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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's Post-2008 Energy Efficiency Policies, Programs, Evaluation, Measurement, and Verification, and Related Issues.	**Rulemaking 09-11-014** **(Filed November 20, 2009)**

PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 M) POST WORKSHOP COMMENTS AND RESPONSES TO ADDITIONAL QUESTIONS IN THE ADMINISTRATIVE LAW JUDGE'S RULING REGARDING ENERGY EFFICIENCY FINANCING

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Pacific Gas and Electric Company (PG&E) files these comments in response to the *Administrative Law Judge's Ruling Regarding Energy Efficiency Financing,* dated January 10, 2012 (ALJ Ruling). The ALJ Ruling presented the Energy Division's on-bill repayment (OBR) financing proposal (Staff Proposal, Attachment A), the Harcourt Brown and Carey Report (HBC Report, Attachment B), the Environmental Defense Fund Report (EDF Report, Attachment C) and posed a number of questions regarding the On Bill Repayment (OBR) proposals for parties to consider in their comments. PG&E's comments on questions posed in Section 6A of the ALJ Ruling were filed on January 25, 2012. In this filing, PG&E comments on the workshops held by the California Public Utilities Commission (Commission) on February 8, 9 and 10 and responds to the questions presented in Sections 6B and 6C of the ALJ Ruling.[1/]

1/ By e-mail dated February 3, 2012, ALJ Fitch delayed the comment period for responses to questions in Sections 6B and 6C of the ALJ Ruling to February 22, 2012 for opening comments and February 29, 2012 for reply comments.

I. INTRODUCTION AND SUMMARY

PG&E compliments Energy Division on its recent well-organized and thought-provoking workshops on energy efficiency financing. PG&E was impressed with the depth of knowledge of the workshop participants, and learned a great deal about the different interests and points of view on the future of energy efficiency financing in California. PG&E found particularly helpful the comments of those speakers who have direct experience in designing and implementing energy efficiency financing programs in California and in other states and believes that much can be learned from those examples. Many of the observations set forth below in responses to questions in the ALJ Ruling reflect information PG&E learned at the workshops.

PG&E agrees with Energy Division Staff (Staff) that the availability of financing for energy efficiency improvements is an important issue that is worthy of significant consideration and analysis to determine whether and to what extent additional financing options would increase the installation of energy efficiency measures in a cost-effective manner.

Based on comments at the workshops and the reports attached to the ALJ Ruling, there appears to be adequate financing opportunities already available for customers in the governmental and institutional sectors. In addition, the utilities' on-bill financing (OBF) programs are available to these customer segments and to commercial customers. The investor-owned utilities' (IOUs' or utilities') OBF programs appear to thus far be successful, as was highlighted in Sempra's workshop presentation. The OBF program should continue to provide financing for these customer sectors during the bridge period.

While conference participants agreed that there is a need to increase energy efficiency measures in the residential sector, there was no general agreement about the best ways to achieve this goal. The workshop presentations clearly indicated a need for further market analysis and research on many aspects of Staff's proposal to determine the terms of energy efficiency financing that would encourage residential customers and lenders alike to participate in an energy efficiency financing program. Threshold questions for research on a possible new loan product should focus on: (a) the specific customer value proposition of an alternative loan product relative to available financing products;[2] (b) the number and types of customers likely to take advantage of an alternative loan product (i.e. size of market, high income/large users, low income, moderate income/temperate climate); (c) clarification of whether on-bill repayment (OBR) will be seen as attractive by various types of lenders (i.e. large nationwide institutions, community banks, or credit unions); and (d) whether loans, rebates, or a combination of both will maximize energy savings. There were mixed opinions about these issues at the workshops.

A new loan program should not put non-participating customers at risk for loan defaults or use ratepayer funds to provide risk mitigation to financial institutions. While PG&E's non-participating customers now bear the risk of default for the OBF program, the amount of loans and loan loss reserves discussed at the workshops for a potential OBR program could greatly increase the exposure of PG&E's customers to loan defaults. Successful loan programs in other states, as discussed below, do not rely on ratepayer funds to finance a loan-loss reserve. Further, credit unions and community banks may be able to offer rates that are acceptable to homeowners without the need for a ratepayer-funded credit support.

Many parties expressed concern about Staff's proposal to disconnect utility services for non-payment of a third-party loan. PG&E does not disconnect customers in any customer class for non-payment of a third-party debt, and service disconnection for residential customers for non-payment of a third-party debt is prohibited by the Public Utilities Code. Allowing service disconnections for non-payment of consumer loans for residential customers could increase residential service disconnections and contradict policies the Commission is now considering adopting in the service disconnection rulemaking. For these reasons, PG&E continues to oppose service disconnections for non-payments of third-party loans.

Finally, Staff's OBR proposal raised a multitude of complicated legal issues that must be thoroughly researched and considered in the development of any new loan program. While the

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2/ Harcourt Brown & Carey, Inc., *Energy Efficiency Financing in California, Needs and Gaps* (ALJ Ruling Attachment B), pp. 5, 14.

workshop excluded discussion of these important issues, there does not appear to be an alternative forum to discuss and resolve these issues. According to the ALJ Ruling, the next procedural step may be for the Commission to issue guidance on financing for the bridge portfolio applications. PG&E strongly urges the Commission to include in the guidance a procedure for the parties to discuss and resolve the many outstanding issues before any large-scale program is attempted.

If the suggested research supports the premise that OBR would in fact increase energy efficiency measures in a cost-effective manner, any initial OBR program should be structured to avoid the most controversial and difficult legal issues raised by the Staff proposal. PG&E suggests that any new loan program should include the following features: (1) third-party products would be billed using existing utility line-item billing functions; (2) the IOUs' role would be limited to providing the energy efficiency program, verifying associated savings, billing the loan to finance the energy efficiency investment, and transmitting loan proceeds to the lender; (3) the loan would be an unsecured product to avoid triggering mortgage lending laws; (4) the loans would be due upon sale or transfer unless the lender and new borrower otherwise agree to a loan assumption; (5) a loan-loss reserve or other specific credit enhancement should not be funded by non-participating customers; and (6) after a set period of time during which the utility uses line-item billing collection procedures (which do not include service disconnection), the lender, rather than the utility, should pursue debt collections.

II. COMMENTS ON THE ENERGY EFFICIENCY FINANCING WORKSHOPS

PG&E appreciated the opportunity to hear from financial institutions, energy contractors, and energy end users and customers, among others, at the energy efficiency financing workshops. There appears to be a role for financing to play in the energy efficiency marketplace. However, many questions still remain. There were numerous comments by panelists that an on-bill-repayment program as envisioned by the Staff proposal is not a complete solution and must be implemented as a complement to other programs that exist in the marketplace.

There was no clear consensus among financial institutions, customers, utilities, and energy contractors over the best path forward for establishing a financing program in California. Given this lack of consensus, PG&E questions whether there is sufficient evidence to support several primary assumptions underlying the Staff's recommendation to implement a large-scale statewide OBR energy efficiency financing program during 2013-2014.

