BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Joint Application of San Diego Gas and Electric Company (U 902), Southern California Gas Company (U 904) and Pacific Gas and Electric Company (U 39 G) to Reallocate the Costs of Natural Gas Public Purpose Programs and Other Mandated Social Programs Among Customer Classes	Application No. 07-12-006 (Filed December 11, 2007)

PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES

I. INTRODUCTION

Pursuant to Rule 2.6 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the Division of Ratepayer Advocates ("DRA") files this protest to the Joint Application of San Diego Gas and Electric Company ("SDG&E"), Southern California Gas Company ("SoCalGas") and Pacific Gas and Electric Company ("PG&E") (collectively referred to as "Joint Utilities") to Reallocate the Costs of Natural Gas Public Purpose Programs ("G-PPPs") and Other Mandated Social Programs Among Customer Classes.

The ALJ granted DRA an extension of one day to file its protest. As such, DRA timely files its protest.

In this application the Joint Utilities request that the Commission:

1. Authorize a change in the way the cost of the natural gas Public Purpose Programs and other social programs, which now include energy efficiency, low-income energy efficiency, the California Alternate Rates for Energy (CARE) low-income subsidy, Research and Development, the Self-Generation Incentive Program, and possibly the Solar Hot Water Heating Program, be allocated to

customer classes using an Equal Percentage of Base Revenues methodology.

And:

2. Grant such other further relief as the Commission deems appropriate.

DRA recommends that the Commission outright reject the Application because 1) the Joint Utilities' arguments to reallocate the CARE program costs have already been addressed and decided by the Commission, 2) the Joint Utilities have not met their burden that to prove that the social programs result in businesses relocating out of state, and 3) there are other proper venues for cost allocation where the Commission can decide the issues included in the instant Application.

The Joint Utilities' Application submit a very broad application that deal with many existing programs and some programs that are not in play yet. The Joint Application confuses the issues by discussing the purported problems of one program, and apply that alleged problem to another program which does not use the same cost allocation. For example, the testimony argues that Equal Cents Per Therm ("ECPT") is inequitable, and, therefore all programs should move away from such an allocation. But, what about the Low-Income Energy Efficiency ("LIEE") and Energy Efficiency ("EE") programs, where the allocation method is not ECPT? Moreover, the Order Instituting Rulemaking ("OIR") for the targeted goals of the EE Programs has recently ended, and a new OIR has been issued for the Low-Income Energy Efficiency programs, which will direct the funding for that program until the year 2020.

The EE and the LIEE programs are in their early phases of determining what measures to install, what segments of the population would benefit from those programs, and what the most cost efficient implementation of the programs will be. While those figures are unknown at this time, the Joint Utilities felt it necessary to include all the social programs together, regardless of whether they

contain issues that the Commission can litigate again, or regardless of whether the EE or LIEE staffs have determined their costs and sources of funding.

In contrast to the EE and LIEE programs, the funding for the CARE program has been consistently allocated on an ECPT basis for more than 18 years. On numerous occasions the Commission has rejected changing the ECPT allocation for CARE's funding, and the Joint Utilities have merely repeated the same arguments which the Commission has rejected. Accordingly, the Joint Utilities should not be allowed to collaterally attack the final Commission decisions concerning the CARE program.

II. DISCUSSION

A. Any reallocation with regards to the CARE program[1] should be dismissed from this application because it is contrary to numerous Commission decisions.

For the past 18 years, the Commission has set the Equal Cents Per Therm ("ECPT") allocation method for CARE costs. And throughout this time period, the Commission has revisited the issue extensively because the utilities have vehemently tried to change the CARE cost allocation to deviate from ECPT for the benefit of its larger industrial customers who do not want to pay their fair share of the CARE program as mandated by statute. *See, e.g.,* D.96-04-00, 1996 Cal. PUC LEXIS 270 at *119. The arguments in this section refer to the CARE program, but may also apply to other programs contained in the Application.

[1] In its analysis, DRA separates the CARE program from other Social Programs for many reasons. As stated above, it is extremely difficult, if not impossible to provide analysis of each program collectively. The Commission has acknowledged that the CARE program costs correspond to expenditures that serve a *very distinct* purpose from other types of utility operations. Furthermore, the Commission must follow strict legislative guidelines for allocating the CARE costs and reporting such allocation to the Board of Equalization. Furthermore, the allocation of the CARE program costs has been litigated substantially. For the reasons stated above, and more, DRA provides a different analysis for the CARE program.

