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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

REPLY BRIEF
OF THE DIVISION OF RATEPAYER ADVOCATES

GREGORY HEIDEN
Attorney for the Division of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone No: (415) 355-5539
Fax No.: (415) 703-2262
Email: gregory.heiden@cpuc.ca.gov

January 18, 2013

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I. INTRODUCTION

Pursuant to Rule 13.11 of the Commission's Rules of Practice and Procedure and the Joint Ruling of the Assigned Commissioner and Presiding Administrative Law Judge and Administrative Law Judge's ("ALJ"), the Division of Ratepayer Advocates ("DRA") hereby submits its Reply Brief on Pacific Gas and Electric Company's ("PG&E") Application for Economic Development Rates for 2013-2017 ("EDR"). DRA anticipated and responded to many of PG&E's and Local Government Parties' ("LGP") arguments in its Opening Brief. Therefore, in the Reply, DRA will only highlight particular issues to which it feels an additional response would benefit the Commission's determination in this proceeding. To the extent DRA does not respond to arguments other parties made in opening briefs, this should not be read as agreement with their positions.

PG&E's Opening Brief ("OB") states "California is in a state of crisis,"[1] yet it reiterates PG&E's refusal to call on its shareholders to share the burden of alleviating that "crisis"[2] despite DRA evidence showing that PG&E shareholders value maintaining PG&E's customer base. PG&E neglects to mention the substantial improvements in the State's economy since 2011,[3] or the excessive risk[4] that ratepayers will not benefit from PG&E's proposed EDR discounts, as required by law.[5] Under PG&E's EDR proposals, nonparticipating ratepayers would bear 100% of the risk of EDR-related shortfalls, despite the fact that PG&E shareholders stand to benefit from the EDR program.[6]

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[1] PG&E OB Executive Summary, p. i.

[2] Id, p.iii.

[3] See, DRA OB, p.7. As of September 2012, the statewide unemployment rate was 9.7%, a considerable drop from the "over 11 percent" rate for December 2011 stated in PG&E's OB. See Ex. DRA-2, Appendix D attachments, for California EDD Reports 400C "Monthly Labor Force Data for Counties".

[4] DRA's OB (p.49) identifies 5 types of risks associated with PG&E's ten-year projections of EDR benefits, and recommends that the Commission not rely exclusively on forecasts of ten years of benefits from five-year EDR contracts.

[5] P.U. Code §740.4.

[6] See DRA OB pp. 92-97. PG&E has not disputed the shareholder benefits identified by DRA.

PG&E has not demonstrated that its proposed 35% enhanced EDR discount is necessary "to get the attention of business leaders"[7] and thus effectively address the "crisis." PG&E also has not shown that DRA's proposed average 22% discount (already more generous than any previous EDR program) could not achieve similar benefits with much reduced ratepayer risk. DRA's proposed five-year, declining discount is similar to reasonably successful EDR programs offered in the past.[8] Contrary to PG&E's assertions, DRA's enhanced EDR proposal is neither unduly complex nor burdensome.[9] Moreover, with the removal of annual ex post enforcement of pricing floors, DRA's proposals are considerably less burdensome than the most recent EDR programs that expired in 2012.

PG&E proposes to eliminate the EDR price floor which was adopted in D.07-09-016 after extensive litigation.[10] The price floor provides a critical customer protection by ensuring that nonbypassable rate components are fully funded by EDR customers, and that costs caused by serving EDR customers' demand are not shifted to other customers.[11] In attempting to relitigate the issue of a price floor requirement, PG&E has failed to demonstrate changed circumstances or any cogent reason why the Commission should reach a different conclusion now than it did in 2007.

[7] PG&E OB Executive Summary, p. i.

[8] PG&E's EDR program initiated in 2005 had a program cap of 100 MW and 88.325 MW enrolled as of June 3, 2010. (See D.10-06-015, p.6). DRA considers this high participation to be indicative of a successful program, and PG&E's witness concurred with that assessment. PG&E/Hartman, 1 RT 186, lines 14-26.

[9] If the Commission prefers a simpler fixed percentage discount, it could offer a 22% enhanced EDR discount consistent with DRA's proposed price floors. In this case, DRA would recommend that the term of discounted EDR contracts be limited to three years (as proposed by MerMod, OB, p.18).

[10] PG&E OB, p.5.

[11] DRA OB, p.24.

