BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of Economic Development Rate for 2013-2017 (U39E)	Application 12-03-001 (Filed March 1, 2012)

OPENING BRIEF OF THE LOCAL GOVERNMENT PARTIES ON APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY FOR APPROVAL OF ECONOMIC DEVELOPMENT RATE FOR 2013-2017

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I. INTRODUCTION

Pursuant to the Administrative Law Judge's (ALJ) Rulings in this matter at the conclusion of hearings and thereafter,[1] and pursuant to Rule 13.11 of the Commission's Rules of Practice and Procedure, the Local Government Parties[2] submit this Opening Brief on the application of Pacific Gas & Electric (PG&E or Applicant) for approval of Economic Development Rates (EDR) for 2013-2017 (Application).

II. SUMMARY

The Local Government Parties (LGP) support the Application by PG&E[3] as a real opportunity for the Applicant, but also for this Commission, to address matters of economic development in areas served by the Applicant and the Commission.

First, the LGP believe the record establishes the need for meaningful action on the severe economic hardship, in particular high and persistent unemployment, within specific areas of the Applicant's service territory. The record also shows that the Commission has approved earlier EDR options but that such past EDR programs have not been effective. [Q32][4] As such, the meaningful steps [Q 15] set forth in the Application are appropriate for the Applicant to propose and the record establishes that

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[1] The most recent Ruling by the ALJ, published 12/11/2012 (December Ruling), among other things, set the date for opening briefs as January 4, 2013.

[2] The Local Government Parties has grown in number since filing the initial Response to the Application on April 4, 2012. The Local Government Parties currently represent the following 10 California counties: Fresno, Kings, Kern, Madera, Merced, San Benito, San Joaquin, Shasta, Tehama and Yuba; and 30 California cities: Atwater, Avenal, Chowchilla, Clovis, Coalinga, Colusa, Corning, Dinuba, Firebaugh, Fowler, Fresno, Huron, Kerman, Kingsburg, Firebaugh, Fowler, Lemoore, Live Oak, Livingston, Madera, Mendota, Orange Cove, Red Bluff, Reedley, San Joaquin, Sanger, Selma, Shafter, Stockton and Willows

[3] The LGP support all aspects of the Application save one, LGP disagree that the Affidavit should be a prerequisite to the EDR proposed. Instead the Affidavit should be one option for verification, alongside municipal approval (where appropriate) and/or CalBIS approval. [Q 17] (Exhibit LGP-1, p.24, lines 20-28).

[4] References inserted in this manner refer to the questions (and their respective numbering) set forth in the Scoping Memo and Ruling of the Assigned Commissioner, dated August 7, 2012.

such steps need to represent a departure from past approaches if they are to be effective. [Q 1]

Second, the LGP acknowledge that there is a key issue of law affecting the Application, that being California Public Utilities Code (P.U. Code) Section 740.4. [Qs 7, 8 & 9] This provision is authority for the Commission to approve EDR programs and provides that the Commission *shall* approve economic development programs where the proposing utility shows that its ratepayers will derive *a benefit* from the program. The LGP submit that EDR are within the jurisdiction of the Commission to approve and that, to the extent a benefit is required, PG&E has met that requirement. As such, the Commission should approve its Application, as modified in LGP testimony.

Third, the LGP provided uncontroverted expert testimony as to the nature of economic development needs and the competitive environment faced by California. The record shows that California faces aggressive out-of state marketing and attractive incentive programs. At the same time it has responded with inadequate economic development programs that have made it difficult to retain the jobs California has, let alone attract new businesses. The LGP contends that many of the elements of past failed EDR programs, designed as "safeguards" for ratepayers, are in fact inadequate elements lacking proper foundation to be effective economic development provisions.

Therefore the LGP urge Commission approval of the proposed EDR Application, as modified in LGP testimony.

