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 07-12-006 (Filed December 11, 2007)

JOINT REPLY BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES, DISABILITY RIGHTS ADVOCATES, AND LATINO ISSUES FORUM

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SUMMARY OF RECOMMENDATIONS

The initial briefs of Joint Applicants and their supporters do not support the Commission changing 19 years of precedents supporting an equal cents per therm ("ECPT") allocation for the California Alternate Rates for Energy ("CARE") component of the gas public purpose program ("PPP") surcharge, let alone a universal, one-size-fits-all allocation of Equal Percent of Base Revenues ("EPBR") for all natural gas PPP costs or other state-mandated costs. Joint Applicants and their supporters did not meet their burden, because the statements on certain issues in their initial briefs and the silence on other issues confirm the following:

- They have no answer to the insurmountable legal obstacle -- that the CARE component of the gas PPP surcharge is legally required to be allocated on an ECPT basis under section 739.1 of the California Public Utilities Code, as interpreted by Commission decisions from 1989 through 2007, and this requirement was further codified by Assembly Bill ("AB") 1002 in 2000 when the Legislature continued the requirement that low income assistance programs pursuant to section 739.1 be recovered in a surcharge on all natural gas consumed in the State;
- They do not support a need to change the allocation, because there is no evidence that the serious concerns of businesses results in any of them closing or leaving California or California losing any jobs due to the $.03/therm gas PPP surcharge;
- They have not shown that California businesses paying the gas PPP surcharge are at a competitive disadvantage, because the record evidence shows that the natural gas rates charged to industrial customers in California are among the lowest in the United States;
- SoCalGas' unique example of losing some small customers to the City of Vernon, California, an industrial city of only 5.2 square

miles, does not meet its burden to justify changing a statewide allocation scheme, when California did not lose jobs and the switching of some customers was either legal (because the City of Vernon has its own gas PPP surcharge or programs) or illegal, and requires law enforcement;

- SoCalGas' other unique example of some interstate pipeline customers in California, who have allegedly stopped paying their taxes required by AB 1002 and who represent less than 0.5% of SoCalGas' throughput, does not meet its burden to justify changing a statewide allocation scheme, because it simply requires SoCalGas to request that the Board of Equalization ("BOE") enforce the law and, again, California did not lose any jobs;
- They have not shown that an *equal* cents per therm allocation formula is inequitable, when all non-exempt customers pay the same rate;
- They have not shown that because the statutes require usage-based rates for the CARE surcharge, the fact that large users pay more dollars, because they use more natural gas, is inequitable, when it is still a small percentage of their overall gas costs;
- They contradictorily claim that the gas PPP costs are rising to attempt to justify a change, and then they rely upon outdated estimates of lower costs for claiming that the impacts of the cost shifts on residential customers would be "modest;"
- They rely upon fictional and artificially low rate impacts of EPBR on residential customers, by ignoring the record evidence that: 1) these estimates relied upon natural gas forecasts of the utilities' weighted average cost of gas ("WACOG"), which the first six months of data in 2008 establish were much higher than the forecasts; 2) CARE enrollment was increasing, as required by state

law; 3) EPBR's cost shift would affect other programs on ECPT which would further harm residential ratepayers; 4) the utilities could and were already trying to change the allocation of base revenues in pending biennial cost allocation proceedings ("BCAPs") which would, if successful, have a snowballing effect on an EPBR allocation for gas PPP costs; and 5) the estimates were based upon average usage, when residential users double their average usage in the winter, which makes the gas PPP surcharge too expensive for many residential customers when they need natural gas the most. They disregard the predictable policy result that the EPBR allocation would increase the incentive for large commercial and industrial customers to migrate from "core" status to "noncore" status, which could lead to underfunding of these vital gas PPP programs, or, at the minimum, further increase rates to remaining residential customers. They also disregard the predictable policy result that any change to a previously stable program funding mechanism will encourage other customer classes to pursue further changes for their own benefit, which could also lead to underfunding gas PPP programs or increased burdens on residential ratepayers;

- They never respond to the reason why ECPT has been statutorily required and used by the Commission—it spreads the costs over the most volumes to minimize the rate impact for any single class, and, therefore, in a time of rising costs, switching from ECPT to EPBR would lose its moderating effects on the gas PPP surcharge and cause the gas PPP surcharge to skyrocket to residential customers at the same time their utility bills will also include the rising costs of natural gas; and
- They never refute and cannot refute the extreme hardship EPBR would cause residential lower income ratepayers, who are not

eligible for the CARE discount, senior citizens on fixed incomes and people with disabilities.

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I. INTRODUCTION

Pursuant to Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the Division of Ratepayer Advocates ("DRA"), Disability Rights Advocates ("DisabRA"), and Latino Issues Forum ("LIF") (collectively referred to as "DRA*, et al*.") file this Joint Reply Brief for Application ("A.") 07-12-006 filed by 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 Applicants") to Reallocate the Costs of Natural Gas Public Purpose Programs (" gas PPPs") and Other Mandated Social Programs Among Customer Classes.

On August 21, 2008, DRA, *et al.,* the Joint Applicants, California Manufacturers and Technology Associations ("CMTA"), the Indicated Producers ("IP"), Agricultural Energy Consumers Association ("AECA"), the California League of Food Processors ("CLFP"), The Utility Reform Network ("TURN"), and the Consumer Federation of California ("CFC") filed opening briefs in the above-captioned proceeding. DRA, *et al.* supports TURN and CFC's recommendations that the Commission reject the Joint

Application. In the instant reply brief, DRA, *et al.* responds to the Opening Briefs of the Joint Applicants, CMTA, IP, AECA, and CLFP.

