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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric  
Company for Adoption of Electric Revenue  
Requirements and Rates Associated with its  
2011 Energy Resource Recovery Account  
(ERRA) And 2011 Ongoing Competition  
Transition Charge (CTC) Forecasts.

Application 10-05-022

(U 39 E)

**REPLY OF PACIFIC GAS AND ELECTRIC COMPANY  
TO PROTESTS AND RESPONSES**

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**I. INTRODUCTION**

Pursuant to Rule 2.6(e) of the Commission’s Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E) hereby replies in this 2011 Energy Resource Recovery Account (ERRA) Forecast proceeding to the protests filed by the Division of Ratepayer Advocates (DRA) and Marin Energy Authority (MEA), as well as the responses filed by Merced Irrigation District and Modesto Irrigation District (the Districts), and California Municipal Utilities Association (CMUA). For the reasons stated below, PG&E requests that the Commission proceed pursuant to the scope of issues and procedural schedule proposed in PG&E’s Application.

**II. OTHER ISSUES SHOULD NOT BE ADDED TO THE SCOPE OF THIS PROCEEDING**

**A. The Issue Of When To End The Ongoing CTC Is Inappropriate For A PG&E-Only Proceeding, And Has Been Previously Determined To Be Beyond The Scope Of This Proceeding.**

The Districts propose that ending the Ongoing Competition Transition Charge (CTC) should be added to the scope of this proceeding. PG&E disagrees. Specifically, the Districts’ request “that the Commission finally consider the question of when Ongoing CTC will end.” (Districts Response filed July 6, 2010, pp. 2-4.)

In each of the previous three PG&E's ERRA forecast proceedings, other parties have attempted to bring this issue into the proceeding, and in each of the previous three PG&E's ERRA forecast proceedings the proposal was rejected. Nothing has changed, and the proposal should be rejected again.

The Districts acknowledge that they requested the same relief in PG&E's 2009 ERRA Forecast proceeding (A.08-06-011) as well as in its 2010 ERRA Forecast proceeding (A.09-06-001). In neither case was the issue found to be within scope. First, in the 2009 ERRA Forecast proceeding, the Commission declined to consider ending Ongoing CTC on the grounds that that issue was beyond the scope of the ERRA Forecast proceeding. (*Id.*, citing D.08-12-029, p. 5.) Second, in the 2010 proceeding, despite the Districts claim that the Commission did not address the Districts' request for ending the Ongoing CTC, in fact the Scoping Memo in the 2010 ERRA Forecast proceeding *did* address this issue and found it to be out of scope, stating:

“In prior ERRA proceedings the Commission has declined to include CTC and CRS matters. During the July 27, 2009 PHC, no party offered any changes that have occurred since prior ERRA proceedings that would indicate why this proceeding should include the matters requested by the Districts and CMUA. CTC and CRS matters will not be included in the scope of this proceeding.” (Assigned Commissioner's Ruling and Scoping Memorandum dated August 17, 2009 Scoping Memo in A.09-06-001, p. 4)

It should also be noted that the reason “no party offered any changes . . . that would indicate why this proceeding should include the matters requested by the Districts . . .” was that the Districts chose not to attend the PHC to advocate their positions. Although the Districts do not mention it in their response this year, they also made this same request in PG&E's 2008 ERRA proceeding (A.07-06-006),<sup>1</sup> and the Commission similarly declined to grant the requested relief. Thus the Commission has for three years in a row ruled that eliminating ongoing CTCs is outside the scope of this proceeding. The Districts have provided no reason why the

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<sup>1</sup> See “Opening Brief of Merced Irrigation District and Modesto Irrigation District,” filed Oct. 12, 2007, in A.07-06-006.

Commission should depart from precedent and include this issue within the scope of PG&E's 2011 ERRRA proceeding.

The Commission has acted correctly in rejecting this proposal in each of the three previous proceedings. The issue is not appropriately considered in an individual Investor Owned Utilities' (IOU) ERRRA proceeding. Rather, issues that equally affect SCE and SDG&E as well as PG&E should be considered in the context of a joint, multi-utility proceeding.<sup>2</sup> In fact, last month, a Scoping memo was issued for Phase III of the Direct Access Reopening (DA Reopening) proceeding that deferred this issue to a future time. This ruling was in response to the suggestion by several parties that reexamination of the non-bypassable charge obligations (including CTC) was ripe for consideration such that the CPUC should consider addressing these issues in Phase III of the DA Reopening proceeding. The June 15, 2010 Scoping Memo in R.07-05-025 ruled as follows:

“Various parties propose that the Commission conduct a re-examination of non-bypassable charges that have been imposed on DA customers. They raise various concerns with the current charges, arguing among other things that charges are defined with great imprecision, do not account for departing customers' load profiles, and generally do not fairly reflect any reasonable concept of a “fair share.”

