



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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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 No. 07-12-006
(Filed December 11, 2007)

**DIVISION OF RATEPAYER ADVOCATES' MOTION TO STRIKE
EXCERPTS IN JOINT APPLICANTS' REPLY BRIEF AND MOTION FOR
LEAVE TO ADD LATE-FILED EXHIBIT**

I. INTRODUCTION

Pursuant to Rule 11.1 of the Rules of Practice and Procedure (“Rules”) of the California Public Utilities Commission (“Commission”), the Division of Ratepayer Advocates (“DRA”) hereby files this motion to strike certain excerpts on pp. 4, 10-13 and 15-18 in the September 2, 2008 Reply Brief of 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”), on the ground that the excerpts rely on untested evidence that is not in the record. Pursuant to Rule 13.10 of the Commission’s Rules, DRA further requests leave to file the updated and fuller version of excerpts of proposed testimony from SoCalGas’ and SDG&E’s pending biennial cost allocation proceeding (“BCAP”) in Application (“A.”) 08-02-001.

II. IT IS FUNDAMENTALLY UNFAIR AND VIOLATES THE DUE PROCESS RIGHTS OF OPPOSING PARTIES TO REFER TO ALLEGED EVIDENCE NOT IN THE RECORD

A. It Would Make the Hearing Meaningless If Parties Could Refer in Briefs, Comments or Ex Parte Meetings to Evidence Not in the Hearing Record

As the California Supreme Court declared in *Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control* (1970) 2 Cal. 3d 85, 104, quoting *English v. City of Long Beach* (1950) 35 Cal.2d 155, 158 “A hearing requires that the party be apprised of evidence against him so that he may have an opportunity to refute, test, and explain it, and the requirement of a hearing necessarily contemplates a decision in light of the evidence there introduced.” It would render the hearing meaningless if unsponsored and refutable information were utilized by the Commission, instead of record evidence that was subject to the rigors of the hearing process by being tested by contrary evidence and cross-examination. For this reason, “[a]dministrative tribunals which are required to make a determination after a hearing cannot act upon their own information and nothing can be considered as evidence that was not introduced at a hearing of which the parties had notice or at which they were present.” *Id.*

As the Commission itself explained in the *Petition of the City of Vallejo*, D.89-06-056(1988), 32 CPUC 2d 207, 223, “the time to offer evidence is during evidentiary hearings. The sworn testimony of witnesses, stipulated facts, and documentary evidence received as exhibits during hearings or as late exhibits (Rule 74) are the foundations upon which we base our findings of fact.”

Consequently, the Commission has granted motions to strike evidence first offered in the reply brief, because “introducing this evidence in the reply brief fails to provide the County or ORA an opportunity to either respond or test the reliability or validity of this evidence. Thus, it would be inherently unfair to accept this additional evidence without reopening the record.” *Investigation into the Natural Gas Procurement Practices of the Southwest Gas Company (“Southwest Gas Company”)*, Decision (“D.”) 02-08-064, pp. 37-38, 2002 Cal. PUC LEXIS 534 at *56-57. The Commission also found that striking

the evidence was warranted, because the evidence did not address a major issue in the proceeding. *Id.* at 38, 2002 Cal. PUC LEXIS 534 at * 57.

Like in *Southwest Gas Company*, in the present case Joint Applicants' reply brief, for the first time, has unfairly referred to selected evidence or statements, which are not in the record and which opposing parties never had an opportunity to test or rebut during the hearing. What makes this even worse than *Southwest Gas Company* is that Joint Applicants do not even attach the untested evidence to their reply brief, but simply quote selected parts of the purported evidence in their reply brief. "Unsworn statements of counsel during argument or on brief and declarations of counsel offered after submission may not be considered as evidence in reaching our findings of fact, if the 'substantial rights of the parties [are to be] preserved.'" *Petition of the City of Vallejo*, D.89-06-056 (1988), 32 CPUC 2d, *supra*, at 223. For Joint Applicants to refer after a hearing to new purported evidence outside the hearing record would make the whole hearing process a sham and make the decision vulnerable if it were to rely upon the evidence not in the record, because it would violate the due process rights of the parties.