III. ECONOMIC BACKGROUND: NEED FOR ACTION

PG&E had been offering an EDR that expired on December 31, 2012 in

accordance with past approvals from the Commission.[5] In the Application (p.5 *et seq*.) PG&E identifies not a diminishing but an increasing need for an effective EDR program. Citing to a Commission finding that electricity is a major cost for businesses in California,[6] PG&E also notes the state's widespread economic hardship and high unemployment. In Exhibit PG&E-1, p. 1-3 (*et seq*.) the Applicant sets out in detail the economic hardship faced by communities and utility customers in its own service territory noting that some of the hardest hit communities in the US are within PG&E's service territory. In response to discovery, PG&E confirmed that the counties targeted for relief in the Application are also the locations with the highest enrolment in the Commission's low-income rates programs.[7] PG&E quotes authoritative sources in citing the top destinations for business being lured out of California,

LGP witness Renzas, in Exhibit LGP-1, pp 6 -7 (*et seq*.), confirms PG&E's testimony (including that states such as Texas, Colorado and Utah are actively targeting California with aggressive incentives noting that in 2011 alone the Chamber of Commerce for Austin, Texas boasted relocating 6,400 jobs from California). Moreover, Renzas adds that California is viewed as a difficult place to do business. The impact of such a view is a pervasive uncertainty as to how beneficial any incentive program will be, thereby impacting its effectiveness. Even with a history of EDR programs, the need for increased action now is evident in the record. DRA witness Levin even stated that "I don't believe conditions at least back in the mid -- middle part of the last decade were as

[5] D.05-09-018 and D.10-16-015
[6] Exhibit PG&E-1, p.5 Citing to D.05-09-018.
[7] According to PG&E's data provided to the LGP in discovery, while 29% of all PG&E customers qualify and are enrolled in the CARE program, 43% of PG&E residential customers are on CARE in the 22 counties that would currently meet the unemployment proposed threshold in the enhanced EDR. In Tulare County 60% of residential customers are enrolled in CARE. Exhibit LGP-1, p.18, lines 7-14.

severe as we are seeing now." [Trs 402, lines 8-11]

The record illustrates a broad consensus on the need for action, from both intervening parties[8] and from external parties at local, state and national level[9]. DRA not only conceded this point but did so in a crucial way, as witness Levin stated, DRA is:

> "convinced, to a considerable extent, by the dire picture that was painted of the economic conditions in the Central Valley that something needed to be done, *and* that ***it was appropriate to offer a substantial expansion of the current EDR***." [Trs 400, lines 16-21] [emphasis added]

The need for action is uncontroverted in the record.

Implicit in the concession from DRA witness Levin is an acknowledgement that the now expired EDR option was neither sufficiently scaled to attract or retain jobs in adversely affected areas nor was it generally effective. [Q 32] Moreover Levin also concedes that the last EDR was also flawed in respect of its inherent uncertainty; its "clawback" provision resulted in a lack of knowledge of how much – if any – discount was ultimately on offer. [Trs 400, lines 6-12]

As LGP witness Renzas testified, the results of past EDR options have been poor, and getting poorer as more restrictions are added:

> "The low and decreasing numbers of participation in successive EDR iterations are telling. As PG&E noted in its Workshop presentation, in the 2010-2011 time period, the period with the most restrictive ex-ante *and* ex-post conditions, the highest number of qualification hurdles and the lowest potential for discount, only

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8 As examples: in their testimony (Exhibit MERMOD-1, p.1) the irrigation districts support sustainable economic development action on jobs, noting the impacts on California of a sustained economic downturn; Greenlining (Exhibit Greenlining-1, p.1.) generally support the employment need and objectives outlined by PG&E. Other parties, e.g. Marin and TURN, merely fail to address in testimony the need for action arising from economic hardship. In fact, no party opposes the picture of economic need painted by PG&E.

9 Various LGP Exhibits (LGP-6 (Fresno Metro Black Chamber), LGP-7 (Fresno Hispanic Chamber), LGP-8 (League of California Cities – Latino Caucus) & LGP-9 (The Latino Coalition)) were introduced during the cross examination of the Joint Parties' witnesses illustrating examples of local, state and national organizations supporting the Application and calling for action to address the "acute needs" of economically distressed areas in California.

