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

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Application of Pacific Gas and Electric Company (U39-E) for Authority to Increase Revenue Requirements to Recover the Costs to Implement a Program to Improve the Reliability of its Electric Distribution System.	Application 08-05-023 (Filed May 15, 2008)

MOTION OF THE UTILITY REFORM NETWORK AND DIVISION OF RATEPAYER ADVOCATES TO DISMISS THE DRIP APPLICATION

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For TURN and DRA

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Pursuant to Rule 11.1 of the Rules for Practice and Procedure of the California Public Utilities Commission ("Commission" or "PUC"), The Utility Reform Network ("TURN") and the Division of Ratepayer Advocates ("DRA) move for the dismissal of the Pacific Gas and Electric Company ("PG&E") application seeking to establish a $2.4 billion Distribution Reliability Improvement Program ("DRIP").

I. Introduction

Every so often the Commission is presented with a utility application that should simply be rejected out-of-hand. This is one such application.

In the settlement of the PG&E 2007 test year General Rate Case, (GRC), which the Commission adopted in D.07-03-044,[1] the utility and DRA agreed upon a distribution capital budget for 2007 that gave the utility the precise amount that PG&E had asked for. It also gave the utility $750 million of attrition increases during 2008, 2009 and 2010. Under forecast year ratemaking, the adopted funding level is intended to cover all of the costs of providing service during the period covered. How the funds are ultimately spent is largely left to the acumen of PG&E's talented management:

> The general concept of test year ratemaking is to authorize a rate level based on a reasonable forecast of various revenues and costs. Once rates are set, the utility has the discretion and responsibility to spend its funds in the most cost effective manner to provide safe and reliable service.[2]

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[1] Att. Page2
[2] SCE Test Year 2006 GRC, D.06-05-016, p. 223.

This concept was specifically acknowledged in one of the settlement conditions the settling parties agreed to PG&E's last GRC:

> "L. The fact that the Settling Parties set forth specific amounts for certain categories of costs is not intended to limit PG&E's management discretion to spend funds as it sees fit and consistent with its obligation to serve."[3]

With this application PG&E claims it needs to raise rates if it is to provide service to its utility customers at the expected level of service reliability. If the utility is to be believed, it has come to the belated realization, based largely on comments from two Commissioners last summer, that its GRC request was deficient in a manner that warrants having the Commission approve a $2.4 billion spending proposal that will increase rates by some $374 million per year when all is said and done.

The reasons to reject this application are numerous and compelling:

- PG&E's request runs counter to future test year GRC ratemaking. The fact that a project was not cited by name in a utility's GRC application does not mean that the adopted revenue requirement did not include it; the Commission generally does not approve specific costs, but a forecast of a reasonable revenue requirement.

- PG&E's testimony in the 2007 GRC addressed the utility's proposal for necessary funding to achieve improved electric distribution reliability. The settlement PG&E entered into included the full amount of electric distribution capital spending that the utility had proposed in its testimony. In D.07-03-044, the Commission approved the settlement's forecast of electric distribution reliability spending for the 2007-2010 rate case period.

- The Commission has long recognized the inappropriateness of permitting a utility to present mid-GRC requests for activities clearly within the purview of the GRC process. The last time PG&E attempted such at tactic, the Commission refused to consider the merits of a $156.3 million request.[4] A bit over ten years later, PG&E is back with its $2.4 billion request. That's some steep inflation.

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[3] D.07-03-044, Appendix C, Settlement Condition L, at C-3.
[4] D.96-12-066 (69 CPUC 2d 691, 692).

- By avoiding the GRC process, this application denies ratepayers their normal rights of review under the Rate Case Plan.[5] For example, under the Rate Case Plan DRA is always given an opportunity to review the Notice of Intent (NOI) filing for deficiencies, and the utility can only file its GRC Application once the Executive Director notifies the Docket Office that the NOI has been accepted by DRA. That process normally takes 90 days or more. Permitting this application to go ahead on the course proposed by PG&E would cause ratepayers to lose all these substantial review opportunities.

- PG&E's application violates the 2007 GRC Settlement Agreement with DRA and others, as it is a unilateral attempt to modify key terms of the Settlement regarding the distribution infrastructure funding levels adopted by the Commission in D. 07-03-044. Under the Settlement Agreement, PG&E agreed that amendments to the Settlement Agreement may only be accomplished with the signed, written agreement of the settling parties.[6] Yet no settling party has agreed that PG&E can amend the Agreement. By filing this application, PG&E is undermining the Commission's strong public policy favoring settlement agreements.

- PG&E must not be permitted to circumvent the substantial legal obstacles by merely relabeling its request for relief. Apparently acknowledging that mid-cycle adjustments to GRC-approved funding are inappropriate,[7] and that well-established Commission policy and court reject attempts to unilaterally modify a settlement agreement, PG&E attempts to characterize its request as something different. The utility is seeking to modify the GRC decision adopting the PG&E and DRA settlement agreement and to modify the Rate Case Plan. The attempt to evade compliance with the binding legal contract of the settlement by declaring this a separate application cannot pass legal muster.

- TURN and DRA fully support PG&E's stated goal of maintaining a reliable distribution system, and certainly do not oppose reasonable and economically viable proposals to enhance that system within the regulatory framework. But a primary justification cited in PG&E's Application, however, is a distorted, self-serving, and opportunistic response to two Commissioners' off-the-cuff statements that surely did not envisage this two billion dollar-plus scheme to increase PG&E's rate base as the answer to their concerns.[8]

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[5] D.89-01-040 (30 CPUC 2d, 576, 601).

[6] D.07-03-044, Appendix C, Settlement Condition F, at C-2. Condition F reads as follows: "This Settlement may be amended or changed only by a written agreement signed by the Settling Parties."

[7] In footnote 2 on page 7 of its Application, PG&E admits that the Commission had found such mid-cycle funding requests impermissible.

[8] To put these statements in context, see Attachment A, an off the record transcript written by PG&E's regulatory staff of the July 26, 2007 Commission meeting, where a San Francisco Chronicle article was informally discussed. See also, Attachment B, a copy of

- The piecemeal review of PG&E's utility forecasts and actual spending is one-sided. If PG&E is permitted to adjust rates to cover spending that it did not anticipate at the time it settled its GRC, the Commission must also review and adjust PG&E's rates to reflect reduced spending in areas that were over-funded in the GRC settlement, such as customer-hook-ups and similar areas with substantially lower-than-forecast spending due to the turmoil in the California housing market.

- PG&E largely bases the need for its proposed reliability improvement effort on comparisons to other utilities, an argument that directly contradicts earlier positions taken by PG&E. In D.04-10-074, the Commission agreed with PG&E that comparing SAIDI and SAIFI figures reported by different utilities, even those within California, yields results that are suspect at best.

- PG&E's application and testimony appear to make no showing on the "value of service" to PG&E customers that might demonstrate that the benefits to customers will at least match the costs of this "Distribution Reliability Improvement Program" (DRIP). In the GRC that led to D.04-10-074, PG&E acknowledged the importance of considering "value of service" prior to initiating any improvements based on customer value of service. The Commission agreed with this as well.[9]

- PG&E's application raises a broad array of issues that will take substantial time and resources to adequately consider, as one would expect when there is a $2.4 billion spending proposal and a $374 million rate increase on the table. The utility raises an array of significant questions about
    - the adequacy of the funding levels approved just over a year ago,
    - the reasonableness of PG&E's reliability efforts in recent years,
    - the availability of other more appropriate sources of funding between rate cases, including savings in other areas of utility operations,
    - the value of increased reliability to PG&E's customers (including inter-class distinctions and intra-class distinctions for rural and urban customers),
    - the need for and efficacy of PG&E's proposed ratemaking, and
    - the proposal to replace the existing Commission-approved measurement of reliability without "major outages" with an IEEE-developed alternative that, just coincidentally, results in better reported figures for PG&E.