III. THE FIRST FOUR REFERENCES OF PURPORTED EVIDENCE OUTSIDE OF THE RECORD SHOULD BE STRICKEN

A. SoCalGas and SDG&E's Claims about the Impact of a \$10 Million Increase in CARE Costs Is Not Tested and Is Marginally Relevant

On page 4 of the Joint Applicants' Reply Brief, they claim there would be a minimal impact from a \$10 million increase in CARE costs on the summer and winter bills of SoCalGas and SDG&E's residential ratepayers when comparing the equal cents per therm ("ECPT") methodology to the equal percent of base revenues ("EPBR") methodology. Right after making the claims about their impacts, Joint Applicants admit that "these calculations are not in the record." Moreover, SoCalGas and SDG&E do not blame themselves for not putting these calculations in the record; instead they assert it is

the opposing parties' fault for not having "requested Applicants to perform an updated bill impact analysis."¹

As they admit this alleged evidence is not in the record, it should be stricken. Moreover, like in *Southwest Gas Company*, it should also be stricken, because this does not address a major issue. Although Joint Applicants allege that this \$10 million issue supports their estimates of EPBR's impact on residential ratepayers, it does not come close to doing so. There is nothing in the record to show that in 2008 or future years, there would only be a \$10 million increase in CARE costs and all other matters would be held constant. As demonstrated in DRA's initial brief, DRA has addressed six different factors affecting EPBR's cost shift impact to residential ratepayers, which undermine all of Joint Applicants' unreasonably low estimates of this impact.² Each of the six factors disprove the low impacts of a cost shift to residential ratepayers under any of the calculations thus far presented by the utilities, including any impact of a \$10 million increase in CARE's budget.

The first of these factors is that the 20% CARE discount is much higher than what Joint Applicants had forecasted due to the fact that they had underestimated the weighted average cost of gas ("WACOG"), but the amount that they had underestimated was never quantified to be anywhere near as low as \$10 million.³

The second factor is that the Joint Applicants had not considered the rising enrollment in CARE, which affects both the numerator (i.e., CARE budget costs) and the denominator (because CARE customers do not pay for the CARE surcharge).⁴ Both the increase in the numerator and the decrease in the denominator under EPBR would cause residential ratepayers rates to be much higher. Indeed, it was not until DRA cross-examined SDG&E/SoCalGas witness Lenart in the hearing that DRA even realized that

¹ Joint Applicants' Reply Brief, p. 4.

² DRA's Brief, pp. 19-33.

³ DRA's Brief, pp. 23-25.

⁴ DRA's Brief, pp. 25-26

Joint Applicants' rate impact witnesses had no knowledge of what the CARE participation rates were or would be and how that would impact the residential customers in a switch to EPBR.⁵ Thus, there is nothing in the hearing record and DRA has no idea what CARE enrollment was assumed to be when Joint Applicants calculated the incremental effect of each increase of \$10 million of costs.

Without repeating all of DRA's other arguments, suffice it to say that DRA also had four other major factors beyond CARE costs that establish how Joint Applicants had underestimated the residential ratepayer impact: other program costs were not considered, the snowballing effect from changed revenue allocations in BCAPs, the doubling of usage in winter, and the migration of large commercial and industrial customers from core to noncore status.⁶ Therefore, a second reason to strike this nonrecord evidence is that it is only marginally related to the issues involving the impacts on residential ratepayers.

B. Joint Applicants' References to Advice Letters, Which Are Outside the Record, Should Be Stricken

In Joint Applicants' Reply Brief, p. 10, footnote 25 ("footnote 25"), they refer to two advice letters outside of this record as indicated by their lack of an exhibit number. In footnote 25, Joint Applicants first refer to redirect testimony of SDG&E/SoCalGas witness Wright, where she stated that she had no knowledge of the utilities studying the ability of the customers to pay for rate increases. DRA has no objection to that transcript reference, because it referred to the hearing record, and the witness was then subject to recross and to questions by Administrative Law Judge ("ALJ") Galvin.

DRA objects to the two advice letters also in footnote 25, which were not in the record, and, therefore, should be stricken from the reply brief. For one thing, based upon their description on the footnote, there is no indication that they stand for the proposition for which they are cited, that these increases were adopted without the utilities studying

⁵ 7 R.T. 398:3-16/SDG&E/SoCalGas witness Lenart.

⁶ DRA's Brief, p. 27-33.

their impact on ratepayers. Secondly, there may be items in these advice letters, which DRA could have referred to help support DRA's case. However, DRA was not given any opportunity to do so, because they are not in the record. Thirdly, parties were not given an opportunity to cross-examine witnesses about the advice letters prior to their admission into the record. None of the procedural safeguards required by the due process clause are available to parties when the opposing parties stick in references in their reply brief to documents outside of the record. Thus, DRA's only vehicle to uphold the fairness of these procedures is with this motion to strike.