First, as noted by Mark Zimring from Lawrence Berkeley National Laboratories (LBNL), existing customer research is insufficient to support the premise that financing will expand the energy efficient marketplace in a more cost-effective manner than rebates. At the workshops, Jean Lamming (CPUC) presented research by the Cadmus Group that indicated only 46% of participants would select zero interest financing over rebates.[3/] This survey may not be indicative of what will happen when third-party lenders offer financing products at non-zero interest rates. For example, the SmartSTART program in New Hampshire, which offered a choice between rebates and financing, had overwhelmingly low loan participation and financed only eight loans in nearly ten years. This low participation rate may reflect the fact that customers more often opted for the offered rebates rather than the financing alternative.[4/] Of course, customers likely recognize that in contrast to rebates, financing products will not reduce the overall costs of energy efficiency installations.[5/]

Second, the premise in Staff's and EDF's proposals that motivating lenders to offer better loan terms to customers requires: (a) service disconnection for non-payment of loan charges; (b) a partial-payment structure; and (c) transferability of the loan to a subsequent occupant or owner

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3/ *Selected Findings from CPUC's Market and Process Evaluation of On-Bill Financing*, presented by Jean Lamming, February 8, 2012. The participants in the study group were apparently not provided any details on the terms of the loan or the amount of the potential rebates, and obviously the response could vary depending on the missing details.

4/ American Council for an Energy-Efficient Economy, *What Have We Learned from Energy Efficiency Financing Programs*, September 2011, p. 10.

5/ *LBNL Energy Efficiency Impacts Calculator: Big Picture Takeaways***,** Mark Zimring and Merrian Borgeson, Lawrence Berkeley National Laboratory, February 10, 2012.

(i.e. "tied to meter"), was not widely supported. Representatives from Wells Fargo, Citigroup, and smaller community banking institutions, were unable to agree on whether they would give an interest rate reduction for these additional OBR elements. In fact, Alfred Griffin of Citibank mentioned that even with these enhancements, OBR loans would likely still be priced as unsecured lending products because of the difficulty of valuing such provisions. In general, lenders at the workshop expressed the view that they did not want to be in the position of directing utilities to disconnect customers for nonpayment and were unclear how the threat of shut-off for non-payment would be valued, particularly given the resulting risk of litigation. Further, the premise that a secondary market is necessary to maximize scale was not the only point of view. As evidenced by several speakers, community banks have funds available to lend. For example, Belinda Hedling stated that the San Jose Credit Union alone has $85 million to lend. Moreover, community banks are often more willing to offer lower interest rates because energy efficiency financing aligns well with the guiding principles of their organizations. Community banks and credit unions may therefore be a suitable delivery channel for products of this type, and may be able to reach sufficient scale in the marketplace.

Third, the workshops did not offer compelling evidence that it would be more effective to redirect customer funds away from energy rebates that directly reduce the upfront costs of energy efficiency projects in order to fund credit enhancements. Indeed, all the financing models based on credit enhancements discussed at the workshops were funded through a combination of foundation grants, government funding, and private capital. PG&E therefore does not support the notion that customer funds should be redirected to fund credit enhancements if the credit enhancements are in lieu of providing rebates or other direct buy-down of the upfront costs of energy efficiency upgrades. PG&E is concerned about any approach where customer funds would be transferred to lenders to increase their return on energy efficiency loan products.

While PG&E agrees that there continues to be a role for the IOUs in support of energy efficiency financing, additional customer research clearly is necessary to validate the need for an OBR program. Many panelists mentioned the value that the IOUs currently play in providing quality assurance and verification of energy savings calculations. If research indicates customer interest in an OBR program, the OBR loans should only fund qualified energy efficiency measures within PG&E's energy efficiency portfolio. PG&E would continue to provide support in calculating and verifying the associated energy savings.

III. RESPONSES TO QUESTIONS IN SECTIONS 6B AND 6C OF THE ALJ RULING

As a preliminary matter, PG&E notes that the Staff proposal logically makes distinctions between financing options for commercial and consumer customers. In the commercial arena, significant accommodations have been provided by governmental agencies such as the California Department of Corporations (CDC) to facilitate the creation and delivery of new lending products by the IOUs in connection with the OBF program. PG&E's comments in this filing are specific to the consumer-lending (or residential) component of the Program (and do not apply by extension to the commercial component).

For consumers, the Staff proposal raises fundamental legal concerns relating to loan origination, servicing and collection that would impair (if not preclude) significant lender participation, and that expose the IOUs to significant risks of litigation. Those concerns must be addressed. Although legislation could substantially resolve many of the legal issues raised by Staff's proposal as occurred for the NYSERDA program, any enabling legislation or regulation would be subject to preemption by Federal law applicable to consumer loans, as further discussed below.

A. Responses to 6B Questions

Suggested Set of Overall Public Policy Objectives for a Ratepayer Supported Program.

> 1. *Do you agree with the suggested public policy goals, or would you add others? Would you eliminate any?*
>
> - *Ensure quality control that enhances the predictable energy savings, cash flow, and thus loan performance to borrower and lender of energy efficiency investment projects.*

PG&E agrees that there is a clear role for utilities to play in quality assurance of energy savings calculations. Energy efficiency measures offered in IOU programs are carefully evaluated and selected for both energy savings and quality. PG&E proposes that OBR program participants be required to utilize energy efficiency measures included in the IOUs' programs. While there is no way to ensure that predicted energy savings will guarantee loan performance, this would provide some additional protection to participating customers.

- *Standardize documentation and data associated with energy efficiency investments and loan transactions to ensure low-cost underwriting in volume, and create the information environment needed to support a secondary capital market.*

PG&E agrees that any statewide product offering would benefit from standardized documentation and data. PG&E is willing to explore this for energy efficiency investments and loans. However, as stated in Section II of these comments, PG&E believes it is unnecessary at this time to rely on a secondary capital market to increase scale, given the interest from credit unions, foundations, and community banks.

- *Establish convenience and acceptability of loan payment mechanisms, such as OBR, improving cash-flow from energy efficiency performance in a way that increases ability and willingness of energy users and/or facility owners to invest in and make efficiency loan payments.*

PG&E, as part of the substantial investment in California's energy efficiency infrastructure, implements all cost-effective energy efficiency measures, and through the numerous incentives and the current loan program, promotes the ability and willingness of energy users to invest in energy efficiency upgrades. As mentioned by several panelists at the workshops, OBR should not be considered a silver bullet in the energy efficiency financing marketplace. Other loan repayment mechanisms should also be explored.

- *Take advantage of existing and enhanced utility billing systems if these will facilitate loan repayment convenience, acceptability, performance, and/or servicing costs so as to expand energy efficiency investment participation.*

Further customer and market research is needed to determine whether utilizing existing utility billing systems will facilitate ease for end-use customers or reduce overall servicing costs. Given that most lenders already have billing and collections mechanisms in place, there may or may not be savings achieved by using utilities to service the loans. At the workshops, Solar City stated that if line-item billing (LIB) were used in a loan program, Solar City would still need to send its customers a detailed loan summary, so the savings to be achieved from using PG&E's billing system may be negligible.