- PG&E wants a Commission decision by the end of this year. But the fact that PG&E apparently has resources that would otherwise be idle that it can choose to devote to developing and presenting new ways to raise rates does not mean any

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that article which stated in part, that PG&E blamed the power outage in the East Bay the previous week "on light rain, which mixed with dust to form mud, which caused equipment to short." Only in utility shareholder heaven can such billion dollar proposals be deemed an appropriate response to taking care of dust. Paying customers however, shudder.

[9] D.04-10-034, p. 52.

other interested party or the Commission has the resources to address the utility's latest scheme at the moment the utility declares itself ready to proceed. And it is a particularly busy time at the Commission. As just a first cut at the other proceedings underway now or in the near future:

  - Utilities' Request to Reallocate Natural Gas Public Purpose Program Costs
  - Sempra BCAP
  - SCE 2009 Test Year GRC, Phase 1
  - SCE 2009 Test Year GRC, Phase 2
  - Sierra Pacific GRC
  - Bear Valley GRC
  - Southwest Gas GRC
  - SCE Distribution of SO2 Allowance Sale Proceeds
  - Greenhouse Gas Rulemaking
  - PG&E's AMI "Update"
  - Planning Reserve Margin Rulemaking
  - Direct Access Rulemaking
  - Demand Response Applications
  - Energy Efficiency Applications

- The only thing stopping PG&E from undertaking this initiative at this moment (without CPUC pre-approval) is PG&E itself. In 2009 and 2010, PG&E's DRIP proposal would have a total revenue requirement of $26 million, or approximately $16 million after taxes.[10] PG&E's GRC revenue requirement for its electric distribution operations in 2009 and 2010 is approximately $6.2 billion.[11] If the need for this project were as compelling as PG&E claims, the utility could begin implementation in 2009 and 2010 at a net cost of $16 million, secure in its confidence that the Commission will agree that the undertaking is worthwhile and fold the project into the capital and expense budgets approved for 2011 in the next GRC.

- PG&E's proposals are not intended to address reliability associated with major outages (such as storms), the events that seem to cause the greatest dissatisfaction among utility customers. To the contrary, PG&E's application proposes a new metric for reliability that would exclude a greater number of outages.

On top of everything else, PG&E's application is a classic "pig in a poke." The utility did not even attempt to present the type of information needed to perform a

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[10] PG&E testimony, p. 1-4 (Table 1-1).

[11] D.07-03-044, p. 10 (the $2.87 billion 2007 test year figure, increased by $125 million for attrition in 2008 ($3.0 billion) and by another $125 million attrition increase for 2009 ($3.1 billion). The $26 million DRIP spending for 2009 and 2010 amounts to approximately 0.4% of PG&E's authorized GRC revenue requirement for 2009 and 2010.

meaningful cost-benefit analysis (much less include any such analysis it may have performed). Instead, the logic boils down to "give us $2.4 billion to spend in the next six years and we'll improve distribution reliability." Spend $2.4 billion on new distribution facilities and you had better get reliability improvements. Spend $2.4 billion on new distribution facilities and even PG&E can be counted on to achieve at least some small amount of improved reliability. But for the Commission the question has never been limited to whether spending more money will achieve greater system reliability, but rather whether from the perspective of PG&E customers the reliability improvements warrant the amount of spending being foisted upon them. PG&E's application ignores that concept, and presents nothing that would allow the Commission to make this critical determination.

The Commission should dismiss the application.

II. Overview of Application

A. The Cost and Revenue Requirement

PG&E proposes to spend $2.365 billion in the 2009-2014 period on its "Distribution Reliability Improvement Program" (DRIP).[12] Of this figure, the vast majority would be recorded as capital spending, increasing the utility's rate base by $2.322 billion by the end of 2014. The associated revenue requirement would reach $374 million per year by 2014. In other words, assuming 4.5 million PG&E customers in 2014, the average payment for whatever "reliability improvement" results from this program will be $83 per year.

Another notable characteristic of the PG&E DRIP proposal is the back-loaded spending pattern: The first two years have a total revenue requirement of $26 million,

[12] PG&E testimony, p. 1-4 (Table 1-1).

while the figure jumps to $97 million in 2011 and increases by approximately $100 million per year in 2012, 2013 and 2014 to reach $374 million in 2014, the last year included in PG&E's forecasts.[13] In other words, of the spending forecasts included in the application, approximately 90% occurs in 2011 (the utility's next test year for its GRC) and beyond.

PG&E's application and testimony omit any mention of the revenue requirement impact beyond 2014, but it will continue to be very substantial. The ongoing recovery of depreciation, taxes and return of the initial investment will amount to approximately 16% of the remaining rate base from this project. Assuming a 30 year average life for this type of distribution plant, the cost recovery will extend to 2034 and will likely produce a revenue requirement exceeding $300 million per year for seven years, and more than $200 million per year for another seven years after that.

B. SAIDI/SAIFI Measurement Metric

PG&E's application presents System Average Interruption Duration Index (SAIDI) and System Average Interruption Frequency Index (SAIFI) figures for the 1996-2007 period, with "major events as defined by the CPUC" excluded from the calculations.[14] The reported figures for 2005-2007 show a downward trend (that is, an improvement), consistent with the Reliability Performance Incentive Mechanism (RIM) targets set for those years in D.04-10-034.

PG&E asks the Commission to permit it to substitute the (Institute of Electrical and Electronic Engineers (IEEE) standard adopted at the end of 2003 in favor of the standard adopted in D.96-09-045, as the IEEE standard will permit the utility to exclude additional

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[13] *Id.*

[14] PG&E testimony, p. 1-5 (Figure 1-1).

weather-driven events from the measured performance.[15] This approach would permit PG&E to exclude additional events as compared to today. It is not clear from the application how these to-be-excluded events will be measured or reported on an ongoing basis, as they would seem to fall into a nether world of non-major events (and thus not covered by G.O. 166) that would be excluded from PG&E's reporting associated with its proposed incentive mechanism.

C. The Interrelationship with PG&E's First Generation and "Update" AMI Efforts.

The DRIP proposal follows close on the heels of another PG&E hugely expensive undertaking promising untold benefits if the Commission would merely grant pre-investment approval of a billion dollar-plus program. The utility's "SmartMeter" program was premised at least in part on delivering distribution system reliability benefits.[16] The recent "update" is intended to take advantage of the utility's "ongoing technology monitoring effort, [through which] PG&E has observed numerous advancements in technology that offer customers increased reliability and enhanced performance."[17] But in considering the interaction between the meter advances and the multi-billion investment

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15 PG&E testimony, p. 6-3. The IEEE standard generally excludes more outages than those covered by the CPUC's definition of "major events." PG&E testimony, p. 4-14, fn. 11.

16 "[T]he system will allow two-way communication between PG&E and the meter (and potentially the customer), which has both distribution system reliability and customer service benefits." D.07-06-027, p. 20. "AMI outage data can be used to dispatch crews more effectively and to improve power-restoration processes after significant outages. Through better information related to customers' individual power status, PG&E's ability to potentially reduce the duration of outages and speed up the restoration efforts will be enhanced." Exhibit PG&E-3, p. 2-2.