Other parties oppose re-examination, arguing that the issue of non-bypassable charges has already been extensively litigated and that further litigation would be burdensome.

We understand that the concerns raised regarding the various non-bypassable charges involve important issues that could significantly impact the success or failure of DA in the longer term.

Given the immediate workload priorities for this phase of this proceeding, however, we will defer consideration of this issue at this time. We will re-evaluate

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<sup>2</sup> PG&E is aware that D.06-07-030, OP 22, suggested that in the future issues associated with cost responsibility surcharges (CRS), which includes the ongoing CTC and the PCIA, should be addressed in future ERRRA proceedings and more recently, Resolution E-4256 noted that “[t]o assure consistency in the ongoing implementation of the CRS and address issues as they arise, we reiterate that OP22 of D.06-07-030 provided that any prospective CRS issues concerning DA obligations shall be addressed in each utility's respective Energy Resource Recovery Account (ERRRA) proceeding.” Clearly this statement, as well as the reference in D.06-07-030, intended to deal with each individual IOU's implementation of the currently approved methodology, and it is not intended that deviations or changes to the currently approved methodology used by all the California IOUs be handled in individual ERRRA proceedings. It would be inappropriate to modify Commission-approved calculations for exit fees (or eliminate an exit fee altogether) in an individual IOU's ERRRA proceeding when that methodology equally applies to other IOUs and other departing load groups that may not be a party to PG&E's ERRRA proceeding.

how the DA non-bypassable charges are determined at a future time.” (Scoping Memo, R.07-05-025 pp.9-10)

In sum, the Scoping Memo in this proceeding should once again find that this issue is not appropriately considered in PG&E’s ERRA forecast proceeding.

**B. PG&E Has Implemented Benchmarking Pursuant To The Methodology Adopted Decision 06-07-030 And Any Re-Litigation Should Take Place In A Proceeding That Includes All Three Major Investor Owned Utilities.**

MEA asserts that PG&E’s Application is deficient in a number of ways including a claim that “the market benchmark for calculation of the PCIA is unreasonably low relative to the actual cost of supplying CCA customers.” (MEA Protest filed July 6, 2010, at p.1.) MEA’s assertion that PG&E’s Application is deficient because of the benchmark presented in its Testimony (at pp. 7-6) is without merit. The benchmark presented in the testimony is compliant with the Commission-approved methodology adopted in D.06-07-030.<sup>3</sup>

If MEA wishes to quibble with the Commission-authorized calculation methodology, which was the result of a multi-party settlement discussion<sup>4</sup> resolving several years of litigation, it should file a Petition to Modify Decision 06-07-030, which it has not done. In the meantime, PG&E must follow existing CPUC directives on the calculation methodology for the benchmark approved, and MEA has not shown that PG&E failed to do so. Therefore, the opening assertion in MEA’s protest -- that PG&E’s Application is somehow “deficient” -- is without merit. As it

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<sup>3</sup> The benchmark is to be calculated annually by the Energy Division (ED) according to the procedure presented in Appendix 1 to D.06-07-030, as modified by Decision 07-01-030 OP 2, using October data. In PG&E’s initial June testimony, April data is used, consistent with the forward price curves underlying the costs. Megawatt Daily, referred to in D.06-07-030, Appendix 1, is no longer published. “Platts-ICE Forward Curve – Electricity” for NP-15 was used as the successor publication for the forward price quotes. The details of the benchmark calculation are presented in PG&E’s workpapers. The final benchmark, calculated by Energy Division, will be utilized in PG&E’s November Update.