> seven requests for an EDR evaluation were ever reviewed – and none could even show a potential discount."[10]

In recognition of a need for action PG&E proposes not only a meaningful increase in the scale of the incentives on offer [Q 15], but PG&E also proposes to adjust or remove some of the provisions that its 15-plus years of experience operating EDR provisions tell it are impediments to effective function of EDR options [Qs 16, 19 & 25]. Both moves are supported by the LGP, who specifically retained an expert in site location and incentive programs to review the Application and provide testimony before the Commission. Moreover, as witness Renzas testified, addressing such severe hardship will require:

> "a broader package of incentives (something I think PG&E recognizes) and a more positive view of investment. It needs to be clear to potential investors that California actively welcomes investment. Utility rates alone are not likely to be the only answer. This Commission, entities like the Local Government Parties and the state have a role to play too"[11]

Local government is prepared to play its role (assuming the Commission approves the Application releasing a valuable tool for such action) and the LGP expects the Applicant, and urges the Commission, to make a similar commitment.

Even DRA proposes that the EDR be scaled up, and that recognition, albeit only of one aspect of past failures is welcome [Q 35]. However, DRA – and other intervenors – seem wed to too many of the flawed provisions of past failed EDR options [Qs 16, 19 & 25]. As witness Renzas testified:

> "past [EDR] iterations appeared highly specific, overly protected and burdened with restrictions and limitations. They did not look attractive – they did not even look as though they were *intended* to be attractive. Any such EDR would

[10] Exhibit LGP-1, p.32, lines 6-10.
[11] *Ibid*, p.10, lines 24-28.

> fail the test of being an effective off the shelf program, and the results seem to confirm that."[12]

IV. THE BENEFIT: DEFINING, IDENTIFYING & MEASURING

Perhaps the key issue for the Commission to determine in this proceeding is whether or not PG&E has demonstrated that "a benefit" will flow to its ratepayers from its proposed EDR.

A. Defining the Benefit in Public Utilities Code Section 740.4 (h)

California Public Utilities Code 740.4 (h) states:

> It is the intent of the Legislature that the Public Utilities Commission, in implementing this chapter, *shall* allow rate recovery of expenses and rate discounts supporting economic development programs within the geographic area served by any public utility *to the extent the utility* incurring or proposing to incur those expenses and rate discounts *demonstrates that the ratepayers of the public utility will derive a benefit from those programs*. [Emphasis added]

This section is not the operative wording that establishes the Commission's ability to authorize EDR programs. [Q 8] The Commission derives that authority from; *inter alia*, PU Code 740.4 (a) that provides "*[t]he commission shall authorize public utilities to engage in programs to encourage economic development*."[13] Subsection (h), quoted above, addresses the basis for the Commission to allow, "*rate recovery* of expenses and rate discounts".[14] Given that there can be no guarantee the Application that the EDR programs will be 100% self-funding, it is appropriate to account for any costs of such discounts, thus we must consider 740.4 (h). [Q 9]

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[12] *Ibid*, p.8, lines 6-9.
[13] Moreover Commission authority to approve EDR programs can be inferred from successive Commission Decisions including: D.98-12-057, D.05-09-018 and D.10-06-015.
[14] Therefore, conceivably, if PG&E were to propose a fully self-funded EDR, subsection (h) would not even be implicated.

This provision contains two conditions for rate recovery by the utility: (i) that there is a showing of "a benefit" and (ii) that such benefit inures to the utility's customers. In other words, there is a qualification as *to whom* the benefit must inure – but there is no qualification as to what that benefit must be.

Given that the legislature saw fit to qualify the parties entitled to a benefit but not to qualify - or specify - what the benefit should be, it is perverse for parties to claim that the benefit must be one, highly specific, thing, as DRA witness Torres does when she states:

> "CTM is, according to DRA's interpretation, the measure of a direct ratepayer benefit, which is what's statutorily required under Section 740.4. And it's the only type of benefit that's under the jurisdiction of the Commission."[15]
> [Trs 63 lines 18-23 witness Torres]

This is an inaccurate statement of the law, both as to what is included in Section 740.4, and as to the extent of Commission jurisdiction. In fact, Commission jurisdiction, established at 740.4 (a), thereafter, at subsection 740.4 (c), expressly includes the authority to consider additional items such as community marketing, industrial expansion, relocation assistance, etc.