Of the ten parties filing opening briefs, eight advocated, or did not oppose, retention of the Commission's price floor first adopted in D.07-09-016.[12] These same eight parties, including SCE, recommend that the Commission continue to rely on demonstration of a positive Contribution to Margin ("CTM") as the definitive test of whether EDR will provide benefits to ratepayers as required by P.U. Code 740.4(h).

PG&E has proposed numerous significant changes from the most recent EDR program that result in substantially greater ratepayer risk. PG&E has the burden of proof to establish that its proposals are just and reasonable and comply with existing law and Commission policy. PG&E has not offered any such proof. Its proposal violates California law and prior Commission EDR decisions on cost shifting, and does not reliably provide a "ratepayer benefit" as required by PU Code Section 740.4(h).

DRA's proposal provides a significantly higher discount than the Commission has ever approved in prior EDR proceedings. There is no evidence that this proposal would not be attractive to eligible customers. At the same time, the proposal would benefit ratepayers generally. For these reasons, DRA's proposal is superior to PG&E's high-risk enhanced EDR proposal. Accordingly, the Commission should adopt DRA's EDR proposal rather than PG&E's.[13]

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[12] The eight parties who advocated for, or were not opposed to the retention of the price floor adopted in D.07-09-016 are: SCE, TURN, DRA, MEA, Merced and Modesto Irrigation Districts, Joint Parties, Greenlining Institute and AReM. SCE does not explicitly recommend a price floor but "recommends that should the Commission ultimately adopt a Floor Price in this proceeding, that Floor Price should be composed of short-run marginal costs" (SCE OB, p.3). SCE does not otherwise take a position on adoption of a floor price. However, in conjunction with its discussion of the role of a positive CTM in determining EDR benefits (SCE OB, pp.5-8), it can be inferred that SCE supports retention of a price floor consisting at least of short run marginal costs.

[13] PG&E's witness admitted that DRA's EDR proposals carry less risk to ratepayers than PG&E's proposal. PG&E/Pease 2 RT 285.

II. RESPONSE TO PG&E OPENING BRIEF

A. PG&E Should Not Hold the EDR Program Hostage in Order to Protect its Shareholders from Risk[14]

PG&E claims that "it would decline to offer the EDR program if shareholder funding were included as a requirement."[15] This position is unreasonable and unfair to ratepayers, given PG&E's opening description of California's "crisis" and is contrary to PG&E's stated purpose for its EDR proposal: "PG&E's EDR proposal is designed to enhance California's competitiveness as a business location for companies to create or retain jobs for California residents."[16] Yet, the company is unwilling to risk any shareholder funds to maintain its customer base. It is however, willing to subject its ratepayers to the significant risk of rate increases.

Thus, PG&E refuses to consider shareholder participation in order to protect its shareholders from any risk while asking non-participating ratepayers to assume all of the risk associated with their EDR proposal. This position calls into question the genuineness of PG&E's concern with helping to enhance California's competitiveness as a business location or with creating or retaining jobs for California residents. PG&E appears concerned with protecting its shareholders from any risk, yet proposes to impose a substantial risk of rate increases on its ratepayers. Due to the fact that PG&E's shareholders as well as its ratepayers could potentially benefit from the EDR program, it is only fair that both parties share the cost and the risk of the EDR program.

1. PG&E Shareholders will Benefit from the EDR Program

In its Opening Brief ("OB"), PG&E states that its "shareholders do not benefit from incremental revenue from sales generated by customers that would otherwise not

[14] Responds to Scoping Memo Questions 30 and 31.

[15] PG&E OB, p.35.

[16] Ex. PG&E-1, p.1-1.

take service from PG&E."[17] This is incorrect; the proposed EDR program has the potential to benefit PG&E's shareholders in several ways as described in DRA's testimony and OB.[18] PG&E has not disputed the specific shareholder benefits described in DRA's testimony.[19]

2. PG&E Shareholders Should Bear Some of the Risk Created by the EDR Program

PG&E incorrectly states "PG&E's analyses under a variety of scenarios indicate that the EDR program would result in positive contribution to margin for the benefit of all customers."[20] PG&E's EDR proposal creates the risk of rate increases for nonparticipating ratepayers from two sources: first, from any negative CTM the program generates; and second, from under collections of the full tariff rate from any "free rider" customers participating in the EDR program.[21]

PG&E's reliance on its ten-year CTM analyses to establish that the EDR program will benefit ratepayers, and thus its assertion that any shareholder funding requirement would "simply be punitive"[22] is incorrect. PG&E's ten-year CTM analyses are too speculative because EDR customers could leave the service territory, close permanently, or potentially participate in the EDR program for an addition five-year term.[23] Nonparticipating ratepayers are also at risk because marginal costs could rise over time,

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[17] PG&E OB, p. 34.