1. The Commission has continuously rejected the utilities' efforts to allocate less CARE costs to noncore industrial customers.

Currently, the Joint Utilities ask that the Commission reallocate the CARE program costs to the benefit of industrial customers. This issue of whether the utilities' industrial customers should be allocated less than Equal Cents Per Therm (ECPT) for the CARE program has been extensively litigated, and the outcome has been the same – that the current ECPT allocation method is the most just and fair.

In 1989, when the Commission adopted the current ECPT, the utilities asked the Commission to allocate the CARE costs based on an Equal Percentage of Marginal Costs ("EPMC") similar to what the Joint Utilities now propose, Equal Percent of Base Revenue ("EPBR"). In D.89-09-44, (1989) 32 CPUC 2d 406, 417, the Commission rejected the EPBR allocation of the CARE program for two reasons: 1) the Commission concluded that the function of the program does not lend itself to an allocation on the basis of customer group's responsibility for current marginal costs. 2) the Commission concluded that the equal cents per kWh surcharge [or "equal cents per therm" for gas] was more consistent with the statutory goal of minimizing the burden on any one class of ratepayers. Subsequently, the Commission reaffirmed the reasoning of its original decision. *See* D.96-04-00, 1996 Cal. PUC LEXIS 270 at *119).

In D.96-04-00, Southern California Edison Company ("Edison") and other parties argued that an equal percentage of each customer's total bill would be a more equitable way of allocating CARE costs. (1996 Cal. PUC LEXIS 270 at *120). The Commission disagreed with the Edison and left the allocation unchanged. The Commission concluded that CARE-related expenditures are no more related to energy consumption than they are to the total usage of utility resources from the perspective of a customer that does not receive the CARE discount. (*Id*.) However, the Commission stated that the issue is one of equity.

The Commission stated that under an EBPR, an inequity would arise because residential and small commercial customers would bear proportionately more of the CARE costs than under an Equal cents per kWh or therms. (*Id.* at *120). Again, the Commission rejected a proposal to have residential and small commercial customers pay more of the CARE cost than larger industrial customers.

In SDG&E and SoCalGas' previous Biennial Cost Allocation Proceeding ("BCAP"), a party proposed placing a cap on the recovery of CARE costs from SoCalGas' largest industrial customers. (D.00-04-060, 2000 Cal. PUC LEXIS 196, * 150). The overall purpose of having the cap in that proceeding is the same as the reallocation currently proposed by the Joint Applicants, to relieve any CARE program costs on large industrial customers. In that proceeding, the shifts in costs from Industrial to Core Customers were approximately $1 - $2 million, which is significantly less than the shifts proposed by the Joint Utilities. Yet, the Commission still held that the current allocation method should not be altered. Specifically, the Commission said "Ultramar has not convinced us that the eight largest users on the SoCalGas' system should pay proportionately less than everyone to meet the cost of a social program." (*Id.* at 150).

More recently, in PG&E's BCAP, PG&E and parties attempted to change the allocation from ECPT to one that would benefit industrial customers. In a recent decision, the Commission, after careful review of all arguments (which are again presented in this Application), rejected PG&E and parties' attempt to modify the ECPT for the CARE program. *See* D.06-05-019 (2006 Cal. PUC LEXIS 191, at *2).

2. The Joint Utilities have not met their burden of changing the Commission's Equal Cents Per Therm cost allocation for funding CARE.

As demonstrated above, for more than 18 years, the Commission has consistently found that the ECPT is the most fair and just allocation method for the

CARE program. In the past 18 years, the utilities and numerous parties have attempted to modify the ECPT allocation based on the exact same arguments put forth in the instant application: 1) that the program costs are rising and thus industrial consumers are paying more than they should for these costs, 2) that the customers are allegedly leaving the state of California because of the high public purpose program surcharge, 3) and/or "such programs" should be borne by core residential consumers. In its affirmation of the ECPT allocation, the Commission thoroughly analyzed the above three factors and rejected the Joint Utilities' arguments.