<sup>4</sup> MEA attempts to create the appearance that the benchmark characteristics that has been used for customers of direct access providers are somehow inapplicable to customers of a CCA (“This protest identifies three key deficiencies of the Application insofar as it pertains to the ongoing operation within PG&E’s service territory of the state’s first community choice aggregation (CCA) entity” (MEA protest, p. 1)). However, the requirements and characteristics of CCAs and ESPs are the same, and would not create the need to establish a new or different approach to the market benchmark. Furthermore, MEA is not the first CCA in California. The City of Victorville in SCE’s service territory, which began CCA service several years ago, has been an active participant in the calculation of the Community Choice Aggregation Cost Responsibility Surcharge (CRS) for several years. See, for example, their Petition for Modification of Decision 07-01-025 Relating to the Market Price Benchmark for the Community Choice Aggregation Cost Responsibility Surcharge (CRS).

proceeds in this case, the CPUC should validate that PG&E's application is fully compliant with the Commission's current directives as it relates to the benchmark methodology.

With respect to MEA's underlying complaints about the currently authorized benchmark methodology and its claims that refinements to the methodology should be made in this proceeding, taking action on such a generic issue would be inappropriate in any single utility proceeding, for the same reasons as set forth in section (a) above. If the Commission determines that the benchmark methodology needs to be re-examined based on MEA's concerns, this should be done in a multi-utility proceeding that includes the wide range of interested stakeholders. The Commission should rule that MEA's benchmarking methodology issue is not appropriately considered in the context of an individual IOU's ERRA proceeding and is therefore out of scope.

Finally, MEA's claims are without support and/or foundation. For example, it claims that PG&E's other customers are somehow benefitted by Marin's load shape being "peakier" than the base load characteristics used to derive the market benchmark. Yet, the Implementation Plan that MEA submitted to the CPUC on January 4, 2010 and certified by the Commission on February 2, 2010 (and reference on page 1 of MEA's protest) shows that MEA expects its capacity requirements (reflecting its load) to be greater in the winter months than the summer months (see page 27, table entitled "Marin Clean Energy, Forward Capacity and Reserve Requirements (MW), 2010 to 2012). This, along with other unsupported MEA claims regarding changes to the market benchmark, should be sufficient basis for the Commission to reject MEA's demands in this proceeding.

**C. New Municipal Departing Load And The Interpretation Of Section 369 As It Relates To Applicability Of Ongoing CTC Should Not Be Reargued Here.**

The Districts (at pp 5 – 6) raise concerns about PG&E's interpretation of the exemption in Public Utilities Code Section 369 and its applicability to the Ongoing Competition Transition Charge (CTC) for new municipal departing load (NMDL) customers.<sup>5</sup>

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<sup>5</sup> New Municipal Departing Load (NMDL) is defined as electric load that has never been served by PG&E but locates within PG&E's service area as it existed on February 1, 2001, and is served by a Publicly Owned Utility

The Districts acknowledge that they have reached an agreement with PG&E that would resolve disputes about the non-bypassable charge obligations (including CTC) of its NMDL customers, and that this agreement, which was filed on June 24, 2009 as Application 09-06-023, is still pending before the Commission. (Districts Protest at p. 5.) Therefore, as they did last year in this proceeding, the Districts “expressly reserve their right to raise those issues in a future proceeding” in the event the Commission does not approve the NMDL agreement. (*Id.*, p. 5-6.)

Last year, PG&E consulted with counsel for the Districts and confirmed that the Districts do not request that this second issue be expressly included within the scope of this proceeding; rather, the Districts merely wanted to reserve their right to raise the issue via an appropriate filing in the event that the Commission rejects the NMDL agreement filed in A.09-06-023. PG&E conferred with the Districts again this year and have confirmed that the Districts intention is the same. That is, the Districts simply want to reserve their right to raise the issue via an appropriate filing in the event the Commission rejects the agreement. Therefore, there is no need, nor would it be appropriate to include this as an issue in this proceeding.

**D. CMUA Has Not Presented Citations To Commission Decisions Suggesting That Transferred Municipal Departing Load Is Eligible For The One-Time Opportunity To Reject The PCIA Exemption.**

CMUA’s response filed on June 22 (at p.3) suggests that PG&E’s treatment of Transferred MDL customers is wrong and, instead, the Commission previously determined that Transferred MDL customers (or publicly owned utilities serving such Transferred MDL customer) are eligible to reject the PCIA exemption. On this point, it is CMUA that is wrong.