II. JOINT APPLICANTS IGNORE THE STATUTORY MANDATE THAT ALL NON-EXEMPT CUSTOMER CLASSES MUST PAY FOR CARE ON A PER UNIT BASIS

The fundamental flaw in the legal analysis of Joint Applicants and their supporters is that they have completely ignored the legal restrictions imposed upon the Commission under section 739.1(a) of the California Public Utilities ("P.U.") Code concerning the California Alternate Rates for Energy ("CARE") program cost allocation.[1] They essentially read section 739.1(a) right out of the statute and treat CARE the same as any other public purpose program. As DRA thoroughly explained in its initial brief, pp. 2-8, the allocation methodology for the CARE program is statutorily mandated – its costs "shall not be borne solely by any single class of customer." *See* Cal. P.U. Code § 739.1(a). Based upon this language, the Commission therefore adopted the Equal Center Per Therm ("ECPT") allocation for the natural gas, low-income assistance CARE program, and its predecessor, the Low-Income Ratepayer Assistance ("LIRA") program, and the Commission adopted a similar equal cents per kiloWatt hour ("kWh") for electric, low-income assistance LIRA/CARE programs. *See* Decision ("D.") 89-09-044 (1989), 32 CPUC 2d 406, 417. The Commission found that this methodology was "more consistent with the goal of minimizing the burden on any one class of ratepayers." *Id.*

There is nothing explicit or implicit in Assembly Bill ("AB") 1002, when it was enacted in 2000, to suggest that the Legislature had intended to repeal the mandatory requirement that the CARE program costs should not be borne by any single class. Indeed, section 890(a) explicitly cross-references sections 739.1 and requires a surcharge on all natural gas consumed to fund the low-income assistance programs. Therefore, the two statutes are completely in harmony. Although AB 1002 implicitly recognizes that the overall gas PPP surcharges can be different per class, and, in fact, these surcharges are

[1] All statutory references herein are to the California Public Utilities Code unless otherwise indicated.

currently different per class, the CARE component of each gas PPP surcharge is and must be the same for all customers; no class of customers can be statutorily exempt from paying for the CARE program costs.

Joint Applicants maintain that there is Commission precedent supporting allocation methodologies for public purpose program costs that are not usage based, such as programs for low income energy efficiency ("LIEE"). Joint Applicants Brief, p. 14. Joint Applicants further allege that in D.07-09-016 (2007), the Commission recognized that it has authority to set rates for gas public purpose programs for different customer classes. Joint Applicants Brief, p. 33. DRA, *et al.* do not dispute either of these contentions, except to note that D.07-09-016, p. 23, also warned that there were practical problems associated with creating very broad classes to receive lower gas PPP surcharges, including classes as large as the entire noncore industrial class. More to the point, this does not justify the Commission violating the statutorily-mandated equal cents per unit allocation for the CARE program cost component of the gas PPP surcharge. Indeed, on this issue, D.07-09-016 (2007) supports our position. In D.07-09-016, p.4, the Commission reaffirmed that it had provided that the utilities recover the LIRA/CARE costs through a surcharge on volumetric rates (e.g., equal cents per kWh), because "the statute required that program costs not be borne by a single ratepayer class."

This is not to say that the Commission cannot have different gas PPP surcharge rates for different classes for the non-CARE components of the gas PPP surcharge. Indeed, the Commission has different gas PPP surcharges for different classes.[2] However, the CARE component of the gas PPP surcharge has been for 19 years and still is an equal rate for all classes.[3] During the past 19 years, Commission precedent has never supported any other allocation for the CARE program costs. *See* D.06-05-019

[2] Exhibit 25, PG&E Advice Letter 2880-G, Sheet 26650-G; Exhibit 21 SoCalGas Advice Letter 3783, Sheet 10.

[3] Exhibit 25, PG&E Advice Letter 2880-G, Sheet 26650-G; Exhibit 31.

(2006), pp. 7-10 citing D.00-04-060 (2000), D.98-07-101 (1998), D.97-04-082 (1997), D.96-04-050 (1996), and D.89-09-044 (1989).

Joint Applicants rely upon their cross-examination of DRA Director Appling as supporting the Commission's right as a policy matter to decide how to allocate gas PPP costs. However, their reliance is misplaced, because their questions just generally referred to the gas PPP surcharge and were not specific to the CARE component. *See, e.g.,* Joint Applicants Brief, p. 19-20; IP Brief, p. 2, n.4. They conveniently omitted from their briefs, DRA Director Appling's responses in redirect to specific questions concerning the CARE program, where DRA Director Appling testified that: 1) under the Commission's interpretation of section 739.1, it adopted ECPT for CARE costs; 2) the Commission's interpretation of section 890(e) was that it did not provide a basis to switch from ECPT; and 3) Joint Applicants' proposal violated the spirit of the statutes.[4]

IP erroneously states that the gas PPP surcharge is a component of transportation rates and the Commission should not be reviewing commodity costs in conjunction with the allocation formula in this proceeding, because the Commission has no jurisdiction over the natural gas commodity. IP Brief, p.3. There are many things wrong with this argument. First, the premise is wrong that the gas surcharge is a component of transportation rates. The gas PPP surcharge is not a part of a rate at all. Indeed, the Commission was statutorily required to impose a "surcharge on all gas consumed in the state … to fund low-income assistance programs … and then funding for those programs shall be removed from the rates of gas utilities."[5]

Secondly, there is no dispute that the Commission has jurisdiction over the surcharge subject to limitations imposed by the Legislature. If IP truly believed that the Commission has no jurisdiction to provide for the utilities to recover their costs for the CARE program under an ECPT methodology, they are 19 years too late to make this argument. Section 3527 of the California Civil Code, entitled "Laches" states that "The

[4] 8 R.T. 549-551/DRA Appling.