If some form of OBR is implemented, PG&E's LIB[6/] functionality for vendor services would be an appropriate model. Any incremental costs for the billing service should be funded by program participants or lenders through appropriate service fees.

- *Ensure easy, affordable, fair, and non-controversial mechanisms to handle potential on-bill loan repayment arrears or defaults, especially for loans to small users or for small loan amounts.*

Any program that allows for disconnection of electric or gas service for nonpayment of loan arrears will be controversial and subject to legal challenges. PG&E opposes disconnecting energy service for nonpayment of a third-party loan, and proposes that any unpaid loan amounts or defaults under OBR revert back to the lender for collection after a period of time as agreed upon between PG&E and lender.

6/ PG&E will implement its vendor service line-item billing functionality March 3, 2012, pursuant to PG&E's information-only report to Energy Division dated February 1, 2012, as provided for by D.11-05-018 in R. 05-10-030/A.09-12-020.

2. *What loan originators or lenders can utilize the OBR mechanism? Should these be limited to traditional lending institutions such as banks, credit unions, and community development financial institutions? Or should non-lenders be able to arrange financing and collect payment via OBR (e.g., ESCOs, energy service providers)?*

To implement an OBR financing program, any partner who wants to access PG&E's bill – whether it be lenders or those companies who do not traditionally serve as lenders such as ESCOs and energy service providers – would need to comply with PG&E specific requirements in order to ensure fair treatment of customers. PG&E would limit partnerships to 3rd parties who are credible, who have established robust customer complaint resolution processes, and who maintain high quality service standards and are able to comply with existing IT infrastructure. PG&E believes OBR loan amounts should only cover the amount justified by energy savings. As previously discussed, only energy efficiency measures eligible for IOU programs should qualify for OBR loans.

3. *Should IOUs be able to propose to be loan originators? Why or why not? For what types of customers?*

The IOUs should be able to propose to serve as lenders, but should not be *required* to act as lenders. Taking on such the role of a lender is unlikely to be a workable solution beyond the OBF program currently in place, given restrictions under State and Federal consumer lending law. Loan origination requires compliance with a complex set of State and Federal laws. The IOUs are currently prohibited from making consumer loans or charging interest rates, both of which are being considered as part of an OBR program. The IOUs would be required to receive licenses to engage in lending pursuant to the California Finance Lenders Law[7/] (CFLL), in order to make consumer loans as the statutory exemptions in the CFLL would not apply to an IOU.

7/ California Financial Code § 21000 *et seq.*

(1) CFLL Requirements: Three activities would need to be considered under the CFLL**.** First, the IOUs could seek a regulatory exemption from the California Department of Corporations (CDC). Second, if a regulatory exemption were denied, the IOUs would be required to apply for finance lenders licenses. Third, following receipt of a license, an IOU as a licensed finance lender, would be required to comply with the consumer lending requirements of the CFLL.

It is unlikely that the CDC would exempt the IOUs from these requirements. Even though the CDC issued a limited regulatory exemption for the commercial on-bill financing program, significant additional policy concerns indicate that in the consumer lending context the CDC would likely require licensing.[8/]

In regard to the process to obtain a California Finance Lender (CFL) license, PG&E understands that the application process, while not protracted in nature, permits the CDC to evaluate the business plan of the proposed licensee. It is certainly possible that the CDC would closely scrutinize the proposed program prior to approving a CFL license. Obtaining a license in this situation could require application preparation and processing time exceeding nine months. In addition, the IOUs would be required to develop, test and implement lending policies and procedures and the loan origination systems necessary to engage in application processing, underwriting, loan closing, loan servicing and collections. Because this would constitute a new line of business for many IOUs, the time needed to commence lending operations as contemplated by the proposed OBR program could well exceed one year.

Finally, even in the instance in which an IOU would obtain a CFL license, the small loan limitations contained in the CFLL make moderate loan amount loans to consumers impractical or illegal. Specifically, Sections 22311 and 22312 of the CFLL prohibit a CFL licensee from

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8/ Among other things, the above-referenced exemption letter for commercial lending determined that IOUs were not engaged in the business of lending, which justified the exercise of discretion in regard to a regulatory exemption. However, in light of the CDC's role as a protector of consumers, the complicated nature of the proposed program argues strongly in favor of requiring licensing.

requiring a borrower to contract for services as a condition of making a loan—which means that the CFL lender would be prohibited from conditioning the use of a contractor prior to providing the consumer with loan funds. Stated another way, although a CFL licensee would be able to offer energy efficiency loans, it would be precluded from insisting that the loan proceeds be devoted to energy efficiency measures should the consumer change his/her mind. This same limitation would not apply to loans provided by a third-party lender, as they are not CFL licensees and therefore are not subject to the same limitations on consumer lending as CFL licensees.

(2) Loan Servicer Licensing Requirements. An IOU would not be required to obtain a finance lender's license under the CFLL if its role is limited to acting as a "servicer" of unsecured loans (as opposed to a lender or originator)[9/]. However, as discussed below, the "attachment" of a loan to a meter might be treated as a lien or hidden mortgage on the premises. If the loans made under the Program are deemed to be secured by real property, the California Residential Mortgage Lending Act[10/] might apply to require a loan servicing IOU to obtain a license because that Act includes a loan servicer as a required licensee if that person services a residential mortgage loan. There is no obvious precedent to indicate whether a "meter attached" loan would be treated as a residential mortgage loan under that Act. The CDC's guidance on this question would be needed if loans are to be secured by a mortgage.

(3) Money Transmitter License Requirements. California Financial Code, Division 1.2, commencing with Section 2000, regulates the transmission of funds received by a party and transmitted to another (referred to as the Money Transmitters Act or MTA). The scope of the Money Transmitters Act's definition of money transmission is sufficiently broad as to include loan servicers such as PG&E that do not otherwise hold an exemption from the requirements of

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9/ California Finance Lenders Law § 22009.

10/ California Financial Code § 50000 *et seq.*

the MTA.[11/]

PG&E has been informed by the California Department of Financial Institutions (CDFI) that the MTA *may* apply to the type of loan servicing activity described in the Staff proposal. More importantly, the CDFI has indicated that it will only respond to interpretative licensing questions following the submission of written requests.[12/] Accordingly, prior to commencing loan servicing under any new loan program, the IOUs must receive an appropriate legal determination regarding the necessity of a MTA license (or an exemption from licensure).[13/]

If the IOUs were to act as consumer lenders, there are many federal consumer protection laws that may be applicable and would need to be thoroughly analyzed and considered in the preparation of a loan program. These include, but are not limited to: the Truth in Lending Act,[14/] the Electronic Fund Transfer Act[15/] and its implementing regulation, the Fair Debt Collection Practices Act,[16/] the Fair Credit Reporting Act,[17/] the Gramm-Leach Bliley Act,[18/] and the Equal Credit Opportunity Act.[19/] There are several California consumer laws that also must be complied with in order to offer a loan program. While many of these provisions are substantially the same as the federal consumer laws listed above, the IOUs would be required to develop the expertise necessary to comply with these requirements.

11/ See MTA § 2003(o).