Decision 07-05-013 adopted a one-time opportunity to reject the DWR power charge only for new MDL of publicly-owned utilities (POUs) not named in PG&E’s Bypass Report but “serving at least 100 customers as of July 10, 2003”. As indicated in that decision,

“ . . . For the allocation of the new MDL exemptions pursuant to 80 MW protocols, however, the IOUs express a willingness to agree to a “one time” choice to be invoked

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(POU). (See Special Conditions, Definitions, 1.a: [http://www.pge.com/tariffs/tm2/pdf/ELEC\\_SCHEDS\\_E-NMDL.pdf](http://www.pge.com/tariffs/tm2/pdf/ELEC_SCHEDS_E-NMDL.pdf) )

for each new MDL customer that falls under the operation of the protocols. The IOUs agree to this one time choice to be invoked at the time the new MDL comes into being “in the spirit of compromise,” and incorporate this provision into their proposed protocols. However, the IOUs ask that such a choice, if adopted for new MDL, not be extended to other departing load customers who have been determined to be exempt from responsibility for DWR power costs.” (D.07-05-013, mimeo, p. 2).

In the discussion section of the decision at pages 4 and 5, the Commission clearly indicates the load type that this one-time election applies to is *new* MDL:

“We conclude that the protocols for administering the New Departing Load exemptions, as set forth in the appendix to this order, are reasonable and hereby adopt them. The adopted protocols generally incorporate the proposed protocols offered by PG&E, with certain clarifying edits.

. . . we did not adopt the rules governing the applicability of the exemption contingent upon a specific level of CRS or only where the exemption results in a lower overall charge. Therefore, although under current market conditions, the exemption may have effects on customers’ bills that were unanticipated at the time that we originally adopted the exemptions and rules for applying them, such unanticipated effects do not invalidate the principles originally established for applying the exemptions. In this instance we shall adopt PG&E’s proposed protocols for each *MDL customer eligible for the 80 MW new load exemption* to have the option to elect whether or not to apply for such exemption.

We authorize this one-time opportunity to make the election concerning the CRS exemption to those MDL customers that are served by POU’s as “new load” subject to the 80 MW cap at the time the exemption protocols are initially established. The one-time election is authorized for such customers as part of the initial establishment of protocols to identify and administer applicable CRS exemptions. (D.07-05-013, mimeo, p. 4-5).

The discussion section also clearly indicates what departing load the one-time opportunity to elect to be exempt or non-exempt applies to:

“We agree with PG&E, however, that other departing load customers who have already been determined to be exempt from DWR power cost responsibility should not be permitted to elect an option to be subject to the DWR power charge. The principles previously applied concerning departing load customers’ exemption from the DWR power charge have not changed.[fn 2] Accordingly, we decline to grant other departing load customers the option to change their status regarding DWR power charge exemption. (fn. 2: In comments on the Proposed Decision, Merced and Modesto dispute the statement that “[t]he principles previously applied concerning departing load customers’ exemption from the DWR power charge have not changed.” Merced and Modesto argue that those principles have changed because of the provisions in D.06-07-030 and D.07-01-020, whereby MDL customers exempt from the DWR Power Charge pay significantly higher CRS than those who are not exempt. We disagree. Those decisions did not change underlying principles governing how MDL cost responsibility is properly allocated. The fact that MDL customers subject to the exemption may pay a higher CRS is due to fluctuating market conditions, not due to any change in underlying principles of proper cost allocation.) (D.07-05-013, mimeo, p. 6).

There has been exhaustive litigation on the topic of CRS exemptions and/or one-time opportunity to elect to be non-exempt from CRS already and certain intervenors look for opportunities to create additional spin on these topics by kicking up dust in a variety of proceedings, redefining ambiguous phrases to mean something the phrase was not intended to mean. Parties less familiar with the procedural history and the web of decisions that have been issued on this topic hashing and rehashing these issues might easily be swayed by the earnest posturing of an intervenor that there is a “misstatement.”<sup>6</sup>

CMUA has not cited any decision in support of its contention that transferred MDL is entitled to the same an opportunity to decline the exemption, nor can it because no such decision exists. At page 5 of the CMUA Response, it asserts that D.07-05-013, at page 5, is “[r]eferring specifically to Transferred MDL, not New MDL.” CMUA takes this quote out of context in order to stir-up controversy and create yet more litigation on this topic, where none is warranted or needed. The entire purpose of the D.07-05-013, stated in the first paragraph, is to deal with “new load” subject to the 80 MW protocols. Specifically, D.07-05-013 states,

This decision grants the Petition for Modification of Decision (D.) 06-07-030, filed on November 20, 2006, by Pacific Gas and Electric Company (PG&E) on behalf of itself, San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) (jointly, the IOUs). The purpose of the petition for modification is to propose protocols for “new load [cost responsibility surcharge] CRS exemptions.” (See, D.06-07-030, Ordering Paragraph 21.)

