BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Joint Petition of the Cities of Concord, Taft, Madera, Kerman and Clovis, and Pacific Gas and Electric Company to Adopt, Amend, or Repeal a Regulation Pursuant to Public Utilities Code Section 1708.5

(JU39E)

JOINT PETITION OF THE CITIES OF CONCORD, TAFT, MADERA, KERMAN, AND CLOVIS AND PACIFIC GAS AND ELECTRIC COMPANY (U39E) TO ADOPT, AMEND, OR REPEAL A REGULATION
Pursuant to Public Utilities Code §1708.5

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Dated: August 12, 2013

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The cities of Concord, Taft, Madera, Kerman and Clovis ("the Cities") and Pacific Gas and Electric Company (PG&E) hereby submit this petition to adopt, amend or repeal a regulation pursuant to Public Utilities Code Section 1708.5 and the Commission's Rules of Practice and Procedure ("CPUC Rule") 6.3.

I. Background

On August 22, 2011, the Cities filed a formal complaint (the "Complaint"), which initiated C.11-08-022 (the "Complaint Proceeding"). The Complaint alleges that PG&E has incorrectly calculated and remitted to the Cities the municipal surcharge in violation of the Municipal Public Lands Surcharge Act, Public Utilities Code sections 6352-6354.1 (the "Municipal Surcharge Act").

In the Complaint, the Cities request that the Commission order PG&E to adopt the remittance methodology used by Southern California Gas Company ("SCG") and San Diego Gas and Electric Company ("SDG&E"), and reimburse the Cities for what they contend are past underpayments of surcharge remittances. The Complaint alleges that San Diego Gas and
Electric Company (SDG&E) and Southern California Gas Company (SCG) (collectively, the “Sempra Utilities”), on the one hand, and PG&E, on the other, employ different methodologies to calculate the amount remitted to cities within each of their service territories. The Complaint seeks a uniform determination by the Commission on the appropriate surcharge remittance methodology under the Municipal Surcharge Act:

“The different Surcharge remittance methodologies employed by the State's investor owned utilities, and the significant impact it has on the amounts remitted to cities, is a problem the Commission should address. It is not appropriate to permit the State's investor owned utilities to interpret and apply the Surcharge Act in different ways.... The Commission should adopt a single State-wide Surcharge remittance methodology consistent with the SCG/SDGE approach.”

Complaint, page 8 (Emphasis added)

On December 20, 2011, the Assigned Commissioner's Ruling and Scoping Memo (“Scoping Memo”) determined the scope of the Complaint Proceeding as follows:

The scope of this proceeding is to decide whether to grant or deny the Complainant's request to order PG&E to modify its municipal surcharge remittance methodology and reimburse the Cities for what they contend are past underpayments. In order to make this decision, the Commission will need to conduct a statutory interpretation of the Municipal Surcharge Act....

On January 13, 2012, Southern California Edison Company (“SCE”) filed a motion for party status in this proceeding, stating that it would necessarily be impacted by the request for a uniform determination by the Commission on the remittance surcharge methodology. On February 8, 2012, Administrative Law Judge David Gamson granted SCE’s motion for party status.

The Scoping Memo ordered the parties to attempt to jointly stipulate to the facts in this matter. In the course of informal discovery conducted by the parties, it became apparent that the Sempra Utilities have for many years employed a different surcharge remittance methodology than PG&E and SCE.
II. Grounds for Institution of Rulemaking Proceeding

The parties recognize that the relief requested in the Complaint raises certain issues, the resolution of which could impact the surcharge remittance methodology employed by IOUs throughout the state. The parties believe these issues would be more appropriately addressed in a single, separate rulemaking proceeding involving the Sempra Utilities, PG&E, and SCE (collectively, the "IOUs"), and in which other cities, counties and other potentially affected parties would have an opportunity to participate. Such a statewide rulemaking proceeding would also avoid the possibility of multiple, conflicting determinations involving different IOUs in separate, piecemeal complaint proceedings before the Commission, and would be the most efficient use of Commission resources to resolve the issues raised in the Complaint.¹

Furthermore, certain facts that are relevant to the issue of the fiscal impact on cities and counties if one or another remittance methodology were adopted on a state-wide basis are in the sole custody of the Sempra Utilities, which are not parties to the Complaint Proceeding. Additional discovery regarding the precise methodologies employed by all of the IOUs may also be helpful to the Commission's resolution of the issues. The parties believe that a statewide rulemaking proceeding will make for more streamlined and efficient discovery, and will permit all interested parties to access the fruits of any such discovery.

