suit. Confidential information provided by SoCalGas, DRA, and TURN, shows that numerous customers are seeking discounted rates. Large industrial and commercial customers need to merely threaten to leave the state and provide statistics showing California energy customers pay more for social programs than neighboring states, and they could be granted a long-term contract that will exempt them from paying their full share of CARE and other program costs. Once the loophole is opened, it will only continue growing and growing until there is a sub-class of the largest customers paying less than all other customers for valuable social programs. There is a very real risk of losing a funding source for these programs – fewer and fewer customers paying higher and higher portions of the costs, until this funding source is depleted.

Referring to the above quotation from the Commission's D.07-09-016, Dana Appling, DRA's Director, testified that "the Joint Applicants ignore the Commission's warning last year, and they attempt to threaten the funding of CARE's natural gas program by not just proposing discounts to a few customers, but by proposing to effectively discount the rates for *all* of their industrial customers and large commercial customers. Their proposed EPBR methodology would therefore shift a significant amount of the costs of the CARE program for natural gas customers from the large industrial and commercial customers to residential and small commercial customers."[121] DRA Director Appling further testified that "[t]his cost shift is not only inequitable to the residential and small commercial customers, who DRA has a duty to represent under section 309.5(a) of the California Public Utilities Code, it also threatens the funding of this essential program. The Joint Applicants' EPBR proposal would effectively accelerate the process of having fewer and fewer customers paying higher and higher portions of the costs, which is the same death spiral for funding this essential program, which the Commission tried to prevent in D.07-09-016 by prohibiting discounts of the PPP surcharge to just a few of the utilities' customers."[122]

[121] Exhibit 64, p. 3.

[122] Exhibit 64, pp. 3-4.

Under the EPBR approach, as discussed above, residential ratepayers, who currently bear approximately 50% of the gas PPP costs, would be forced to bear 68.3% (for PG&E), 78.4% (for SoCalGas) and 83.8% (for SDG&E) of the gas PPP costs.[123] Besides having residential customers bearing such a disproportionately high share of PPP costs under EPBR, they would be threatened by having to bear even higher rates to the extent that more of the Joint Applicants' large core commercial or industrial customers migrate to noncore status. Under EPBR, PG&E would allocate 82.5% of all of its gas PPP costs to its core customers (which includes residential, core commercial and core industrial customers) and only 17.5% of its gas PPP costs to its noncore commercial and industrial customers.[124] Under EPBR, SoCalGas would allocate 95% and SDG&E would allocate 97.2% of all of their gas PPP costs to their core customers (which includes residential, core commercial and core industrial customers), and SoCalGas would allocate only 5% and SDG&E would allocate only 2.8% of their gas PPP costs to their noncore commercial and industrial customers.[125] This by itself would already cause a significant increase in the residential customers' rates.

In addition, according to the Joint Applicants' rate impact analysis, there is a discrepancy in the resulting change from their EPBR proposal between a large *core* commercial or industrial customer's PPP surcharge and a large *noncore* commercial or industrial customer's PPP surcharge.[126] Therefore, SoCalGas and SDG&E witness Lenart

[123] Exhibit 1, p. 3-4, Table 3-4 at lines 2 and 8, and p. 4-3, Table 4-3 at line 1.

[124] Exhibit 1, p. 4-3, Table 4-2, line 5.

[125] Exhibit 1, p. 3-3, Table 3-3, lines 5 and 10.

[126] As stated in Joint Applicants' prepared testimony, the average present rate (including the PPP surcharge) for SoCalGas' core commercial class is $.90/therm and by the third year under EPBR it would be $.884/therm, which is a reduction of .6%. In contrast, the average present rate (including the PPP surcharge) for SoCalGas' noncore commercial and industrial class is $.089/therm and by the third year under EPBR it would be $.068/therm, which is a reduction of 9.3%. *See* Exhibit No. 1, p. 3-5, Table 3-5, lines 3 and 4. Similarly, the average present rate (including the PPP surcharge) for SDG&E's core commercial class is $.876/therm and by the third year under EPBR it would be $.838/therm, which is a reduction of 1.5%. In contrast, the average present rate (including the PPP surcharge) for SDG&E's noncore commercial and industrial class is $.171/therm and by the third year under EPBR it would be $.131/therm, which is a reduction of 9.2%. *See* Exhibit No. 1, p. 3-5, Table 3-5, lines 9 and 10. By the same token, the average present rate (including the PPP surcharge) for PG&E's large core commercial class is $1.023/therm and by the third year under EPBR it would be $0.987/therm, which is a reduction of 1.2%. In contrast, the average present rate (including the PPP surcharge) for PG&E's noncore large commercial class is $.16/therm and by the third year under EPBR it would be $.123/therm, which is a reduction of 8.9%. *See* Exhibit No. 1, p. 4-4, Table 4-4, lines 4 and 8.

