BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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In the Matter of the 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)

REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE CLARK

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REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE CLARK

I. SUMMARY

Pursuant to Rule 14.3 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Division of Ratepayer Advocates ("DRA") hereby submits reply comments on the August 9, 2013 Proposed Decision of ALJ Richard Clark ("PD").[1] The PD's provision of an opportunity for an enhanced EDR discount of 35 percent, which is much higher than any EDR discount ever approved by this Commission, is only supported by two parties and vigorously opposed by others. Yet those two parties, PG&E and LGP, are still critical of the PD for upholding longstanding precedent that an EDR discount not allow any EDR customer to pay less than the sum of marginal costs and nonbypassable charges. DRA reiterates that this price floor is a necessary legal protection for non-participating customers and must be enforced either through the PD's proposed refund check/bill credit or through a back bill. DRA also replies to several other opening comments below.

II. DISCUSSION

A. An Additive Price Floor, Consisting of the Sum of Nonbypassable Charges and Marginal Costs, is a Legal Requirement Necessary to Protect PG&E Ratepayers.

Of the parties filing Opening Comments, only PG&E and LGP oppose retention of the additive price floor adopted in D.07-09-016 and reflected in all EDR contracts from the effective date of that decision until the expiration of the most recent EDR at the end of 2012. DRA believes that this is the key issue of this proceeding. PG&E's direct testimony proposed that there be no price floor constraining EDR discounts.[2] In its Opening Comments, PG&E appears to have abandoned this position and now appears to argue for a price floor consisting of marginal costs only. Thus, PG&E states:

> "PG&E's position is that retention, attraction, and expansion customers need only pay a rate that exceeds the marginal costs of service – and that NBCs need not be included in the so-called "floor price" – in order to produce benefit for all of PG&E's remaining customers."[3]

There is no dispute among the parties that CTM is a valid measure of ratepayer benefits. Further, no party has alleged that NBCs are marginal costs and must therefore be subtracted from

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[1] Pursuant to an August 15, 2013 Electronic Ruling by ALJ Clark, Reply Comments are due on September 6, 2013.
[2] Ex. PG&E-1, p.2-7.
[3] PG&E Opening Comments, p.3

customer revenue in computing the CTM.[4] However PG&E's contention that NBCs are not required to be in the price floor is inconsistent with sections of the P.U. Code prohibiting (1) discounting NBCs and (2) shifting marginal costs among customers, as interpreted by D.07-09-016. [5] While most of the discussion in D.07-09-016 focuses on statutory prohibition against discounting of NBCs,[6] the term "cost shifting" occurs on six separate pages of that decision, in the context of a statutory or regulatory prohibition.[7]

PG&E contends that the inclusion of NBCs in the EDR floor price adopted in D.07-09-016 hinged on PG&E's failure to "persuasively demonstrate how NBCs can be excluded from the price floor and fully funded at the same time".[8] PG&E now claims: "That deficiency has been remedied." [9] To the contrary, PG&E has not made, and cannot make, such a demonstration, at least, not without impermissible cost shifting. The additive price floor adopted in D.07-09-016 ensures that EDR customers provide sufficient revenue to simultaneously fully fund both the NBCs and the marginal generation and distribution costs. If this condition is not met, then either one or more NBCs are effectively discounted, or the marginal costs caused by the EDR customer's demands are not fully funded and are consequently shifted to other customers. Both outcomes are impermissible according to D.07-09-016.[10] PG&E simply has not provided the needed justification to relitigate these findings.