The Complaint seeks a uniform determination from the Commission as to the appropriate method to calculate and remit the municipal surcharge under the Municipal Surcharge Act. The uniform nature of the requested relief would potentially impact all IOUs in the state that collect and remit the municipal surcharge. Such a decision would necessarily require the Commission

¹ Prior to the filing of this Joint Petition, PG&E and the Cities filed a stipulation and motion requesting dismissal of the Complaint without prejudice, and they have entered into a separate tolling agreement, pursuant to which any statute of limitations applicable to the claims asserted in the Complaint or any defenses thereto are tolled. To the extent any issues raised or relief requested in the Complaint are not addressed or provided in the proposed rulemaking proceeding -- specifically including, but not limited to, the issue of PG&E's obligation to compensate the Cities for alleged past underpayments of the Surcharge -- the parties would address them in a separate complaint proceeding, if appropriate.
to conduct an investigation and develop a policy as it relates to the proper remittance methodology under the Municipal Surcharge Act.

A change in the remittance methodology by one or more IOUs could have a potential fiscal impact on a number of cities and counties within the service territory of the IOU(s). With the exception of the five cities that are Complainants in this matter, no other city or county is a party to the Complaint Proceeding.

To the best of the parties' knowledge, the precise issue to be addressed in the proposed rulemaking proceeding -- namely, the appropriate remittance methodology applicable to third-party revenues under the Municipal Surcharge Act -- has never been litigated or considered by the Commission.²

III. Requested Relief.

Pursuant to Public Utilities Code Sections 1701.1 and 1708.5, and for the reasons set forth above, PG&E and the Cities hereby request that the Commission institute a

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² In their Complaint, the Cities noted that in D.10-03-040 the Commission resolved the issue of the appropriate remittance methodology for Department of Water Resources ("DWR") revenues. However, the Complaint expressly acknowledged that, in D.06-05-005, the Commission clarified that D.10-03-040 did not address the issue of the appropriate remittance methodology for third-party revenues more generally. Likewise, in D.03-02-032, the Commission addressed Surcharge remittances from DWR revenues, not third-party revenues generally.
rulemaking proceeding for the purpose of establishing a single statewide remittance methodology consistent with the Municipal Surcharge Act.

PAUL KERKORIAN

By: /s/ Paul Kerkorian

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Representative of Cities of Concord, Taft, Madera, Kerman and Clovis

Dated: August 12, 2013

STEPHEN L. GARBER
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By: /s/ Grant Guerra

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Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY
DECLARATION OF PAUL KERKORIAN

I, Paul Kerkorian, declare as follows:

1. I know the following facts based on my own personal knowledge. If called as a witness, I could and would competently testify thereto.

2. I am the representative of the Cities of Madera, Taft, Kerman, Clovis and Concord in connection with proceeding C.11-08-022 and the accompanying or attached joint petition to adopt, amend, or repeal a regulation pursuant to Public Utilities Code 1708.5 (the "Petition").

3. On August 8, 2013, I sent an email to Judy Cooper at the California Public Utilities Commission's (CPUC's) Public Advisor's Office. The email included a draft copy of the Petition and explained that the email was being sent in order to fulfill the requirement, under Rule of Practice and Procedure 6.3(c), to consult with the Public Advisor to identify any additional persons upon whom to serve the Petition.

4. On August 9, 2013, I received a telephone call from Karen Miller, the CPUC Public Advisor. Ms. Miller said that she was responding to my August 8 email, and she advised me that there were no additional parties to serve with the Petition.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Richfield, Utah on the date indicated below.

Date: 8/21/13

Paul Kerkorian
VERIFICATION OF PG&E

I, Grant Guerra, am an attorney for Pacific Gas and Electric Company (PG&E), and am authorized to make this verification on its behalf. I have read the foregoing document and know its contents. I am informed and believe, and on that basis allege, that the matters stated therein are true. I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on the date indicated below at San Francisco, California.

By: ______________________ /s/ ______________________  Dated: ________________

Grant Guerra

August 12, 2013
VERIFICATION OF CITIES

I, Paul Kerkorian, am authorized to make this verification on behalf of Utility Cost Management LLC (UCM). UCM is the authorized representative of each of the cities of Madera, Kerman, Clovis, Taft and Concord (the "Cities"). I have read the foregoing document and know its contents. I am informed and believe, and on that basis allege, that the matters stated therein are true. This verification is being made by UCM, as representative of the Cities, in accordance with CPUC Rules of Practice and Procedure, Rule 1.11(d). The Cities on whose behalf this verification is made is/are absent from the county in which UCM's office is located and/or lack personal knowledge as to the matters stated in the foregoing document.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on the date indicated below at Fresno, California.

By: /s/ Paul Kerkorian

Dated: August 12, 2013