BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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Application of Pacific Gas and Electric Company to Revise its Gas Rates and Tariffs to be Effective July 1, 2010 (U39G)	Application 09-05-026 (Filed May 29, 2009)

OPENING BRIEF OF
THE SCHOOL PROJECT FOR UTILITY RATE REDUCTION,
ABAG PUBLICLY OWNED ENERGY RESOURCES,
AND TIGER NATURAL GAS

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I. INTRODUCTION AND SUMMARY.

On June 28, 2010, the Commission approved a partial settlement that resolved all issues in this proceeding except for (a) the core brokerage fee ("CBF") issue, and (b) the compression cost of PG&E's Scheduled G-NGV2 rate.[1] The Commission ordered the proceeding to remain open to consider the CBF issue and hearings were held on that issue on July 19, 2010. In accordance with the Administrative Law Judge's instructions at the evidentiary hearing, the School Project for Utility Rate Reduction ("SPURR"), ABAG Publicly Owned Energy Resources ("ABAG POWER"), and Tiger Natural Gas ("Tiger"), jointly submit this Opening Brief on the CBF issue.

SPURR, ABAG POWER, and Tiger are core transport agents ("CTAs") who, separately, provide commodity natural gas supply to public schools, colleges, and municipal agencies, as well as to commercial and residential accounts on the Pacific Gas and Electric Company ("PG&E") distribution system. SPURR, ABAG POWER, and Tiger are referenced collectively as "SAT" in this brief.

In this proceeding, also called the "2009 Biennial Cost Allocation Proceeding" or "2009 BCAP," the Commission is charged with allocating PG&E's costs of providing natural gas service to customers connected to its distribution system. Among those costs are PG&E's costs of providing commodity natural gas supply to bundled core customers; that is, to customers who do not affirmatively choose CTA service for their commodity gas supply. For all core customers, PG&E remains the monopoly supplier of transportation services.

The issue presented here is which costs should be allocated to the PG&E core gas procurement rate, tariff G-CP, as opposed to transportation rates. Certain cost allocations are not in dispute among the parties. For instance, no party disputes that commodity costs – the

[1] D.10-06-035 (June 28, 2010), at page 39.

costs of purchased gas, pipeline capacity, and storage capacity – should be allocated to G-CP. No party disputes that the direct costs of PG&E's natural gas purchasing department personnel should be allocated to G-CP.

The parties disagree as to whether some costs of the other business functions necessary for the provision of gas supply, including but not limited to customer enrollment, billing, customer service, accounting, and finance, should be recovered in G-CP, rather than in PG&E's monopoly (non-bypassable) transportation rates. SAT argues that such costs must be allocated to G-CP so that transportation rates will no longer create a preference for PG&E commodity supply over non-utility supply, so that one group of ratepayers will no longer subsidize another group of ratepayers with respect to these costs, and so that more accurate price signals can be presented to core customers in G-CP. PG&E argues that these costs should be recovered completely in transportation rates, with no allocation at all to G-CP.

As set forth below, California law and Commission policy require that G-CP include at least some allocation of costs for business functions related to the provision of gas supply to bundled core customers. However, since PG&E has failed to provide the necessary cost information for the Commission to make an informed allocation at this time, we recommend a three-step approach.

First, the Commission should reject the allocation proposed by PG&E in its Application and instead provisionally allocate costs to G-CP based on a reasonable proxy of actual costs as discussed below. Second, the Commission should direct PG&E to retain a qualified independent entity to study the actual costs incurred by PG&E for all business functions necessary to provide commodity gas supply to core customers, including but not limited to customer enrollment, billing, customer service, accounting, and finance. Third, based on the independent study, the Commission should allocate such costs to G-CP in place of the provisional allocation to create just, reasonable, and nondiscriminatory rates, to bring the benefits of fair competition in gas commodity supply to core customers.