B. The Proposed Decision Correctly Requires That PG&E Annually Estimate the Discount for Each Customer, and Finalize the Discount Based on the Price Floor

PG&E criticizes the PD for requiring an annual refund to customers rather than providing a guaranteed discount.[11] A guaranteed discount is not allowable because of the need to enforce the legally required price floor, thereby ensuring that EDR customers fully fund their marginal

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[4] For the most part, NBCs are not marginal costs; transmission being the sole agreed-upon counterexample of a rate component which is both an NBC and a marginal cost. See, DRA Opening Brief, p.60.
[5] Specifically, D.07-09-016 prohibits shifting of costs *caused by* EDR participants to non-participating ratepayers, where cost causation is reflected in marginal cost. Discounts below marginal distribution and generation costs always involve such cost shifting because such costs are incurred as an unavoidable consequence of the EDR participants' demand for energy (see, Ex. DRA-2, p.1-3). D.07-09-016 cites P.U. Code Sec. 366.2(d)(1), which states: "It is further the intent of the Legislature to prevent any shifting of recoverable costs between customers."
[6] D.07-09-016, p. 16
[7] Id, pp. 6, 11, 16, 26, 27, and 35. See also D.06-08-033, p.5, and P.U. Code Sec. 366.2(d)(1).
[8] PG&E OC, p.4, quoted from D.07-09-016, pp. 33-34. Effectively, PG&E is "cherry-picking" one sentence in D.07-09-016 and ignoring the six separate references to cost shifting cited above.
[9] Id.
[10] D.07-09-016, p.33, FOF 1 rules out discounting of NBCs.
[11] PG&E Opening Comments, pp.2, 6-8.

and nonbypassable costs. Such assurance requires periodic true-up of customer bills to reflect changes in the floor price. PG&E argues "an incentive that can fluctuate in an unpredictable fashion is not useful and will be ineffective in influencing a company's location decision."[12] DRA disagrees the discount will be unpredictable and not useful. First, the PD correctly requires that PG&E meet with customers and provide "a good faith … estimate of the saving the customer can reasonable expect to receive." [13] This greatly reduces uncertainty, and PG&E should have no problem doing this.[14] Second, the EDR program could provide even greater certainty if the Commission adopts DRA and other parties' proposal in opening comments that marginal costs for the price floor be based on GRC Phase 2 marginal cost results, which are reset <u>every three years</u>. The only annual change would be for nonbypassable charges, which typically only fluctuate mildly.

Further, PG&E's and LGP's statements that a larger up front discount could be allowable based on DRA's proposal mischaracterize and cherry pick from DRA's testimony.[15] While DRA proposed an average enhanced discount of 22 percent over the five-year contract term, the DRA price floor using a five-year NPV approach included both 1) twenty-five percent shareholder funding of the discount and 2) shareholder funding of any shortfalls.[16] Since the PD adopted neither of these proposals, it is inappropriate for PG&E to recommend a discount based on DRA's analysis without the recognition that PG&E shareholders would fund a shortfall if those forecasts did not come to fruition.[17]

Finally, DRA opposes AReM's proposal to use the average of the constrained and unconstrained distribution marginal cost in computing the price floor.[18] Doing so would result in

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[12] Id., p.7 citing PG&E testimony.
[13] PD., at 29.
[14] As is shown in its comments, PG&E can already reasonably calculate the available discount to various customers
[15] PG&E Comments, at 6-7. Similarly, LGP refers to DRA's proposed 22 percent discount (LGP Comments at 4) and allowing for the discount over a locked in five-year period, without the recognition that the DRA proposal protected ratepayers by requiring shareholder funding of the shortfall.
[16] Ex. DRA-1, pp.12-13.
[17] Without an annual price floor as authorized by the PD and prior EDR programs, or DRA's proposed shareholder funding of a revenue shortfall, an EDR would be illegal pursuant to D.07-09-016 because of unlawful cost-shifting to non-participating customers. For this reason, and as described in DRA's Opening Comments, DRA also opposes AReM's proposal that an Enhanced EDR customer get a guaranteed 12 percent discount. AReM Comments at 6-7. Even at this lower discount, there is the possibility that the EDR customer could pay less than the price floor if the price floor is not actually enforced. AReM recognizes this elsewhere in its Comments when it states that "in the event that a 12% EDR reduction results in a rate lower than the floor rate, the floor rate should prevail." Id. at 2. The floor price should prevail under both EDR programs.
[18] AReM Opening Comments, p.2.

customers in constrained areas receiving excessive discounts. If their cumulative loads exceed those for unconstrained areas, the EDR program would not benefit ratepayers as required by P.U. Code Section 740.4.