[18] DRA OB, pp. 92, 93, 95; Ex. DRA-1, p. 3-12, citing Moody's Investors Service, Moody's Credit Evaluation Guidelines, August 2009. Appendix B, p.1-2. Ex. DRA-1, Appendix F.

[19] See Ex. DRA-1, pp. 3-10 – 3-14.

[20] PG&E OB, p.35.

[21] Ex. DRA-2, p.1-9.

[22] PG&E OB, p. 35.

[23] PG&E did present limited sensitivity analyses to some of these risk factors. Inadequacy of PG&E's ten-year CTM calculations is discussed in DRA OB, p.19, p.51.

causing the EDR program to generate a negative CTM.[24] PG&E's analysis does not account for this possibility.

This EDR proposal carries the most risk of generating a negative CTM than any of the past EDR programs.[25] Under the current EDR program, the generation of negative CTM is impossible because of the "claw-back" provision. PG&E is very confident that its EDR program proposal will generate a positive ten-year CTM and the Commission should require PG&E to stand behind its assertion. Asking PG&E shareholders to pay for any negative CTM generated by the program that remains after ten years is fair and will protect nonparticipating ratepayers from unnecessary risk. Requiring shareholders to cover any negative CTM at the end of ten years also assures compliance with the ratepayer benefits provision of PU Code §740.4(h).[26]

If PG&E's proposed program is going to be as effective as PG&E asserts, PG&E's shareholders should be willing to step forward and contribute monetarily to funding the EDR discounts it proposes. As Commissioner Ferron stated:

> …we must also use rate subsidies very sparingly and only after careful consideration of all other options. After all, this is a zero-sum game. If we allow a discount on electricity to one group, this has to be paid for by another group with higher rates somewhere.[27]

Rather than ask ratepayers to bear 100% of the costs of discounts, as PG&E proposes, the Commission has the authority to require that voluntary discounts provided by PG&E be funded, in part, by its shareholders.

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[24] DRA OB, pp. 52-54.

[25] DRA OB, p. 47.

[26] DRA OB, p. 92.

[27] Tr., p. 2, lines 15-23; see also p. 78, lines 14-24 (May, 8, 2012 Public Participation Hearings/Commissioner Ferron).

B. Preservation of An Additive Price Floor is Essential for Ratepayer Protection[28]

PG&E's OB states:

> A floor price is neither necessary nor appropriate for the EDR program going forward.[29]

This assertion is based on the mistaken notion that "In PG&E's view, if the after-the-fact true-up is eliminated, there is no need for the "floor price" as defined in Decision ("D.") 07-09-016."[30] PG&E offers no further support for this dubious proposition. On the contrary, all parties representing ratepayers[31] support retention of a floor price.[32]

The additive floor price established by D.07-09-016 is required to ensure that (1) The NBCs are not discounted; and (2) The costs caused by EDR participants are not shifted to nonparticipants.[33] This is not merely a policy determination, but a legal requirement, as stated in that Decision and in DRA's Opening Brief. As aptly stated by AReM:

> To ensure that non-participants' rates are just and reasonable, and to comply with Public Utility Code Section 740.4(h), the Commission must maintain price floors.[34]

As discussed above, the need for, and nature of, price floors under EDR discounts was the subject of protracted litigation which culminated in D.07-09-016. In this

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[28] Responds to Scoping Memo Questions 2, 3, and 4.

[29] PG&E OB, p.5.

[30] Id.

[31] DRA, TURN, AReM, MEA, MerMod, and the Joint Parties.

[32] SCE did not state opposition to an additive floor price, and can be inferred to support a floor price consisting of short-run marginal cost. See, SCE's OB, p.3, pp.5-8.

[33] Ex. DRA-2, pp. 1-3 through 1-5; DRA OB, pp. 26-29.

[34] AReM OB, p.3.

litigation, PG&E sought, unsuccessfully,[35] to exclude NBCs from the price floor. PG&E, in attempting to relitigate D.07-09-016 here, offers nothing of substance that should lead the Commission to reverse its well-reasoned 2007 EDR decision.