12/ It should be noted that while Section 2011 of the Money Transmitters Act provides the CDFI with the authority to grant exemptions, that process requires the submission of a detailed request to the CDF

13/ Due to the growing sensitivity of money transmission activity in domestic antiterrorist programs, compliance with the MTA would also likely require that an IOU create policies and procedures to ensure compliance with anti-money laundering statutes, PATRIOT Act provisions and similar laws.

14/ 15 U.S.C. § 1601 *et seq.*

15/ 15 U.S.C. § 1693 *et seq.*; 12 C.F.R. §533.

16/ 15 U.S.C. § 1692 *et seq.*

17/ 15 U.S.C. § 1681 *et seq*.

18/ 12 U.S.C. § 1811 *et seq.*

19/ 15 U.S.C. § 1691 *et seq.*

4. *What are reasonable splits of responsibilities among lender, borrower, and utility?*

Responsibilities of the IOUs should be guided by three principals. First, any financing product offered to utility customers must protect both participating and non-participating customers from adverse financial impacts, as well as protecting privacy of customer data. Second, the IOUs' role should be crafted to avoid subjecting the utilities to compliance with the myriad of federal and state consumer protection and lending laws and associated regulations. Third, the IOUs' responsibilities should not create the risk of adverse impacts to their financial statements, credit metrics, credit quality, or credit capacity.

The responsibilities for the loan transaction, including the origination and processing of the loan applications and attendant documents, and the servicing of the loan, should reside with the borrower, lender or some non-utility intermediary such as suggested in the Deutsche Bank workshop presentation.[20/] Utility responsibility should be limited to cooperation with the lenders or intermediary to effect inclusion of the loan billing statement with the utility monthly bill, and the transmittal of payment and payment information from the utility to the lender. The utility may also refer utility customer calls about the customer's loan payment to the lender.

Utility responsibilities should not include the following: providing lender information to the borrower or acting as an agent of the lender; redirecting a customer utility payment in any way other than established under a tariff or loan agreement; any obligation to pay lenders with funds other than those provided by a customer in his or her utility payment; mediation of any disputes between the customer and the lender; any obligation to the lender to collect past due amounts from customers; notification to the customer of any changes in loan terms or conditions, or of any assignment or other notices required under the terms of the loan agreement, except to the extent such notifications are provided by the lender to the utility and can be included in the

20/ CPUC Energy Efficiency Financing Workshop, William Jenkins, Duetsche Bank, February 10, 2012.

normal monthly statement the utility sends to the customer; or verification of information on the loan statement. The utility should not have any obligation to guarantee any utility bill savings as the result of the borrowers' use of the loan proceeds for the installation or acquisition of any energy efficiency measure or other products allowed under the loan agreement, nor warrant any product for performance or workmanship. The utility will also not want to be liable to lenders for any interruptions to the utility's billing and payment processing that result in delayed transmission of customer loan payments to lenders.

The lender or intermediary would have the responsibility to provide all information for a monthly billing statement, and to track loan payments, any past due amounts, and to initiate any collection activities or pursue judgments against the borrower.

> *5. The Commission has identified a need to integrate demand-side management programs within its jurisdiction in order to enable offerings of integrated packages that will maximize savings and efficiencies of utility programs. Can loans (either OBF or OBR) include non-energy-efficiency measures such as demand response, distributed generation, electric vehicle charging stations, water efficiency, etc.? If so, with what policy or programmatic connection? Where should the boundaries be drawn? What operational or implementation details would need to be considered?*

If a central goal of an OBR or OBF program in which IOUs role is essentially to promote bill neutrality, loans should be limited to measures that result in verifiable energy savings. Moreover, loan amounts should also be limited to the amount justified by such savings. Funding measures such as electric vehicle charging stations and water efficiency measures would not achieve the goal of bill neutrality and should not be included. PG&E recommends that any program of this type include only investments for approved energy efficiency program measures.

> *6. What are appropriate criteria for accepting specific energy efficiency investment projects and/or energy efficiency financing programs permitted to use the OBR mechanism? For example, should OBR transactions be limited to those with some kind of utility programmatic connection to assure the measures are appropriate, meet quality standards, or are otherwise "vetted" and thus good prospects for investment? For example,*

if a homeowner's furnace breaks down and he/she must otherwise buy a minimum standard unit with 80% efficiency with a cost of $2,500, should OBR support the full energy efficiency unit transaction to buy a $3,200 furnace with 96% efficiency or a $4,000 furnace with variable speed motor and modulating burner? If there is any additional loan guarantee support in the form of credit enhancement or interest rate support, should this cover only the incremental value of efficiency above the basic unit's $2,500 cost?

Consistent with current utility OBF programs and the Clean Energy Upgrade Program from the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA), PG&E recommends that OBR program participants be required to utilize energy efficiency measures included in an approved IOU energy efficiency program in order to qualify for energy efficiency financing through an OBR mechanism. In the workshops, there was consensus on the value that utilities provide through qualification and verification of energy savings. Since IOU programs meet rigorous approval standards by the Commission, requiring customers to utilize energy efficiency measures included in IOU energy efficiency programs will provide assurance that energy efficiency financing funds are used for the appropriate energy efficiency measures.

If a specific energy efficiency investment project and/or energy efficiency financing program includes energy efficiency measures supported by an IOU program, PG&E believes it should be at the discretion of the lending institutions to determine the maximum loan amounts and terms. However, if a customer's utility bill payment history is to be used as an underwriting standard and one of the guiding principles of an OBR program is bill neutrality, loan amounts should not exceed the likely energy bill savings over time. Moreover, loan repayment amounts should be limited so that the monthly loan payments are not greater than a customer's typical monthly energy charges.

7. *Must there be some determination either for an individual borrower, or for a program or lender as a whole, that loan purposes and terms are reasonable and can be included on the utility bill? Should reasonableness take into consideration the combined cost of utility service and the energy efficiency loan repayments?*

As previously mentioned in response to Question 6B 2 above, PG&E is interested in ensuring fair treatment of customers under any program in which third parties have access to PG&E's customers through their utility bills. In the case that PG&E acts solely as the billing agent for third-party financial institutions, PG&E would not pre-determine the lending terms offered to customers. It may be appropriate for an IOU to issue a request for proposals (RFP) to select suitable lending partners that offer the best terms to customers and have existing IT infrastructure. In addition, any lenders with access to an OBR mechanism offered by PG&E would be subject to strict service level agreements and quality control processes to ensure that lending practices are fair and reasonable.

8. *How much of an eligible loan transaction must be devoted to going beyond minimum efficiency levels to qualify as an energy efficiency loan? A percentage of the loan value or some other measure?*

There should not be a minimum efficiency level to qualify a transaction for an energy efficiency loan if the upgrade is conducted consistent with the current program guidelines. However, financing should only be offered for certain pre-selected energy efficiency measures within PG&E's program, similar to PG&E's OBF program.

9. *To what extent can energy efficiency measures financed fall outside of utility programs and their specific targeted measures?*

As discussed in response to Question 6B 6, above, PG&E recommends that OBR program participants should be required to utilize energy efficiency measures included in an approved IOU energy efficiency program in order to qualify for energy efficiency financing through OBR. If an energy efficiency measure is not offered as a deemed measure, customers can apply for energy efficiency incentives for these measures through the non-residential custom programs.

