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

C1108022

CITY OF CONCORD, CITY OF  
TAFT, CITY OF MADERA, CITY OF  
KERMAN, CITY OF CLOVIS;

Complainants,

v.  
PACIFIC GAS AND ELECTRIC  
COMPANY (U39E),

Defendant.

Case No.

**COMPLAINT OF CITIES OF CONCORD,  
TAFT, MADERA, KERMAN AND CLOVIS**

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August 22, 2011

## **I. Introduction**

The complainants in this case are the cities of Concord, Taft, Madera, Kerman and Clovis (“Cities”). The Cities are municipalities located in Northern and Central California. Pacific Gas and Electric Company (“PG&E”) owns and operates electric and gas transmission and distribution facilities that are subject to franchise agreements made pursuant to Public Utilities Code Sections 6201 et seq.

The Cities receive, and at all relevant times have received, remittance from PG&E of a “franchise fee surcharge” (hereinafter the “Surcharge”), pursuant to Public Utilities Code Section 6350-6354.1 (the “Surcharge Act”). Under the Surcharge Act, the Surcharge is imposed on end-use customers of gas or electricity who purchased the gas or electricity from a third-party (non-utility) provider that transported the third-party gas or electricity over PG&E’s transmission or distribution system.<sup>1</sup> PG&E is required to collect the Surcharge from the end-use customers and remit it to the Cities.

The Cities contend that PG&E has incorrectly calculated, and continues to incorrectly calculate, Surcharge remittances, in violation of the Surcharge Act and the Commission decisions that interpret it. As a result of PG&E’s incorrect remittance calculation, PG&E has underpaid past remittances to the Cities. By this complaint, the Cities are requesting that the Commission order PG&E to modify its remittance calculation, as described herein, and to reimburse the Cities for PG&E’s past underpayment of remittance amounts.

## **II. Facts**

PG&E’s current method of collecting Surcharges from customers, and remitting them to cities, is as follows. PG&E determines the quantities of gas and electricity that it transports in each city to customers who receive “transportation only service” – i.e., customers who purchase gas or electricity

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<sup>1</sup> Throughout this complaint, we use the terms “third-party gas”, “third-party electricity” or simply “third-party energy” to refer to the gas, electricity or energy provided by a “third-party provider” (i.e., a non-utility provider) and transported over PG&E’s distribution system to the end-user.

from third-party (i.e., non-utility) providers, but who pay PG&E to transport the gas or electricity on PG&E's distribution system. Then, PG&E multiplies these quantities by the Surcharges, stated in dollars per therm or dollars per kWh as detailed in PG&E Rate Schedules "G-SUR" and "E-FFS", and it remits that amount to each city. The Surcharges remitted (in dollars per therm or dollars per kWh) are the same for every city in PG&E's service territory, regardless of the terms of each city's franchise fee agreement with PG&E. In other words, the current gas Surcharge of \$0.00407 per therm is applied to all third-party gas sales, regardless of whether the city in whose jurisdiction the gas was sold has a franchise agreement that calls for payment of ½%, 1%, 2%, or 5% of the gross receipts from the sale of gas in the city. The PG&E approach averages the different franchise fee percentages that apply in the various cities, and arrives at a single, system-wide percentage that is used to derive the \$0.00407 per therm Surcharge remittance. This averaged, system-wide percentage is sometimes referred to as the "Franchise Fee Factor" or "FFF".<sup>2</sup>

A different methodology is, and for many years has been, used by Southern California Gas Company (SCG) and San Diego Gas and Electric Company (SDG&E). The SCG/SDGE methodology calculates the Surcharge remittance by treating the third party revenues from customers within a given municipality in the manner prescribed by that municipality's franchise agreement. In other words, it treats third party revenues as though they were receipts subject to the municipalities' franchise agreement. Under the terms of the franchise agreements of the complainant Cities, the municipality receives the *greater of*:

- 2% of the gross receipts "arising from the use, operation or possession of the franchise" (hereinafter referred to as the "Broughton calculation"), or,

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<sup>2</sup> PG&E uses the same methodology with respect to its electric Surcharge.

- 1% or ½%<sup>3</sup> of the gross receipts “from the sale within the limits of the municipality of the utility service for which the franchise is awarded” (hereinafter referred to as the “1937 calculation”).