As noted in D.06-07-030, “new load” of publicly-owned utilities (POUs) not named in PG&E’s Bypass Report but “serving at least 100 customers as of July 10, 2003” are exempt from the Department of Water Resources (DWR) Power Charge up to a cap of 80 Megawatts (MW).

Consistent with Ordering Paragraph 21 of D.06-07-030, meetings of the Working Group were conducted in an effort to develop a consensus recommendation for the protocols to be used to allocate the DWR power charge exemption for the 80 MW of new municipal departing load (new MDL).

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<sup>6</sup> Appendix D, of D.08-09-012 includes a fairly comprehensive list of decisions and citations defining MDL exemption status and exceptions relative to the various CRS obligations. PG&E is attaching an excerpt of this Appendix to showing the web of decisions that have been generated on this one topic. These decisions are not an exhaustive inventory of decisions and resolutions that have been issued on the CRS issue for MDL.

CMUA's assertion that D.07-05-013 at page 5 is dealing with transferred MDL is disingenuous.<sup>7</sup> This decision, D.07-05-013, is dealing with "new load" of publicly-owned utilities (POUs) not named in PG&E's Bypass Report but "serving at least 100 customers as of July 10, 2003, referred to in the protocols as the "80 MW exemption". Decision 06-07-030 adopted protocols for transferred MDL and indicated that protocols for new MDL would be dealt with subsequently.<sup>8</sup>

The issues on which PG&E and CMUA disagree are legal issues and therefore, if there continues to be disagreement as to the proper interpretation of the MDL eligible for the one-time opportunity to elect an exemption, PG&E would like to reserve the right to further address these issues more fully in briefing.

### **III. THE COMMISSION SHOULD DEFER CONSIDERATION OF THE PARTIES' SUBSTANTIVE ARGUMENTS UNTIL THE ISSUES HAVE BEEN PROPERLY LITIGATED**

In their respective protests and responses, MEA and other parties present their position and reasoning on various substantive issues. For example, MEA presents its perspectives on how it believes PG&E should reflect potential load departures in developing its sales forecast, however MEA does not dispute that the sales forecast has long been an issue that is integral to this proceeding is and clearly within its scope. Several other protests and responses also include points that go to the ultimate merits of various PG&E requests in this Application.

PG&E's proposals in this proceeding will be subject to further review through the normal course of intervenor testimony, evidentiary hearings (if needed), briefs, and Commission

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<sup>7</sup> See Appendix to D.07-05-013, footnote 1: These Protocols do not address the level of the cap which is governed by applicable Commission orders, nor do they address the Protocols for Administering CRS Transferred Departing Load Exemptions, attached to D.06-07-030.

<sup>8</sup> See Decision 06-07-030, OP 20 and 21: OP 20: The protocols for administering MDL CRS transferred load exemptions as set forth in Appendix 4 are hereby adopted. OP 21: The Commission's Energy Division shall convene a subsequent meeting of the Working Group within 30 days of the effective date of decision for the purpose of seeking consensus on the calculation of the Market Benchmark for 2007 consistent with the principles of this order, and also to finalize the calculation of MDL CRS accrual charges and obligations consistent with this order, and to develop protocols for new load CRS exemptions.

proposed and final decisions. However, it is premature for the Commission to consider the substantive arguments contained in the parties' protests at this early scoping stage of the proceeding

That said, PG&E feels compelled to respond briefly here to two erroneous allegations that its showing was somehow "deficient," and will respond more fully on these matters in testimony and briefing, if and as appropriate.

**A. PG&E Has Appropriately Provided The Required Detailed PCIA Vintaging Information In Its Workpapers Supporting This Application.**

MEA (at pp. 3-4) and CMUA (at p. 3) assert that PG&E's Application is deficient because it allegedly fails to provide sufficient information for parties to verify the calculation of PCIA for each vintage. Not only should this claim of deficiency be dismissed as being without merit because PG&E provided the required information in its workpapers, but, incredibly, CMUA and MEA made these claims before they had even received PG&E's workpapers which provide the required information. Specifically, since CMUA filed its protest, it has since requested and received workpapers for PCIA calculations, whereas MEA has not even requested PG&E's workpapers at all.