admitted during cross-examination that a core commercial or industrial customer switching to the status of noncore commercial or industrial customer would see a rate difference for the share of PPP costs they would bear under EPBR.[127]

As discussed in the previous section of this brief, the Joint Applicants' rate impact analysis of switching from ECPT to EPBR is severely underestimated, because, among other things, their rate impact witnesses assumed an unrealistically low WACOG for the CARE discount, did not consider the increasing enrollment in the CARE program and did not consider the costs from the other programs besides the CARE program. For these reasons, the discrepancy between the large *core* commercial or industrial class rate and the large *noncore* commercial or industrial class rate under EPBR would be even greater than Joint Applicants had indicated. The result of switching to EPBR became obvious during the hearing. As CMTA witness Rothrock explained, whether or not large business customers can control a $1.22/therm commodity price, they try to control their costs, even if it is as low as a $.03/therm or $.04/therm PPP cost. Businesses take steps to reduce costs when they can control them. (CMTA Rothrock RT 320-321). This, of course, was exemplified by the active participation in this proceeding by CMTA and representatives of other large businesses in California, such as IP (representing oil companies), AECA (representing agribusiness) and CLFP (representing food processors).

In view of the above, the residential customers who are captive and cannot switch to noncore status, would be stuck paying even higher and higher PPP surcharges, as core commercial or industrial customers would see how, under EPBR, they too could switch to noncore status and pay lower rates for the PPP costs. Consequently, as the hearing progressed, the Commission's concern in D.07-09-016, p.14, became more apparent: there was "a very real risk of losing a funding source for these programs – fewer and fewer customers paying higher and higher portions of the costs, until this funding source is depleted."

[127] 7 R.T. 378-379/SoCalGas/SDG&E Lenart.

After sitting through all three days of hearings, during her cross-examination DRA Director Appling confirmed that she believed that Joint Applicants' EPBR proposal would trigger events that could threaten the funding of the CARE program, because the rate disparities were much larger than Joint Applicants had indicated, other customers would want to switch to noncore status and a snowballing effect could occur, such that a critical mass of residential customers would revolt or complain about having to pay the costs of the program to make up for the share of costs previously paid by industrial customers. (DRA Appling RT 540-545). Similarly, DRA witness Sabino confirmed during cross-examination that she believed that the actual rate differences under EBPR (as opposed to the discredited rate impacts of Joint Applicants) would cause core commercial and industrial customers to migrate to noncore status, leaving a smaller and smaller number of core customers bearing the burden of paying for the gas PPP costs.[128]

D. The Residential Class' Increased Rates under Joint Applicants' Proposed EPBR Would Make It More Difficult for Many Ratepayers to Be Able to Pay for Life Necessities

Numerous lower and middle class residential customers, who are not eligible for the CARE discount, have a hard time paying for their life necessities. Joint Applicants' proposed EPBR would make it even more difficult. Particularly hard hit would be the senior citizens on fixed incomes, people just above the CARE eligibility limits and the disabled community.[129] DRA witness Sabino testified that approximately 15% of the population in California would not qualify for CARE, but do not make much income above the CARE eligibility limit of $35,800 for a family of three.[130]

In consumer complaints with the Commission's Consumer Affairs Branch ("CAB"), there are numerous examples of people already struggling to pay their utility bills, including a disabled veteran with a limited income, a single parent caring for her young son and elderly mother in a small apartment, and a retiree who had to borrow money to pay her utility bills.[131] Disability Rights Advocates provided numerous examples of people with disabilities, who did

[128] 8 R.T. 587-588/DRA Sabino.

[129] Exhibit 40, pp. 5-8 and Exhibit 66, pp. 2-4.