10. *Should there be some advantageous underwriting or interest subsidy for projects that involve "deeper" levels or more "comprehensive" efficiency improvements?*

The evidence presented does not support a need for or efficacy of interest subsidies that are underwritten by non-participating customers, especially if that support is funded in lieu of rebates or other incentives that directly reduce the upfront costs of energy efficiency projects.

> 11. *If financing is not offered in the marketplace for otherwise qualified or desirable borrowers, should there be a default lender, and if so, what kinds of entities, through what process, and at what maximum costs?*

The panelists' discussions revealed a significant difference between Staff's view that loans supporting energy efficiency upgrades are low risk and the views of both financial institutions and customers regarding the risks presented by these types of loans. PG&E is concerned that the presence of a subsidized "default" lender in the marketplace may be counterproductive in the long-run if the goal of the Commission is to encourage non-subsidized financial market participation. PG&E suggests that rather than acting on the presumption that subsidized lending is needed, it would be appropriate to first explore the feasibility of increasing non-subsidized lending. Based on comments at the workshop, community banks and credit unions appear to be potentially interested in this market and may be more likely to provide capital on terms customers find acceptable.

Options for Connecting Repayment Obligations with the Meter and not the Initial Borrower

> 12. *What is the legal basis, if any, for allowing payment obligations to extend to a successor owner or occupant that is also a utility customer assigned to the same meter?*

As discussed in PG&E's opening comments dated January 25, 2012, there is no legal basis for an OBR program to extend payment obligations to a successor owner or occupant who is also a utility customer assigned to the same meter, absent an express written agreement between the lender and the subsequent owner or occupant to assume the loan.

As an initial matter, a review of the materials relating to the ALJ Ruling indicate that the sole basis identified for justifying transferring the debt obligation to a new home owner or tenant who has not executed a loan agreement with the originating lender is that a tariff approved or required by the Commission would authorize this result. While the scope and breadth of the tariff authority is beyond the scope of these comments, a tariff or other state regulatory action would be subject to preemption by Federal consumer protection laws. This creates substantial doubt about the viability of the tariff solution.

Absent a legally-effective tariff or other legislative or regulatory action, it is difficult to identify how the debt obligation could transfer to a new consumer who did not sign the loan agreement with the lender unless the so-called "attachment" to the meter creates some enforceable right that is a form of lien on the underlying real estate or improvements.

If the lien were limited to fixtures or improvements in the property, rather than to the entire property, then actions to collect the debt would need to be consistent with requirements in the California version of the Uniform Commercial Code.[21/] Assuming that those steps occurred, executing on improvements to a tenancy or a fixture that is severable from improvements to real property is impractical and from a reputational perspective, unacceptable.[22/] In addition, it is also likely that the successor occupant or potentially the real property owner would be able to allege violations of federal consumer protection laws, such as the Dodd-Frank Act[23/] due to the harm to the consumer's occupancy of the residence.

Even in situations where access to the property and recovery of energy improvements is possible, as noted by panelists at the workshops, the value of any recoverable item would be *de minimus* and would not be reflected in the actual cost of purchase and installation. Based upon

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21/ PG&E has been interpreting the references to the attachment of a lien or right to the home or apartment electrical meter as a shorthand reference to an enforceable right relating to the provision of utility services, rather than a lien that specifically attaches to the meter itself. (For example, if PG&E were deemed to be a lender, it could not attach a lien to a utility meter because that device is already owned by PG&E.)

22/ Of course, a lender could always ignore a lien and sue on the underlying obligation, effectively treating the loan as a simple unsecured transaction.

23/ 12 U.S.C. § 5301 *et seq.*

this likely outcome, PG&E believes that a lender would ignore the recovery value of any energy improvements—which would have the same effect on loan pricing as underwriting the consumer loans as unsecured.

If the lien attaches to the real property as a whole, the loan contract could be deemed to constitute a disguised or "hidden" mortgage on the real property (which could include a tenancy interest in real property), which has significant repercussions on the lender. For example, if the lien were deemed a hidden mortgage, the lender would become subject to the foreclosure requirements of the Section 726 of the California Code of Civil Procedure (CCCP), which requires that the lender initiate a judicial foreclosure on the real property. Stated another way, if deemed a mortgage, the lender would be prohibited from demanding that the IOU deny power and would be required to seek recovery by filing a lawsuit and complying with the foreclosure requirements.

If the ability to "tie" the loan obligation to the meter is a fundamental aspect of the OBR program's design, third-party lenders are unlikely to participate in the program unless enforceability can be confirmed by reliable precedent. Further, as noted by Bob Anderson of Green Campus Partners, it is not clear that this would be a programmatic aspect that is appealing to lenders, as it may subject them to claims by those customers or tenants whose service is disconnected.

13. Who has the right to exercise extension of an obligation to a new occupant or owner? The lender, initial borrower, or successor occupant/customer?

As discussed above, both the lender and the successor occupant/owner must agree in a written instrument to the assignment of a loan to a new borrower.

A related question is whether the outgoing occupant should be released from liability if the incoming occupant agrees to assume the loan. The lender would not be willing to release the outgoing occupant (original borrower) unless it is satisfied that the incoming occupant satisfies the lender's underwriting standards. Thus, a change in occupancy may require the lender effectively to repeat its loan origination procedures (possibly with an interest rate adjustment) for the new occupant as one of the lenders participating in the workshops stated. Additional underwriting fees might also be payable in that situation.

Alternatively, if both the incoming and the outgoing occupant are liable for the debt, the successor occupant might be deemed to be a guarantor of the debt, in which case compliance with certain consumer guarantor provisions of the California Civil Code would be required.[24/]

> 14. *What should be the disclosure, notice, and acceptance requirements to the successor occupant/utility customer, the form of such notice/acceptance (whether explicit or implicit), and the process for administering these notice requirements?*

As discussed above, both the lender and the successor occupant or owner must agree in a written instrument to the assignment of a loan to a new borrower. To ensure adequate disclosure, there should at a minimum be a clear recitation of the terms and conditions of the loan, including the rights of the lender in the case of default. In addition, an original copy of the loan agreement should be provided, as well as a description of the OBR mechanism to invoice the successor occupant.

Because California law prohibits the IOUs from terminating power to residential customers for non-payment of third-party debts,[25/] no forms of disclosure would allow this result for a residential occupant. As noted in PG&E's opening comments dated January 25, 2012, there would appear to be no legal authority to allow the IOUs to discontinue utility services to other customer classes based on non-payment of a loan to a third party, unless the customer agrees in writing to assume the loan obligation and to be subject to service disconnection for non-payment.

> 15. *Does a loan become "due and payable" by the initial borrower if a successor declines to accept the repayment obligation?*

24/ *See* California Civil Code § 1790.9 *et seq.*

25/ Public Utilities Code §§ 777.1 (e) (3) and 779.2 (a).

An OBR loan should become due and payable if either a subsequent occupant or lender declines to accept an assignment of the loan. There does not appear to be any generally applicable general contract or consumer law that would prevent such a provision from being enforceable.