1. PG&E Misconstrues the Passage it Quotes From D.07-09-016

PG&E's OB states:

> …the Commission left the door open in Decision 07-09-016 to reconsider its existing policy…

and quotes the paragraph from pp.33-34 from D.07-09-016:

> PG&E does not persuasively demonstrate how NBCs can be excluded from the price floor and fully funded at the same time.

As discussed in DRA's Opening Brief,[36] PG&E's interpretation of the quoted paragraph is fundamentally flawed because it ignores the context of the entirety of D.07-09-016, with its repeated references to statutory and Commission prohibitions against cost shifting.

In the context of the full Decision, the key statement should be interpreted as:

> PG&E does not persuasively demonstrate how NBCs can be excluded from the price floor and fully funded at the same time, *without unwarranted shifting of costs to nonparticipants.*[37]

As discussed in DRA's Opening Brief,[38] such a demonstration, including the Commission's clear policy direction to avoid cost shifting, is mathematically impossible

[35] See, e.g., Reply Of Pacific Gas And Electric Company To Comments On Proposed Decision Of Administrative Law Judge Barnett And Alternate Proposed Decision Of President Peevey, A.04-04-008, dated August 20, 2007.

[36] DRA OB pp. 40-41.

[37] D.07-09-016, p.33, with italicized words added by DRA

[38] DRA OB pp. 34-41.

when the additive price floor is violated. Therefore, contrary to PG&E's assertion, D.07-09-016 has not "left the door open" to jettison the price floor that it adopted.

2. The EDR Floor Price Should Continue to Consist of the Sum of NBCs and Marginal Costs; The Benchmark for Calculating CTM Consists of Marginal Costs Only

PG&E's Opening Brief states:

> Nonbypassable charges should not be included in the benchmark for calculating contribution to margin. …Such a benchmark should consist of the marginal costs for transmission, distribution, and, if a bundled service customer, generation.[39]

DRA agrees, and further agrees with SCE[40] and other parties, that a positive CTM[41] is the definitive indication of a ratepayer benefit for EDR. However, a positive CTM, though necessary, is not sufficient for Commission approval of an EDR program or contract: Pursuant to D.07-09-016 *et seq.*, EDR contracts must also satisfy an additive price floor consisting of the ***sum*** of NBCs and marginal costs.[42]

3. PG&E's 2007 Hypothetical Demonstrates the Need for an Additive Price Floor; PG&E's "Rental" Hypothetical Fails to Support PG&E's Position

In its Opening Brief, PG&E presents a rental example that likens a utility's decision to take on a new customer to that of two renters sharing an apartment deciding whether to take on a third renter.[43] In the example, PG&E posits that rent is equivalent to NBCs in that its cost to the renters is fixed; the monthly food and utilities are variable costs that are equivalent to the utility's marginal costs. PG&E concludes that an

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[39] PG&E OB, p.6.

[40] See, e.g., SCE OB p.6.

[41] CTM is defined as the excess of the revenue provided by the new or retained customer above the marginal cost. See, e.g., Ex. DRA-1, p.4.

[42] DRA OB, pp.23-25.

[43] PG&E OB, pp.9-10.

additional renter would provide a benefit to the other two existing renters so long as he/she were willing to pay any amount exceeding the variable cost. However, the analogy of rent to NBCs is not valid. Since the Commission has interpreted the P.U. Code as saying that NBCs cannot be discounted, the NBC revenue ("rent") must increase proportionately when a new customer ("renter") is added. To make the analogy valid for NBCs, the landlord effectively is charging a rent proportional to the number of occupants. Thus, the new renter must contribute revenue at least equal to the variable cost ***plus*** the per occupant rent.[44]

A better hypothetical was presented by PG&E in a 2007 pleading in a previous EDR proceeding.[45] As described in DRA's OB,[46] while PG&E could argue that a 25% discount would still result in a positive CTM and an economic benefit, funding NBCs first results in a shortfall in revenue needed to cover marginal costs. This would cause costs to be shifted to other customers, in violation of statute and Commission policy.[47]

4. Nonbypassable Charges Cannot Be Fully Funded Without Cost Shifting, When Distribution Rates Are Negative.

PG&E's Opening Brief states:

> PG&E has demonstrated in this proceeding that NBCs can be fully funded even when distribution rates are negative.[48]

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[44] PG&E OB, pp.9-10. The NBC per customer is $500. A new customer (renter) would need to pay the full amount of the NBCs ($500) plus the variable cost ($600), or $1,100 in total. If the new renter paid only $700 as PG&E suggests, $500 would still be due to the landlord (for NBCs/rent), leaving only $200 to cover the variable expenses and resulting in a shortfall of $400 ($600-$200) that would be shifted to the original occupants (who would not be happy).