The distinction between the PG&E methodology and the SDGE/SCG methodology is that the SDGE/SCG methodology – unlike the PG&E methodology – calculates the Surcharge remittance in the same manner as is set forth in each municipality’s respective franchise agreement. Pursuant to the Public Utilities Code, each city’s franchise agreement provides for payment of the “greater of” the Broughton calculation or the 1937 calculation. Also under the Public Utilities Code, a few chartered cities have opted to negotiate a higher percentage for their 1937 calculation. The SDGE/SCG methodology incorporates both of these aspects of the franchise fee calculation into the Surcharge remittance calculation. The PG&E methodology does not.

For example, the City of Kerman’s franchise agreement with PG&E provides that PG&E will pay Kerman a franchise fee equal to the greater of the Broughton calculation or the 1937 calculation. Under Kerman’s franchise agreement, the 1937 calculation percentage for electricity is 1%. Yet under PG&E’s methodology, Kerman receives a Surcharge remittance from PG&E that is less than 1% of the third party electricity revenues in Kerman. The 1937 calculation percentage that is applied to Kerman is a blended average of the 1937 calculation percentages of all of the cities in PG&E’s territory. Since virtually all cities’ 1937 calculation percentages are either ½% or 1%, the blended average works out to roughly .6% or .7%. If PG&E used the SDGE/SCG methodology, it would take third-party revenues from sales of electricity in Kerman and apply either (a) the 1937 calculation percentage set forth in

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<sup>3</sup> Pursuant to Public Utilities Code Section 6231(c), chartered cities receive ½%, instead of 1%, of the gross annual receipts from electricity sales within the city under the 1937 calculation. Chartered cities are given the option, under Section 6205, to negotiate higher percentages than the statutorily-prescribed percentages, and a few chartered cities such as San Jose have done so.

Kerman's franchise agreement with PG&E, i.e., 1%, or (b) the Broughton calculation, whichever result is greater.

The Cities contend that both the Surcharge Act and Commission decisions require PG&E to calculate and pay the Surcharge in accordance with the SCG/SDGE methodology. That is, PG&E must remit a Surcharge that is equal to the greater of 2% of the third party revenues "arising from the use, operation or possession of the franchise" (i.e., the Broughton calculation), or 1% or ½% of the third-party revenues "from the sale within the limits of the municipality" of the gas or electricity (i.e., the 1937 calculation).

As noted, this is in fact how SDGE and SCG calculate the Surcharge remittance. But this is not how PG&E calculates it. Instead, PG&E calculates Kerman's Surcharge without reference to Kerman's franchise agreement. It simply remits an amount based on a single, system-wide Surcharge that is multiplied by the quantity of third-party electricity used within the City of Kerman.

### **III. Alleged Violations of Law**

#### **A. Surcharge Act**

The Cities contends that PG&E's past and continuing application of the PG&E methodology to calculate remittances of Surcharges to the Cities is contrary to the Surcharge Act, including but not limited to Sections 6354(b) and 6352(d).

Section 6354(b) of the Surcharge Act states:

*Surcharges collected from the transportation customer shall be remitted to the municipality granting a franchise pursuant to this division in the manner and at the time prescribed for payment of franchise fees in the energy transporter's franchise agreement.*

The PG&E methodology does not remit Surcharges to municipalities "in the manner...prescribed for payment of franchise fees" in the Cities' franchise agreements. The

“manner...prescribed for payment of franchise fees” is described in each cities’ franchise agreement. According to those franchise agreements, cities are paid the greater of the 1937 calculation and Broughton calculation. PG&E’s methodology ignores this. It applies only the 1937 calculation, instead of the greater of the 1937 calculation and the Broughton calculation. And the percentage PG&E uses in the 1937 calculation is a blended average percentage of all cities, rather than the actual percentage that appears in the franchise agreement.

The PG&E methodology also violates Section 6352(d) of the Surcharge Act, which states:

Nothing in this chapter shall in any way affect the rights of the parties to existing franchise agreements executed pursuant to this division that are in force on the effective date of this chapter.

By deviating from the formula prescribed in the municipalities franchise agreement – i.e., the greater of the 1937 calculation and the Broughton calculation – the PG&E methodology violates this provision of the Surcharge Act.

## **B. Commission Decisions**

The Cities contend that the PG&E methodology violates the spirit, if not the letter, of D.03-10-040.