Moreover, DRA's interpretation is at odds with standard statutory interpretation. Under the rules of statutory construction, the Commission must:

> "look to the statute's words and give them their usual and ordinary meaning. The statute's plain meaning controls the court's interpretation unless its words are ambiguous. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy.[16]

The language in 740.4 is, in fact, straightforward and unambiguous. In contrast

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[15] "CTM" used here by DRA, and throughout this Brief, means 'contribution to margin'.
[16] *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal. 4th 381, 387-388.

DRA offers a convoluted and circular 3-page descriptive interpretation (which is in turn relied upon by TURN and others), the objective of which is to equate "a benefit" with 'direct ratepayer benefit' and, in turn, with 'positive CTM'.[17]

The logic is strained and, ultimately, flawed; the quote from Commission Decision 05-09-018 of Finding of Fact (FOF) 2 is highly selective and ignores the context (i.e. the following paragraph; FOF 3 that states "In addition to direct benefits to other ratepayers, economic attraction and retention activities also provide indirect benefits to ratepayers in the form of increased employment opportunities and improved overall local and economic vitality;") and it includes unsupported assertions (e.g. at p 1-14 lines 2-3 DRA states the Commission "has established that these indirect benefits alone are insufficient to satisfy the ratepayer benefit requirement of PU Code § 740.4(h)" yet there is no citation to support this.)

Moreover, as that last reference makes clear, even if this interpretation were accurate or compelling, nowhere does it show positive CTM as the *only* benefit that can be derived from a successful EDR. Rather DRA simply asserts that other benefits, including those identified by the Commission, are inconsequential and insufficient. Despite all of this contrived effort to create a definition that serves DRA's more restrictive interpretation of the statute –DRA witness Torres conceded, under cross examination, that the statute "does not specifically define what a ratepayer benefit is". [Trs 60, lines 16-17] Consequently, the Commission should find that the unambiguous language of the statute applies and that, plainly put, only "a benefit" need be identified, for the test within Section 740.4 (h) to have been met.

[17] Exhibit DRA-1 pp 1-11 – 1-14.

B. Identifying "A Benefit" in Terms of Public Utilities Code Section 740.4(h) [Qs 7 & 9]

PG&E identifies multiple benefits in Exhibit PG&E-1. Specifically, PG&E notes that EDR lower rates by increasing or retaining revenues that contribute to fixed costs benefiting all its ratepayers and EDR offers indirect ratepayer benefits by increasing local economic vitality and employment opportunities. Only one of these benefits needs to be true for the 740.4 (h) test to be met. [Q 33] As LGP illustrated on the record, the Commission has determined not only such benefits to be evident but that they satisfy the ratepayer benefit test. [Trs 72, lines 2-10]

LGP witness Renzas supports the Application by identifying additional specific benefits that inure to PG&E ratepayers, thereby further satisfying the test in PU Code 740.4 (h). In Exhibit LGP-1, p.15 witness Renzas testifies that he is able to calculate the range of benefits to a given community – when the specifics of a given investment are known. Moreover, he testifies, such requirements are common, especially for municipal clients for whom the law requires that benefits be known and quantifiable. Renzas specifies two types of identifiable benefits – "direct" and "multiplier". The benefits include "the value of real estate transactions, of additional and/or new manufacturing facilities, numbers of employees and – more forensically – in the maintenance of profitability that protects existing jobs and investments. In multiplier terms, there are methods to calculate the likely multiplier impact of a given investment."[18]

As noted above, the *existence* of a benefit – that inures to PG&E ratepayers – is sufficient to meet the test set out in PU Code 740.4 (h). The statute at subsection (h) does

[18] The detailed workings of the 'multiplier' referred to are set out at LGP-1, p.5. Moreover, and as noted in Exhibit LGP-5, p.6, lines 17-18, LGP's Renzas was the only witness in an Economic Development Rates proceeding to even mention the multiplier – despite its recognition in Commission Decision 05-09-018.

not require that the benefit be measurable, or that recovery is limited to the extent of such benefit. As such, any one of the benefits identified above is, as a matter of law, sufficient to meet the test. As a practical matter, however, it should be expected that some verification of the existence of a benefit be undertaken. If the benefit is jobs, for example, that implies that the verification may likely record the number of jobs involved. If other metrics are used, then more complex tracking and verification are likely involved. (See next section).