[5] *See* California Public Utilities Code §890(a).

law helps the vigilant, before those who sleep on their rights." Courts have found that under the equitable doctrine of laches, that an unreasonable delay in asserting rights and earlier acquiescence bars a party from later challenging the action. *See, e.g., Johnson v. City of Loma Linda* (2000) 24 Cal. 4th 61, 68 (three year delay unreasonable). The Commission has found that a four-year delay in filing a petition for modification would be barred by laches. *See Utilisource v. Southern California Edison Company,* D.05-06-030 (2005). If sleeping on your rights for three or four years is barred by laches, what does that say as to a 19-year delay in challenging the Commission's legal jurisdiction to adopt the ECPT allocation methodology?

Although the Commission admittedly does not have jurisdiction to set prices in the wholesale natural gas market, that does not mean that the Commission has no jurisdiction to *consider* the price of natural gas or volumes of natural gas in order to decide matters within the Commission's jurisdiction. It has long been settled by the courts that considering non-jurisdictional matters in order to decide jurisdictional rates would appear to be an "everyday affair" for federal agencies or state commissions. *See FPC v. Conway Corp.* (1976) 426 U.S. 271, 280; *see also Rochester Gas & Electric Corp. v. Public Service Com'n* (2d Cir. 1985) 754 F.2d 99, 103-105. Indeed, the Commission could not calculate the CARE component of the gas PPP surcharge without considering the 20% discount of the price of natural gas, which is, by far, the largest cause of the increase in CARE costs.[6]

IP, therefore, has no basis to try to restrict the facts in the record, which the Commission reviews to decide matters in its proceedings.[7] Indeed, the Commission has a duty to review the impacts on residential and other classes from the CARE surcharge, because under section 739.1(a), the Legislature required that no single class should bear

[6] *See* DRA Brief, pp. 10-11. DRA also noted therein that the Commission has jurisdiction over the utilities' retail sales of gas to core residential, commercial and industrial customers. *Id.* at 11.

[7] IP has confused legal jurisdiction to decide matters (consistent with state legislation) with factual matters, which the Commission must consider in order to issue decisions. For example, the Commission does not have jurisdiction to print money, but the Commission reviews dollar impacts on ratepayers based upon utility ratemaking principles all the time.

the costs of the CARE program, and under section 890(a), the Legislature required the funding under section 739.1 to be recovered through a surcharge on all natural gas consumed in this state. It would be contrary to the purpose and legislative intent of these provisions to impose most of the burden on the residential ratepayers, who currently pay the CARE surcharge on an ECPT basis, but do not directly benefit from CARE. However, that is precisely what the effect of EPBR would do.

For example, under EPBR, SoCalGas would allocate 95% of the CARE costs to its core residential, commercial and industrial customers (and specifically 78% of CARE program costs to its residential customers not in the CARE program) and only 5% of the CARE program costs to its noncore industrial customers.[8] According to SoCalGas' workpapers, the non-CARE residential ratepayers would pay a $.0409/therm CARE surcharge compared to SoCalGas' noncore industrial customers' rate of $.0044/therm.[9] Thus, non-CARE residential customers would be paying almost ten times what the noncore industrial customers would be paying, even using the utilities' numbers. This clearly would violate both the purpose and spirit of the allocation provision in section 739.1(a). Accordingly, it is not a reasonable interpretation of this statutory provision. *See County of Sacramento v. State Water Resources Board* (2007) 153 Cal. App. 4th 1579, 1588.

III. JOINT APPLICANTS HAVE NOT MET THEIR BURDEN OF PROOF TO JUSTIFY DEVIATING FROM ALL RELEVANT COMMISSION PRECEDENTS ON THE ALLOCATION OF GAS PPP COSTS

Assuming, solely for the sake of argument, that the Commission could change from an ECPT allocation for CARE without acting contrary to the law, the Joint Applicants have not met their burden to prove that circumstances warrant such change. The Joint Applicants' burden of proof is very simple: they must demonstrate that the

[8] *See, e.g.,* SoCalGas' effect of adopting its proposed EPBR in Year 3 in Exhibit No. 1, p. 3-4, Table 3-4, lines 2-4, which follows its EPBR allocation set forth in Exhibit No. 1, p. 3-3, Table 3-3, lines 1-5.

[9] Exhibit 65, p.42-43.

reasons they set forth for the Commission to modify the current PPP cost allocation are true and substantial enough to warrant changing the Commission's allocation methodologies in numerous decisions. This burden would be particularly heavy to attempt to justify changing from the ECPT allocation for CARE, which Commission precedent has repeatedly found to be just and reasonable for 19 years. The Joint Applicants have provided several, some even contradicting, reasons as to why the Commission should deviate from its current 19-year old cost allocation methodologies. The Joint Applicants and their supporting parties have provided no more evidence or reason to modify ECPT than was presented to the Commission during PG&E's last BCAP, and therefore the Commission should apply the same reasoning to these set of facts as before and reject the Application.[10]

[10] The PG&E BCAP decisions demonstrate that the Commission already addressed the same exact issue very recently and found that ECPT should not be modified. The Joint Applicants offer the following three superficial distinctions between the instant proceeding and the very recent BCAP decision that they collaterally attack: 1) the level of participation is greater now than the BCAP, 2) EPTR is different from EPBR, and 3) only CARE was an issue in the BCAP. None of these arguments justifies any deviation from D.05-06-029 or its rehearing order, D.06-05-029.