In D.03-10-040, the Commission considered the appropriate methodology for calculating Surcharge remittances in connection with electricity sales by the Department of Water Resources (“DWR Revenues”). PG&E advocated multiplying DWR Revenues by the single, system-wide Franchise Fee Factor (FFF). The City of San Jose and others advocated multiplying DWR Revenues by the specific percentage used for the 1937 calculation, as set forth in each individual municipalities’ franchise agreement.<sup>4</sup>

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<sup>4</sup> In D.03-10-040 the Commission did not consider the “greater of” approach that is used by SCG and SDG&E, and which the Cities are advocating herein. As noted above, the 1937 calculation applies a percentage figure – for the

The Commission concluded that the PG&E remittance methodology for DWR Revenues violated the Surcharge Act, stating:

Under PG&E's approach, the uniform factor [the FFF] would be applied irrespective of the *terms of any individual franchise agreements* and the contractual franchise fee percentage explicitly stated therein. (At \*17).<sup>5</sup>

By using a simple average remittance rate [the FFF], PG&E would necessarily remit municipal surcharges that exceed the comparable franchise fee for some municipalities and fees that fall short for others. (At \*18).

Accordingly, PG&E's proposed method would unduly deprive municipalities of the remittances to which they are entitled under the statutes. (At \*17)

Rather than simply applying a *weighted average remittance rate* [the FFF] to every municipality, PG&E shall remit surcharge fees to each municipality utilizing *the same percentage factor that is specified in the specific franchise agreement* applicable to the franchisor municipality in question. (At \*18)

The PG&E remittance methodology that is subject of this complaint violates the spirit of D.03-10-040 because it multiplies the Surcharge (in \$/kWh or \$/therm) by the quantity of third-party gas or electricity to arrive at Surcharge remittance owed. It thereby uses a single, system-wide "average" franchise fee percentage (the FFF) for all municipalities, while simply ignoring "the terms of any individual franchise agreements".

The Cities acknowledge that D.03-10-040 only addressed the proper methodology for calculating Surcharge remittance on *DWR revenues*, not on third party revenues more generally. This was made clear in D.06-05-005, in which the Commission resolved PG&E's petition for modification seeking clarification of the scope of D.03-10-040:

Thus, PG&E petitions the Commission to modify D.03-10-040 to clarify that the decision deals only with remittances to cities and counties associated with revenues the

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vast majority of municipalities it is 1% or ½% -- to the third party revenues from the sale of gas or electricity within the city. In San Jose's particular case, the percentage figure was 2% because San Jose had negotiated a higher percentage. See Footnote 3 above.

<sup>5</sup> Throughout this document pin cites to Commission decisions utilize Lexis/Nexis star (\*) pagination.

utilities collect on behalf of DWR, and to affirm that the Commission had no intention to address the remittance of municipal surcharge revenues generally. (At \*6)

We affirm, therefore, that D.3-10-040 does not address PG&E's remittance methodology for municipal surcharges generally, but is limited in applicability to DWR revenues.

However, the concern that lead the Commission to thus limit the scope of D.03-10-040 does not exist in the present circumstances. The Commission explained its concern as follows:

As pointed out by PG&E and the cities in support of its petition, various unintended consequences could result if PG&E were to recalculate all municipal surcharge fees in the manner contemplated by San Jose and Sunnyvale. While San Jose and Sunnyvale would receive higher revenues under their preferred approach, other cities and counties would lose revenues....*The effects of such adverse consequences were not considered in reaching the conclusion as to the remittance methodology PG&E was to use for the municipal surcharges specifically limited to DWR revenues as ordered in D.03-10-040.*

The SCG/SDG&E remittance methodology, the use of which the Cities are advocating in the present proceeding, was not raised or considered by the Commission in D.03-10-04, or in any other proceeding. It has, however, been used by SCG and SDG&E for many years. Its use by PG&E would alleviate the Commission's stated concern about "adverse consequences" that might result if PG&E were required to change its current methodology. Since the SCG/SDG&E methodology requires the utility to pay "the greater of" the 1937 calculation or the Broughton calculation, no municipality would receive less Surcharge remittance under the SCG/SDG&E methodology than it currently receives under the PG&E methodology. Therefore, the basis for the Commission's decision (in D.06-05-05) to limit the scope of D.03-10-040 does not exist here.

While the Cities lack sufficient information to calculate the precise dollar amount of PG&E's underpayment, a comparison of the total gas Surcharge remittances paid by PG&E and SCG gives some sense of the magnitude of the underpayment. While SCG's gas sales are roughly 20% greater than

PG&E's, SCG's gas Surcharge remittances are approximately 130% greater than PG&E's.<sup>6</sup> Most of this difference in Surcharge remittances paid by PG&E and SCG is due to the different Surcharge remittance methodologies they use.