For the intervenors, DRA witness Levin, despite attempting to deny the validity of such other benefits, states in Exhibit DRA-1, p.1 lines 16-18 that:

> "carefully crafted and appropriately applied, an EDR program can benefit ratepayers while *providing a tool, among other tools, to support a stronger business climate in California*." [Emphasis added]

This "stronger business climate in California", he conceded, was a "generalized benefit" of EDR [Trs 415, lines 6-8] but he asserted that "some of the benefits that are enumerated in [LGP witness] Mr. Renzas' testimony… should not be counted as benefits to ratepayers generally" [Trs 416, lines 14-17] Those "dubious benefits" included (i) the value of real estate transactions, (ii) maintenance of profitability that protects investing, (iii) jobs and (iv) investments. [Trs 418, lines 1-4] When pressed on this apparent contradiction, and the fact that the value of real estate transactions can have a direct impact on tax receipts, the witness asserted a lack of knowledge on the value of such "arrangements." [Trs 418, lines 22-23] Ultimately this witnesses' apparent confusion was ended with the concession that increased state revenues identified by the LGP (derived from transactions in a specific area) were, notwithstanding earlier assertions to the contrary, generalized benefits. [Trs. 419, lines 21-28]

As such, the record clearly shows that benefits from an EDR, and the Applicant's proposed EDR options are readily identified, assuming the Application is approved.

C. Measuring the Benefit in Public Utilities Code Section 740.4 (h) [Q 7]

The issue of how to measure a benefit that meets the requirement set forth in PU Code 740.4 (h) was highlighted by the December Ruling of the Assigned ALJ. In that Ruling the ALJ directs parties to include in briefs a response to the following questions:

(i) Should the Commission ensure that the EDR Program complies with the "benefit to ratepayers" requirement of Public Utilities Code §740.4(h) by requiring that an EDR customer's reduction in contribution to margin be proportionate to the number of jobs actually retained or created by that customer?

(ii) If not, how may the Commission measure the benefits to ratepayers attributed to the number of jobs created by the EDR program?

Implicit in these questions are two assumptions. First, that there are means *other than the restrictive interpretation offered by DRA* of meeting the test in PU Code 740.4 (h). The LGP fully endorses that assumption. Second, the alternative to DRA's flawed approach is via benefit found in some measure of the number of jobs created or retained. On this second assumption LGP takes issue. As noted above, LGP contends that a 'measurement of the *extent of* any benefit' is specifically *not* required in PU Code 740.4 (h). Rather, there need only be the identification of the existence of *a benefit*. As a practical matter measuring such a benefit may be the best means of identifying it beyond any doubt, but that practical approach is not the same thing as a legal requirement and it should not be treated as such. Specifically, were there to be difficulty in reaching agreement on means to measure the benefit of an EDR program to ratepayers, that should not become, in effect, a legal bar to approving an EDR program.

Moreover, as noted above, LGP believes that jobs need not be the only means of establishing/measuring the existence of a benefit to ratepayers. For example, [Q 18] the state has determined that increases in energy efficiency is of benefit to all ratepayers in California.[19] Similarly, demand response programs are deemed to yield ratepayer benefits in the form of significant savings.[20] The Application proposes to retain the requirement of past EDRs that participants be subject to an energy audit and review energy efficiency and demand response options. Given the state's policy in favor of such programs, these opportunities to promote energy efficiency and demand response can also be considered benefits (even *direct* benefits) to ratepayers.

The testimony of LGP witness Renzas also makes clear there can be direct and indirect jobs benefits – indirect jobs being those he describes as a result of the operation of the multiplier (a position shared by Joint Parties witness Phillips, see below). Consequently, measuring the number of jobs *directly* created or retained by a given EDR induced investment could seriously underestimate the actual number of jobs impacted.

In other words the record does not indicate that an evaluation of the number of jobs created or saved is a prerequisite for approval, and while counting jobs created or saved alone may serve to identify the existence of a benefit: under 740.4 (h) it likely would not capture the extent of any such benefit accurately.