C. Other Issues

1. The Proposed Decision Correctly Orders PG&E Shareholders to Bear the Administrative Costs of Implementing the EDR Program

PG&E opposes the PD's requirement that the administrative costs of implementing the EDR program be borne by PG&E shareholders.[19] PG&E's first argument that shareholder funding of administrative costs is outside of the scope of this proceeding is unfounded.[20] DRA originally proposed shareholder funding of a portion of EDR program costs,[21] and this issue was discussed by many of the parties in their Rebuttal Testimony, Opening Briefs, and Reply Briefs as well as extensively in hearings.[22] PG&E's second argument, supported by LGP, is that Resolution E-3654 is "based on outdated regulatory conditions and is simply not applicable today."[23] Yet Decision 07-09-016 was issued in 2007, during market conditions similar to those today and it relied on the rationale, used in Resolution E-3654, that EDR programs "benefit shareholders by maintaining or increasing customer base and market share".[24] PG&E's final point is that a 1944 Supreme Court decision makes shareholder funding illegal.[25] However, the Court's decision does not prohibit shareholder funding. It only mandates that utilities have sufficient revenues to fund their overall operations and provide an appropriate return to investors. The Commission has already found, in D.07-09-016, that it has the authority to require shareholders to pay costs of an EDR program.[26]

PG&E also states that it already has determined not to seek rate recovery of EDR administrative costs in the 2014 GRC and, therefore, the issue of shareholder funding of EDR program administrative costs is moot.[27] DRA disagrees. Utilities generally have some discretion on how to spend their authorized revenue requirement, and even when there's no explicit "line

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[19] PG&E Opening Comments, pp. 9-10.
[20] PG&E Opening Comments, p. 9.
[21] DRA Testimony, p. 3-14.
[22] A.12-01-003 Hearing Transcript, 1:36-42, 1:49-51, 1:108-112.
[23] PG&E Opening Comments, p. 9.
[24] D.07-09-016, p.27.
[25] PG&E Opening Comments on the PD, p. 10.
[26] D.07-09-016, p.27: "The consideration of benefits accruing to shareholders should result in some allocation of costs to the utility, but this record does not support a finding of a particular percent."
[27] PG&E Opening Comments, p. 9. PG&E requested EDR funding in both its 2007 and 2011 GRCs.

item" for EDR, the administration costs are paid by ratepayers through the overall revenue requirement. Thus DRA supports AReM's recommendation that the PD be modified to direct PG&E to explicitly track all EDR program administrative costs and demonstrate how those costs are recovered.[28]

2. PG&E Should Annually Report on the Amount of the Headroom Shortfall Generated by the EDR Program.

The Merced and Modesto Irrigation Districts recommended that "the Commission add to the reporting requirements set forth in the PD a requirement to (1) report on the amount of the headroom shortfall, and (2) show how it was allocated to non-participating customers."[29] DRA supports this recommendation because it will provide the Commission with valuable information about the EDR program's impacts on non-participating ratepayers. Such information will be critical to evaluating the success of the EDR program.

3. The Proposed Decision's 5% Energy Savings Requirement is Reasonable

DRA supports the PD's requirement that PG&E achieve a 5% energy usage reduction over the life of the Enhanced EDR tariff and, given that the requirement is spread across the entire Enhanced EDR program[30], it is realistic and practical. Due to the size of the potential discount for Enhanced EDR customers, it is reasonable to expect that at least some of these customers can deploy additional energy efficiency or demand response measures.

Respectfully submitted,

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[28] AReM Opening Comments, PD, p.7.
[29] Merced Irrigation District and Modesto Irrigation District, Opening Comments, p.9.
[30] PD., p.34