17 AMI Update testimony, Ex. 1, p. 12.

PG&E now wishes to make in the rest of its distribution system, the utility now professes to be not so sure:

> It is possible that its SmartMeter program <u>may</u> have an impact on SAIDI/SAIFI, but at this time PG&E cannot reasonably predict whether there will be an impact, what the magnitude of the impact will be, <u>or whether the impact will be beneficial or detrimental</u>.[18]

D. Program-specific Balancing Account

PG&E proposes to create the Electric Distribution Reliability Improvement Balancing Account (EDRIBA), a new balancing account intended to segregate the DRIP-related costs from the funding levels approved in the utility's most recent GRC, as well as the next two GRCs to come.

> The GRC forecast [for the next GRC] will not include costs associated with this program, although it will include base reliability work. . . . PG&E currently anticipates including this program's revenue requirements in the 2017 GRC.[19]

PG&E does not explicitly say so, but there appear to be two and a half rate case cycles during which the utility expects to track the revenue requirement associated with the DRIP program separately from the rest of its electric distribution revenue requirement – the remainder of the current GRC, the 2011-2013 GRC cycle, and the 2014-2016 GRC cycle. Once folded into the next available GRC (for a 2017 test year under the utility's proposal), the program costs "will be subject to further review as with all other costs requested for recovery."[20] TURN and DRA suspect the utility intends this to mean that any costs

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[18] PG&E Testimony, p. 6-2, emphasis added.
[19] PG&E Testimony, p. 7-2.
[20] PG&E Testimony, p. 7-12.

expended after the 2014 expected life of the program will be reviewed in future GRCs, rather than a review in the 2017 test year GRC of costs spent prior to that GRC period.

As stated earlier, PG&E's request to have this project examined in this proceeding and later through the EDRIBA, rather than through the normal GRC process, effectively asks the Commission to deny DRA its normal right to review deficiencies in PG&E's NOI. Nowhere in PG&E's Application does it provide any justification, or mention at all, as to why the General Rate Case plan, or the NOI process, should be ignored.

One of the significant ratepayer protections embodied by the Rate Case Plan in D.89-01-040 is the requirement that the utility provide elaborate and detailed information to DRA, and cooperate with DRA to establish that there are no deficiencies in the NOI. Under the RCP for example, DRA can submit data requests to the utility at least six months prior to the anticipated tendering of the NOI, and the utility shall then make a reasonable effort to provide responses with the tendered NOI. All these significant ratepayer protections will be eviscerated if the Commission does not dismiss this application, because this application pretends that the RCP does not exist.

III. The Commission Should Dismiss PG&E's DRIP Application, Without Prejudice To PG&E Including Such A Program In Its Next GRC.

A. The 2007 GRC Settlement Contained Sufficient Funds For PG&E's Reliability Spending Until At Least The Next GRC.

PG&E's DRIP application suggests that the funding it seeks is different than the funding approved in the utility's 2007 GRC.[21] This claim is revealed to be baseless, however, when one looks at the adopted settlement in the 2007 PG&E GRC and the funding proposals included therein.

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[21] PG&E DRIP Application, pp. 4 and 7, fn. 2.

The Commission-approved settlement in the 2007 GRC increased PG&E's revenue requirement by $213 million in 2007, and $125 million in each of the three following years.[22] The settlement incorporated $862.0 million for electric capital expenditures in 2007, the same figure PG&E had sought.[23] So there can be little doubt that when it came to the utility's electric capital spending, the Commission gave PG&E everything it asked for in the 2007 GRC.

And according to PG&E, its request in the 2007 GRC was not aimed merely at maintaining the status quo:

> PG&E knows that to meet the increasing demands of the state and the customers it serves, it must take its operations and service to a higher level; and it must be able to make significant new investment in the infrastructure and technological improvements needed to deliver that higher level of service. . . . Our customers' needs and expectations are changing, which requires us to make the operational improvements and infrastructure investments necessary to respond to their demands.[24]

The utility was not describing a mere replacement of its basic utility infrastructure, but the <u>upgrade</u> of that infrastructure.[25]

PG&E's testimony in the 2007 GRC further describes electric distribution reliability spending that "makes appropriate capital investments to improve reliability,"[26] and a "major work category" (MWC) dedicated to addressing "reliability issues above and beyond those addressed" in the utility's "base" reliability MWC.[27] The testimony also describes how PG&E targets communities with "AIDI and AIFI values that are higher than

[22] D.07-03-044, p. 2.
[23] D.07-03-044, p. 62.
[24] PG&E Ex. 1 (Policy Overview – Tom King), p. 1-1 and 1-2.
[25] *Ibid.*, p. 1-5.
[26] PG&E 2007 GRC Ex. PG&E-4, p. 8-1.
[27] *Id.,* at p. 8-17.

communities with a similar number of customers."[28] At that time, PG&E believed far lower amounts would be necessary to address its high SAIDI figures for 2003 and 2004: "Engineering and operating personnel are working together to review data and develop projects from a system-wide perspective. PG&E anticipates prioritizing work using existing guidelines to calculate benefit to cost ratios or a ratio of potential customer-minutes saved to expenditure (i.e. potential customer-minutes saved/dollar)."[29]

As noted at the outset, when the Commission approves a GRC revenue requirement, it is not so much funding the specific projects included in the utility's application and testimony as it is establishing a reasonable revenue requirement and leaving it to utility management to determine the precise manner of spending the authorized amounts.[30] Where, as here, the Commission gave PG&E everything it asked for, and PG&E itself described using the requested funds to upgrade its reliability performance through additional infrastructure investments, the only reasonable conclusion is that the revenue requirement authorized in the 2007 GRC fully funds the reasonable amounts PG&E might need to spend on its electric distribution system.

B. The Last Time PG&E Sought A Second Bite At The GRC Apple, The Commission Appropriately Rejected The Request.

A footnote in PG&E's application alludes to the fact that the utility tried a similar scheme in 1996 to obtain a mid-cycle adjustment to the authorized revenue requirement for its electric distribution facilities.[31] The entirety of PG&E's discussion of this earlier decision suggests that its outcome reflects the fact that PG&E had there sought "additional

[28] *Id.*, at p. 8-29.
[29] *Id.*, at p. 8-30.
[30] SCE Test Year 2006 GRC, D.06-05-016, p. 223.
[31] PG&E DRIP Application, p. 7, fn. 2.

funds to do the same amount of work" set forth in the 1995 GRC. Since the DRIP application seeks "to install equipment which will improve PG&E's reliability performance beyond that level currently funded," the earlier decision is somehow not applicable here.