C. The Joint Applicant' Reference to the LA Times Article Should Be Stricken

In Joint Applicants' Reply Brief, pp. 12-13, they refer to an August 16, 2008 LA Times article discussing unemployment and purported causes of job losses, and one of the causes was allegedly the high cost of energy. Of course, the article does not explain what it meant "energy." It could mean electricity, and it may not have meant natural gas, which is the energy involved in the present proceeding. Nor is there any indication that by energy, the article meant just the \$.03/therm gas PPP surcharge out of a total delivered price of gas of more than \$1.00/therm. Nor does the article explain whether the other causes were more responsible for job losses.

The fundamental problem with citing a newspaper article in reply briefs is that there is no opportunity to respond and if the Commission were to reopen the hearing, there is nobody to cross-examine. This is precisely why it has long been established in Commission proceedings that it is inappropriate to cite extra-record newspapers in reply briefs. In *Re Pacific Bell* (1992) D.92-06-065, 44 CPUC 2d 694, 723, the Commission granted Pacific Bell's motion to compel, which was based upon due process arguments. In so doing, the Commission explicitly found that the extra-record material, including recent newspaper articles, "contained in DRA's brief was inadmissible because Pacific Bell had had no opportunity to cross-examine any witness on it." *Id.*

Indeed, besides being referenced in a reply brief, the newspaper article should not have been allowed in the record even at the time of the hearing, because it is unreliable

hearsay and without a sponsoring witness, it should have been inadmissible at that time as well. *See In the Matter of the Joint Application of Southern California Edison Company (U-338-E) and Pacific Terminals LLC*, D.03-07-031, p. 38, 2002 Cal. PUC LEXIS 985 at * 60.

D. Extra-Record Evidence of Low Income Energy Efficiency and Energy Efficiency Programs Should Be Stricken

In Joint Applicants' Reply Brief, pp. 10-11 and pp. 17-18 (including footnotes 50-52 on p.18), they refer to extra-record evidence by PG&E, SoCalGas and SDG&E concerning their increasing low-income energy efficiency ("LIEE") budgets and PG&E's increasing energy efficiency ("EE") budget. This is all extra-record evidence and should be stricken, because there was no sponsoring witness who was familiar with these budgets to cross-examine on these matters, parties were not provided with the documents, these are only references to select parts of the documents, and parties were deprived of presenting contrary arguments and evidence. Therefore, fundamental fairness and due process considerations require that these references be stricken.

In the first reference to these growing budgets on page 10, Joint Applicants argue that if increases to these programs would cause dire consequences to residential customers, then growing budgets for them or CARE would have to be rejected by the Commission. Of course, that would not be lawful, because the Commission and utilities have a statutory duty to maximize enrollment in these programs. *See* Cal. Pub. Util. Code §§ 327(a)(4), 739.1(b), 739.1(c), 739.1(d)(1), 739.1(f). Moreover, by making this argument in the reply brief instead at the hearing, Joint Applicants have deprived parties of the opportunity to present contrary evidence or arguments, such as how much more dire the consequences to the lowest income people would be without CARE and the LIEE programs. Similarly, on pages 17-18, Joint Applicants only refer to the extra-record increases in LIEE budgets to argue that EPBR helps residential customers, because it would make business customers pay for a small share of these programs. However, they have left off the increasing energy efficiency ("EE") budgets, which under EPBR may shift more costs back to residential customers, and increasing CARE budgets to reflect

statutorily required increases in enrollment in CARE, which definitely would shift more costs to CARE customers. Consequently, DRA and others were deprived of litigating these issues with contrary evidence and cross-examination herein, because Joint Applicants waited until after the hearing to refer to this extra-record evidence in briefs.

IV. JOINT APPLICANTS' CONTRADICTIONARY POSITION CONCERNING SOCALGAS' BCAP TESTIMONY IS PREJUDICIAL TO DRA'S RIGHTS AND SHOULD BE REMEDIED BY STRIKING THE EXTRA-RECORD EVIDENCE OR ADDING A MORE COMPLETE LATE-FILED EXHIBIT TO THE RECORD

A. Joint Applicants' Position Is Contradictory

In Joint Applicants' Reply Brief, p. 15-16, they refer to a part of SoCalGas' 2009 BCAP testimony, quote a selected portion of it, which was not in the record, and argue that this disproves DRA's contention that the gas PPP surcharge's inclusion of certain program costs does not cause businesses to leave California. At the same time in Joint Applicants' Reply Brief, pp. 4-5, they argue that Exhibit 30 (excerpts of SoCalGas' proposed 2009 BCAP testimony, dated February 4, 2008 and actually in the record) and references thereto in DRA's initial brief, pp. 17-18 and 28-29, are improper and should be removed from consideration.