CMUA correctly cites to a recent CPUC resolution that sets forth the types of data that is required to be presented in order to verify the PCIA calculation. CMUA's Protest asserts that "the ERRA *Application* does not include this level of detail" even though it's own response acknowledges that these requirements apply to the *workpapers* that are provided upon request shortly after the Application has been filed and served. Specifically, in Resolution E-4256, as cited by CMUA's Response at page 3, the CPUC required that "PG&E, SCE, and SDG&E shall provide detailed workpapers in their ERRA filings that illustrate their CRS calculations, including the treatment of CAISO costs, fully annotated with supporting explanations, citations to data sources, and citations to Commission authorization for recovery of specific cost categories." PG&E's workpapers include the information that is required by the Resolution, and in fact PG&E has provided similar detailed, fully-annotated workpapers to Energy Division for

the past three years in this proceeding (with market participants receiving a redacted public version of same upon request). Thus the fact that this detailed information does not appear in PG&E's Application or Testimony itself is not a deficiency, given that the CPUC itself expressly stated that the workpapers are the proper vehicle.

Again, what is particularly troublesome here is that when CMUA filed its response to PG&E's Application asserting this "deficiency," it had not even requested PG&E's workpapers.<sup>2</sup> Rather CMUA only made such requests shortly after making these assertions in its filing. Given CMUA's own footnote acknowledges the *workpapers* are the appropriate vehicle for such information, this not only calls into question CMUA's credibility, this premature and groundless allegation raises a serious question of ethics as well as a possible Rule 1 violation. At a minimum, these two parties should not be allowed to make groundless misrepresentations to whip up controversy by manufacturing an "issue" where none exists.

The Commission should dismiss these groundless assertions made before these parties even had the workpapers, and take whatever disciplinary action or make whatever admonishments are appropriate.

**B. PG&E's Application Indicated That MEA's Phase 1 Load Departures Would Be Reflected In Supplemental Testimony, To Be Served Before Hearings.**

In its Protest (at pp. 1 - 3), MEA implies that the submission and certification of an Implementation Plan serves as sufficient notice for PG&E to discontinue its obligation to procure on behalf of CCA-eligible customers, and asserts that PG&E's Application fails to properly account for MEA's Phase 1 customers loads in its ERRA Forecast. In fact, the sales forecast necessary for preparation of PG&E's Application must be prepared significantly before the filing can be made. PG&E's Application was filed on May 28, 2010, which is before the June 7, 2010 date MEA's own Protest cites for full enrollment in its Phase 1A, as well as before the August 10, 2010 date MEA's Protest cites for fully enrollment of Phase 1 B. Therefore, PG&E could

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<sup>2</sup> CMUA filed its Response to Protests on June 22, 2010, but its request for workpapers was not made until June 23, 2010. See email from Scott Blaising for CMUA included herewith as Attachment 1. MEA filed its Protest on July 6, 2010 but to date, MEA has not requested any workpapers at all.

not have reflected the actual departures. However, in acknowledgement of this quirk of timing, PG&E's testimony reserved the right to file supplemental testimony before hearings (targeted for early September), to reflect any material changes in forecast load that can be known in time.

As PG&E noted in its May 28, 2010 ERRA Forecast Testimony, Chapter 7, Section E, PG&E believes that it retains the obligation to procure for customer load until the physical transfer of load and completion of the of the opt-out noticing as provided in PG&E Rule 23. And that is how PG&E in fact conducts its procurement, which is what is relevant for the ERRA Forecast proceeding.

Furthermore, as evidenced by the changes in MEA's customer composition (i.e., the introduction of Phase IB), PG&E believes that, absent a Binding Notice of Intent (BNI) information provided in an Implementation Plan is an insufficient means of absolving the utility of the obligation to procure on behalf of its customers. Given the substantial effort required to complete the forecasting and procurement processes, it is unreasonable to expect that PG&E would have relied on speculative documentation to adjust its procurement forecast.

In its testimony, PG&E reserved the right to file supplemental testimony before hearings if a CCA provider should solidify its load such that PG&E no longer has the obligation to procure on behalf of those customers. PG&E will exercise that right and plans to file supplementary testimony in early September to reflect these customer departures.