II. BACKGROUND.

Prior to this 2009 BCAP, cost allocation between transportation and procurement rates was determined in PG&E Gas Transmission and Storage proceedings, commonly known as the "Gas Accord" cases. During the first Gas Accord negotiations in 1996 and 1997, PG&E favored an allocation to procurement rates restricted to the "incremental" costs of gas procurement, with remaining costs recovered in transportation rates. Other parties favored a more comprehensive embedded-cost allocation of the costs necessary for PG&E to provide natural gas supply to bundled core customers.[2] The parties compromised, presumably to avoid the costs and risks of litigation. The compromise was to allocate a fixed amount, $0.024 per Dth, to core procurement rates (later called G-CP), subject to balancing account treatment.[3]

The Commission accepted the cost allocation compromise as part of the larger Gas Accord I settlement. Due to the compromise, there was no need for the Commission to rule definitively on the issue of exactly what types of functional costs should be allocated to procurement rates. However, all parties were put on notice that the issue might be revisited by the Commission from the inception of the Gas Accord process. In D.97-08-055 (August 1, 1997), the decision adopting the Gas Accord I settlement, the Commission expressly reserved the right to revise any and all elements of the settlement at a later date and said that it would consider doing so if such a revision would help create "a more competitive gas market for all classes of utility customers."[4]

Subsequent Gas Accords did not address the issue of cost allocation to procurement rates in general, or the CBF in particular, except in two respects. First, in Gas Accords III and IV, the CBF was adjusted to its current level of $0.032 per Dth. This was done to reflect, in an imprecise way, inflation since the effective date of Gas Accord I.[5] The change in CBF levels from $0.024 per Dth at the start of the Gas Accord I effective period (March 1998) to $0.032 per Dth through the end of the Gas Accord IV effective period (December 2010) represents a compound rate of increase of 2.26% per annum.

The only other respect in which subsequent Gas Accords addressed cost allocation to procurement rates was in Gas Accord IV, when the settling parties agreed that the level of the CBF following the settlement period would be "litigated and decided in BCAPs, and not in GT&S

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[2] Exhibit 48 [Prepared Rebuttal Testimony of Michael Rochman on behalf of SPURR, ABAG POWER, and Tiger, December 17, 2009], at SPURR Exhibit A [excerpts from Report on the Gas Accord Settlement Agreement, Core Procurement Advisory Group appendix, May 10, 1996], Section IV.A., page 24: the negotiated number "represents a reasonable compromise between the utility position (and Commission directive) favoring an incremental-cost approach and the supplier position favoring a more comprehensive embedded-cost approach."

[3] Exhibit 48, at SPURR Exhibit B [excerpts from The Gas Accord Settlement Agreement, August 21, 1996], page 54.

[4] D.97-08-055, page 63, Conclusion of Law 4 ("Approval of the Gas Accord does not bind future Commissions or prohibit future Commission orders that might rescind, alter, or amend the terms of the settlement"), and page 25 (Commission intends "to consider other means to produce a more competitive gas market for all classes of utility customers").

[5] Exhibit 44 [excerpts from Gas Accord IV Settlement Agreement, March 15, 2007], page 10 (CBF "set at $0.032 per decatherm for the term of this Settlement"). See also, D.04-12-050, December 16, 2004, Exhibit 1 [Gas Accord III Settlement Agreement, August 24, 2004], page 10 (CBF increased from $0.024 per Dth to $0.030 per Dth effective in 2005 "to reflect inflation since 1997").

rate cases."[6] Nothing in the Gas Accord IV decision addressed identification of costs that should be represented in the allocation to G-CP.

This 2009 BCAP is the first BCAP since Gas Accord IV. In its BCAP Application, PG&E proposed to lower the CBF from its current rate of $0.0320 per Dth to $0.0188 per Dth for the effective period of the 2009 BCAP.[7] In support, PG&E presented testimony as to the results of a cost study undertaken by PG&E personnel.[8] According to PG&E's witness, the testimony and supporting study covered only "procurement-related" costs and did not address the costs of any other functions necessary for PG&E to provide commodity supply.[9]

SAT disagreed with PG&E's proposal to reduce the CBF and with the scope of the PG&E testimony and the supporting "study" on several grounds, including the fact that PG&E's study and testimony is inadequate to justify lowering the CBF in this BCAP. As stated in SAT's rebuttal testimony, PG&E's testimony and study did not even consider "a variety of functions that are necessary for PG&E to sell commodity gas to core customers, such as accounting, billing, customer service . . . , and credit and collection costs related to PG&E's sales of commodity natural gas.[10] PG&E filed additional testimony responding to SAT's rebuttal testimony. An evidentiary hearing was held on July 19, 2010.

The parties to this 2009 BCAP have not reached a settlement on cost allocation to G-CP. So the issue is now before the Commission as a contested matter, outside of the Gas Accord structure. The question at hand is how much of PG&E's fixed costs of providing gas supply to bundled customers should be allocated to G-CP.