DRA objects to Joint Applicants' tactic of waiting to the reply brief to selectively quote from a part of this proposed testimony, which was not in the record, and trying to preclude DRA from responding to their argument or even relying upon the document, which is in the record.

B. There Is Nothing Improper in DRA's Reference to Exhibit 30

In sharp contrast to the Joint Applicants' sandbagging in their reply brief, DRA gave advanced notice to SoCalGas and SDG&E's counsel two days before utilizing Exhibit 30 in cross-examination in the hearing and before ALJ Galvin heard oral argument and admitted the excerpts of SoCalGas' proposed BCAP testimony in the

record.⁷ Joint Applicants now state, for the first time in their reply brief, pp. 4-5, that Exhibit 30 did not contain the most recent version of excerpts of the proposed BCAP testimony and therefore should be “removed for consideration.” The one exception, of course, is the part of the BCAP proposed testimony, which was not in the record and which they now quote in their brief. Joint Applicants never explain why they waited until their reply brief to make this claim instead of at the hearing (since DRA gave them two days advanced notice), why the witness did not say anything about his testimony being updated during his cross-examination or why Joint Applicants did not raise this matter in their opening brief or file a motion to strike (which is virtually indistinguishable from the relief they seek), so that DRA could respond. Joint Applicants do not quote or explain what material differences there are in the more recent version, but imply that it is different. In fact, there are no material differences.

In DRA’s initial brief, pp. 17-18, DRA used Exhibit 30 to show that in its 2009 BCAP, “although SoCalGas had 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 from 2009 to 2011.” As support, DRA’s initial brief, p.18 footnote 69, referred to Exhibit 30, p. 5 which was excerpts of SoCalGas/SDG&E witness Emmrich’s testimony, Table 2, lines 8 and 12 and the cross-examination on Table 2, 7 R.T. 395/SoCalGas/SDG&E Lenart, in which he stated he had relied upon Mr. Emmrich’s testimony. The updated version of Mr. Emmrich’s testimony, dated April 24, 2008, p. 5, including Table 2, is identical to the excerpt of page 5 and Table 2 in Exhibit 30.⁸

⁷ Attached hereto as Attachment A is a copy of DRA’s counsel’s e-mail informing SoCalGas’ counsel on July 20, 2008 of the BCAP testimony, which DRA utilized on July 22, 2008 to cross-examine SoCalGas witness Lenart. 7 R.T. 361:14-19 (exhibit identified) and 7 R.T. 384-397 SoCalGas/SDG&E Lenart (cross-examination). SoCalGas did not object to the cross-examination. 7 R.T. 393:17-20/SoCalGas Attorney Pong (“No, I don’t want to object.”) SoCalGas objected to the exhibit being admitted, because the testimony had not yet been adopted, but ALJ Galvin admitted Exhibit 30 into the record as proposed testimony. 7 R.T. 431:21-432:6.

⁸ Attached hereto as Attachment B are relevant excerpts of the updated testimony of Emmrich and Lenart for comparison, for purposes of comparison with the portions of Exhibit 30 at issue. The first two pages
(continued on next page)

After relying upon DRA witness Sabino's testimony that the base revenues may change in BCAPs and cause a snowballing effect on the allocation of gas PPP costs under EPBR,² in DRA's initial brief, pp. 28-29, and footnote 115, DRA also cited Exhibit 30, p. 13 to show that SoCalGas/SDG&E witness Lenart had already submitted testimony in their pending BCAP seeking an increase in the allocation of core ratepayers' revenue requirements by 4.7% and a 16% decrease in revenue requirements for their noncore customers.¹⁰ In DRA's initial brief, p. 28, and footnote 116, DRA also stated that SoCalGas also was seeking in its pending BCAP a 6.9% increase in its residential rates and a 31.6% decrease in its noncore commercial and industrial rates, citing to Exhibit 30, second to last page, Table 1, lines 1 and 12. The Table 1 accompanying the updated June 30, 2008 Lenart testimony in the BCAP has slightly changed. In this version, Table 1, line 2 now shows a 7.2% (instead of a 6.9%) proposed rate increase for residential customers and a 31.4% (instead of a 31.6%) decrease for its noncore commercial and industrial rates.¹¹