#### **IV. THE COMMISSION SHOULD APPROVE THE CATEGORIZATION, HEARING DETERMINATION, AND PROCEDURAL SCHEDULE PROPOSED IN PG&E'S APPLICATION**

On procedural matters, none of the parties oppose PG&E's proposed categorization of this proceeding as ratesetting or suggest that hearings will not be necessary, and only DRA proposes a procedural schedule that slightly differs from PG&E's.

PG&E's proposed procedural schedule tracks past ERRA forecast schedules and allows a Commission decision before the end of 2010, so that the ERRA forecast and amortization can be reflected in PG&E's Annual Electric True-Up process for electric rates beginning January 1,

2011. DRA proposes a revised schedule on a slightly slower track. DRA’s schedule appears to call for a one to two week delay in the filing dates for opening and reply briefs (with Reply Briefs not until “early October,” whereas PG&E’s schedule specifically targeted Reply Briefs for September 27<sup>th</sup>). A further challenge with DRA’s lack of specific dates is that vaguely seeks a final decision in “December 2010” without acknowledging the very important fact that December 16<sup>th</sup> is the last Commission Decision Conference of the year; that is why the December 16<sup>th</sup> date was specifically reflected in PG&E’s Schedule. No party disputes that the proceeding must be decided in December 2010 to ensure that ratepayers gain the benefits as of January 1, 2011 of the expected reduction in revenue requirements that may result from this ERRA Forecast proceeding. Therefore, the impact of DRA’s delay of 1 – 2 weeks in the filing timeframe for briefs would fall on the Administrative Law Judge, whose time for preparing a Proposed Decision could shrink from 40 days under PG&E’s proposed schedule to potentially less than 30 under DRA’s schedule given the need for opening and reply comments before a final decision can be issued by December 16<sup>th</sup>. PG&E believes its schedule is fair and workable, but would be open to modest changes to this schedule if agreeable to the ALJ and the parties, as long as it is certain to result in a final decision by the end of 2010.

PG&E sets forth here, for the CPUC’s and the parties’ convenience, a side by side comparison of PG&E’s and DRA’s proposed schedules:

<u>Description:</u>	<u>PG&amp;E's Schedule:</u>	<u>DRA's Schedule:</u>
Application Calendared	3-Jun-10	5-Jun-10
Protest Filed	6-Jul-10	5-Jul-10
Prehearing Conference	30-Jul-10	end of July 2010
Intervenor Testimony	13-Aug-10	early August 2010
Rebuttal Testimony	25-Aug-10	mid/late August 2010
Hearings (if necessary)	September 2-3	early September 2010
Opening Briefs	20-Sep-10	late September 2010
Reply Briefs	27-Sep-10	early October 2010

<u>Description:</u>	<u>PG&amp;E's Schedule:</u>	<u>DRA's Schedule:</u>
Proposed Decision (PD)	5-Nov-10	early November 2010
Comments on PD	late November 2010	late November 2010
Reply Comments on PD	early December 2010	early December 2010
Final Decision December 2010	16-Dec-10	late December 2010

**V. CONCLUSION**

For the reasons stated above, PG&E respectfully requests the Commission to:

1. Determine that the categorization of this proceeding is ratesetting;
2. Find that evidentiary hearings probably will be necessary;
3. Set a procedural schedule like the one proposed by PG&E that will allow a Commission decision by the end of 2010;
4. Adopt as the issues to be considered within the scope of this proceeding the issues listed in PG&E's Application;
5. Deny the requests by the Districts, CMUA, and MEA to add other issues to be considered; and
6. Find that the intervenor's presentations regarding the ultimate merits of issues properly belong in the later evidentiary and briefing stages of this proceeding for issues that are found to be within scope, and that the Commission will not consider substantive arguments in this scoping stage.

Respectfully submitted,

LISE H. JORDAN  
GAIL L. SLOCUM

By: \_\_\_\_\_ /s/  
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July 16, 2010

# **ATTACHMENT 1**

**Slocum, Gail**

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**From:** Scott Blaising [Blaising@braunlegal.com]  
**Sent:** Wednesday, June 23, 2010 5:28 PM  
**To:** Slocum, Gail  
**Subject:** A.10-05-022 - Request for Work Papers  
**Attachments:** A10-05-022 CMUA Response.pdf

Hi Gail –

Would you please provide all work papers that were used in developing the PCIA, indifference amounts, CTC and other related amounts described principally in Chapters 7 and 9 of PG&E's testimony.

Thank you.

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\*\*\*\*\*

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Last Updated: July 12, 2010

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