The first distinction, that there is greater participation in the instant proceeding, is clearly irrelevant as it has no bearing on the facts in evidence (furthermore, there is no evidence in record to show the participation in the last BCAP). The Joint Applicants have failed to provide any new or different evidence to support EPBR.

Second, there is no significant difference between EPTR and EPBR. Both EPTR and EPBR are based on transportation revenues and there is no difference on the impact of the allocation methods. (See Exhibit 65, p.31.)

Finally, the fact that the Commission already decided that the CARE program should continue to be allocated by ECPT only supports DRA, *et al.*'s position. Just because the Joint Applicants have attached more programs, many of which are not under ECPT, does not negate the fact that the Commission found that CARE costs should continue to be allocated under ECPT.

The Commission's 2006 BCAP can only be distinguished if the Joint Applicants have provided evidence to rebut the conclusions reached by the Commission in D.06-05-019 and D.05-06-029:

> (1) "that no party has made a convincing case that current CARE allocation represents poor public policy";
> (2) "that all businesses and individuals benefit from the economic welfare of the greater community"; and
> (3) "no party has presented any evidence to suggest that the CARE rate component has caused businesses to fail or relocate."

IV. ECPT IS NEITHER BURDENSOME NOR INEQUITABLE

A. The Record Lacks Any Evidence that the $.03/Therm Surcharge Will Cause California Businesses to Fail or Relocate

The Joint Applicants state that they do not have to show that companies are leaving the State because of the gas social programs.[11] But, just two years ago when PG&E asked the Commission to modify ECPT "to reduce business costs and make California more attractive to business" the Commission, required PG&E to provide evidence proving that the gas PPPs "has caused businesses to fail or relocate."[12] The Joint Applicants ask for the same relief for the same reasons and the Commission should therefore apply the same standards as it did in D.05-06-029 and D.06-05-019.

Furthermore, the question of whether businesses are leaving the state is at issue in this proceeding because the Joint Applicants have made it an issue by claming that the current PPP cost allocation causes businesses to relocate. The executive summary of the Joint Application begins by claiming that the rising burden of the gas social programs have "had a negative impact on the business environment in California and is one of the reasons many businesses consider leaving the state."[13] However, as DRA *et al*. and the other consumer advocates demonstrated the lack of evidence supporting this contention, the Joint Applicants retracted their executive summary assertion and stated in their rebuttal that they "never claimed that the gas PPPS costs, or even social program costs in total, are forcing businesses out of California."[14] Yet, in their opening brief, they once again argue that "some businesses are considering relocation, shutting down, or making further investments in other states due to rising costs of doing business in this jurisdiction."[15] Just as their testimony failed to establish a causal connection between the

[11] Joint Applicants Opening Brief, pp. 28-29.

[12] D.05-06-029 and D.06-05-019.

[13] Exhibit 1, p. ES-1.

[14] Exhibit 3, p. 20:20-22.

[15] Joint Applicants Opening Brief, p.28.

$.03/therm gas PPP cost and businesses relocating to other states, so does this assertion in their brief fail to make this causal connection.

In fact, DRA provided evidence why the current ECPT allocation and the $.03/therm should not cause California businesses to move or close: California gas prices for industrial customers are among the lowest in the nation, so that even with the PPP surcharge, they should be competitive.[16]

The Joint Applicants, CMTA, IP, AECA, and CLFP provide much data relating to unemployment, profit margins, and job losses. None of these parties has been able to show that the ECPT allocation for CARE or the gas PPP of $.03/therm has caused any of these problems. Absent such evidence, the limited information they provide is irrelevant. And, DRA *et al*., TURN, and CFC provide ample evidence in their opening briefs showing that it is unreasonable for the current cost allocation to have a substantial impact on California businesses.[17]

CMTA attempts to undermine DRA's analysis of California's business environment by stating that, during cross-examination, DRA's witness could not recall the 'source' for the fact that there are tens of thousands of manufacturing companies in California. Well, one of the many sources that confirm the fact that there are tens of thousands of manufacturing companies in California is contained within the Joint Applicants Rebuttal Testimony, page 9, where they state that SoCalGas and PG&E have over 400,000 nonresidential customers (200,000 each) and that "most are manufacturing." It is important to note that CMTA is aware of this fact as evidenced by the fact that it does not dispute the veracity of DRA's claim, but frivolously points to the witness' not being able to recall the 'source.' During Commission hearings, it is not uncommon for witnesses to have to verify certain facts, nevertheless exact 'sources.' And it is highly inappropriate for CMTA to dismiss the substantial evidence DRA

[16] DRA Opening Brief, pp. 15-19 and references to evidence therein, particularly, page 17 supported by Exhibit 65, Attachment D and Exhibit 27, p.1.

[17] *See* DRA Opening Brief, pp.15-19.

provides (as evidenced on pages 15-19 of its Opening Brief) simply because a witness could not recall a 'source.' Such tactics to undermine legitimate evidence or data by frivolous claims only support the fact that the Joint Applicants and their supporters are unable to substantively rebut the evidence in the record demonstrating that the ECPT allocation does not result in hardship for many customers that warrant the Commission to change its methodology.

Moreover, if a specific utility customer actually faces financial hardships resulting from utility rates that would cause them to fail or leave California, the Commission allows the utilities to provide discounts on transportation rates so long as they do not go below the floor for marginal and nonbypassable costs.[18] This is a more reasonable alternative than to provide a blanket rate decrease for all business customers.