As such, LGP believes the answer to question (i) should be "no", the Commission should neither introduce a requirement of measuring the 'extent' of the benefit, nor should any measurement be required to be tied to CTM. Moreover, while it is not even clear how such an option would work, the absence of a record on that proposal (given

[19] California Long Term Energy Efficiency Plan: http://www.cpuc.ca.gov/NR/rdonlyres/D4321448-208C-48F9-9F62-1BBB14A8D717/0/EEStrategicPlan.pdf Introduction p.3.
[20] docs.cpuc.ca.gov/word_pdf/NEWS_RELEASE/164447.doc

that the question was posed only after hearings had concluded) should not be allowed to delay approval of the Application.

In answer to question (ii), and notwithstanding the misgivings already noted, the LGP respond that any number of modeling options are available to the Commission to measure the existence of benefit(s) from implementing an approved EDR. The can include data on direct numbers of jobs but also they might include more generalized local employment data (to reflect the multiplier), investment data, new business formations/registrations, local and state tax revenue data, etc. As witness Renzas testified, the key to assessing the benefit is knowing the elements of the investment: "specific details of location, type of business and scale of the investment are all needed before any meaningful estimates are possible." (Exhibit LGP-1, p.15, line 28) Consequently, Renzas testifies that after-the-fact analysis allows for "more effective monitoring and measuring the success of the EDR incentives" (Exhibit LGP-1 p. 27).

Nonetheless, the Commission can plan for assessing the existence of benefit(s) from an approved EDR (and even anticipate measuring the scale and extent of such benefit(s)) by means of briefing an appropriate study. [Q 33] A range of parties perform such studies and briefing the parameters of a study would allow the Commission to include such elements of benefit as it deems fit, and accord them the weight it considers appropriate.[21] In point of fact, it may be considered an omission that in a decade and a half approving various EDR programs, the Commission has yet to commission such an

[21] To achieve this a re-invention of the wheel is not required – merely application of existing approaches, which the Commission has already approved. For example the Standard Practice Manual is an excellent starting point when seeking a methodological approach: http://www.energy.ca.gov/greenbuilding/documents/background/07J_CPUC_STANDARD_PRACTICE_MANUAL.PDF

assessment. Again, however, the absence of preparation for such a study should not be used as an excuse to delay or decline to approve the Application.

D. DRA's Testimony on PU Code 740.4 is Misleading [Q 9]

In support of its opposition to the PG&E Application, DRA offers testimony that was repeatedly questioned as misleading,[22] which misread and misquoted statute,[23] and, ultimately, was in part (albeit small) stricken.[24] Within this context, DRA includes a material *misrepresentation* of the law regarding PU Code 740.4.

In Exhibit DRA-1, p.1-2, lines 20-26, DRA notes "…that PU Code Section 740.4 (b) *and (h)* authorize rate recovery of EDR expenses *to the extent* of ratepayer benefit." [Emphasis added] In fact only PU Code Section 740.4 (b) limits recovery of (reasonable expenses for economic development programs) "*to the extent of ratepayer benefit*". [Again, emphasis added] Whereas, PU Code Section 740.4(h) anticipates rate recovery of expenses and rate discounts to the extent there *is* "a benefit" [emphasis added] The difference is significant, particularly in light of the position advanced by DRA. The

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[22] Under cross examination by PG&E counsel, witness Torres was obliged to state that it had not been her intention to proffer misleading testimony on no less than five occasions: Trs 41, line 16, again at line 27 Trs 131, line 23; Trs 132, line 28; Trs 134, lines 10-17.

[23] Under cross examination witness Torres, who had previously testified that PU Code 583 did not provide for the release of customer data, was invited to read the statute. At first she declined to find the operative provision but under persistent cross she eventually conceded that there the statute she was reading from in fact did include provisions where confidential matters could be made public. [Trs 98, lines 17-28 and Trs 99 lines 1-8] In DRA-2, p.2-12, lines 28-29, DRA misquotes P.U. Code 451 as being "*any* charges" when in fact the statute is: "***All*** Charges demanded or received by any public utility…" (DRA even emphasizes the incorrect word by placing it in italics). [Trs 118, line28/Trs 119, lines 1-10] While of minimal significance in themselves, this lax approach to the language of California statutes indicates that the Commission should exercise caution in relying on DRA citations in testimony, particularly when more significant issues are detailed later.