Nothing in D.96-12-066 suggests that its outcome turned on whether the Commission deemed the additional funds as going to incremental work. Rather, the outcome is explained by the mid-GRC nature of the request and proposed expenditure, without regard to whether the request was deemed "incremental." The Commission listed a number of reasons, (all of which apply equally to this Application) to not grant PG&E the opportunity to augment its GRC funding. First, permitting PG&E's request to go forward would allow PG&E to escape its part of the regulatory contract:

> [The revenues at issue] relate to the day-to-day cost of operating a safe and reliable electric utility business. These are some of the cost areas in which savings can be generated during some years and in which extra costs must be absorbed during others. Thus, they are not appropriately the subject of exceptional rate proceedings.[32]

PG&E's request was also deemed as failing "the test of fundamental fairness:"

> PG&E's request does not pass the test of fundamental fairness. . . . Here PG&E has selected a handful of accounts where it asserts additional revenues are needed and asks for a rate increase without offering to balance any higher costs with savings it might generate elsewhere. … If PG&E can be expected to incur savings in other areas that would offset the higher costs at issue here, then it would not be reasonable to authorize a higher revenue requirement. It is also possible that savings would outweigh new costs and the reasonable revenue requirement would be reduced.[33]

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[32] 69 CPUC 2d 692, 695.
[33] *Ibid.*

A third reason the Commission cited for rejecting the application was its inconsistency with reasonable expectations about PG&E's planning process:

> [B]ecause the activities for which PG&E seeks additional revenues are a normal part of its ongoing business, it should be able to undertake appropriate planning activities to allow it to make timely revenue requests within its normal rate case cycle… PG&E has not assured us that its recent conclusion calling for additional expenditures did not result from inadequacies [in] its earlier planning practices.[34]

Allocation of limited resources was the fourth reason the Commission cited for rejecting PG&E's 1996 request:

> [T]o appropriately consider this rate request, the Commission would have to dedicate scarce resources …. We elected to dedicate resources to the determination of PG&E's revenue requirement in 1995. PG&E had every reason to expect that its 1995 proceeding provided its one opportunity to establish its base revenue requirement for the next three years. If we were to entertain PG&E's request here, we would be hard-put to deny each utility the opportunity to change its rates whenever it is unhappy with them. With the crush of cases currently before us, we cannot afford to provide a second bite at the apple.[35]

Even if the presence of "extraordinary circumstances" might warrant some sort of extraordinary relief, the Commission rejected the notion that a utility changing its mind about the appropriate level of resources to devote to reliability work constitutes such circumstances:

> It is not extraordinary (or at least should not be extraordinary) for a utility to undertake periodic reassessment of its service and maintenance activities and to determine that it should spend more than it previously planned to spend. . . . There is no apparent reason that PG&E

[34] *Ibid.*
[35] *Ibid.*

> should not have addressed this issue in A.94-12-005 [its just completed GRC proceeding].[36]

Anyone who has read D.96-12-066 understands why PG&E afforded it only mention in a footnote – the utility cannot meaningfully distinguish its request here from the request that the Commission firmly and correctly dismissed in that decision. Having no real argument on this point, PG&E sought to ignore it by relegating it to a footnote. The Commission should not fall for such tactics. Instead, it should conclude that the current request shares a number of similarities with the request PG&E made in 1996, and deserves a similar outcome as a result.

C. PG&E' DRIP Application Undermines the Commission's Policies Promoting Settlements, and Should Therefore Be Rejected.

Through this DRIP application, PG&E is seeking funding for capital budget items related to distribution system reliability that are clearly within the purview of the GRC process, and that were within the purview of the Settlement Agreement PG&E, DRA and others executed, and that the Commission adopted.[37] By filing this application, PG&E has violated that Settlement Agreement.

First, PG&E violated the Settlement Agreement by choosing to file this Application without the written consent of the other signatories to that Agreement. Second, just as this application is indistinguishable from a request to waive the rate case plan,[38] it is also indistinguishable from a petition to modify a Commission decision adopting a settlement agreement. Given that PG&E has time and again been party to proceedings where it, or

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[36] Id., at 696
[37] D.07-03-044, Appendix C, General Rate Case Settlement Agreement.
[38] See section III B., above, discussing the 1996 Commission decision addressed in PG&E's DRIP Application, p.7, fn. 2.

some other party, tried unsuccessfully to unilaterally file petitions to modify decisions adopting settlement agreements, it should come as no surprise why it did not try that avenue this time. It would benefit the Commission, however, to examine the similarity of this Application to that of a Petition to Modify a Decision Adopting a Settlement Agreement, so that the law and policy that applies to those Petitions could be applied to this situation too.

1. PG&E is violating the Settlement Agreement because it has not sought the written agreement of the other parties to that Agreement.

Some of the pertinent "conditions" in the Settlement Agreement that PG&E is choosing to ignore are as follows:

> A. This Settlement resolves all issues raised by all Parties…
>
> D. The Settling Parties agree that this Settlement is reasonable in light of the entire record, consistent with the law, and in the public interest.
>
> **F. This Settlement may be amended or changed only by a written agreement signed by the Settling Parties.**
>
> H. The Settling Parties intend the Settlement to be interpreted and treated as a unified, integrated agreement… and
>
> L. The fact that the Settling Parties set forth specific amounts for certain categories of costs is not intended to limit PG&E's management discretion to spend funds as it sees fit and consistent with its obligation to serve.[39] (Emphasis added.)

The Settlement Agreement was the result of extensive negotiation between the settling parties. As occurs in all settlement negotiations, the settling parties compromised their positions and engaged in significant give and take in order to reach agreement. Now,

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[39] Id. Appendix C: General Rate Case Settlement Agreement, pp. C-2 – C-3.

however, without even acknowledging that it is doing so, PG&E has come to the Commission to modify key terms of the settlement without even attempting to first obtain the approval of the settling parties. The moving parties strongly object to this.[40]

PG&E is clearly violating Section F of the Settlement Agreement, for example, leading to the only conclusion that this application should be rejected.

Under California law, a settlement is a contract, and legal principles that apply to contracts generally apply to settlement agreements. (Hernandez v. Board of Educ. Of Stockton Unified School Dist. (App. 3 Dist. 2004) 25 Cal. Rptr.3d 1, 126 Cal. App. 4th 1161. Like contracts, Commission settlements are binding on all parties. (Rule 12.5 of Rules of Practice and Procedure of the California Public Utilities Commission) California courts have enforced private settlement agreements as if they were contracts. In A.J. Industries Inc. v. Ver Halen, 75 Cal. App. 3d 751 (1977), the California Court of Appeals upheld a private settlement agreement between two parties stating that a settlement agreement on its face is clearly a contract designed to settle existing and potential disputes between private parties. (*Id.* at 759.) The Court stated that a settlement contract has the attributes of a judgment in that it serves to bar reopening of the issues settled. (*id.*) By unilaterally requesting funding for its electric distribution system within the time period covered by its last GRC, beyond that agreed upon in the Settlement Agreement, PG&E is in effect breaching that contract, rendering this Application unenforceable.

When the Commission adopted its settlement rules in D.87-11-053 (Opinion Proposing Rules Governing Settlements and Stipulations), it stressed the importance of settlements:

[40] It should be noted that TURN was not a party to the Settlement Agreement, but objects to PG&E's tactics as a matter of policy.

> we remind parties that the purpose of stipulations and settlements is to promote overall efficiency in the process, consistent with the public interest, and not to provide an opportunity to 'game' the process to individual advantage.[41]

PG&E is attempting to game the settlement process in this instance because it reaped the benefits from the Settlement Agreement by having the Commission approve its entire GRC Application with regard to distribution capital spending, yet now wants to ignore that outcome so as to benefit its shareholders at the expense of ratepayers.

The Commission has stated that it is poor public policy to require all settling parties to be forever vigilant in the protection of settlements, and require that they file protests to petitions for modification to secure that defense. (D.94-03-014, 1994 Cal. PUC LEXIS 185, *4.) This Application, which in reality is even more egregious because it does not even acknowledge that it is in fact a Petition to Modify a Decision adopting a settlement agreement, is unnecessarily testing DRA's vigilance to protect the GRC Settlement. Not even two years ago, DRA joined with PG&E to advocate for the Settlement. DRA should not be forced to argue for the Commission to uphold the Commission-approved Settlement again, simply because PG&E is not living up to its part of the bargain.