The different Surcharge remittance methodologies employed by the State's investor owned utilities, and the significant impact it has on the amounts remitted to cities, is a problem the Commission should address. It is not appropriate to permit the State's investor owned utilities to interpret and apply the Surcharge Act in different ways, with the result that PG&E cities are systematically paid less than SCG cities. The Commission should adopt a single State-wide Surcharge remittance methodology consistent with the SCG/SDG&E approach.

#### **IV. Issues To Be Considered**

1. Which methodology for calculating Surcharge remittances is the correct one under the Surcharge Act – the PG&E methodology or the SCG/SDG&E methodology?
2. If the SCG/SDG&E methodology is correct, then did PG&E calculate past Surcharge remittances to the Cities in accordance with the SCG/SDG&E methodology?
3. If PG&E did not calculate its Surcharge remittances to the Cities in accordance with the SCG/SDG&E methodology, then is PG&E required to (a) reimburse the Cities for the difference between the Surcharges that would have been remitted under these methodologies, and (b) calculate future remittances in accordance the SCG/SDG&E methodology?

#### **V. Relief Requested**

Complainant requests that the Commission:

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<sup>6</sup> These percentage are based on the following figures. SCG's gas sales in 2005 were around \$4.22 billion, and PG&E's gas sales were \$3.55 billion. SCG's surcharge remittances in 2005 were \$42.2 million, while PG&E's surcharge remittances in 2006, the only year for which Cities have data, were \$18.3 million.

1. Order PG&E to pay each of the Cities an amount equal to the difference between: (a) the Surcharges actually remitted by PG&E to the City during the past four years, and (b) the Surcharges that should have been remitted by PG&E to the City during such period in accordance with the SCG/SDG&E methodology, plus prejudgment interest as permitted by law.
2. Order PG&E to calculate and pay all future Surcharge remittances to the Cities in accordance with the SCG/SDG&E methodology.
3. Provide such other and further relief as the Commission deems appropriate.

**VI. Information Required by Commission Rules**

This matter has not previously been brought to the Commission staff for informal resolution. The suggested categorization of this proceeding is “adjudicatory”. The Cities believe that a hearing will be required.

The Cities’ mailing addresses and phone numbers are: City of Concord, Civic Center, 1950 Parkside Drive, Concord, CA 94519, (925) 671-3000; City of Taft, 209 East Kern Street, Taft, CA 93268-3224, (661) 763-1222; City of Madera, 205 West Fourth Street, Madera, CA 93637, (559) 661-5400; City of Kerman, 850 S. Madera Avenue, Kerman, California 93630, (559) 846-9384; City of Clovis, 1033 Fifth Street, Clovis, CA 93612, (559) 324-2060.

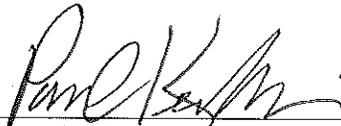
Defendant PG&E’s mailing address and phone number is 77 Beale Street, San Francisco, CA, (415) 973-7000.

The Cities propose the following schedule for this proceeding:

Prehearing conference	November 4, 2011
Complainants’ Opening Testimony	December 30, 2011
PG&E’s Response Testimony	January 27, 2012

Complainants' Rebuttal Testimony	February 24, 2012
Hearing	March 2, 2012
Opening Briefs (Concurrently filed)	April 6, 2012
Response Briefs (Concurrently filed)	April 27, 2012

UTILITY COST MANAGEMENT LLC

By:   
Paul Kerkorian

Dated: 8/22/11

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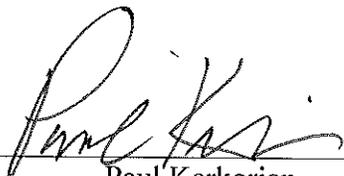
Representative of Complainants

## VERIFICATION

I, Paul Kerkorian, am a managing member of Utility Cost Management LLC (UCM), and am authorized to make this verification on its behalf. UCM is the authorized representative of each of the Complainant(s) in this proceeding. I have read the foregoing complaint and know its contents. I am informed and believe, and on that basis allege, that the matters stated therein are true. This verification is being made by UCM, as representative of the Complainant(s), in accordance with CPUC Rules of Practice and Procedure, Rule 1.11(d). The Complainant(s) on whose behalf this verification is made is/are absent from the county in which UCM's office is located.

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

By: \_\_\_\_\_

  
Paul Kerkorian

Dated: \_\_\_\_\_