[45] Reply Of Pacific Gas And Electric Company To Comments On Proposed Decision Of Administrative Law Judge Barnett And Alternate Proposed Decision Of President Peevey, A.04-04-008, dated August 20, 2007.

[46] DRA OB, pp. 34-37.

[47] Id.

[48] PG&E OB, p.9.

PG&E neglects to mention, however, that negative distribution rates always imply cost shifting. This most easily can be seen in the case of a DA or CCA customer. When the distribution rate is negative for such a customer, that customer is providing insufficient revenue to cover its NBC rate components, let alone its marginal distribution cost. Given PG&E's assertion that NBCs are fully funded, that revenue, as well as the revenue needed to fund the customer's marginal distribution cost, must be shifted from other customers.[49]

PG&E's CARE example[50] does not apply to EDR because cost shifting to fund CARE discounts is specifically authorized by statute. No such cost shifting is legally permitted for EDR.[51]

C. A Positive CTM is Necessary to Satisfy the Mandate of P.U. Code §704.4(h)

In response to Scoping Memo Issue 9, "Must the proposed EDR schedule of rates generate a positive contribution to margin in order to comply with section 740.4(h)?" PG&E responded "No."[52] DRA strongly disagrees, and believes that in order to comply with PU Code §740.4(h), the proposed standard and enhanced EDR programs must individually generate a positive CTM.[53] DRA's interpretation is consistent with the Commission's two most recent EDR Decisions, D.05-09-018 and D.07-09-016, and is supported by most of the other parties in this proceeding.[54]

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[49] DRA OB, pp.41-45.

[50] Ex. PG&E-4, pp.2-16, 2-17, PG&E OB, p.9.

[51] DRA OB, pp. 26-29. See also, D.07-09-016, pp. 6, 11, 16, 26, 27, and 35 and D.06-08-033, p.5.

[52] PG&E OB, p.21.

[53] See Ex. DRA-1, pp. 1-11 – 1-14; Ex. DRA-2, p. 1-5; DRA OB, pp. 9 – 18.

[54] See MEA OB, p.3. MedMod OB, p.8, SCE OB, p.5, TURN OB, p.2, Greenlining OB, p.7, Joint Parties OB, p.18 citing to Ex. JP-3, AReM OB, p. 3 "To ensure that non-participants' rates are just and reasonable, and to comply with Public Utility Code Section 740.4(h), the Commission must maintain price floors. All non-bypassable changes, including marginal distribution costs must be paid. As discussed in detail below, the EDR floor established in Decision ("D.") 07-09-016 (modified by D.07-11-052) is legally required and reasonably protects the interests of non-participants and guarantees compliance with Public Utilities Code Section 740.4(h)."

One of the strongest supporters of DRA's interpretation of PU Code §740.4 is PG&E's sister utility SCE, whose Opening Brief states, "the Commission has consistently interpreted the 'derive a benefit' phrase to mean that EDR recipients must make a positive CTM."[55] SCE goes on to state:

> There is no compelling reason to revisit this easy-to-administer, logical, previously litigated and applied standard for what constitutes a "benefit to ratepayer" consistent with Section 740.4(h).[56]

The above quotation from SCE is especially compelling because SCE's current EDR program recently expired, and it has offered EDR programs for the past 15 years. The fact that SCE believes that using a positive CTM, as a way to ensure ratepayer benefits is "easy-to-administer" and "logical," as well as consistent with past Commission precedent, further supports the utility and propriety of this standard. The Commission should require all standard and enhanced EDR contracts to generate a positive CTM in order to comply with PU Code §740.4(h).

PG&E incorrectly states "that EDR programs produce numerous benefits beyond CTM that accrue to remaining customers that could offset any shortfalls."[57] In making this statement, PG&E mischaracterizes a quote from D.07-09-016, which it cites in its OB.[58] The quote that PG&E cites is found in a section of the Decision that discusses which bill components may receive the EDR discount.[59] That section of D.07-09-016 does not discuss or reference PU Code §740.4. Thus any "benefits" discussed in that section are not within the context of the ratepayer benefit statute. PG&E's assertion that

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[55] SCE OB, p.5.