The Commission recently expressed its strong public policy favoring settlement agreements. (D.07-05-060, 2007 Cal. PUC LEXIS 159, *7 (May 24, 2007); D 06-08-024, 2006 Cal. PUC LEXIS 348, *12, (August 24, 2006); D.06-06-067, 2006 Cal. PUC LEXIS 221, (June 29, 2006). Only last year, the Commission held that its "policy weighs against the Commission's alteration of agreements reached through negotiation." (D.07-05-060, 2007 Cal. PUC LEXIS 159 at *7, *8). PG&E cannot reasonably expect this Commission

[41] D.87-11-053, 1987 Cal. PUC LEXIS 378, *6.

to alter the GRC agreement that the parties reached through negotiation. And if this is the utility's expectation, the Commission should firmly disabuse them of it.

If the Commission expects parties to continue to engage in settlement negotiations and to present settled outcomes to the complex and often thorny issues present in Commission-regulated matters, it absolutely cannot allow individual parties to unilaterally modify settlements. If parties are allowed to unilaterally modify settlements without obtaining consent of the settling parties, then settlements would not necessarily be in force for whatever term is agreed to by the settling parties, but only for so long as the utility chooses to be bound by the agreement. For parties such as DRA and TURN, both of whom have in the past frequently achieved mutually agreeable settlements with PG&E, this risk would undermine, if not eliminate, any incentive to consider settling matters in the future. If PG&E were allowed to modify settlements without the consent of the settling parties, then key terms negotiated for would be meaningless.

2. The Law Governing Petitions to Modify a Commission Decision Adopting a Settlement Agreement Should Apply To This Application. Accordingly, It Should Be Rejected.

The unilateral modifications that PG&E seeks to the GRC decision, as well as the underlying Settlement Agreement, makes this "application" indistinguishable from a "petition to modify" the earlier decision. Commission rules and precedent, as well as public policy, strongly condemn unilateral attempts to modify settlements, and the moving parties submit that those same rules should apply to this Application.

When a party files a petition to modify a decision that adopted a settlement, that party is attempting to unilaterally modify the underlying settlement. Decision 96-05-037, 1996 Cal. PUC LEXIS 652, *, 66 CPUC2d 280 (May 8, 1996). However, the Commission has a well-established rule that all settling parties must be signatories to a Petition to Modify a decision that adopted a settlement. *See* Decision 93-03-075, 1993 Cal. PUC LEXIS 176, *; 48 CPUC 2d 574 (March 24, 1993).[42] In 1995, the Commission clarified its position when it stated:

> We encourage a party who seeks modification of a decision to file the petition cosigned by all parties to the original settlement. Alternatively, within the petition, the petitioner should explain to the best of its knowledge why any original settling party failed to jointly file the petition. Decision 95-02-025, 1995 Cal. PUC LEXIS 76, *, 58 CPUC 2d 623 (February 8, 1995)

PG&E, however, has done no such thing, and is attempting to avoid this rule by way of deeming its filing an "Application" instead. The Commission's rationale for this rule is to maintain the validity of settlements and to hold parties to the terms of their Commission approved agreements.[43]

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[42] Further authority on this issue can be found in Decision 94-03-014, 1994 Cal. PUC LEXIS 185, *, 53 CPUC 2d 323 (March 9, 1994); Decision 95-02-025, 1995 Cal. PUC LEXIS 76, *, 58 CPUC 2d 623 (February 8, 1995); Decision 95-05-034, 1995 Cal. PUC LEXIS 552, *, 59 CPUC 2d 717 (May 24, 1995); Decision 96-05-037, 1996 Cal. PUC LEXIS 652; and Decision 97-09-119, 1997 Cal. PUC LEXIS 889, *; 75 CPUC 2d 788 (September 24, 1997).

[43] (D.94-03-014, 1994 Cal. PUC LEXIS 76, p.*4-*5; D.96-05-037, 1996 Cal. PUC LEXIS 652, p.*7; D.87-11-053, 1987 Cal. PUC LEXIS 378, p. *6; D.93-03-075, p. *20.)

In D.93-09-038, the Commission had adopted two partial settlements that provided a productivity factor[44] for the utility operations of GTE California Incorporated ("GTEC"). In D.96-05-037, GTEC had filed a petition to modify D.93-09-038 to suspend the productivity factor because of substantial changes in the telecommunications industry since the adoption of the settlement. (1996 Cal. PUC 652, p. *2.) DRA and TURN jointly filed a response in opposition to the GTEC petition contending that the petition violated the settlement agreement. (*Id.* at *3.) GTEC responded by stating that the Commission had authority to modify the settlement. (*id.*) The Commission denied GTEC's petition to modify.

The Commission viewed GTEC's petitions as an attempt to modify the settlement and stated, "it would be an unusual settlement agreement indeed that allowed a party to seek unilaterally to modify certain provisions, without the consent of other parties." (1996 Cal. PUC 652 at *6.) The Commission stated that its policy is to hold parties to the terms of their agreements. (*id.*) The Commission further declared that maintaining the validity of approved settlements is *essential to sustaining* the Commission's commitment to alternative dispute resolution. ((Emphasis added) (*Id.* at *7).) The Commission's view was that if it approved the petition to modify, then it would not be maintaining the validity of settlements. The decision also provided that if the Commission exercised its discretion and approved the petition to modify, it would dishonor the settlement agreement. (*Id.)* Those same principles should be applied to the instant application, and the Commission should respectfully uphold the GRC Settlement Agreement by rejecting this application.

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[44] "Productivity factor" is expressed as an offset to an inflation adjustment, which typically increases rates. 1996 Cal. PUC LEXIS 652, *1.

3. This Application is Unnecessary Because In D.07-03-044, The Commission Provided PG&E With The Financial Means Necessary To Take Care Of Its Infrastructure Reliability Needs Through 2010.

This application should be dismissed for the simple reason that it brazenly ignores the Commission's decision regarding its last GRC, D.07-03-044, and because it provokes the Commission into dishonoring the Settlement Agreement it adopted in that decision. There, the Commission agreed to authorize PG&E's requested level of infrastructure spending through 2010. Yet now PG&E is asking for additional funding for infrastructure improvements before that time. The decision acknowledged that adoption of the Settlement was in the public interest, yet PG&E implies through this application that only through funding this $2 billion-plus project will the public's interest be served:

> We find that the Settlement Agreement…is in the public interest because it enables PG&E to provide safe and reliable service at a reasonable cost **through 2010**. The Settlement does so by (1) setting a GRC revenue requirement that is consistent based on historical expenses, future trends, customer and system growth, and other cost drivers that set forth in the record; and (2) providing PG&E with the financial means to **make necessary capital investments in its utility infrastructure** and operations.[45]

The DRIP application has PG&E unapologetically defying the regulatory regime under which it operates. By ignoring the clear language and the record supporting Commission Decisions, PG&E seems to be operating in a bubble where it alone gets to determine what is in the public's interest, and what is not. The Commission should respectfully remind PG&E that it is not the arbiter of that determination, by rejecting this Application. The Commission has already financed PG&E's distribution infrastructure

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[45] D.07-03-044, p. 263 (emphasis added).

through 2010. PG&E will have to wait until the next GRC to get more funding, should it prove necessary.

D. The Commission Has Recently Rejected Claims Regarding Reliability Performance That Rely On Comparisons With Other Utilities Rather Than An Assessment Of The Value Of Service To The Utility's Customers.