Specifically, in D.05-06-029 and D.06-05-029 addressing PG&E's most recent BCAP, the Commission reaffirmed the ECPT allocation for the CARE program and provided logical, reasonable, and equitable rationale against the arguments raised in favor of moving away from the ECPT allocation. (2006 Cal. PUC LEXIS 191, at *2). In that proceeding, PG&E and other parties recommended that the Commission modify the ECPT allocation for CARE to an Equal Percent of Transportation Revenue, similar to the Joint Utilities proposal to use Equal Percent of Base Revenue ("EPBR"). Essentially, the Commission addressed the same issue presented, backed by the same arguments, and found that the ECPT cost allocation should remain unmodified. Further, in that same proceeding, the Commission adopted PG&E's proposal to recover the allocation of Self-Generation Incentive Program (SGIP) cost on an ECPT basis.

In their present application, the Joint Utilities state that "since Equal Cents Per Therm became the standard allocation method, the costs to fund these programs has dramatically increased which puts a disproportionate amount of the burden to pay on commercial and industrial customers." (Executive Summary, p. ES-1). The Joint Utilities also state, "when the costs of state-mandated social programs were much lower, the allocation method was less important, and any negative impact of poor allocation would be negligible." (Joint Utilities

Testimony p. 1-14). The Joint Applicants imply that the Commission has not considered new facts such as rising program costs since its last ECPT allocation.

Contrary to any implication that the Commission has not considered all relevant and updated information and program costs since its last ECPT allocation, the Commission has recently considered *all* the arguments the Joint Utilities present in their current application. For example, in D.06-05-019, the Commission explicitly recognized "that the number of subscribers to the [CARE] program has increased *substantially*." (2006 Cal. PUC LEXIS 191, at *2). In fact, the Commission CARE program costs that the Commission actually considered were up to 2005. (*Id.*). Therefore, the Joint Utilities' statement on page 1-14 of their testimony that "at the onset of these state-mandated programs, the Commission ruled that the costs of these programs were not unreasonable in light of social benefits" is extremely misleading. First, as just shown, in the past 18 years, the Commission has affirmed and reaffirmed its ECPT allocation based on what the programs were at the time of its decision and found that the cost allocation was not unreasonable less than two years ago. Second, the issue at hand is cost allocation, not cost reasonableness. The costs of the programs are not at issue here, only their cost allocation. The Commission, at most, is being asked to make certain cost allocations and not defer judgment on the reasonableness of any programs.

The Commission also considered that any change to the allocation method would unfairly allocate more costs to residential customers and reduce industrial customer bills. (*Id.*). Essentially, the instant application does not present an issue or argument that the Commission did not consider when affirming the ECPT allocation.

The Commission also considered the equity issues and arguments, such as the CARE costs being a high percentage of noncore customers' transportation rates. (*Id.* at *9). The Commission found that "The fact that the CARE rate is a high percentage of noncore industrial transmission rates merely reflects the fact

that the transportation rate for those customers is low." (***Id.* at * 10**). The Commission went further and stated that the applicant's use of transmission rates *alone* overstates the impact of CARE rates on large customers.

In that decision, the Commission found that it should not change its historic allocation method to provide "relief for a customer class that feels it is shouldering an unfair burden." (See 2006 Cal. PUC LEXIS 191, *13). The Commission concluded that while the statute provides a long list of exceptions and exemptions, none exists for a customer class that feels it is shouldering an unfair burden. *Id.*

During D.06-05-019, the Commission found that PG&E's industrial customers were paying 37.4% of gas CARE costs. (See 2006 Cal. PUC LEXIS 191, *13) PG&E and other parties were arguing that 37.4% of gas CARE costs were too much for PG&E's industrial customers to pay. However, the Commission found that 37.4% of all costs were not too high. (*id.*). Because the other social programs are not allocated on an ECPT basis, according to PG&E's current testimony, their Industrial Customers are allocated for only 24.8% of all the Social Programs, including CARE. Therefore, based on this the Industrial Class' low contribution to the entire social programs, the Joint Utilities have not met their burden for attempting to change the ECPT methodology for funding the CARE program.

The Commission concluded that in 2006 the parties failed to meet their burden in support of the alternative (EPTR), that the ECPT allocation has a disproportionate impact on large users, putting them at an uneconomic disadvantage. (See 2006 Cal. PUC LEXIS 191, *13). Therefore, the Commission should not alter the current ECPT methodology and should reject the Joint Utilities' application.