[56] SCE OB, p.6.

[57] PG&E OB, p.21.

[58] Id.

[59] D 07-09-016, p.26, Question 5 "5.Can EDR program levels under Decision 05-09-018 be achieved by applying the discount to bill components other than nonbypassable charges? Are there any statutory restrictions to applying the EDR discount to the other bill components?"

indirect benefits of the EDR program can satisfy the ratepayer benefit mandate in PU Code §740.4(h) is incorrect and misleading. As DRA has explained in its testimony[60] and OB, and as the Merced and Modesto Irrigation Districts, state:

> While the Commission has acknowledged that economic rates may result in indirect benefits, it has not determined that such benefits *alone* are sufficient to protect ratepayers; direct benefits are required.[61]

D. PG&E Has Not Demonstrated That Its Proposed 35% Enhanced EDR Discount Is Just, Reasonable, Will Benefit Ratepayers, and Is Necessary To Retain and Attract At-Risk Businesses[62]

1. PG&E's Proposed 35% Enhanced EDR Could *Raise* Rates for All Ratepayers

PG&E's Opening Brief states:

> PG&E's EDR program is designed to lower rates for all ratepayers by increasing or retaining revenues that contribute to its fixed costs.[63]

In support of this contention, PG&E provides tables showing positive CTMs over a ten-year analysis period.[64] Included here is a very limited set of sensitivities to the risks which PG&E acknowledges: free-ridership, termination of service after the five-year discount period, and qualification for a second EDR term under a new EDR program. Of note, many of PG&E's CTM calculations for the proposed five-year contract term are negative.[65]

Many other scenarios that PG&E could have run would produce negative ten-year CTMs. One significant risk that PG&E fails to acknowledge or analyze is the risk that

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[60] See Ex. DRA-1, pp. 1-13 – 1-14; DRA OB, pp. 14 – 18.

[61] MerMod OB, p.8.

[62] Responds to Scoping Memo Question 15.

[63] PG&E OB p.16.

[64] PG&E OB, pp. 16-18.

[65] DRA OB, p.22; Ex. PG&E-5, pp. WP 2-7 – 2-12.

marginal energy costs will increase over time. As DRA shows by example, increasing marginal energy costs, coupled with a fixed percentage discount, can cause an initially positive CTM to become negative.[66]

Merced and Modesto Irrigation Districts clearly explain the problems with PG&E's ten-year CTM analyses.[67]

> There are several problems with PG&E's analysis. First, PG&E assumes that customers would take service under the EDR tariff during the first five years, and that most would return to full tariff rates during the second five years (with 10% taking service at a 12% discount).[68] If a replacement EDR program is adopted after the proposed EDR program ends, 10% could well turn out to be a low estimate of continuing participants, and 12% may be too low an estimated discount, in which case either or both would further reduce even the 10-year CTM calculated by PG&E.[69] Second, PG&E does not account for any level of customer attrition. Notably, of the 15 customers who signed up for service under the current EDR program, two have since ceased service, one after only seven months on the EDR tariff, and one after 10 months.[70]

As DRA's Opening Brief points out, there are many uncertainties that can affect ten-year CTM outcomes.[71] Relying solely on a ten-year analysis to demonstrate positive CTM is too speculative and subjects nonparticipating ratepayers to substantial and

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[66] DRA OB, pp.52-54.

[67] MerMod OB, pp. 8 – 9.

[68] PG&E OB, p.17.

[69] PG&E/Pease, 2 RT 320, lines 5-17 and 25- 28; p. 321, lines 1-5. PG&E also acknowledged that a higher level of free riders than assumed in Table 2-3 of Exh. PG&E-4 would decrease the 10-year CTM calculated by PG&E. (PG&E/Pease, 2 RT 320, lines 19-24).

[70] Exh. MerMod-1, Attachment I. In rebuttal testimony, PG&E indicates that three of the 15 customers (or 20% of program participants) ceased operations before the end of their rate reduction period. (Exh. PG&E-4, p. 2-9, lines 22-25 (Pease). PG&E also indicates that eight of 38 customers (or 21% of program participants) were not operating for five years after the rate reduction period, two of the 38 did not complete the rate reduction period. (*Id*. at lines 19-22, and note 38).