PG&E's DRIP Application has two central elements that should ring familiar with the Commission. The company's asserted need to improve its reliability metrics relies on a comparison of PG&E performance with that of other utilities, and not at all on a demonstration of the value that its customers would place on the type of improved reliability performance that PG&E proposes to achieve. In D.04-10-034, a decision on reliability issues that arose during PG&E's test year 2003 GRC, the Commission described the difficulties of comparing utility performance using indices such as SAIDI and SAIFI, and emphasized the need to demonstrate an adequate level of benefits to PG&E customers, such as through a value of service study. Consistent with the outcomes adopted only a few years ago, the Commission should dismiss PG&E's application and, should the utility choose to include such a program in its next GRC, direct it to make a showing consistent with D.04-10-034.

The cavalier attitude of PG&E's application is captured in its very brief discussion of D.04-10-034 in the introductory testimony:

> A comparison to other California investor-owned utilities (IOU) is illustrative. PG&E's average performance would need to improve by about 50 minutes to provide the same level of reliability as SCE and by over 100 minutes to equal SDG&E. In its decision to establish the RIM (D.04-10-034), the Commission found that "it is not particularly useful to compare reliability performance among utilities based on

> SAIDI, SAIFI and MAIFI, since different customer counts, system design, geography, weather patterns, and methods of calculating outage duration of the individual utilities will necessarily result in differing performance." [citation omitted] PG&E agrees with the Commission in terms of the difficulties in using the reliability metrics to gauge the appropriateness of a utility's performance. However, notwithstanding such differences, the data indicates that PG&E customers are not receiving service as reliable as SCE's and SDG&E's customers. If the Commission approves this application, PG&E will be able to improve its reliability performance to provide system-average performance that is more comparable to SCE, and would narrow the performance gap with SDG&E by about 40 percent.[46]

PG&E's logic is beyond tortured: It agrees that inter-utility comparisons are "not very useful," then blithely proceeds to use them to "demonstrate" that its customers are not getting the reliable service that Edison or SDG&E customers receive. Nowhere does PG&E remind the Commission that in the lead-up to D.04-10-034, it argued that it could achieve a substantial improvement to both SAIDI and SAIFI performance if it merely adopted Edison's methodology for measuring reliability.[47] Even greater gains might be available if PG&E used Edison's definition of excludable outages. The Commission concluded its review of these issues in 2004 with a few observations relevant to the request presented here:

> PG&E's service may indeed be less reliable that the other two utilities, or it may simply appear less reliable due to system differences or different methods used to calculate SAIDI and SAIFI…. We agree with PG&E that inter-utility comparisons are of limited value because different utilities measure different things, serve different customers mixes, and experience different weather. Based on the record in this proceeding, using the performance indices alone, we cannot find, as CUE claims, that PG&E's service is significantly

[46] PGE DRIP Prepared Testimony, p. 1-6.
[47] D.04-10-034, p. 72.

> worse than SDG&E's and SCE's, due to the different methods of calculating the inputs that the indices are derived from.

PG&E's application and testimony present no reason to suspect that there is any reason to doubt that this conclusion is as true today as it was in 2004. Yet where the Commission rejected proposals to spend $27 million per year in 2004 in part because they relied on this premise, PGE now asks the Commission to bless its $2.4 BILLION spending plan on the self-same premise.

It is interesting to note that on the one hand, PG&E relies on President Peevey's apparent comparison of its own distribution system's reliability to that of the other California utilities as justification for filing this application,[48] while public statements made by its own executives during the same time period contradict that very notion. According to the July 26, 2007 Chronicle article that apparently motivated President Peevey's statement, PG&E's prior Commission-approved position that inter-utility SAIDI/SAIFI comparisons are unreliable, was reiterated by Ed Salas, PG&E's senior vice president for engineering and operations at the time, who said

> "'not all utilities compile their data in quite the same way, even if they use the same basic formula. That's true when comparing within California as well as state to state, he said.
>
> 'You don't really have a clean ability on an apples-to-apples basis to compare, from one utility to another,' Salas said." [49]

Without any credible explanation, PG&E has now conveniently chosen either to forget, or to contradict, its previously consistent position on this issue.

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[48] PGE DRIP Application, p. 3, where PG&E quotes President Peevey as saying that PG&E's distribution system "still has outages that by the data we collect are approximately double those of other utilities in the State of California."

[49] Attachment B, San Francisco Chronicle Article, July 26, 2007, "The Blackout Blues."

In D.04-10-034, the Commission also recognized the need for some sort of benefit-to-cost analysis, that is, comparing the value of the improved reliability to customers to the costs required to achieve the improved reliability. Indeed, in 2004 it was PG&E calling for an updated value of service study prior to initiating any improvements based on customer value of improved reliability.[50] In the DRIP application, TURN was unable to find the term "value of service" or any discussion, much less analysis, that might permit interested parties and, ultimately, the Commission to compare the purported customer benefits to the very real and very high costs of the initiative.

It's not clear why PG&E believes that the positions it took, and the Commission generally agreed with, in the proceeding that led up to D.04-10-034 are no longer valid. For purposes of this motion, the more important consideration is the utility's abject failure to present any reasoned basis for the Commission reaching a different conclusion on these points. An order dismissing the application due to its inconsistency with D.04-10-034 is warranted.

E. PG&E's Application May In Part Be About Lowering the Bar For The Utility.

The DRIP application describes the utility's new "Reliability Performance Incentive Mechanism (RPIM)" as "[c]onsistent with its commitment to improve reliability performance."[51] The introductory chapter of the DRIP testimony describes the new mechanism as being based on a "reliability metric methodology" established by the Institute of Electrical and Electronic Engineers (IEEE).[52] Far deeper in the testimony is the

[50] D.04-10-034, p. 52.
[51] PG&E DRIP Application, p. 5.
[52] PGE DRIP Prepared Testimony, p. 1-4.

explanation of the proposed switch from the Commission-approved metric to the IEEE approach – it will permit PG&E to exclude events that are included under the existing method. This approach eliminates the utility's need to worry about whether an event constituted an "emergency" for anyone other than the utility,[53] or was just another case of PG&E being incapable of responding to anyone's reasonable expectations.

PG&E must not be permitted to claim that this application is solely about spending more with the hope of better achieving current reliability expectations. It may also be about bringing those expectations down. In the past, the Commission has engaged in extensive review of proposals to exclude events from reliability performance indices. It is inappropriate for PG&E to simply suggest that the current approach should be scuttled in favor of the IEEE approach without providing for similar opportunities for review and alternative proposals.

F. PG&E's Request For A Year-End Decision Reaffirms The Appropriateness Of Dismissing The Application Outright; If PG&E Is So Enamored With The Wisdom and Value Of Its Proposal, Nothing Stops PG&E From Beginning To Implement It, Subject To Review In The Next GRC.

PG&E wants a Commission decision on its DRIP application by the end of this year. The utility's suggestion that this proceeding should be put on such a fast track might be laughable were the stakes not so high. The DRIP application is competing with a number of other proceedings of substantial magnitude or import. Focusing on energy matters presently before the Commission, the following is a partial list:

- SCE 2009 Test Year GRC, Phase 1
- SCE 2009 Test Year GRC, Phase 2

[53] PG&E describes this as "the political vagaries of emergency declarations and interpretations of emergency declaration boundaries." PGE DRIP testimony, p. 6-4.