> *16. Should the meter transfer option be made available to all borrowers, or should there be any restrictions on what customer segments or kinds of projects can utilize it?*

PG&E believes that the only acceptable manner of obtaining the consent to repay the debt obligation by a subsequent consumer occupant would be by the execution of an appropriate assumption agreement in a manner that conforms to the requirements discussed in response to Question 6B 14, above.

In the event that the original loan is made to a tenant, PG&E believes it is likely that landlords would object to transferring the debt obligation to a new tenant because of the increased cost of the aggregate rent on the property, and because this type of transfer would likely raise many of the legal objections identified in these comments. Further, if a tenant's utility services were disconnected, a tenant may allege a constructive eviction, with the result that the landlord would seek damages from an IOU for the termination.

Handling Partial Payments, Arrears, and Defaults

17. *Under current utility tariffs for OBF for non-residential customers:*
    - *A borrower voluntarily undertakes the energy efficiency project and loan and accepts the terms of the OBF loan tariff;*
    - *Any partial payment is pro-rated across utility bill items (e.g., across gas, electric, and the OBF loan repayment);*
    - *If the customer fails to pay a bill in full, standard utility collections procedures and due process apply;*
    - *Once all other remedies are exhausted, the last resort is for the utility to terminate service for non-payment, an outcome that the customer accepts under the OBF tariff agreement.*

Should these same policies apply to energy efficiency loans made by non-utility lenders? This would mean that the lenders using OBR must agree to accept a utility's standard billing collection and redress procedures and cannot seek special treatment unique to the energy efficiency loan portion of the overall status of the utility bill. This would also mean that there is some potential for customers to have their utility service disconnected if they persistently fail to pay, even partially, either their loan obligation under OBF or OBR, their utility bill, or both. This is consistent with current practice. Any change to the underlying disconnection policies related to non-payment of the portion of the bill devoted to utility services would require notice and need to be conducted outside of this proceeding. However, parties are welcome to comment here on any recommended changes to these procedures that would be necessary or desirable for energy efficiency financing program purposes (for collections related to the energy efficiency loans) and/or how the existing rules should be applied in the context of financing programs.

PG&E does not support either service disconnection for nonpayment of third-party charges or pro-rata partial payments between utility and non-utility charges. The workshops did not indicate a consensus these procedures were needed or that they would provide much additional security for the lenders. Given the lack of evidence that shut-off for nonpayment and/or a partial payment structure will induce lenders to offer better financing terms to customers, it should not be required. As noted in response to Question 6B 14, above, disconnecting service to residential customers for non-payment of a third-party loan is currently unlawful. Further, requiring disconnection of essential utility services for non-payment of a loan to a third party appears to contradict this Commission's own policies. In the *Order Instituting Rulemaking on the Commission's Own Motion to Address the Issue of Customers' Electric and Natural Gas Service Disconnection* (R.10-02-005), the Commission is considering implementing new rules to *reduce* the number of gas and electric service disconnections due to nonpayment. The concept of increasing service disconnections due to non-payment of *third-party loans* appears to be completely adverse to the objectives of R.10-02-005. The disconnection rules adopted in this proceeding should be consistent with decisions and policies approved in the rulemaking.

If there will be an OBR program, such a program could be implemented by PG&E utilizing information technology (IT) infrastructure currently in place to implement its line item billing vendor services program. The vendor services program does not allow shutoff for non-payment of third-party services nor does it allow a partial payment structure.

18. Should these same policies apply to energy efficiency loans to residential customers? Why or why not?

PG&E does not support these policies for residential customers for the same reasons given in response to Question 6B 17, above. The Clean Energy Works Oregon program is an example of a successful OBR program in which there is no partial payment structure. Service is not disconnected for customers who fail to pay their loan charges. Instead, the loan repayment amounts are directed back to the lender for collection when the repayments are in arrears. This approach is also consistent with the current IOU line-item-billing programs.

Determining Ratepayer Support of Financing Transactions

19. Who should support costs of billing system upgrades and/or operating expenses?

PG&E believes that an OBR program structure must be clearly defined in order for each IOU to determine, what if any, support costs of billing system upgrades and/or operating expenses are necessary. As in the NYSERDA program, IOUs can act solely as billing and collection agents. In such a model, lenders would pay monthly processing fees to PG&E for access to the bill as well as a referral fee for loans initiated by PG&E service representatives.

20. When might financial support or underwriting of an energy efficiency loan pool be appropriate?

Generally, subsidies should be avoided as they may distort prices, and result in a sub optimal allocation of society's resources. By artificially lowering the cost of capital, energy efficiency loan subsidies may redirect scarce capital into investments that are of less value to the society than other investments. Subsidized loans may also encourage customers to take on more debt than they can really afford, an important consideration at a time when the nation is struggling to overcome the impacts of excessive debt.

> 21. *Using what criteria might possible mechanisms or products be chosen and prioritized for support – through traditional benefit/cost ratios, cost of saved energy, target levels of leverage (e.g., a 10% or 15% loan loss reserve mechanism), or some other metric?*

This question is somewhat unclear. In general, as stated in earlier responses, the product offerings and mechanisms that have already been approved by the Commission for OBF programs provide a good foundation for any contemplated OBR program. These programs are currently part of a cost-effective portfolio and would provide cost-effective energy savings. PG&E does not support ratepayer-supported credit enhancements such as a loan-loss reserve.

> 22. *Should any support be targeted to customers who otherwise cannot meet traditional market lending criteria?*

PG&E currently supports the Energy Savings Assistance Program (formerly Energy Partners or Low Income Energy Efficiency), which helps customers who cannot meet traditional lending criteria implement energy efficiency upgrades through a subsidized direct install program. Approximately one third of PG&E's residential customers currently qualify for assistance under this program.

In addition, PG&E partners with a number of community-based organizations (CBOs) and local governments such as the Low Income Investment Fund (LIIF), San Francisco Community Power, and various cities in PG&E's service area to address energy efficiency needs in traditionally underserved communities.

PG&E suggests that these existing programs may be more appropriate for customers who cannot meet traditional lending criteria rather than embarking on a new program to provide subsidized loans which may encourage such customers to take on debt that they cannot afford, especially if loan subsidies are provided in lieu of rebates or other incentives that are currently used to directly buy-down the upfront cost of energy efficiency upgrades.

B. Responses to 6C Questions

Function and Boundary Issues for Loans and Entities Servicing Loans

1. What are the criteria for accepting participating lenders?

It is too early at this time to specify all the criteria that PG&E would use. However, PG&E believes the best approach would be to issue an RFP to select participating lenders so that PG&E can ensure high levels of customer service and the most favorable terms for customers.

2. Are there maximum loan terms that are acceptable (e.g., caps on permissible interest rates charged)?

As referenced in response to Question 6C 1, PG&E would consider an RFP to select participating lenders. While it is too early at this time to specify all the criteria that PG&E will use, maximum loan terms offered by lenders may be one criteria used in the selection process.

3. What degree of uniformity or standardization (at least for data and documentation) should be required?

In order to minimize the work necessary to modify PG&E's billing infrastructure, PG&E would seek a high level of uniformity. In any RFP used to select participating lenders, PG&E would detail its standards regarding data transfer protocols.