[71] DRA OB, p.51.

unnecessary risk. PG&E claims that reliance on a ten-year CTM analysis is supported by PG&E's actual experiences with the EDR program.[72] However, PG&E's experiences with its past EDR programs are not indicative of likely results from the proposed EDR program because it proposes a much higher discount than any of the past programs and will likely have significantly more participants than the past programs.

In summary, PG&E is proposing an enhanced EDR discount that is nearly three times larger than the recently-expired 12% standard EDR discount, coupled with relaxed eligibility requirements and elimination of a pricing floor. Contrary to the rosy picture PG&E attempts to paint, this combination places ratepayers at high risk of negative CTM.[73] Just as a positive CTM would benefit ratepayers by retaining or increasing revenues that contribute to fixed costs, a negative CTM would harm ratepayers.[74] PG&E has not met its burden of demonstrating that ratepayers will benefit from the proposed EDR programs. In order to comply with PU Code §740.4, the Commission should require that PG&E demonstrate that both the standard and enhanced EDR programs will produce a positive CTM over the five-year contract term.

2. PG&E Provided No Analysis Supporting Its Proposed 35% Enhanced EDR Discount; There is No Evidence That DRA's Proposed Average 22% Discount Would Not Be Equally Effective

As Merced and Modesto Irrigation Districts pointed out:

> PG&E has not presented evidence in support of *any* level of discount, much less in support of a determination of the minimum discount that would achieve the program goal[75].

[72] PG&E OB, p.19.

[73] DRA OB, pp. 46-54. In hearings, PG&E's witness acknowledged that PG&E's proposed 35% EDR discount carries more risk to nonparticipating ratepayers than DRA's proposed 22% enhanced EDR discount. PG&E/Pease 2 RT 285.

[74] A negative CTM means that the customer is contributing insufficient revenue to cover the marginal costs caused by its demand. In that case, other customers must contribute additional revenue to make up for the marginal cost shortfall.

[75] As stated in D.10-06-015, p.2, the goal of the EDR program "is to attract and retain those businesses in California that would otherwise go out of business or leave the state, reducing the number of jobs

(continued on next page)

> Similarly, PG&E has not demonstrated that any specific discount level is too low. … there is no evidence establishing that a 35% discount is necessary to sway a location decision, or that a 12% [or 22%] discount is too low in areas with higher unemployment. [76]

Since PG&E has not met its burden of proof to show that a 35% discount is just and reasonable, the Commission should instead adopt DRA's EDR proposals which, unlike PG&E's enhanced EDR, are fully compliant with Commission policies and the P.U. Code.

III. RESPONSE TO LOCAL GOVERNMENT PARTIES

A. The Existence of a Benefit is not Sufficient to Satisfy the Ratepayer Benefit Requirements of P.U. Code §740.4(b) and (h)

The Local Government Parties ("LGP") incorrectly states that PU Code §740.4(h) does not limit recovery of expenses to the extent of benefits but that it "requires there only be a 'benefit'."[77] LGP has erroneously accused DRA of misquoting this statute.[78] Thus, below is PU Code §740.4(h) in its entirety:

> 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*. Further, it is the intent of the Legislature that expenses for economic development programs incurred prior to the effective date of this chapter,

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(continued from previous page) available to Californians."

[76] MerMod OB, pp.21- 22.

[77] LGP OB . at p. 2, p.15.

[78] Id. at p.14.

> which have not been previously authorized to be recovered in rates, shall not be subject to rate recovery.[79]

The above quoted statute clearly limits rate recovery by any public utility of expenses and rate discounts to the extent it demonstrates that the ratepayers will derive a benefit.[80] DRA's interpretation that "ratepayer benefit" requires a positive CTM is based on interpretation of past Commission precedent and the price floor requirements of past EDR programs, which are discussed in Section II.C. of this Reply Brief. This interpretation of the ratepayer benefit requirement is consistent with the way many other parties in this proceeding have interpreted PU Code §740.4(h).[81] Requiring the proposed EDR programs to benefit ratepayers in the form of a positive CTM is fair to all of PG&E's ratepayers and is mandated by PU Code §740.4.

A clear and tangible demonstration of ratepayer benefits is necessary because PG&E's proposed enhanced EDR program could result both in revenue undercollections as well as potential negative CTM.[82] Discounts necessarily result in revenue undercollections even if there is positive CTM. Resulting revenue shortfalls will be recovered from all of PG&E's ratepayers, many of whom have also been affected by the

[79] P.U. Code §740.4(h), emphasis added.