III. PG&E'S PROPOSAL WOULD EXACERBATE THE CURRENT RATE STRUCTURE THAT DISCRIMINATES IN FAVOR OF ONE GAS SUPPLIER.

PG&E's proposed allocation to G-CP should not be permitted under applicable law or Commission policy. Pursuant to California Public Utilities Code ("Code") sections 453(a) and 728, the Commission must set rates that are non-discriminatory and do not favor one person over another.[11] Also, the Commission has stated a policy preference for ratemaking that

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6 Exhibit 44, page 10.

7 Exhibit 39 [PG&E 2009 BCAP Errata to Prepared Testimony Core Brokerage Fee, May 29, 2009], page 4-2, lines 21 – 23.

8 Exhibit 39, page 4-9, lines 9 – 14.

9 Transcript of July 19, 2010, evidentiary hearing ("Transcript"), page 359, lines 11 – 22, PG&E witness Hazari.

10 Exhibit 48, page 10, lines 5 – 8.

11 Code section 453(a) provides, in part: "No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage." Code section 728 provides, in part: "Whenever the commission, after a hearing, finds that the rates or classifications, demanded, observed, charged, or collected by any public utility . . . are insufficient, unlawful, unjust,

Footnote continued on next page

encourages competition for the benefit of natural gas customers. For example, in the order approving the Gas Accord I settlement, the Commission stated that it intends "to consider other means to produce a more competitive gas market for all classes of utility customers."[12] Also, in the order resolving the G-NGV2 rate issue in this 2009 BCAP, the Commission stated that its allocation of compression costs to G-NGV2 was intended to "encourage competition" in the CNG marketplace.[13]

In this context, non-discriminatory and pro-competition rates are rates that, to the extent practicable, put all commodity gas suppliers, including PG&E, on the same footing when presenting their offers to core customers. The current situation, where only one seller of commodity supply (PG&E) is privileged to recover significant portions of its costs to provide commodity gas through monopoly transportation rates, while all other core gas suppliers are not so favored, is discriminatory and must be rectified by the Commission.

Even PG&E pays lip service to the goal of setting non-discriminatory rates. The PG&E witness testified that PG&E's goal in studying costs and proposing a CBF of $0.0188 was to create a "level playing field" between PG&E and core transport agents.[14] Unfortunately, PG&E's actions in this proceeding demonstrate that their commitment to non-discriminatory ratemaking is purely rhetorical.

All providers of commodity gas supply must perform many business functions, such as enrolling new customers, managing customer information, procuring commodity supplies, billing customers, paying vendors, providing customer service and responses to procurement related customer inquiries, collecting payments from customers, accounting for revenue and expenses, managing cash, and handling customer terminations.[15] PG&E is no exception to the rule as it must perform these functions as well. [16]

Yet PG&E considered only <u>one</u> of these functions, procuring commodity supplies, as appropriate to include in their "study" of costs allocable to G-CP. PG&E proposed to include only the costs of one business unit, their Core Gas Supply Department (the "CGS"), together with

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unreasonable, discriminatory, or preferential, the commission shall determine and fix, by order, the just, reasonable, or sufficient rates[.]"

[12] D.97-08-055, August 1, 1997, page 25.

[13] D.10-06-035, June 28, 2010, page 36.

[14] <u>Exhibit 39</u>, page 4-9, lines 19 – 23.

[15] See, <u>Exhibit 48</u>, page 10, lines 5 – 12 (listing some business functions necessary to provide commodity gas supply).

[16] <u>Transcript</u>, page 380, lines 380 – 12, PG&E witness McLafferty (PG&E must enroll commodity customers and track their information), page 382, line 10 to page 384, line 13, PG&E witness McLafferty (PG&E must bill and collect from commodity customers, as well as provide customer service and accounting for those customers and cash management for that business).

some supporting functions performed by the Market Risk Management group and other PG&E departments, in G-CP.[17] The CGS and the PG&E personnel who provide support to the CGS are the buying group for core gas supplies. Yet this buying group (the PG&E "Core Procurement Group") performs only a portion of the business functions necessary for PG&E to sell commodity gas to core customers.

Based on the record in this case, it is clear that PG&E did not even consider including the costs of any other business functions in their study or in their computation of their proposed CBF. The only costs considered were those incurred by the PG&E Core Procurement Group.[18] Both PG&E witnesses conceded that they had no professional experience related to the range of functions, other than procurement, necessary to provide commodity gas supply to customers.[19] PG&E did not consult with any third parties regarding the relevance of non-procurement functions to cost allocation in this matter.[20] PG&E clearly lacks any honest interest in its stated goal of creating a "level playing field."