4. What entity or entities should be sought to administer a loan loss reserve form of subsidy, or an interest rate write-down subsidy? (e.g. a state agency, nonprofit, governmental, utility, or private financial entity? Or a specific entity such as CAEATFA?)

As stated previously, PG&E does not support the use of customer funds for the purpose of providing credit enhancements or interest rate buy-down, especially if those funds are in lieu of providing rebates or other incentives that reduce the costs of energy efficiency upgrades. If the Commission should find that credit enhancements are needed, PG&E encourages the Commission to look for funding sources other than utility rates.

Several types of entities potentially could be used to manage and deploy funds for this purpose. The two most likely candidates would be trusts (stand alone or bank-managed) and special government agencies with a specific charter. Trusts could be established with specific charters that provide for a governance committee, investment rules, and a process for deployment of the funds. Banks are natural candidates to manage such trusts since that is a function they often perform for individuals and institutions. Similarly, special government agencies can be created to perform the same function, such as CAEAFTA.

5. *What roles, if any, should utilities play in informing customers about financing available and/or actively promoting specific or all financing mechanisms?*

In the workshops, there was consensus that utilities lend credibility to energy efficiency programs. SMUD's residential loan program, SDG&E's OBF program and Clean Energy Works Oregon have succeeded at least in part because of robust education, outreach and training practices. Therefore, utilities can play a central role in helping customers navigate the financing marketplace. Further, customer outreach and education regarding programs already available to commercial and residential customer segments may be a positive first step in increasing uptake of energy efficiency financing.

6. *To what extent can energy efficiency measures financed fall outside utility programs and their targeted measures?*

Please see PG&E's response to Questions 6B-6 and 6B-9.

7. *What is the role of the utility or the CPUC in any financial or performance disputes between the borrower and his/her lender or the energy efficiency installer?*

Any dispute should be resolved directly between the lender and borrower or customer and supplier.

First, the CPUC lacks jurisdiction to resolve a contract dispute either between the customer and lender or between the customer and supplier.

Second, although it is not completely clear from the description of the consumer loan in the ALJ Ruling, it appears that an IOU could potentially service a third-party loan through the OBR mechanism, but, due to the requirements of the federal debt collections laws, the IOU should not engage in collection actions should a dispute arise between the borrower and either the lender or the product supplier/installer.

The IOUs should not be required to become involved in any payment disputes. Further, the IOUs should have the benefit of express disclaimers of liability for the installation or provision of any energy products or services under the program. In regard to its proposed role as a loan servicer, PG&E notes that it could be faced with the possibility that a borrower makes a monthly payment that is insufficient to pay the utility bill plus the monthly payment due on the consumer loan. Should that occur, the consumer could merely send in a partial payment and expect the IOU to allocate payment, or might direct the IOU to allocate the payment to specific line items in the bill (for example, to pay the utility charges but not the loan charges). The program design should address how these issues are to be resolved and, for the protection of non-participating ratepayers, payments should first be allocated to the current energy bill, so that the loan program does not result in an increase of uncollectable bills to be covered by other customers.

Lenders and servicers in California have incurred liability in the past for improperly allocating partial payments, and this is an area of risk for which the IOUs should be indemnified by the lender and receive specific guidance from the Commission.

Options for Connecting Repayment Obligations with the Meter and not the Initial Borrower

8. What other conceptual or operational details need to be addressed?

As noted throughout these comments, some of the ideas raised pose significant legal issues, in particular the idea of connecting repayment obligations with the meter rather than the borrower. This issue is addressed in the answer to questions 9 through 11.

9. *What notice and disclosure mechanisms should be used (e.g., as a condition of receiving utility service or being able to buy or lease residential or nonresidential property)?*

PG&E does not support service disconnection for a third-party loan. However, assuming that it is legally permissible to offer a loan on the basis outlined in the ALJ Ruling, and the CPUC authorizes such a program, the strongest and clearest disclosure must be provided to the original borrower that the failure to make loan payments will result in termination of electrical power. (This disclosure would be in addition to other required disclosures such as closed-end disclosures required by federal laws.)

In regard to a subsequent occupant, as noted above, PG&E believes that unless a subsequent occupant assumes repayment of the debt in writing, that individual cannot become legally obligated to make payments on the debt incurred by the previous occupant. Accordingly, if a subsequent borrower were to assume the repayment obligations, a similar clear disclosure must be provided that would clearly spell out the remedy available should the loan fall into default.

10. *What entity would administer disclosures, and could an owner refuse to allow a tenant to enter such a transaction?*

Although the inquiry is somewhat broad, it should be noted that many consumer tenancy leases prohibit tenants from making permanent additions/modifications to the leased premises. In such cases, tenants seeking to use loan proceeds for modifications that might violate such loan covenants would be required to obtain prior consent from the landlord or risk violating the rental agreement. In addition, to the extent that a loan program is structured to require a subsequent tenant to pay for a loan of a prior tenant, this arrangement should be subject to the review and approval of the property owner, as it would prohibit the property owner from renting his/her property to potential tenants who do not wish to assume the loan obligation and, thus, it impacts the owner's real property interests. Further, as noted in PG&E's opening comments dated January 25, 2012, it appears that the real property owner would be the owner of any real property improvements at the termination of any tenancy. For this additional reason, the property owner should be involved in any transaction that would result in improvements to or a loan secured by the owner's property.

To the extent that a loan is secured by a real-property mortgage, the mortgage would be disclosed as part of the title search and escrow that would be conducted for the sale of the real property.

11. What are the mechanics for transferring loans to the next owner or occupant using the meter?

PG&E incorporates by this reference its responses to Questions 6B 12 and 6B 13, above.

Handling Partial Payments, Arrears, and Defaults

12. How should partial or missing payments be handled when there are both utility and lender charges on the same bill (e.g., pro-rate all revenue across line items on the bill, pay funds toward the utility bill first, or apply payments to the largest line items first)?

Partial payments and missing payments should be handled similarly to other third party charges that are currently billed through PG&E. In other words, delinquent IOU energy charges are serviced before servicing any delinquent third party charges.

Determining Ratepayer Support of Financing Transactions

13. Are there any guidelines for reasonableness of IOUs' billing costs incurred or fees to be charged to lenders for access to OBR?

The proper amount for the IOUs to charge for their billing services can be determined through a variety of benchmarks. Data points that should be considered to set guidelines for reasonableness of IOUs' billing costs include a) the costs incurred by lenders to bill and process payment from their customers, b) the price that third parties are willing to pay to gain access to IOUs' customer bills, and c) the fees currently paid by third parties that have line items on IOUs' bills nationwide. PG&E recently conducted a similar RFP and responses indicated third parties would be willing to pay a flat fee per bill per month per customer whereas another company indicated willingness to pay a percentage of the line item amount to PG&E. Additionally, over ten utilities nationwide including Sempra offer a line-item billing service to a variety of third party companies in which the utility charges a fee for the service.