[24] [Trs 459, lines 16-22] Ruling of the Assigned ALJ struck part of the DRA testimony on joint motion of the LGP & PG&E who both objected to use of the term "precedent" in respect of a Settlement *and* to an evaluation by DRA of what settling parties considered "fair and reasonable". While only the latter was stricken, it remains the view of the LGP that DRA's accusation that LGP witness Renzas was "ignoring precedent" when referring to a non-precedential settlement is improper and, as stated by PG&E, a violation of the Settlement entered into by DRA.

former requires a measurement of the benefit – specifically recovery is limited by the "extent' of benefit. The latter provision (740.4 (h)) separately requires there only be "a benefit". [Qs 7 & 9]

Misquoting the section that applies in this instance, and describing a more restrictive provision that does not apply, therefore, is a material misrepresentation of the law. Moreover, this misleads on the very issue on which DRA seeks to persuade the Commission, i.e. the meaning of "benefit" in Section 740.4.

V. ECONOMIC DEVELOPMENT

A. The LGP offered Expert Testimony on Economic Development That Remains Uncontroverted

LGP witness Renzas testified to the competition faced by California in the economic development area. Renzas cites the "Texas Enterprise Fund" which provides large cash incentives to attract businesses. (Exhibit LGP-1 p.9, lines 5-12). He also testified on "performance-oriented incentives" and "job creation tax credits" in Utah. [Trs 629, lines 1-21] Again, in that latter example, the witness testified to the fact that money is made available as incentive for jobs. While requiring jobs as *quid-pro-quo* for cash, they generally do not contain the range numerous conditions and restrictions applied here in California. [Qs 16, 17, 19, 20, 25 & 26] These programs, as Renzas testified, are fundamentally different from the PG&E Application. In the only other discussion of this PG&E witness Hartman confirmed the differences between such jobs for money programs and the Application. [Trs 220, line 26, *et seq.*] This accorded with the testimony of witness Renzas.

Witness Renzas also testified as to the need for the Commission to consider the unique nature of economic development issues:

> "…energy, utilities and ratepayers in California are essentially stuck where they are - they are location specific. That is atypical in business. Most enterprises can move location and/or serve customers from remote locations or at a distance. As such the Commission needs to differentiate its approach to economic development incentives for mobile and remote entities, from that more typically associated with fixed location entities such as utilities."[25]

In fact the expert testimony of witness Renzas is uncontroverted as to his knowledge of issues in the economic development area. As such, LGP urge that the Commission consider seriously; his concerns regarding the flaws in past EDR options [Qs 16, 17, 19, 20, 25 & 26], which, as he testified, tend to make California less competitive; and his testimony in support of the PG&E Application.

Apart from the Applicant and the LGP, only one intervenor offered a witness with any colorable claim to knowledge of economic development issues, and that was witness Phillips for the Joint Parties. It is notable then that under cross-examination, witness Phillips agreed with the LGP testimony regarding the multiplier impact on jobs of an EDR program. Specifically he offered [Trs 490, line 28/Trs 491 line 1] that an EDR investment would generate up to 5 additional jobs for each 'EDR job.' A favorable assessment wholly in line with the LGPs testimony (Exhibit LGP-1, p.5, lines 26-27). Moreover Witness Phillips conceded that these 'multiplier jobs' are likely to include the full range of opportunities from laborers to professional services. [Trs 491 lines 2-9]

The failure of intervenors to address the economic development issues raised by an *Economic Development Rate* Application indicates what witness Renzas called a

[25] Exhibit LGP-1, p.4, lines 26-28 and p.5, lines 1-3.

"fundamental disconnect" from the inter-state *not intra-state* competitive realities facing California. As LGP witness Renzas testified:

> "It is a disservice to the Commission, and to the needs of the economically distressed parts of the state, that in reviewing economic development rate proposals, the main intervenors offer no experts on the subject of economic development."[26]

B. The Commission Should Reject Flawed Intervenor Testimony

The record is replete with examples of precisely how little was done by various intervening parties to test the validity of their assertions. Various intervenors contented themselves to rely upon DRA's analysis of the Application. However that analysis was revealed as sorely lacking in foundation. Despite assertions about the impact of its proposals, DRA repeatedly conceded it had not undertaken basic research of the type that might be expected prior to providing testimony on such matters or as support for such testimony.