All PG&E core natural gas business function revenue requirements not recovered in the CBF are recovered in their (monopoly) transportation rates. For example, all billing services costs, for billing of transportation and commodity services, are recovered by PG&E in transportation rates. As PG&E's witness McLafferty testified: "Irrespective of whether or not PG&E provides procurement service to a customer, billing service costs are collected through our transportation charges and not allocated between transportation and procurement."[21]

In effect, PG&E's Core Procurement Group is the only supplier of core gas in the market who does not have to pay anything at all for billing, collection, customer service, and other necessary business functions. All of those services are provided to the PG&E Core Procurement Group *gratis*, by other business units at PG&E who recover their costs via transportation rates.

PG&E does offer to provide some services to non-utility core gas suppliers, the CTAs, for a fee. PG&E will present commodity invoices, receive payments and institute collections for such invoices, and provide some related accounting services, for CTAs who elect PG&E

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[17] Exhibit 39, page 4-11, lines 3 – 9.

[18] Transcript, page 359, lines 20 – 22, Question: "So all other costs that did not relate to procurement, those were by definition excluded [from the study]?" PG&E witness Hazari: "That is correct."

[19] Transcript, page 349, line1 to page 350, line 2 (PG&E witness Hazari's professional experience), page 436, line 27 to page 438, line 5 (PG&E witness McLafferty's professional experience).

[20] Transcript, page 356, PG&E witness Hazari, line 23 to page 357, line 11.

[21] Transcript, page 431, PG&E witness McLafferty, lines 13 – 15.

“consolidated” billing. Under PG&E consolidated billing, commodity and transportation invoices are delivered together by PG&E to the customer. Consolidated billing is offered to CTAs under PG&E Gas Schedule G-ESP, at a rate of $0.70 per service account per monthly billing cycle.[22] CTAs that do not elect PG&E consolidated billing must obtain, and bear the costs of, bill presentment, payment receipt, and collection services on their own. PG&E’s Core Procurement Group, by contrast, is the <u>only</u> core commodity supplier that receives bill presentment, payment receipt, and collection services at no cost.

While CTAs must recover the costs of bill presentment and payment receipt under the terms of their supply agreements with customers, PG&E’s PG&E Core Procurement Group can recover such costs in non-bypassable transportation rates. Similarly, for other functions such as collections, customer service, accounting, and finance, PG&E’s competitors must bear those costs and recover them, if at all, under service agreements with customers, while PG&E has access to a monopoly revenue source in which it can bury its cost recovery, out of sight of customers and free from competitive pressures. This situation is on its face discriminatory in favor of PG&E, the dominant supplier of commodity natural gas to core customers.

Based on its own testimony, PG&E was not remotely interested in allocating costs to establish a truly “level playing field” with CTAs. Their proposed cost allocation to G-CP reflects this fact and it should be rejected by the Commission.

IV. <u>PG&E’S PROPOSAL WOULD EXACERBATE THE CURRENT RATE STRUCTURE UNDER WHICH ONE CLASS OF CUSTOMERS SUBSIDIZES ANOTHER.</u>

In accordance with Code section 451, the Commission is obligated to allocate costs to rates in a “just and reasonable” manner.[23] PG&E’s proposal would cause CTA customers to subsidize bundled customers. Effectively, the PG&E proposal would increase and perpetuate an ongoing subsidy, which is neither just nor reasonable.

The existing rate structure imposes a subsidy to the extent that one set of core customers, those who choose supply service through CTAs, pay for services received by other core customers, the bundled service customers of PG&E. A bundled customer and a CTA customer who use the same amount of gas in the same time period pay the same amount in transportation rates.[24] The transportation rate that the CTA customer pays includes cost

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[22] PG&E Gas Schedule G-ESP.

[23] Code section 451 provides, in part: “All charges demanded or received by any public utility . . . shall be just and reasonable[.]”

[24] <u>Transcript</u>, page 394, PG&E witness McLafferty, lines 15 – 18.

recovery for all billing services by PG&E, for transportation service and for commodity supply, as demonstrated above. The CTA customer is not being billed for commodity by PG&E, but a CTA customer is still being billed as if it were a PG&E commodity customer, because it must pay PG&E's billing service costs. Due to this "extra" payment by the CTA customer, the rate charged to the bundled customer is lower than it would be otherwise. This is clearly a subsidy from CTA customers to bundled customers, created by rate structures that do not properly allocate costs.