For Joint Applicants to argue that the "proposed testimony" in Exhibit 30 and references to it in DRA's initial brief should not be considered, when the more "updated" proposed testimony on the relevant points is either the exact same or virtually the exact same, defies common sense. There is no harm or prejudice to Joint Applicants, simply because Exhibit 30 had not reflected that in the pending BCAP, SoCalGas was seeking an allocation of base revenues that would result in a 7.2% increase in residential rates instead of a 6.9% increase. Either way, if SoCalGas were to succeed, it would result in a further increase in the gas PPP costs allocated under EPBR.

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of Exhibit 30 are also attached, but they were never updated.

² Exhibit 65, p. 35.

¹⁰ Exhibit 30, p. 13 was never updated, so the revenue requirement data is obviously the same.

¹¹ See Attachment B, after end of Lenart testimony, Table 1.

C. Joint Applicants' Reply Brief's Quote from Mr. Emmrich's Testimony Should Be Stricken Unless the Full Context of His Quote Is Admitted into the Record

DRA respectfully moves pursuant to Rule 13.10 of the Commission's Rules, that the updated proposed testimony, which is attached to this motion as Attachment B, be admitted as a late-filed exhibit. In Attachment B, DRA has included excerpts from the updated proposed testimony in Exhibit 30, as well as the quote from Emmrich's proposed testimony, which Joint Applicants refer to in their reply brief, and a few pages around the quote so that it is not taken out of context. In this way, DRA would not be prejudiced by Joint Applicants' selected quote from Emmrich's testimony in their reply brief, and the Commission would have a more complete record. Clearly, Joint Applicants have no basis to oppose this motion, because it would take care of any criticism they have raised in their reply brief about Exhibit 30.

Alternatively, if Attachment B is not admitted as a late-filed exhibit, DRA moves to strike the reference to Emmrich's Testimony in Joint Applicants' Reply Brief, pp. 15-16, because it is not in the record and DRA would be prejudiced from the Joint Applicants' use of it without an opportunity to respond. In Joint Applicants' Reply Brief, pp. 15-16, they claim that the Emmrich quote on page 7 of his proposed testimony in the BCAP, which states that retail noncore industrial demand is expected to drop from the 2006 level by 8% (the "Emmrich Quote"), somehow proves that businesses were leaving California due to the ECPT cost allocation, and Joint Applicants allege that it "backfires" upon DRA to refer to the forecast in his testimony. Joint Applicants' claim that DRA had also used an earlier, outdated version of Emmrich's proposed testimony creates an erroneous inference that DRA's reference to SoCalGas' forecast in Mr. Emmrich's Table 2 of an increase in noncore commercial and industrial throughput from 2009 to 2011 was wrong. However, Table 2 is the same in both versions of the Emmrich testimony. Therefore, the Emmrich Quote needs to be put in context.

As Table 2 in both Mr. Emmrich's February 4, 2008 testimony and his updated April 24, 2008 testimony reveals, since the Table is the same in both versions, his

forecast for “Non-core C&I” increases from 143,918 MDth in 2009 to 144,097 MDth in 2011.¹² Thus, the statement in DRA’s brief about SoCalGas’ forecast of a slight increase in noncore commercial and industrial throughput from 2009 to 2011 is true. All that Joint Applicant’s Emmrich Quote refers to is one subpart of three different subparts, which in aggregate make up the total amount in the forecast in Table 2. Moreover, the Joint Applicants’ Emmrich Quote merely compares the noncore industrial throughput decrease compared to 2006. In point of fact, SoCalGas witness Emmrich’s forecasts that between 2009 and 2011, “Non-core Industrial” throughput will nevertheless increase in demand from 57,819 MDth in 2009 to 57,920 MDth in 2011.¹³

Shortly after the end of the Emmrich Quote on pages 7-8 of Mr. Emmrich’s April 24, 2008 proposed testimony, on page 8 he further states: “Refinery Industrial demand is forecasted to be stable at nearly 64,000 MDth per year for calendar years 2009 to 2011,” and he attributes the 3000 MDth decrease in demand since 2006 to the refineries switching to alternate fuels such as butane during summer months and energy efficiency savings.¹⁴