[80] LGP 's interpretation would make sense only if the EDR program were funded 100% at PG&E shareholder expense, which no party (certainly not PG&E) is proposing.

[81] See MEA OB, p.3. MedMod OB, p.8, SCE OB, p.5, TURN OB, p.2, Greenlining OB, p.7, Joint Parties OB, p.18 citing to Ex. JP-3, AReM OB, p. 3 "To ensure that non-participants' rates are just and reasonable, and to comply with Public Utility Code Section 740.4(h), the Commission must maintain price floors. All non-bypassable changes, including marginal distribution costs must be paid. As discussed in detail below, the EDR floor established in Decision ("D.") 07-09-016 (modified by D.07-11-052) is legally required and reasonably protects the interests of non-participants and guarantees compliance with Public Utilities Code Section 740.4(h)."

[82] Ex. DRA-2, p.1-9, "For retention customers, marginal costs are unchanged but the CTM decreases by exactly the amount of the discount. Even if the CTM remains positive after the EDR discount, ratepayers are harmed relative to the status quo prior to the EDR, when the EDR retention customers were paying the full rate."

economic downturn and are already paying some of the highest electric rates in the Country.[83]

Thus, LGP advocates for potentially raising residential ratepayers electric rates in order to give substantial discounts, which average $200,000 annually,[84] to large industrial and commercial customers. The revenue shortfall could be substantial if many retention customers participate in this program, which could happen given the very large "carrot" of a 35% discount.[85] To the extent that indirect benefits from this program exist, they have not been quantified. Even if they had been, they cannot be used to offset the lack of an adequate showing of direct benefits (positive CTM).

B. LGP Asserts, But Does Not Demonstrate, That DRA's EDR Program Would Be Ineffective

Discussing the severe economic conditions in high-unemployment counties, LGP states:

> The record illustrates a broad consensus on the need for action..…the now expired EDR option was neither sufficiently scaled to attract or retain jobs in adversely affected areas nor was it generally effective.[86]

In response to the significance of the current economic downturn, DRA has proposed the most generous EDR program in the history of the Commission's EDR offerings, including a significant relaxation of some of the more burdensome features of the recently expired EDR program.

Unfortunately, LGP arbitrarily dismisses DRA's enhanced EDR proposal, stating:

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[83] Ex. PG&E-1, p. 1-8.

[84] DRA OB, p. 47, Table 10.

[85] DRA OB, pp. 47-48, "If all 1,337 potentially eligible customers apply and qualify for enhanced EDR, the revenue shortfall would be $275 million annually, based on this analysis."; See also Ex. DRA-2, p.1-9.

[86] LGP OB, p.4.

> Even DRA proposes that the EDR be scaled up…. However, DRA – and other intervenors – seem wed to too many of the flawed provisions of past failed EDR options
> … Any such EDR would fail the test of being an effective off the shelf program …[87]

LGP's rejection of DRA's enhanced EDR proposal is wrong on several counts:

- With an initial discount of 35% and a five-year average discount of 22%, DRA's enhanced EDR proposal is far more generous than previous EDR programs and is, contrary to LGP's assertion, likely to get the attention of potentially eligible businesses.
- DRA's proposal is neither more complex nor more burdensome than some reasonably successful previous EDR programs.
- DRA has agreed with PG&E and LGP that the "clawback" feature of the previous EDR program should be eliminated.
- Unlike PG&E's enhanced EDR, DRA's proposal preserves essential ratepayer safeguards established in D.07-09-016.

In summary, LGP has not shown that a five-year 35% discount is necessary for an EDR program to be effective. The Commission should adopt DRA's enhanced EDR proposals, rather than PG&E's, because PG&E's proposal generates the risk of higher electric rates for every Californian in its service territory.

[87] LGP OB, pp. 5-6.

IV. CONCLUSION

For the reasons discussed above, the Commission should reject PG&E's unreasonable EDR proposal and adopt DRA's proposal instead.

Respectfully submitted,

/s/ GREGORY HEIDEN

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Gregory Heiden
Staff Counsel

Attorney for the Division of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 355-5539
Fax: (415) 703-2262
E-mail: gregory.heiden@cpuc.ca.gov

January 18, 2013