V. PG&E'S PROPOSAL WOULD SEND AN INACCURATE PRICE SIGNAL TO CUSTOMERS.

As established above, PG&E's costs of billing, collection, customer service, accounting and the like are excluded from the G-CP procurement rate and are recovered in non-bypassable transportation rates. This causes G-CP to be too low and transportation rates to be too high. Excluding such costs from G-CP sends an incorrect price signal to customers, which distorts their analysis of competing suppliers. PG&E commodity rates appear artificially low compared to the rates that could be offered by other gas suppliers, who do not benefit from cost recovery in non-bypassable rates. The Commission should act to correct the price distortion, by allocating costs as urged by SAT.

Interestingly, in at least one other state the costs of many of the business functions discussed above are allocated to utility commodity rates, pursuant to a directive of the state regulatory body.[25] The New York Public Service Commission ("NYPSC") issued an order in August 2004 regarding the treatment of energy utilities' embedded costs of providing retail services to customers.[26] Pursuant to this order, natural gas utilities in New York compute a per therm "Merchant Function Charge," or "MFC," that is included in commodity rates charged to bundled service customers, but not to transportation-only customers. The MFC was summarized in testimony recently filed with the NYPSC by two employees of the New York State Department of Public Service:

> *"Q. What is the purpose of an MFC?*

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[25] Some states, such as Georgia and Ohio, have allowed or encouraged gas distribution utilities to exit the commodity supply business entirely. Cost allocation is not an issue where the utility no longer competes as a commodity supplier.

[26] Statement of Policy on Unbundling and Order Directing Tariff Filings, issued by NYPSC in Case 00-M-0504, August 25, 2004 (copy posted at: www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/Web/0717FE125899AD1985256EFB006253F2/$File/201b.00m0504.pdf?OpenElement)

"A. An MFC is a charge intended to capture utility costs related to [the utility's] merchant function; that is those costs related to providing commodity supplies to serve bundled sales customers of the utility.

"Q. Why is this necessary?

"A. In its [August 2004 order], the Commission provided guidance on the allocation of utility costs between regulated and competitive functions. The Commission asked the utilities to establish cost based competitive rates that would afford customers accurate price signals as they choose among the providers of services in a competitive market. The MFC together with the Gas Supply Charge (GSC) represents that competitive price for purposes of comparing the cost of utility supplier service with the cost of alternative providers of supply services in the competitive market. . . .

"Q. What cost components did the [utilities] propose to include in the[ir] gas MFCs . . . ?

"A. The [utilities] propose to include cost components for commodity related uncollectibles, administrative costs related to the procurement function including credit and collections, call center, and customer service expenses, and working capital components related to purchased gas expense, storage inventory and commodity hedge margin[.]"[27]

The MFC appears to differ by gas utility and the allocated costs for each utility are updated twice yearly. For example, according to information posted on the NYPSC Web site, the MFC for commercial natural gas customers of Consolidated Edison Company of New York, Inc., was $0.031009 per therm ($0.31009 per Dth) in July 2009 and $0.024758 per therm ($0.24758 per Dth) in January 2010.[28]

In other words, New York appears to have a worked out a method for allocating certain business function costs to commodity gas rates for bundled customers. SAT is not asserting that New York ratemaking is exactly the same as California ratemaking. However, as a general

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[27] Prepared Testimony of Gas Rates Panel (Alan F. Mostek and Davide Maioriello), filed January 10, 2010, in NYPSC Cases 09-E-0715, 09-G-0716, 09-E-0717, and 09-G-0718, page 42, line 24 to page 44, line 16, posted at: http://documents.dps.state.ny.us/public/Common/ViewDoc.aspx?DocRefId={7225F445-EA95-4A18-948C-DF460F03949A} .

[28] See, www.dps.state.ny.us/typical_bills/util_gas_ci_bills_July_2009.pdf for July 2009 and www.dps.state.ny.us/typical_bills/util_gas_ci_bills_Jan_2010.pdf for January 2010.

matter, if "merchant function" costs can be allocated to bundled procurement rates in New York to help send more accurate price signals to consumers, then something similar can, and should, be accomplished here.

VI. THE COMMISSION SHOULD SET A PROVISIONAL COST ALLOCATION TO G-CP NOW, PENDING COMPLETION AND ANALYSIS OF AN INDEPENDENT STUDY TO INFORM PROPER COST ALLOCATION.