3. The Joint Utilities are collaterally attacking Commission decisions that have already resolved this issue.

As demonstrated above, the Commission has already held that the ECPT allocation for the CARE program costs should not be modified. For the utilities to once again ask for the same relief, they are collaterally attacking previous final Commission decisions, which is prohibited. The Commission has held that in all collateral actions or proceedings, the orders and decisions of the Commission which have become final shall be conclusive. (D.07-10-015, 2007 Cal. PUC LEXIS 552, at * 11). The Conclusiveness of a decision arises by operation of law (*Id.*, *People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 632-633.)

There are numerous Commission decisions that have rejected the Joint Applicants' current recommendation for reallocating the CARE program costs. Most recently, D.06-05-009 denied an application for the rehearing of the care allocation issue. The Applicants are not providing any new information or arguments with regards to the CARE program costs. The instant application is an improper collateral attack on a final commission decision because it challenges the conclusions in D.06-05-019, D.00-04-060, D.96-04-050, and D.89-09-044.

B. The Joint Applicants have not met their burden to prove that the social programs result in businesses relocating out of state.

The Joint Utilities argue that that the state-mandated social program costs are a competitive issue for California utilities. Yet, in their testimony, they provide only one example of a customer who allegedly was contemplating leaving the State and where the cost of gas transportation was a factor. That one specific situation was recently addressed by the Commission in D.06-04-002 and D.07-09-016 regarding the Guardian case. The discussion in the Joint Application testimony regarding the challenging business environment in California is unpersuasive as a reason to change the cost allocation methodology of these programs.

In fact, the Commission has held that there is insufficient evidence that the CARE costs results in businesses relocating out of state. (D.06-05-019, at * 21). The Joint Utilities have not provided any new convincing evidence that the CARE program costs result in businesses relocating out of state. The Joint Utilities failed to meet their burden to prove that businesses are relocating out of state because of the CARE program costs.

The Joint Utilities' application appears to be based on businesses relocating out of state, a premise that lacks evidence. Therefore, the Commission should reject the Joint Utilities' Application.

C. If the Commission is willing to consider any cost re-allocation, it should do so in the upcoming BCAP proceeding.

If the Commission does not reject the Application and considers any sort of cost allocation issues, DRA recommends that such cost allocations for each utility should take place within their respective BCAPs or in the individual proceedings involving the unique characteristics of the various programs. SoCalGas and SDG&E are expected to file their BCAP application in less than one month. DRA recommends that such cost allocations should be done during the BCAP, as was the case for PG&E's last BCAP. If PG&E wishes to enter as a party to SoCalGas' BCAP, then it may do so. Otherwise, to analyze cost allocation issues outside the BCAPs would result in duplication and inefficiency. Currently, this Application conflicts with the upcoming BCAPs. Therefore, it would be beneficial to DRA, the Commission, and other parties if the Commission examined cost allocation in the upcoming BCAPs.

D. Other Issues

There are numerous other reasons why the Commission should reject the Application. For example, how will this impact other utilities that have ECPT such as Edison who has asked for the same relief before? The ECPT has been used for a long time, and the Commission must realize that a shift from that

methodology impacts all utilities, including the smaller IOUs that participate in the program. The Application does not consider such impact.

Also, the new LIEE and EE program costs have not yet been determined. There have been significant policy changes in the LIEE and EE programs that will change their costs. The Joint Utilities submit the programs present costs, which may be irrelevant as they are subject to change. Therefore, the Commission should consider that the actual cost shift from core to noncore will be greater than stated in the Application.

III. CONCLUSION

The Commission should reject the application. The Joint Utilities are merely rearguing positions that the Commission has already rejected. In the alternative, if the Commission still wishes to consider the request for reallocation, it should be addressed in the proper forum which is the upcoming BCAP.

If the Commission does not reject the Application, DRA requests Evidentiary Hearings. There are significant issues of fact that DRA disputes that necessitate hearings.

Because this application conflicts with the upcoming BCAP applications, the schedule proposed by the Joint Applicants is difficult. DRA requests that the

proposed schedule in the Application be modified to allow extra time for Intervener Testimony and hearings.

Respectfully submitted,

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January 15, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of "**PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES"** in **A.07-12-006** by using the following service:

[X] E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

[ ] U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on January 15. 2008 at San Francisco, California.

/s/ HALINA MARCINKOWSKI

Halina Marcinkowski

N O T I C E

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