

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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In the Matter of the Application of  
SOUTHERN CALIFORNIA EDISON  
COMPANY (U 338-E) for Modification of  
Decision 05-09-018 to Extend EDR-  
Retention Rates.

Application No. 09-10-012

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Application of Pacific Gas and Electric  
Company for Modification of Decision 05-  
09-018 to Extend the Economic  
Development Rate (U 39 E).

Application No. 09-11-010

**PROTEST OF  
THE DIVISION OF RATEPAYER ADVOCATES**

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February 10, 2010

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Pursuant to Rule 2.6 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”) and Administrative Law Judge (ALJ) Wilson’s ruling at the January 29, 2010 prehearing conference (PHC), the Division of Ratepayer Advocates (“DRA”) submits this protest to Amended Application 09-10-012 (“SCE Application”) filed by Southern California Edison Company (“SCE”) and Amended Application 09-11-010 (“PG&E Application”) filed by Pacific Gas and Electric (“PG&E Application”, or together “Applications”). Pursuant to the ALJ’s Ruling and Scoping memo of February 5, 2010, the two Applications have been consolidated. In the Amended Applications, SCE and PG&E propose to: (1) significantly increase the cap on the amount of customer load that can participate in the Economic Development Rate (“EDR”) program from the existing 100 MW to 200 MW for PG&E and 250 MW for SCE; (2) change the sunset date for the Economic Development Rate (“EDR”) programs

from December 31, 2009 to December 31, 2012; and (3) significantly modify the floor for EDR-R contract rates by creating customer specific marginal distribution costs.

## **I. BACKGROUND**

In D. 05-09-018 the Commission established EDR tariffs as a way to retain and attract business to California. In order to receive the discounted rate customers had to attest that but for the discounted rate they would not retain, expand, or locate their load in California. In D. 07-09-016 the Commission modified D.05-09-018 by ordering that all outstanding EDR contracts be modified to include all nonbypassable charge components in the floor price and finding that the gas rate components funding public purpose programs may not be discounted.<sup>1</sup>

## **II. ISSUES TO BE ADDRESSED**

As stated above, the EDR program, as established in D.05-09-018, included a sunset date of December 31, 2009. The Applicants are not only proposing to extend the current program for a term of three more years but to more than double its current size. The Commission should take the opportunity afforded by the filing of the Amended Applications to do a thorough review of the EDR program, determine whether or not it has achieved its goal of retaining business in and attracting business to California, and carefully consider the costs and benefits before “doubling down” on a program for which non-EDR customers bear the cost.

DRA is not opposed to the concept of discount rates for troubled businesses. If structured perfectly with minimal opportunity for free riders, an EDR program would contribute to marginal costs, create and retain jobs, and generate other economic benefits for the state. The current EDR program, however, lacks transparency and has a very low bar to entry. While DRA thinks that it is likely impossible to guarantee no free riders, increasing transparency, strengthening the screening process, and requiring shareholders to have “skin in the game”, however minimal, would bolster ratepayer confidence that free ridership would be minimized.

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<sup>1</sup> D.08-09-016, at 16.

Therefore, before the Commission extends the EDR program, increases the size of the EDR program, or increases the discount, the Commission should:

- 1) **Consider and examine the success of the EDR programs to date.**  
Have they in fact aided in retaining business or attracting business to California? Have any EDR customers gone out of business after signing up for and benefitting from the rate?
- 2) **Strengthen the screening process.** The current process merely requires potential EDR customers to sign an affidavit stating that but for the discount they would leave the state or locate new load elsewhere. This process is unverifiable, unenforceable and ultimately insufficient to screen out free riders. DRA also has concerns that CalBiz may not be the most appropriate third party verifier.
- 3) **Adopt a requirement that EDR customers must show that electricity makes up a threshold percentage of operating costs.** It is hard believe that a 15% discount to the otherwise applicable tariff for a customer for whom electricity represents 2% of operating costs would make a significant difference in that customer's decision to continue operations in California.
- 4) **Require utility shareholders to contribute to the program.** Requiring shareholders to pay for a percentage of the undercollections that result from EDR discounts would give ratepayers more assurance that the utilities interests in screening out free riders are aligned with their own.
- 5) **Adopt additional safeguards that limit ratepayer exposure.** In order to minimize risk for ratepayers that do not receive EDR rates, the Commission should either shorten the length of the discounted rate from 5 years to 3 years or require SCE and PG&E to revisit the discount with EDR customers in the event that economic conditions improve. The proposed EDR discount would run for a guaranteed five years. The

Applicants have not proven why five years is the appropriate term for the contract.

The Commission will also need to carefully consider the appropriate level of marginal distribution costs that should be included in the EDR contract floor. As described in its Application, SCE requests Commission authorization to restructure its EDR rate so that, instead of using class average marginal distribution costs as it presently does, it could fully eliminate marginal distribution costs for certain EDR customers. Decision 05-09-018 does allow customer specific marginal costs, but does not endorse simply eliminating these costs from the contract floor. Justification should be provided for all contracts that adopt this practice. DRA has already issued two data requests and will continue to gather information in order to best assist the Commission in determining the appropriate level of marginal distribution costs that should be contained in the contract floor.

DRA reserves the right to address and raise other issues that may be presented by the Application as the proceeding progresses.

### **III. PROCEDURAL ISSUES**

The Assigned Commissioner's Ruling and Scoping Memo includes two potential schedules, one with hearings and one without hearings, which were agreed upon by the parties at the January 29, 2010 PHC. As discussed at the PHC, absent settlement, DRA believes evidentiary hearings will be necessary.

### **IV. CONCLUSION**

For the foregoing reasons, DRA protests A.09-10-012 and A.09-11-010.

Respectfully submitted,

/s/ F. JACKSON STODDARD

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February 10, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of **PROTEST OF THE OFFICE OF RATEPAYER ADVOCATES** to the official service list in **A.09-10-012 and A.09-11-010** by using the following service:

**E-Mail Service:** sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

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

Executed on **February 10, 2010** at San Francisco, California.

/s/            HALINA MARCINKOWSKI

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Halina Marcinkowski

**SERVICE LIST FOR A.09-10-012 & A.09-11-010**

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