To establish a truly "level playing field" for all gas commodity suppliers, including PG&E and CTAs, the Commission must allocate to G-CP a portion of the costs of all business functions that relate to the gas purchase and sale function. Since PG&E has not presented any study or any testimony that would allow an informed allocation at this time, the Commission should require PG&E to submit to an independent study of all cost elements necessary to provide commodity gas supply on the PG&E system, including but not limited to billing, collection, accounting, high bill inquiry, and customer service. The objective of the study should be to create a truly "level playing field" per PG&E's testimony. Once the study has been completed and accepted by the Commission, then a more informed cost allocation can be completed.

Since the recommended study and evaluation process probably cannot be completed before the existing allocation to G-CP expires in December 2010, the Commission should provisionally set a cost allocation in the interim. In the case of procurement bill presentment, payment receipt, collection, and some accounting costs, PG&E has a reasonable proxy readily at hand to balance these costs between PG&E and third party suppliers. This is PG&E Rate Schedule G-ESP, the rate PG&E charges all core commodity suppliers (except PG&E's own PG&E Core Procurement Group) who elect consolidated PG&E billing. Under Schedule G-ESP, the charge to CTAs who elect PG&E consolidated billing is $0.70 per service account per monthly billing cycle.

SAT has estimated the cost allocation to G-CP if G-ESP were used as a proxy as follows, based on data currently in the record of this proceeding. Assuming that PG&E has approximately 4.2 million bundled core customers,[29] then the annual dollar amount that provisionally would be removed from transportation rates and allocated to G-CP would be $0.70 x 4.2 million accounts x 12 months = $35.28 million. Divided by estimated bundled core

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[29] Exhibit 45 [PG&E Data Response, July 16, 2010, Question 1], page 2: PG&E had 4,194,113 bundled core accounts at April 1, 2010.

throughput of 262 million Dth per year,[30] that equals $0.1347 per Dth of additional CBF costs to include in G-CP.

Once the independent study has been completed and accepted by the Commission, then rates could be adjusted to allocate costs in a non-discriminatory fashion for the remainder of this BCAP effective period and to set the structure for CBF adjustments in future BCAPs.

Until the recommended cost study is completed, it is not possible to know exactly how costs should be allocated in a just, reasonable, and nondiscriminatory manner. Since the Commission will be allocating costs, based on a known revenue requirement, there should be no increase in total costs paid by core customers. Even the PG&E witness admits that cost allocation does not necessarily lead to increased costs for ratepayers.[31]

VII. PRIOR GAS ACCORD SETTLEMENTS AND DECISIONS DO NOT RESTRICT COST ALLOCATIONS IN THIS PROCEEDING.

In resolving this matter, the Commission is not restricted in any way by prior Gas Accord decisions on the CBF. Nor was it ever so restricted, as the Commission made clear when it stated in D.97-08-055 that future Commissions could revise provisions of the Gas Accord at any time.[32] Also, the issue is now outside the Gas Accord structure entirely, pursuant to the Gas Accord IV settlement. The Commission should act on the facts before it now, to comply with applicable law and to enable fair competition that will benefit ratepayers in their purchases of commodity gas.

VIII. PUBLIC UTILITIES CODE SECTIONS 328, 328.1 AND 328.2 DO NOT RESTRICT COST ALLOCATIONS IN THIS PROCEEDING.

At the July 19 evidentiary hearing, ALJ Judge Wong asked the parties to brief the relevance of Public Utilities Code ("Code") sections 328, 328.1, and 328.2, to the issues.[33]

Simply stated, the cited sections do not constrain the Commission's authority to properly allocate costs to the CBF as urged by SAT. Basically, Code sections 328, 328.1, and 328.2 define certain functions that gas corporations --

- must provide ("bundled basic service" as a supply option),

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[30] Exhibit 39, page 4-13: PG&E's core bundled throughput was 262,663,316 Dth in 2008.

[31] Transcript, page 395, PG&E witness McLafferty, line 19 to page 396, line 21.

[32] D.97-08-055, page 63, Conclusion of Law 4 ("Approval of the Gas Accord does not bind future Commissions or prohibit future Commission orders that might rescind, alter, or amend the terms of the settlement"), and page 25 (Commission intends "to consider other means to produce a more competitive gas market for all classes of utility customers").

[33] Transcript, page 447, lines 4 – 8.

- may exclusively provide ("revenue cycle services," except to core aggregation and noncore customers), or
- are encouraged to provide ("after-meter" services).