[130] 8 R.T. 567/DRA Sabino.

[131] Exhibit No. 66, p. 6.

not qualify for the CARE subsidy, and sacrificed medicine or medical care to be able to pay their utility bills. Others turn off their utilities during the winter, because their bills are already too high, and rely upon blankets and/or become ill from insufficient heat. *See* Exhibit No. 40, pp. 5-8. Moreover, Disability Rights Advocates provided many other examples of the devastating effects which would occur, if the CARE program were to receive less funding.[132]

In D.05-10-054, when the Commission increased the eligibility for utility customers to participate in the CARE program to 200% of Federal poverty guideline amounts, which at that time was $38,750 for a family of four (i.e., 2 x $19,350) (*see id.* at 8), the Commission stated: "Ensuring that we have taken all reasonable steps to protect the most vulnerable consumers at this time of exceptionally high natural gas prices is an urgent matter." *See id.* at 5. However, the Commission was also well aware that many residential customers with incomes beyond $38,750 would have a hard time making ends meet. The Commission referred to the example of a family of four living in Los Angeles County:

> In order to cover the basic expenses (rent for a three-bedroom apartment, food, transportation, child care, and taxes), such a family would need an income of $69,670. However, the median income for four-member families in Los Angeles County is $65,500. Without taking into account sudden changes in things such as utility charges, the median family would already face a deficit of $4,170. Logically, a great many families would be much further behind.

Id. at 6-7.

Under the ECPT methodology, residential customers already pay their fair share of the CARE program costs which presently is at approximately $.024/therm for all classes of PG&E's customers and SoCalGas' customers and $.027/therm for all classes of SDG&E's customers.[133] Faced with rising natural gas prices and increased CARE program costs, is not a reason to abandon the ECPT methodology. It is a reason to keep it, because it spreads the increased costs equally over all non-exempt therms to minimize the per unit rate increase. Moreover, as the graphs in Joint Applicants' rebuttal testimony reveal, so long as these increasing costs are spread over non-exempt customers' therms, the increase in gas PPP costs

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[132] Exhibit 40, pp. 8-12 and the Exhibit A attachment thereto.

[133] *See* Exhibit No. 65, pp. 40-41.

do not significantly increase or approach in order of magnitude the substantial increase in the price of the commodity.[134] As the Commission declared in D.05-06-029, when it rejected PG&E's proposal in its last BCAP to change from an ECPT methodology for the CARE program: "As a threshold matter, we are sympathetic to concerns over the costs incurred by California businesses especially during this difficult economic period. On the other hand, we are equally concerned with the plight of families and individuals, many of whom have seen their salaries fall while the cost of living increases." *See id.* at 16.

In view of the above, the Joint Applicants have not come close to meeting their burden of proof to change from ECPT to EPBR. Requiring residential customers to pay a higher share of gas PPP costs, so that businesses can reduce their gas PPP surcharge by a couple of cents per therm out of a total delivered cost of gas that is more than $1.22/therm, is inequitable. Although businesses may be concerned about paying their fair share of these vital program costs, it does not come close to the hardship, which it would cause to numerous residential customers if they were required to pay more each month to make up for any shortfalls in these programs caused by businesses decreasing their contributions.

VI. CONCLUSION

The Commission should reject the application. The evidence in this record demonstrates that ECPT must be retained to allocate the CARE program costs. Additionally, The Joint Applicants have failed to prove that EPBR is a more reasonable allocation method than ECPT. While any of these two reasons alone justifies the rejection of the application, the fact that EBPR will cause a substantially greater cost shift to residential customers than predicted by the Joint Applicants, makes it absolutely necessary for the Commission to reject the application.

[134] Exhibit 3, pp.33-34, Figures A., B., and C.

Respectfully submitted,

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APPENDIX

VII. Parties, Glossary and Measurements

A. *Parties*

AECA – Agricultural Energy Consumers Association

CLFP – California League of Food Processors

CMTA – California Manufacturers and Technology Association

CFC - Consumer Federation of California

Disability Rights Advocates

DRA – Division of Ratepayer Advocates

IP – Indicated Producers: BP Energy Company, Chevron U.S.A., Inc. and ConocoPhillips Company

Joint Applicants – PG&E, SoCalGas and SDG&E, the applicants in A.07-12-006

Latino Issues Forum

PG&E – Pacific Gas and Electric Company

SDG&E - San Diego Gas and Electric Company

SoCalGas – Southern California Gas Company

TURN – The Utility Reform Network

B. *Glossary*

BCAP - Biennial Cost Allocation Proceeding- A Commission proceeding addressing natural gas issues, including cost allocation issues that could determine how certain base transportation revenues are allocated.