- Sempra BCAP
- Greenhouse Gas Rulemaking (R.06-04-009)
- PG&E's AMI "Update"
- Planning Reserve Margin Rulemaking (R.08-04-012)
- Direct Access Rulemaking (R.07-05-025)
- Demand Response applications
- Energy Efficiency applications
- Low-income Energy Efficiency applications
- Utilities' Request to Reallocate Natural Gas Public Purpose Program Costs
- Sierra Pacific GRC
- Bear Valley GRC
- Southwest Gas GRC
- SCE Distribution of SO2 Allowance Sale Proceeds

This list reaffirms why the Commission got it right when it dismissed PG&E's earlier application in D.96-12-066: If the utility is permitted to pursue mid-GRC rate relief for matters that clearly could either have been included in the most recently completed GRC, or be included in the next GRC, it further tilts the resource imbalance that exists between the utility and all other interested parties, as well as the Commission. DRA (with the largest amount of staffing and resources) and TURN (an intervenor with a relatively large staff of advocates) are already scrambling to cover the existing cases active before the Commission in 2008. Adding another proceeding to the mix simply means TURN and DRA (as well as other intervenors, we suspect) may have to choose not to fully participate here, even though it is a $2.4 billion request that implicates value of service issues and consideration of a new method of measuring reliability measurement method. Rather than imposing this burden on all other parties simply because PG&E decided it needed a decision in 2008, the Commission should defer consideration of the matter to PG&E's next GRC.

The Commission should ignore the protestations it is sure to hear from PG&E about the need for PUC pre-authorization of this program before the utility begins to implement it. The work can commence tomorrow if PG&E so chooses. According to the utility's figures, the total DRIP-related revenue requirement in 2009 and 2010 totals $26 million.[54] And that's a before-tax figure – after-tax, it is probably about a $16 million difference to the utility's bottom line, holding all else equal.

Of course, the timing of PG&E's 2007 GRC means that all else is <u>not</u> equal. The forecasts of capital and O&M expense included in the last GRC preceded the economic downturn and the turmoil in the housing market, and reflect a far greater number of housing starts and other new-customer-related projects than the utility is likely to experience in 2007 and 2008. PG&E says it will spend $266 million in 2009-10 on DRIP.[55] If PG&E's spending on new customer connections in 2008-2010 is 10% lower than the level forecast for 2007, its capital spending will be reduced by a similar amount.[56]

The Commission may wonder what to make of PG&E's claim:

> Should the Commission deny approval of PG&E's six-year reliability program, PG&E does not expect to undertake any significant portion of the reliability improvement work proposed herein prior to PG&E's next GRC in 2011.[57]

Taken at face value, PG&E agrees that it needs to undertake a reliability improvement program, but will only do so if the Commission pre-approves it. This is simply a management decision. And not a very savory one at that, given that it comes hand-in-hand with another management decision to have the amounts included in rates for connecting

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54 PG&E DRIP Testimony, p. 1-4.
55 *Ibid.*
56 Calculated from data in PG&E-4, Chapter 3, Table 3-19 of its 2007 GRC filing, assuming 2010 baseline spending would be the same as 2009 spending absent any changes to the housing market.
57 PGE DRIP Testimony, p. 1-7.

non-existent new houses flow entirely to shareholders, while asking ratepayers to pay for the entirety of the DRIP effort.

It bears repeating:

> The general concept of test year ratemaking is to authorize a rate level based on a reasonable forecast of various revenues and costs. Once rates are set, the utility has the discretion and responsibility to spend its funds in the most cost effective manner to provide safe and reliable service.[58]

PG&E's management team has apparently decided that the DRIP initiative is not so critical to start in 2009 that it warrants using existing rate revenues to fund the 2009 and 2010 start-up years. This is so even though pure dumb luck led to PG&E's existing revenue requirement set before the recent economic downturn began, meaning PG&E's rates reflect a level of customer growth-related activities that is substantially higher than PG&E is actually performing. PG&E clearly could fund this effort out of existing rates, but apparently PG&E does not believe that the DRIP initiative is only worth pursuing if the utility can obtain higher rates to do so. The Commission should accept the utility's tacit judgment that its rhetoric about the DRIP virtues does not match up to the reality of the utility's unwillingness to fund it out of current rates, and deny any mid-GRC cycle rate recovery for 2009 or 2010 DRIP costs.

IV. Conclusion

PG&E proposes to add hundreds of millions of dollars to its authorized revenue requirement for decades into the future to fund this purported reliability initiative. PG&E customers need another multi-billion capital project added to rates like we need a hole in the head. Where, as here, the requested increase raises fundamental concerns about where

[58] SCE GRC, D.06-05-016, p. 223.

it fits in the GRC ratemaking process, and about whether the value to PG&E customers will ever amount to anything close to the price tag that comes with the promised reliability improvements, the application should not get out of the starting gate. PG&E has had sufficient opportunity to move forward with the funding provided in its currently authorized revenue requirement, and there is nothing stopping the utility from attempting to demonstrate the reasonableness of its program in its test year 2011 GRC. Finally, the integrity of the Commission's policy favoring settlements would be severely undermined were this Application not rejected at this juncture.

For all the reasons stated above, this Application must be dismissed.

June 17, 2008 Respectfully submitted,

By: __________/S/__________________

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For TURN and DRA

Attachment A

Unofficial PG&E transcript of Commission Meeting, dated July 26, 2007

PG&E Power Outage Transcript
July 26, 2007 Commission Meeting

Executive Director Paul Clanon: Thank you Mr. President and before I get to the item on the agenda I wanted to take some public notice of an article that I think many of us read on the front page of the San Francisco Chronicle this morning pointing out some issues that PG&E has been having with its reliability, especially its distribution system reliability especially here in San Francisco. We'll be doing some follow up beginning with the conversation that I had this morning with the head of our Energy Staff Sean Gallagher. Sean's going to convene a group of his own folks, PG&E, and perhaps some others to try and get to the bottom of these long standing issues that PG&E has been having, particularly here in San Francisco, particularly here at the distribution level. I've asked Sean to take a renewed interest in getting to the bottom of the reliability issues and to come back to us with recommendations for anything that he thinks the Commission ought to be doing that we are not already doing; there are certainly many Commission initiatives under way in the area of reliability. So just wanted to let you know, take some public notice of that article and let you know about our follow up.

President Michael R. Peevey: Thank you Mr. Clanon. In that regard I would hope that Mr. Gallagher, and as we go forth in this, that you involve IBW Local 1245. I mean these are the people that actually do the work, as well as the other professional unions at PG&E. You know, frankly enough is enough. You can't be what they seek to be and claim to be – the number one utility in the U.S. – and have these kinds of outages repeatedly in this city again and again and again and again. In this very building that we are in we had to postpone one of our meetings for over an hour a couple of years ago because the power was out up the street. I mean, you would think we might deserve some special wiring, but I guess that…

Clanon: I want to note Mr. President that the building experienced an outage again last week - a PG&E outage that blacked out the Energy Division.

Peevey: It was very selective.

Clanon: And some others.

Peevey: But I think all of us are really serious, and I hope that TURN and DRA and others will participate in any inquiries we have here. You cannot continue to have a system that, where apparently despite the differences in weather and the physicality of the system, still has outages that by the data we collect are approximately double those of other utilities in the State of California. This cannot continue without dire consequences for the company in terms of the eyes of this Commission. I think we have a fundamental consumer protection responsibility in that regard, so I commend the efforts that apparently the Executive Director and the Energy Division are going to commence now.

Any other comments on this? Any personal stories of inconvenience that want to be related?