In addition, shortly before the Emmrich Quote, on page 7 of SoCalGas witness Emmrich’s April 24, 2008 proposed testimony, he further states: “During the BCAP period from 2009 to 2011, non-core commercial demand is forecasted to average nearly 22,500 MDth per year, slightly higher than 2006 actual usage of 22,400 MDth.” He further describes this as a “net gain of 1.2% of economic growth,” but states that it is expected to be reduced by a loss of -0.7% from mandated demand-side management and the departure of two commercial customers to the city of Vernon. Nevertheless, in Table 4 of SoCalGas witness Emmrich’s April 24, 2008 proposed testimony, he forecasts an

¹² Non-core C&I is noncore commercial and industrial throughput. A comparison of Exhibit 30, Emmrich Testimony, p. 5, Table 2, line 11 with the April 24, 2008 Emmrich Testimony, p. 5, Table 2, line 12 in Attachment B, reveals that the pages are identical.

¹³ See Attachment B, Emmrich proposed testimony, dated April 24, 2008, p. 8, Table 5, line 20, “Non-core Industrial” demand forecast.

¹⁴ See Attachment B, Emmrich proposed testimony, dated April 24, 2008, p. 8, lines 9-16.

increase in “Non-core Commercial” demand from 22,367 MDth in 2009 to 22,588 MDth in 2011.¹⁵ When the Non-core Commercial demand forecast from 2009 to 2011 in Table 4, lines 15-16 is added to the two lines for Non-core Industrial and Industrial Refinery demand forecast from 2009 to 2011 in Table 5, lines 20 and 21, the aggregate amount of these three subparts is what is reflected in the Table 2 demand forecast in Exhibit 30 and which DRA relied upon in its initial brief, pp. 17-18.¹⁶

In addition, viewed in this context, there is no basis to the argument in Joint Applicants’ Reply Brief, p. 15, that the Emmrich Quote somehow refutes DRA’s claim that the ECPT cost allocation is not causing commercial and industrial customers to leave the state. There still is an aggregate increase in SoCalGas’ forecast for non-core commercial and industrial demand from 2009 to 2011, and nowhere does SoCalGas witness Emmrich address the ECPT methodology. Instead, he attributes the decrease in demand for just one subpart of the aggregate amount to events he submits will have already occurred between 2006 and 2008, including his assumption that SoCalGas will lose all of the industrial customers in the unique situation involving the City of Vernon. As DRA points out in its joint reply brief, the City of Vernon is a total of 5.2 square miles in size, it represents a very small amount of SoCalGas’ total throughput, it does not result in job losses in California, it is either legally allowed to provide retail natural gas service to businesses in its city because it has its own public purpose programs or is charging its own gas PPP surcharge, or it is violating the law, in which case the appropriate law enforcement agency should enforce the law.¹⁷

¹⁵ See Attachment B, Emmrich proposed testimony, dated April 24, 2008, p. 7, lines 5-11 and Table 4, lines 15-16.

¹⁶ See Attachment B, Emmrich proposed testimony, dated April 24, 2008, p. 5, Table 2, line 12 (“Non-core C&I” demand forecast), p. 7, Table 4, lines 15-16 (“Non-core Commercial” demand forecast) and p. 8, Table 5, lines 20-21, “Non-core Industrial” and “Industrial Refinery” demand forecast) demand forecast.

¹⁷ DRA, *et al*’s Joint Reply Brief, pp. 11-13.

In view of the above, either the Emmrich Quote and references to it should be struck from Joint Applicants' Reply Brief, pp. 15-16, due to the unfairness of utilizing this select quote, which is outside of the record and out of context, or, the Attachment B should be added as a late-filed exhibit, so that DRA suffers from no prejudice from Joint Applicants' reference to it.

V. CONCLUSION

For the foregoing reasons, DRA respectfully requests that the above-mentioned references in Joint Applicants' Reply Brief to extra-record evidence or calculations be stricken, except the reference to the Emmrich Quote but only to the extent that DRA is granted leave to file Attachment B as a late-filed exhibit.

Respectfully submitted,

/s/ Harvey Y. Morris

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September 8, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**DIVISION OF RATEPAYER ADVOCATES’ MOTION TO STRIKE EXCERPTS IN JOINT APPLICANTS’ REPLY BRIEF AND MOTION FOR LEAVE TO ADD LATE-FILED EXHIBIT**” in **A.07-12-006** by using the following service:

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, if any.

By Hand: On assigned Administrative Law Judge and Assigned Commissioner. Executed on the 18th day of August 2008, at San Francisco, California.

/s/ JOANNE LARK

JOANNE LARK

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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