Providing a significant rate decrease for all business customers is simply unnecessary, especially considering that not all these customers have expressed concern about the PPP surcharge and will not make any business decisions based on the PPP surcharge. For instance, Chevron, BP, and Conoco Phillips, which are represented by IP, have not expressed any concern with the PPP surcharge.[19] Indeed, Chevron is obviously not deterred by the gas PPP surcharge as it is expanding its Richmond refinery in Northern California such that it would increase its natural gas usage by 33%.[20]

In addition, SoCalGas has forecasted an increase in its noncore industrial volumes from 2009 to 2011. [21] If their contention that their industrial customers are making negative business decisions due to the current ECPT cost allocation were true, certainly their own forecast would not show that their usage is actually rising.

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[18] D.07-09-016, Ordering Paragraph 1.

19 8 R.T. 505/IP Schoenbeck.

[20] Exhibit 61, p.2-7.

[21] Exhibit 30, p.5 of Emmrich's testimony, Table 2, lines 8 and 12; 7 R.T. 395/SoCalGas/SDG&E Lenart; Exhibit No. 61, p. 2-4.

B. The Joint Applicants Attempt, but Fail to Demonstrate that there is a Substantial Threat that Businesses will Avoid Paying the gas PPP Surcharge

In their attempts to demonstrate that businesses have "already taken action to avoid paying the public purpose program surcharge," the Joint Applicants provide *only* two speculative scenarios that apply to just one of the Joint Applicants, SoCalGas.[22] Without providing any specific examples, SoCalGas states that businesses have made or will make decisions to avoid paying the PPP surcharge by either switching to the City of Vernon or to an interstate pipeline.[23] Below, DRA, *et al.* demonstrate both the improbability and insignificance of the two scenarios.

1. The unique example of SoCalGas regarding losing customers to the City of Vernon does not justify a statewide change in allocation

The Joint Applicants conclude that customers have left their jurisdiction for the City of Vernon, because the City of Vernon is not assessing the gas PPPs.[24] The Joint Applicants provide little evidence to support this contention. For this to be true, the Commission must first accept that the City of Vernon is not assessing the gas PPPs. And second and more important, the Joint Applicants must prove that the gas PPP surcharge has caused customers to switch to the City of Vernon. PU Code section 898 mandates a municipality such as the City of Vernon to collect the PPP surcharge from all its customers, unless it offers low-income programs itself. P.U. Code § 898. However, the Joint Applicants have not provided any evidence that the City of Vernon is not abiding by the law. Even if the City of Vernon were contravening the law, this would justify the appropriate law enforcement agency, such as the California Attorney General, to require Vernon to abide by the law and collect the PPP surcharge from its customers. It would

[22] Joint Applicants Opening Brief, p.30.

[23] Joint Applicants Opening Brief, pp 30-31.

[24] Joint Applicants Opening Brief, p. 31.

not justify changing statewide the allocation methodology followed by all of the law abiding customers of the utilities.

Additionally, the City of Vernon is an isolated and unique situation and is not representative of the majority of SoCalGas' or any of the other Joint Applicants' service territories. The entire City of Vernon service territory is only 5.2 miles[25] making it unlikely that it will gain any significant customers from SoCalGas. SoCalGas' estimates that it has lost a mere 0.02% of throughput to the City of Vernon, demonstrating that any alleged losses thus far have been insignificant.[26].

Furthermore, the Commission has already addressed any competitive issue between the unique situation of SoCalGas and the City of Vernon by implementing a special rate for SoCalGas' industrial customers within the City of Vernon.[27] This special rate allows SoCalGas to be at level playing field with the City of Vernon by offering lower rates for its industrial customers. Thus, SoCalGas has been able to retain many customers in the City of Vernon.[28]

Any and all arguments relating to job losses or businesses leaving the state do not apply to the Vernon example because the City of Vernon is within California.

The Joint Applicants expect the Commission to believe that the City of Vernon example "demonstrates that gas social program costs for those customers were at a high enough level that they chose to sever longstanding ties with SoCalGas to avoid paying for the gas social programs specifically."[29] The Joint Applicants have provided no evidence that demonstrate that customers have actually left their system for the City of Vernon to avoid paying the PPPs, yet they make this unsubstantiated assertion.

[25] Exhibit 19, Response 13; 7 R.T. 293/Wright.

[26] Exhibit 19, Response 13.

[27] Exhibit 23, sheet 3.

[28] Exhibit 19, Response 12 – 13.

[29] Joint Applicants' Opening Brief, p. 31.

2. The unique example of the Board of Equalization's alleged lack of enforcement of AB 1002 does not justify a statewide change in allocation

The Joint Applicants offer another unsubstantiated claim that there are interstate pipeline customers that avoid paying the PPP surcharge because of lack of enforcement from the Board of Equalization ("BOE").[30] The BOE scenario again only applies to SoCalGas and not PG&E or SDG&E.

First, this unlikely scenario involves an insignificant amount of gas throughput. SoCalGas itself provided that in 2007 the total percentage of interstate pipeline customers' volume was only 0.4% of its total throughput.[31]

Second, the BOE scenario is highly speculative as evidenced by SoCalGas' witness testifying that it "doesn't have information about which specific customers have paid or not paid the Board of Equalization."[32]

Third, SoCalGas' lack of concern, as demonstrated by their lack of action, illustrates the insignificance regarding the BOE's collection of the PPP surcharge. SoCalGas has not contacted the BOE to pursue the enforcement of section 898.[33] SoCalGas' witness explained that SoCalGas had not contacted the BOE because that the Commission provided 'direction' to SoCalGas to not contact the BOE.[34] However, SoCalGas' witness could not identify the decision and in Joint Applicants' brief, they do not cite any such decision. Moreover, when pressed, SoCalGas' witness somewhat recanted and stated that it was "more a matter of appropriate working policy … If [current procedures] are not successful, we may evaluate other options."[35]

The Commission has never prohibited SoCalGas from seeking redress from or contacting the BOE. It would violate the First Amendment of the U.S. Constitution and

[30] Joint Applicants' Opening Brief, p. 31.