Except for after-meter (safety) services, these Code sections speak only to the provision of services and not to cost allocation. So the Commission remains free to allocate costs as it chooses, in accordance with Commission policies on recovery of revenue requirements by gas corporations (in this case, PG&E) in a non-discriminatory manner that does not favor one person over another. We will analyze each sentence in the cited Code sections to prove this point.

Code section 328 sets forth the Legislature's findings (a) that gas corporations (distribution utilities such as PG&E) should continue to offer "safe basic gas service," and (b) that customers should not pay separate fees for services that "protect public or customer safety."[34] Neither Legislative finding is at issue in this proceeding.

Code section 328.1 defines certain terms, as follows:

> *As used in this chapter, the following terms have the following meanings:*
>
> *(a) "Basic gas service" includes transmission, storage for reliability of service, and distribution of natural gas, purchasing natural gas on behalf of a customer, revenue cycle services, and after-meter services.*
>
> *(b) "Revenue cycle services" means metering services, billing the customer, collection, and related customer services.*
>
> *(c) "After-meter services" includes, but is not limited to, leak investigation, inspecting customer piping and appliances, carbon monoxide investigation, pilot relighting, and high bill investigation.*
>
> *(d) "Metering services" includes, but is not limited to, gas meter installation, meter maintenance, meter testing, collecting and processing consumption data, and all related services associated with the meter.*[35]

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[34] Code section 328, in its entirety, provides:

"The Legislature finds and declares both of the following:

"(a) In order to ensure that all core customers of a gas corporation continue to receive safe basic gas service in a competitive market, each existing gas corporation should continue to provide this essential service.

"(b) No customer should have to pay separate fees for utilizing services that protect public or customer safety."

[35] Code section 328.1.

Nothing in this definitional section constrains the Commission in properly allocating costs in this 2009 BCAP.

Code section 328.2 contains the operative text of the cited sections, in five sentences. Taking each sentence one at a time, the first sentence reads:

> *The commission shall require each gas corporation to provide bundled basic gas service to all core customers in its service territory unless the customer chooses or contracts to have natural gas purchased and supplied by another entity.*[36]

This means simply that gas corporations must offer bundled "basic gas service," as defined in Code section 328.1(a), to its core customers, unless a customer chooses an alternative supplier. PG&E's intention to offer bundled basic gas service is not in dispute in this proceeding, so the sentence is not relevant here.

The second sentence reads as follows:

> *A public utility gas corporation shall continue to be the exclusive provider of revenue cycle services to all customers in its service territory, except that an entity purchasing and supplying natural gas under the commission' s existing core aggregation program may perform billing and collection services for its customers under the same terms as currently authorized by the commission, and except that a supplier of natural gas to noncore customers may perform billing and collection for natural gas supply for its customers.*[37]

PG&E does, exclusively, provide "revenue cycle services" for its transportation function. No one other than PG&E is allowed to provide the transportation function or to provide metering, billing, or other specified services related to that function. As stated in the Code, core aggregators can provide billing and collection services for their own commodity customers, and noncore suppliers can do the same.

This sentence specifies the provision of services, not cost allocations. Nothing in the second sentence of Code section 328.2 constrains the Commission in its allocation of gas corporation costs. The Commission remains free to allocate revenue cycle services costs to rates, in accordance with applicable law and Commission policy.

The third sentence reads as follows:

[36] Code section 328.2.

[37] Ibid.

The gas corporation shall continue to calculate its charges for services provided by that corporation.[38]

There is no dispute in this proceeding that PG&E should compute its own charges for services provided.

The fourth sentence of Code section 328.2 provides:

If the commission establishes credits to be provided by the gas corporation to core aggregation or noncore customers who obtain billing or collection services from entities other than the gas corporation, the credit shall be equal to the billing and collection services costs actually avoided by the gas corporation.[39]

In this fourth sentence, the Commission receives direction regarding credits for avoided costs if a core aggregator or a noncore supplier bills a customer, as is allowed in the second sentence of Code section 328.2. In other words, if the gas corporation is not billing the customer, because the non-utility supplier renders a "consolidated" bill to the customer that includes both utility distribution and non-utility commodity charges, then any credits due to customers must equal the billing and collection costs "actually avoided" by the utility.