Despite insisting on an Affidavit [Q 20] DRA witness Torres illustrated no knowledge or understanding of the issues associated with executing an affidavit, [Trs 105, lines 2-27] no actual knowledge of business attitudes to being confronted with an affidavit requirement or any negative impact such a proposal might have on an EDR [Trs 107, lines 13-28] The witness could not even provide any basis for asserting that it would work or was actually needed [Trs p102-103…]

Notwithstanding testimony asserting the need for a 5% threshold [Q 19], nowhere was that number substantiated. Witness Torres: "Well I could consider five percent to be, you know, getting to be a substantial part of your operating costs…" However witness Torres considerations lack foundation. She conceded that she did not know of the

[26] Exhibit LGP-5, p.4, lines 13-16.

Uniform System of Accounts, [Trs 95, line 13] and that she did not know which accounting procedure tracked utility costs. [Trs 95, line 28] She also conceded that she did not speak with any customer on the then current EDR. [Trs 18, lines 22-26]

Despite conceding the need for a "substantial expansion" of the EDR option, DRA witness Levin asserted that a 12% electricity discount [Trs 362, lines 11-15] was sufficient to attract some businesses to California. [Q 15] Yet the same witness conceded that he had not consulted with any businesses in formulating his testimony. [Trs 406, lines 6-12]

When witness Torres was asked if it is DRA policy that parties should be deterred from applying for EDR, she responded "no". [Trs 79, lines 26-28] Contrasting that with the following statement by the same witness: "by limiting the amount of customers who are eligible, that helps to limit the risk to ratepayers`" [Trs P 101 lines 4-6] the conclusion can only be that DRA's testimony is confused and contradictory.

Perhaps the best illustration of such flawed testimony is DRA's proposal (Exhibit DRA-2, p.3-4) that any EDR contract should be non-assignable in the event of acquisition of the contract holder by another enterprise. In an exchange between witness Torres & counsel for PG&E, the DRA witness fails to escape the inevitable consequence of poorly conceived testimony. PG&E counsel posits a hypothetical where a company holding an EDR contract is bought out by another company. The DRA position of record is that this new owner should be *required* to find an out-of-state alternative or would be excluded from assuming the benefits of an already executed EDR contract for the California business location. [Trs pp 25-28] Unable to say how forcing an investor in a

California company to look out of state would benefit California ratepayers, witness Torres then offered that:

> "I guess maybe we could have the provision where they would say they wouldn't have bought the company but for their participation in the EDR program." [Trs 29, lines 3-6]

Setting to one side the impropriety of offering off-the-cuff policy advice instead of conceding a position was flawed, it should be inconceivable that the Commission would rely on analysis and policy advice so lacking in insight that it actually requires investors in California to look elsewhere.

C. Remaining Issues Not Addressed at This Time

To the extent this opening Brief has not addressed issues raised in the Application and during subsequent stages of this proceeding, the LGP preserves its options and retains the right to address such issues in reply brief.

Specifically, LGP has no comment at this time on matters including, but not necessarily limed to; (i) competition between the Applicant and CCA, DA or other competitive intervenors, including laws governing competition with irrigation districts [Qs 5, 11 & 14], (ii) matters of the price floor [Qs 2, 24, 25 & 26], negative distribution or non-bypassable charges [Qs 3 & 4], (iii) matters of geographical [Q 10 & 12] or business size discrimination, (iv) program design matters, to the extent not already addressed [Qs 15-23] or (v) shareholder funding [Qs 30 & 31], J&R [Q 29] rates or ex-ante good faith projections [Q 33] and (vi) any other live matters not already addressed herein.

VI. CONCLUSION

For the foregoing reasons, LGP respectfully urge the Commission to approve the Application for Economic Development Rates as set out by PG&E with the only modification being to the Affidavit as referenced herein.

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Respectfully submitted,

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