[31] Exhibit 19, response 6.

[32] 7 R.T. 288:7-9/Wright.

[33] 7 R.T. 288:13-23/Wright.

[34] 7 R.T.288-289/SoCalGas Wright.

Article I, §§ 2 and 3, of the California Constitution for the Commission to do so. *See, e.g., Zhao v. Wong* (1996) 48 Cal.App.4th 1114,1122 (The right to petition refers generally to the right of the people to inform government agencies of "their desires with the respect to the passage or enforcement of laws" and includes activities such as "complaint letters to government agencies.")

Furthermore, SoCalGas admitted that if a SoCalGas customer switched to an interstate pipeline to avoid paying the PPP costs, SoCalGas would know who the customer was and could ensure that the BOE collected their surcharge.[36] There is no serious concern about the BOE collection of the PPP surcharge and the Commission need not modify a 19-year old cost allocation methodology because of SoCalGas' arguments regarding BOE enforcement. Moreover, even if a few customers are not paying taxes to the BOE, that would not justify a statewide reallocation of a utility surcharge paid by law abiding customers any more than if a few customers were not paying taxes to the IRS would justify changing an entire federal policy for law abiding citizens.

C. The Joint Applicants attempt, but Fail to Demonstrate that ECPT Results in an Inequitable Cost Allocation for Commercial and Industrial customers

1. The Joint Applicants inappropriately count the quantity of nonresidential customers instead of the quantity of volumes used by nonresidential customers

Another point that the Joint Applicants attempt but fail to prove is that ECPT results in an inequitable and unfair cost allocation for commercial and industrial customers.[37] Throughout their Opening Brief, the Joint Applicants attempt to prove the alleged inequity of ECPT by referring to an irrelevant statistic. Specifically, they maintain that "5 % [nonresidential customers] of the customers are paying about 45% of

(continued from previous page)

[35] 7 R.T. 289:16-21/SoCalGas Wright.

[36] 7 R.T. 301:28/Wright.

[37] Joint Applicants Opening Testimony, pp. 2, 24, 33

the social program costs."[38] While this statement may be literally true, it is irrelevant. The Joint Applicants derive the 5% figure by literally counting the quantity of their individual business customers against each residential customer.[39] In actuality, the *quantity of gas* that nonresidential customers consume is more than 50% of the utilities' gas volume.[40] In proper context, the nonresidential customers consume more than 50% of the utility gas volumes and pay for about 45% of the social program costs. When PG&E, CMTA, and IP complained two years ago that nonresidential customers were paying too high a proportion of the CARE costs, the Commission rejected the argument reasoning that it only reflects that large customers consume more gas.[41]

Comparing the quantity of customers, instead of the quantity of volumes these customers use also contravenes the law because P.U. Code section 890(e) specifically states that for calculating the surcharge "the Commission shall determine the total *volume* of retail gas transported within the service territory of a utility gas provider." (Emphasis added). Thus, the reason why the Commission refused to change the CARE cost allocation for only a small handful of large customers by stating that "the eight largest users on SoCalGas' system should [not] pay proportionately less than everyone to meet the costs of social program."[42]

It is ironic that the Joint Applicants make this comparison when their own witness testified to the inappropriateness of comparing an individual residential customer to an individual business customer. When trying to undermine the evidence regarding residential customers' shut off rates compared to those of business customers, the Joint Applicants stated that "an individual residential customer doesn't necessarily represent a significant amount of revenue . . . in the residential class we tend to look less at the

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[38] Joint Applicants Opening Testimony, pp. 2, 11, 13,

[39] Joint Applicants Opening Testimony, pp. 2 ("an estimate based on a ration of combined nonresidential customer count of 500,000 to total customers (10.5 million)")

[40] Exhibit 21, top of page 2.

[41] D.06-05-019 at *10

[42] D.06-05-019 at *18 *citing* D.00-04-060 at *151-152.

individual customer actions but rather in the aggregate and patterns of behavior or changes for larger numbers given the number of residential customers."[43] The Joint Applicants concluded that "the impact of an industrial customer's bill is much greater than that of a residential customer and the one-to-one comparison should not be made."[44] Therefore, it is completely inappropriate to compare a single residential customer to a single business customer.

2. There are no new facts or circumstances that change the Commission's finding that ECPT is equitable and results in residential and nonresidential customers paying the same, fair percentage towards the CARE program

The Commission found that all customers, whether residential or nonresidential, pay the same per therm rate for the CARE program, resulting in the most equitable allocation for all customers.[45] The Joint Applicants agree that the Commission found ECPT to be the most equitable allocation for CARE (Joint Applicants Opening Brief, p.6), but try to dismiss this fact by stating that when the Commission stated this, "costs were substantially lower and represented only a small fraction of a customers' total bill for utility gas service." Joint Applicant Opening Brief, p.6). This is simply not true, as evidenced by the Commission's own finding that "the number of subscribers to the program has increased substantially in recent years as a result of the energy crisis, more aggressive utility marketing and easier enrollment procedures."[46]

The Joint Applicants and their supporting parties attempt to further distort the Commission's conclusion by attempting to show that the commercial customers pay a higher proportion of their delivered gas costs or by inflating the change in their CARE and PPP surcharge costs.

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[43] 7 R.T. 303-304/SDG&E/SoCalGas Wright.