For example, PG&E's Gas Schedule G-CRED applies to core aggregation customers whose aggregator provides consolidated billing services in such a manner that PG&E is not required to send an information-only bill to that customer. So long as certain conditions are satisfied, that customer is entitled to a credit that is (presumably) equal to the cost that PG&E avoids by not sending an information-only bill.[40]

The fourth sentence of Code section 328.2 applies to the G-CRED situation, which is not at issue in this proceeding. The sentence does not bear on cost allocation to G-CP.

Finally, the fifth sentence of Code section 328.2 provides:

The commission shall require the distribution rate to continue to include after-meter services.[41]

The final sentence in Code section 328.2 states that services performed "after" the meter (downstream from the meter) must be chargeable in transportation rates, which the section calls "distribution" rates. These functions – pilot light relighting, inspection of customer piping, and so

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[38] Ibid.

[39] Ibid.

[40] PG&E Gas Schedule G-CRED.

[41] Code section 328.2.

forth – protect public safety but are not necessarily part of the monopoly transportation function upstream of, or at, the meter. The Legislature determined that it would be in the public interest if customers could access these safety services without having to pay a separate fee to a non-utility provider.[42] This fifth sentence is the only part of Code section 328.2 that speaks to cost allocation and it is not in dispute by the parties.

Except with respect to after-meter safety services, nothing in the cited Code sections constrains or modifies cost allocations by the Commission. The truth of this statement is proved by the fact that <u>some</u> PG&E business function costs are <u>currently</u> allocated to G-CP. PG&E wishes to lower the allocation amount, but not to eliminate it. SAT argues that the Commission should adopt a different, probably higher allocation, based on an independent study of relevant business functions and costs. All parties agree that there should be <u>some</u> allocation; the only disagreements concern allocation method and amount. With respect to the CBF, Code section 328.2 does not compel the use of one cost allocation method over another, or one amount over another.

IX. <u>CONCLUSION</u>.

For the reasons set forth above, we urge the Commission to reject the CBF allocation proposed by PG&E in this Application. PG&E has presented an inadequate study, supported by testimony from witnesses who are not qualified to address the issue that PG&E itself raised, the issue of a "level playing field." SAT urges the Commission to reject this flawed study and testimony in setting rate allocations that will affect millions of consumers in Northern California.

A proper study must be performed by an independent, qualified firm, with sufficient experience in the retail natural gas industry, and must be made available for scrutiny by the Commission, by market participants, and by the public. Only then can the Commission make an informed decision on this matter. The Commission should direct PG&E to retain a qualified independent entity to study the actual costs incurred by PG&E for all business functions necessary to provide commodity gas supply to core customers, including but not limited to billing, collection, accounting, high procurement bill inquiry, and customer service, etc.

The CBF is currently fixed until the conclusion of the Gas Accord IV Settlement term, on December 31, 2010. The study of costs may not be completed in time for Commission review and action by that time. To ensure that a reasonable rate is available on January 1, 2011, the Commission should require PG&E to compute and implement a provisional CBF rate for the

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[42] Code section 328(b) provides, in part: "No customer should have to pay <u>separate fees</u> for utilizing services that protect public or customer safety." Emphasis added.

period starting January 1, 2011, through such time as the independent study is conducted and accepted by the Commission and a just and reasonable cost allocation to G-CP has been approved by the Commission.

SAT recommends that the Commission set a provisional cents-per-Dth rate based on Schedule G-ESP billing costs as discussed above (estimated at $0.1347 per Dth for the bundled core), plus procurement department personnel and direct overhead costs.

Based on the independent study, the Commission should allocate such costs to G-CP in place of the provisional allocation to ensure just, reasonable, and nondiscriminatory rates, to bring the benefits of fair competition in gas commodity supply to core customers.

Respectfully submitted,

September 16, 2010

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CERTIFICATE OF SERVICE

I hereby certify that I have served, this day, a copy of the foregoing –

**OPENING BRIEF OF
THE SCHOOL PROJECT FOR UTILITY RATE REDUCTION,
ABAG PUBLICLY OWNED ENERGY RESOURCES,
AND TIGER NATURAL GAS**

via electronic mail to all parties on the service list for **A. 09-05-026** who have provided an electronic mail address and by first class mail, postage prepaid to any "Appearance" or "State Service" parties on the service list who have not provided an electronic mail address.

Executed September 16, 2010, at Concord, California.

/s/ MICHAEL ROCHMAN

Michael Rochman

VIA E-MAIL AND FIRST CLASS MAIL

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VIA E-MAIL

See attached service list

Service List for A.09-05-026, posted at
http://docs.cpuc.ca.gov/published/service_lists/A0905026_78405.htm
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