CARE - California Alternate Rates for Energy program - Legislatively-mandated, financial assistance program to help low-income electric and gas customers pay for their utility bills. *See* Cal. P.U. Code §§ 739.1, 739.2. The CARE participants receive a 20% discount on the utilities' core procurement rate and core transportation rate.

CICS – California Institute for Climate Solutions - New institute to research solutions for global warming that in D.08-04-039, the Commission required the utilities to fund with ratepayers' funds recovered through a surcharge on an ECPT basis.

Core – Natural gas public utility ratepayers, who are residential or who are commercial or industrial and choose to purchase natural gas from utilities.

Core aggregators – Marketers of natural gas, who sell gas to aggregated residential or small commercial customers, but who receive only transportation service from utilities.

Core procurement rate – Natural gas rate charged by utilities to their core ratepayers (except those served by core aggregators) that include the weighted average cost of gas (WACOG) and which may also include other charges, such as interstate pipeline reservation charges.

Core transportation rate – Natural gas transportation rate charged by the utilities to all of their core customers to recover their transportation cost of service, such as distribution costs, transmission costs, customer-related costs, and gas storage costs.

ECPT - Equal Cents Per Therm - The cost allocation methodology utilized by the Commission for the past 19 years to recover CARE's program costs (e.g., the 20% subsidy) and certain other public purpose program costs by spreading the costs equally over all non-CARE exempt customers.

EPBR - Equal Percent of Base Revenues - The Joint Applicants' proposal in the present proceeding, which would assign costs for all gas public purpose programs, including CARE, to individual classes of customers based upon the percentage allocation of gas transportation costs to them, such as in a BCAP.

EPMC- Equal Percentage of Marginal Cost - Similar proposal to EPBR to allocate the costs for CARE's predecessor, LIRA, based upon the percentage allocation of gas transportation costs that are expressed in terms of marginal cost revenues, but the Commission explicitly rejected this proposal as inappropriate, because EPMC assumes that every cost has a functionality that allows it to be attributable to a certain class. Low-income assistance benefits society in general.

EPTR – Equal Percent of Transportation Revenue- Similar proposal to the EPBR by basing allocation formula to recover CARE's program costs to the percentage allocation of transportation revenue requirements, but the Commission rejected this proposal in PG&E's recent 2005 BCAP.

Gas PPP – Natural gas public purpose program(s), which the State requires utilities to fund through a surcharge on their rates.

KWh – KiloWatt hour - Measurement of electricity at 1,000 watts per hour, which is used by the Commission to recover CARE's electricity subsidy in an equal cents per kWh surcharge.

LIEE – Low-Income Energy Efficiency – Statutorily-required public purpose program under which utilities provide energy efficiency measures to low-income customers. *See* Cal. P.U. Code § 2790.

LIRA – Low-Income Ratepayer Assistance - Predecessor program to CARE's program to provide financial assistance to the California utilities' low-income electric and gas customers to help them afford essential utility services.

Noncore - Natural gas public utility ratepayers, who are commercial or industrial and who choose not to purchase the natural gas commodity from utilities and only use their gas transportation services.

WACOG – Weighted Average Cost of Gas – Phrase used by utilities to reflect their cost of natural gas over a certain period of time, such as a month, which factors in the average cost considering the volumes purchased at different prices.

C. Natural Gas Measurement Terms

Btu – British thermal unit reflecting heat content

Dth - Decatherm – Volume of natural gas equivalent to ten therms or 1,000,000 Btus.

MMbtus – 1,000,000 Btus

Mth – 1,000 therms of natural gas

Therm – Volume of natural gas, which is sold or transported by utilities in California, which contains heat that equals 100,000 Btus

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of "**BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES"** in **A.07-12-006** by using the following service:

[X] E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

[ ] U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on August 21, 2008 at San Francisco, California.

/s/ Imelda Eusebio

IMELDA EUSEBIO

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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