[44] *Id.*

[45] D.06-05-019 at *10; D.05-06-029, p.*19-*20.

[46] D.05-06-029 at *19.

While the supporters of the Joint Application state that the PPP surcharge for PG&E's industrial customers increased 1414% from 1993 –2007, this only means that the PPP surcharge for PG&E's industrial customers increased to $.03/therm from 1993-2007.[47] When a rise to only 3 cents reflects more than a thousand percent increase, it just demonstrates that the industrial customers paid practically nothing towards social programs in 1993.

The industrial customers for SDG&E, SoCalGas, and PG&E respectively pay 2.3%, 4%, and 4.49% of their total gas costs.[48] The Joint Applicants and their supporters assert that these rates are excessive, yet they state that a 2.4% increase (in addition to their current PPP surcharge) for residential customers is a "modest impact."[49]

3. CMTA and IP continue to make comparisons that the Commission previously found to be misleading

The Commission has twice found that CMTA and IP's use of transmission rates alone overstates the impact of CARE rates on large customers and is in fact deceptive.[50] The Commission clearly found that the CARE component should not be compared to only the transmission, or cost of service, portion of a customer's bill, but to their total bill because "the transmission portion . . is a small part of most customers' bills."[51] IP employs this misleading tactic in the very first sentence of its introduction when it states "the PPP charges for PG&E industrial backbone customer class are 573% of the utilities' cost to serve the class."[52] The fact that 573% only represents $.026 reflects that such comparison is indeed misleading.[53] Throughout the entire proceeding, IP has continued to defy the Commission's order by comparing the percentage of a residential customer's

[47] Exhibit 25 PG&E Advice Letter 2880-G, Sheet 26650-G.

[48] Exhibit 65, pp. 60-61.

[49] Joint Applicants Opening Brief, p.13.

[50] *See* D.05-06-029 at LEXIS*23 and D.06-05-019, pp. 7-8.

[51] D.05-06-029 at LEXIS*23.

[52] IP Opening Brief, p. 1.

total costs, which include both gas and commodity, to a non-residential customer's transportation charge.[54] And despite acknowledging on page 18 of its opening brief that the Commission prohibited such comparisons, CMTA continues to make them.[55] If CMTA and IP actually compared a commercial customer's gas PPP surcharge to both their commodity and transportation bill, it would show that the PPP surcharge is a small portion of each customer's overall gas service.[56]

The Joint Applicants rationalize adopting their Application "to prevent customer classes from repeatedly advocating for a cost allocation method that most benefits them." Joint Applicants' Brief, pp. 15-16, 18. This is hardly justification for the Commission to reverse 19 years of precedents, and reward CMTA and IP for continuing to make the same misleading statements.[57]

It is significant that the Joint Applicants have finally recognized that advocates for business customers have "repeatedly" sought to have a cost allocation method that "most benefits" them. These repeated attempts resulted in several decisions rejecting their attempts including D.07-09-016 (2007), D.06-05-019(2006), D.00-04-060 (2000), D.98-07-101 (1998), D.97-04-082 (1997), and D.96-04-050 (1996). While DRA and the Commission would like nothing more than parties to refrain from "repeatedly advocating" a cost allocation that most benefits them, which result in significant waste in

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[53] Exhibit 25 PG&E Advice Letter 2880-G, Sheet 26650-G

[54] Exhibit 56, pp 5 – 8; IP Opening Brief, p. 6.

[55] CMTA Opening Brief, p. 7 (referring to the Joint Applicants baseless estimates of total bills, including commodity of residential customers); *Id.* at 18 (referring to only comparing transportation rates and stating that commodity is irrelevant); *Id.* at 23 (again referring to total residential rate impacts including commodity).

[56] Exhibit 3, p. 13.

[57] A close scrutiny of IP's footnotes reveals that it's Opening Brief consists of a series of opinions in its favor, supported not by facts, but instead by either its own or its supporters' conclusory opinions. The Commission has held that expert opinions should be supported by "facts and reasonable assumptions predicated upon facts."[57] However, the conclusions contained within IP's Opening Brief are based upon opinion only, not facts and therefore do not meet the Commission's standard. The Commission should consider this fact when appropriating weight to IP's arguments.

resources, it is highly inappropriate to change an established legal and policy position to prevent litigation.

V. THE JOINT APPLICANTS HAVE ALSO FAILED TO DEMONSTRATE THE REASONABLENESS OF EPBR

Even if the Joint Applicants had been able to prove that ECPT is unreasonable, burdensome, and results in an equitable allocation to large and commercial customers --- which they have not—they still would have the burden to prove that EPBR is reasonable. The Joint Applicants fail to provide a single reasonable rationale to support EPBR.

The distinction between ECPT and EPBR is that EPBR assigns the PPP costs on transportation service, while ECPT assigns these costs on volumes or therms consumed. The Joint Applicants, therefore, have the burden to rebut the reasonableness that the Commission has presumed for ECPT by demonstrating that EPBR is superior to ECPT.

The Joint Applicants attempt to meet their burden by stating that:

> EPBR is the best method of equitably spreading gas social programs costs across *all* customer classes, as it departs from a usage-based allocation method to a method based on transportation rates, which have been much more stable over time.[58]

However, the fact that EPBR is based on transportation rates only results in lower costs for those customers that have lower transportation rates or more specifically large commercial and industrial customers.[59]

The Joint Applicants argue that the CARE cost allocation should be based on transportation rates rather than commodity because transportation rates have been "more stable over time." Joint Applicants' Brief, p. 13. The Joint Applicants fail to recognize that the PPP costs have no relationship to transportation rates, and therefore the stability of these rates is irrelevant to allocating the PPP surcharge. Furthermore, the Joint Applicants have already testified that the commodity cost is the single most important factor that determines the CARE discount, making the stability of transportation rates

[58] Joint Applicants' Opening Brief, p. 13.