Commissioner Dian M. Grueneich: I will add my personal story. I was briefed yesterday by PG&E on how they had risen to very high up in the JD Power Survey of Customer Satisfaction. Again we have some gap going on between a utility who clearly does want to position itself, and we welcome it, to be a leader and to understand the needs of its customers. I wholeheartedly endorse President Peevey what you are doing and Executive Director Clanon and Sean [Gallagher] that there is something going on when we have a commitment from a utility saying 'we want to serve our customers and understand how important it is,' but we continue to have these outages. I think it comes down to really understanding what the gap is and how collectively we can move forward.

Commissioner Timothy A. Simon: On the morning that I was leaving for the NARUC Convention I suffered a blackout at my home and had to dress and pack by flashlight--it was quite a challenge. My concern is that in my area outages have become almost an expectation and I think the bar is being lowered considerably. I commend you President Peevey and my colleagues for bringing the point that enough is enough. We have to have some type of resolution in this service so we don't find ourselves constantly hampered as families and as businesses with these continuous blackouts and I encourage Executive Director Clanon to move aggressively and efficiently [on this].

Attachment B

San Francisco Chronicle article: The Blackout Blues, dated July 26, 2007
Found on the Internet at http://www.sfgate.com

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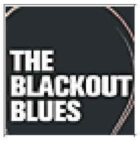
THE BLACKOUT BLUES

PG&E leaves customers in the dark more often than the other big utilities in California

David R. Baker, Chronicle Staff Writer
Thursday, July 26, 2007



Pacific Gas and Electric Co. customers endure more frequent and longer-lasting blackouts than other Californians, state data show.

Tuesday's power outage in San Francisco and the Peninsula was no isolated incident. In 2006, the average PG&E customer lost power for more than 4 1/2 hours, according to statistics compiled by the utility and submitted to state energy regulators.

In contrast, Southern California Edison's average customer lost half as much time to blackouts -- not quite 2 1/2 hours. And residents of San Diego fared even better, spending less than an hour without power all year.

PG&E's performance exasperates many of its customers and has fueled unsuccessful attempts in several cities -- including the company's hometown of San Francisco -- to break away from the vast utility.

San Francisco Mayor Gavin Newsom expressed frustration Wednesday that the city had experienced another blackout.

"We've been through this so many times," he said after his staff met with PG&E representatives. "There's nothing more I can say. I've already said (everything) to them. Should I handcuff them? Arrest them? Should I bring them all to justice? Should I sue them? Obviously, we're not happy. Obviously, they're not happy."

PG&E still had not determined the cause of the blackout by Wednesday afternoon. But company representatives said they had made progress improving service in San Francisco in recent years, including installing another high-voltage line on the Peninsula to bring power into the city. Utility President Bill Morrow called Tuesday's outage unacceptable.

"The performance does not reflect the level and quality of service that we are committed to providing customers and that they expect from PG&E," Morrow said in a prepared statement.

Causes of Bay Area blackouts have varied from the startling to the mundane.

In 2003, for example, a fire at a San Francisco substation cut power to 120,000 customers the weekend before Christmas. In contrast, about 17,000 customers in the East Bay lost power last week in outages that the utility blamed on light rain, which mixed with dust to form mud, which caused equipment to short.

Many customers were stunned that such minor rainfall -- less than a tenth of an inch in most places -- could wreak such havoc.

"It was the most ridiculous thing I ever heard," said Rebecca Renfro, whose Berkeley home went without power for roughly 12 hours. "I thought, 'Wait a minute, this was not the first time in the history of the universe that there has been drizzle.' "

The company's blackouts occasionally have cost it money. PG&E agreed to pay $6.5 million in lieu of fines for the December 2003 outage. And the company's overall outage performance in 2005 triggered a $9.2 million penalty from the California Public Utilities Commission.

California's utilities keep tabs on their annual performance by compiling statistics that measure the frequency and length of blackouts year after year. One measurement -- known as the system average interruption duration index, or SAIDI -- adds up the duration of blackouts experienced during the year and divides that by the company's total number of customers.

PG&E's average customer went without power for 280.5 minutes last year, according to data compiled by the company and submitted to state energy regulators. Southern California Edison's average customer was blacked out for 142.3 minutes, and San Diego Gas and Electric's, 52.8 minutes.

The Sacramento Municipal Utility District recorded 99.3 minutes without power for the average customer last year. The Los Angeles Department of Water and Power did not have comparable data available for 2006.

Utilities use a similar statistic to measure how often blackouts occur. Called the system average interruption frequency index, or SAIFI, this measurement counts the utility's total number of outages during the year and divides that by the number of customers.

There again, PG&E fared worse than its fellow California utilities in 2006.

The company's average customer lost power 1.7 times, compared to 1.1 times for Southern California Edison, 0.5 times for San Diego Gas and Electric Co. and 1.4 times for the Sacramento Municipal Utility District.

PG&E representatives often point out that their electrical distribution system is larger than the other utilities', spanning the territory from the Humboldt County coast to Bakersfield. It serves more customers -- many of them living in remote and rugged terrain -- and endures more frequent storms than the southern part of the state.

But some utilities in states with far worse weather still manage to rack up better performance statistics than PG&E.

Wisconsin, which endures blizzards in the winter and severe thunderstorms in the summer, had only one of the state's five large utilities reporting more than 160 minutes of outages for the average customer in 2006. In neighboring Minnesota, the highest number was 118 minutes.

Ed Salas, PG&E's senior vice president for engineering and operations, said not all utilities compile their data in quite the same way, even if they use the same basic formula. That's true when comparing within California as well as state to state, he said.

"You don't really have a clean ability on an apples-to-apples basis to compare, from one utility to another," Salas said.

California energy regulators allow utilities to compile a second set of statistics excluding outages that strike during government-declared emergencies or freak weather events, like last July's record-setting heat wave. By that standard, PG&E's performance has been improving steadily for three years. The average customer last year experienced 150.8 minutes of blackouts, compared with 187.1 minutes the previous year and 205.1 minutes in 2003.

Without those exceptions, PG&E's performance has been worsening since 2004, when the utility's average customer experienced 205.3 minutes of blackouts.

Salas said excluding unusual weather from the statistics shows the system's underlying health. States along the Gulf Coast, for example, would have seriously skewed statistics if they counted outages during hurricanes.

"If you're in the South, I'm not sure that including the Katrina effects would really tell you how your system performs," Salas said.

Still, some of the company's critics claim PG&E is excluding too many storms from its data in an effort to make the utility look better.

The Utility Reform Network, a local watchdog group, recently filed a complaint with state regulators after PG&E requested a $151,899 bonus for meeting performance goals set by the state. The utility excluded blackouts caused by minor winter storms, said the group's staff attorney, Matt Freedman.

"It's easy to get a reward when you remove all the days when you have outages," said Freedman, whose group argues that PG&E should face a $5.1 million penalty instead.

Chronicle staff writers Marisa Lagos and Cecilia Vega contributed to this report. E-mail David R. Baker at dbaker@sfchronicle.com.

http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/07/26/MNGPER769I1.DTL

This article appeared on page **A - 1** of the San Francisco Chronicle

San Francisco Chronicle Sections Go

CERTIFICATE OF SERVICE

I, Larry Wong, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On June 17, 2008 I served the attached:

MOTION OF THE UTILITY REFORM NETWORK

AND DIVISION OF RATEPAYER ADVOCATES

TO DISMISS THE DRIP APPLICATION

on all eligible parties on the attached lists to **A.08-05-023** by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List.

Executed this June 17, 2008, at San Francisco, California.

_____/S/_________

Larry Wong

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