14. How should an affordable amount or cost-effectiveness limit for ratepayer support be determined?

PG&E does not believe a compelling case has been made in support of the need for ratepayer funded credit enhancements or direct buy-down of interest rates. This is especially true if such support is in lieu of rebates or other financial incentives that directly buy down the upfront costs of energy efficiency upgrades. PG&E agrees that the amount of the monthly loan payment should be affordable to the customer and that OBR loan amounts should only cover the amount justified by energy savings.

15. To what extent can traditional rebate and incentive funding be reduced once financing mechanisms better match cash flow to energy savings and non-energy benefits received?

There is little data or compelling evidence to enable PG&E to adequately address this question. As a component of the proposed market research studies, PG&E proposes to evaluate the potential tradeoff between traditional incentive and rebates and financing. In the absence of market research, PG&E believes that financing, incentives and rebates are all relevant to the promotion of energy efficiency.

In the Cadmus Group's presentation entitled "*Selected Findings from CPUC's Market and Process Evaluation of On-Bill Financing*," 34 percent of OBF participants preferred incentives to zero percent financing (Slide 9). Given over one-third of OBF participants prefer incentives over a zero interest rate loan, additional market research must be conducted to evaluate the impact of changes in interest rates for energy efficiency loans on customer preference for financing over incentives.

16. If ratepayer support is warranted for individual loans or loan programs, for whom, under what conditions, and up to what amounts?

As stated earlier, PG&E is opposed to direct subsidies in the form of customer-funded loan-loss reserves or interest rate buy-downs. PG&E already supports a successful direct install program for low-income customers under our Energy Savings Assistance Program and works with a number of community-based organizations to provide assistance to traditionally underserved communities. In general, PG&E does not support a policy of encouraging customers to take on additional debt if they do not have the level or stability of income to qualify for credit. Moreover, as stated earlier, PG&E does not believe non-participating customers should be forced to subsidize the extension of credit to customers who would not otherwise qualify for credit.

17. Should the degree of any loan support vary with customer segments, degree of energy efficiency achieved, or other factors?

Provided that customer funds are not being used to provide the loan support, the party who is providing the loan support should be allowed to determine which market segment is most consistent with its charter and policy objectives.

18. Might ratepayer support outlay be able to be limited if financing is tied into natural transaction points, such as through lease agreements, tenant or owner turnover, etc.?

PG&E does not support the establishment of a customer-funded credit enhancement regardless of type, particularly if that support is in lieu of rebates or other incentives that directly buy down the upfront costs of energy efficiency upgrades.

19. How should private or local government entities be encouraged to offer loans not otherwise available (e.g., to reach target markets)?

Workshop panelists from credit unions and community banks indicated that energy efficiency loans were well aligned with the goals of their organizations and they were interested in expanding opportunities to provide financing in support of energy efficiency loans. PG&E recommends further exploration of this possibility with institutions that have expressed interest.

20. *If a state agency participates as a loan originator (drawing on ratepayer funds as loan capital) or administers credit enhancement support using ratepayer funds, how can this access to ratepayer funding be protected from potential use for state budget purposes by the Legislature?*

Funds held by State agencies that are subject to appropriation and not subject to express escrow limitations are not secure because they can be diverted to purposes other than those for which the funds are intended. Indeed, the State of California has already loaned hundreds of millions of dollars from the Renewables Trust Fund, and only has repaid a fraction of that amount. The State also attempted to completely divert to the General Fund a portion of natural gas public purpose program funds collected pursuant to Public Utilities Code section 890. PG&E opposes any transfer of funds collected from utility customers for General Fund or unrelated purposes as this could ultimately defeat the purposes of the program if the funds are diverted.

If the funds are to be held by a state agency, despite the risk of diversion, the state agency should serve as an escrow agent and enter into contractual agreements with the participating lenders that would require disbursement of the funds to the lenders under specified circumstances. If the funds are not contractually obligated to the lenders, they would be subject to diversion. Any disbursements from the IOUs to the agency acting as the escrow should be limited to those amounts that are contractually obligated.

Managing Information on Energy Efficiency Project and Loan Performance

21. *What data should be available (presumably in aggregate form, not customer-specific unless the customer authorizes) to contractors and/or lenders about energy efficiency investment projects and for what kinds of projects or customers?*

PG&E agrees with a number of parties who suggested that a task force be formed to address this issue. Environmental Defense Fund (EDF) volunteered at the workshop to organize this effort. PG&E requests that the Commission encourage EDF to reach out to the IOUs and other stakeholders for this purpose.

22. *Should this differ among projects with:*

- *No utility financing but some form of utility program participation*
- *External financing but participating in OBR*
- *External financing with no utility program or OBR involvement?*

See response to Question 6C 21, above.

23. *What kind of credibility with lenders should a database administrator have, and what kind of non-disclosure agreements or other forms of confidentiality protection may be needed?*

See response to Question 6C 21, above.

Utility Credit for Energy Efficiency Savings Facilitated With Financing Programs

24. *Should utilities receive energy efficiency savings credit towards their energy efficiency goals resulting from financing using OBR or other new financing mechanisms utilizing a combination of ratepayer and third party capital? What about when measures or projects do not otherwise participate in a utility portfolio program?*

Provided that financing is associated with products already deemed cost-effective in the utility portfolio and that OBR is implemented using utilities solely as billing and collection agents – a service for which they are receiving processing fees - there should be no need for additional or new mechanisms to track savings associated with financing.

If the energy efficiency savings are associated with portfolio funding it would be appropriate, as with resource programs in the mechanism approved in D.10-12-049, to count savings towards the achievement of IOU portfolio energy savings and treat them as other energy savings achievements.

> 25. *In situations where only private capital is used for financing, with utility payment facilitation, what kinds of data collection or evaluation requirements should be placed on third parties to help the Commission and stakeholders understand the impacts of these programs?*

PG&E recommends that EM&V considerations be explicitly considered as part of overall program design and agreed to by stakeholders prior to implementation of any OBR program. The exact specification of EM&V will be dependent on actual pilot/program design and agreement by stakeholders. (See also response to related Question 6C 21, above.) To the extent that any OBR program is limited to energy efficiency measures which are part of the IOU's program, then additional EM&V requirements should be minimal.

> 26. *What treatment should any credited energy efficiency savings have in any potential future shareholder "risk reward incentive mechanism" determinations?*

PG&E incorporates its response to Question 6C 24, above.

This question should be considered in a future phase of the energy efficiency risk reward incentive mechanism (RRIM) proceeding after the financing program details have been determined.

> 27. *In cases where financing is paired with other incentives or programs, what protections need to be in place to prevent the potential for double-counting of savings? Should "credit" be proportional to budget/financial contribution?*

PG&E incorporates its response to question 6C 24, above.

Additionally, the IOUs should utilize internal systems to ensure that double counting does not occur. As each IOU will be both issuing the incentive and tracking the OBR, this should not be an issue and is currently not a problem with OBF.

IV. CONCLUSION

PG&E appreciates this additional opportunity to provide comments on the energy efficiency financing questions posed in the ALJ Ruling and to comment on the various presentations at the workshops. PG&E looks forward to working with interested stakeholder to determine the role of expanded energy efficiency financing in future IOU portfolios.

Respectfully submitted,

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