[59] D.06-05-019.

irrelevant.[60] The fact that transportation rates have remained steady while PPP costs have increased due to commodity price increases, only support the use of ECPT because under ECPT the PPP surcharge is a function of the PPP program costs.

Despite the fact that the Commission has stated, and Joint Applicants agree, that the residential customers are no more responsible for the CARE costs than noncore customers, CMTA continues to assert that the EPBR is necessary to allocate more costs to the residential class because they benefit more from CARE.[61] CMTA incorrectly assumes that EPBR functionalizes the social program costs in a way where residential customers pay a greater share. However, the Joint Applicants witness could not even explain how to functionalize any societal costs.[62] The Joint Applicants admit that it is not even possible to functionalize these costs because "direct benefits do not work for low-income social programs like CARE where the beneficiaries of the program are exempt from paying from paying it."[63] Yet, parties such as CMTA state that "CARE and LIEE programs almost exclusively benefit residential customers" to support their arguments for EPBR.[64]

VI. CHANGING TO AN EPBR ALLOCATION METHODOLOGY WOULD SEVERELY IMPACT THE RESIDENTIAL CLASS

A. Joint Applicants and Their Supporters Have Taken Contradictory Positions Concerning the Residential Rate Impact Analysis

The Joint Applicants and their supporters' purported justification for changing the allocation formula to EPBR is that the costs under these gas public purpose programs are growing. Indeed, Joint Applicants do not just refer to the rising costs through 2007. They also state in their initial brief, p.16: "In fact, social program costs *will* be rising,

[60] 6 R.T. 169:12-13/PG&E Blatter.

[61] CMTA Opening Brief, pp. 6-8, 15 – 18; Exhibit 35:15-23

[62] 7 R.T. 397/SoCalGas/SDG&E Lenart

[63] Joint Applicants' Opening Brief, p. 15.

[64] CMTA Opening Brief, p. 7.

and efforts to increase participation in CARE and other low income programs during these tough times means that the business customers can expect to see their allocated portion of gas social program costs continue to rise." (Emphasis added).[65] However, when it comes time to measure the impacts of the cost shift to residential non-CARE customers from switching to EPBR, Joint Applicants forget all about these rising costs and refer to outdated data. Indeed, they fail to even add their own outdated numbers correctly and state that EPBR would reallocate $90 million from their nonresidential class to their residential class. Joint Applicants' Brief, pp. 13, 16.[66] They cannot have it both ways. Either these costs are not increasing, so they should not be arguing that the Commission needs to reevaluate the allocation, or they are increasing, so they cannot try to minimize the impacts on a cost shift to residential customers based upon old gas price forecasts and a failure to look at all of the factors affecting the impacts on residential rates.

B. Without ECPT, Significant Increases in CARE Program Costs Would Cause Much Higher CARE Surcharges for Residential Customers

As previously discussed, from 1989 to 2007, the Commission's interpretation of section 739.1 pertaining to the CARE program has been that the Commission is statutorily required to spread the costs of the CARE program equally over all nonexempt therms of gas. *See* D.89-09-044 (1989), 32 CPUC 2d 406, 417, and D.07-09-016(2007), p.4. Moreover, the wisdom in this statutory requirement is that even when costs have been increasing, the CARE surcharge has not come close to approaching the order of magnitude of the increasing costs, because spreading the increase of CARE's costs (i.e.,

[65] *See* CMTA Brief, pp.1 and 7, objecting to ECPT "in the face of rising social program costs" and "increases in social program levels; " *See also* AECA Brief, p.1, "Energy costs continue to rise for all California ratepayers …The joint application … will assist farms and businesses in mitigating skyrocketing energy costs."

[66] As the Appendix A to their brief clearly shows, by Year 3, under EPBR, the increase to the Joint Applicants' residential ratepayers would be more than $100 million. SoCalGas' residential ratepayers' rates would increase by $65.2 million (i.e., $185.4 million minus $120.2 million), SDG&E's' residential ratepayers' rates would increase by $7.9 million (i.e., $24.9 million minus $17 million) and PG&E's residential ratepayers' rates would increase by $27.2 million (i.e., $129 million minus $101.8 million).

the numerator of the equation) over the largest amount of therms (i.e., the denominator of the rate equation) minimizes the burden on any one class of ratepayers. This is precisely why the thin red line in the graphs in figures A, B, and C in the Joint Applicants' rebuttal testimony depicting the current $.03/therm gas PPP surcharge (with the CARE component $.024 or less)[67] has stayed so low compared to the rise in the overall delivered price of gas to industrial customers from approximately $.40/therm in 2002 to approximately $.80/therm in 2007.[68]

As pointed out in DRA's Brief, pp. 19-22, however, the mitigating effect of a large denominator on rising costs is absent in EPBR, because more than half of therms are no longer applied to help rates of residential customers, because they are the therms of core commercial and industrial customers or noncore commercial and industrial customers.[69] This, in conjunction with the disproportionately high percentage of all gas PPP costs, including CARE program costs, to the residential class under EPBR (e.g., from 50.8% to 78.4% for SoCalGas)[70] could cause enormous increases in the residential ratepayers' gas PPP surcharges in the future. Indeed, under the Joint Applicants' artificially low estimates of the cost shift of EPBR, the CARE rate for SoCalGas' residential class ($.0409/therm) would be almost 10 times the CARE rate for SoCalGas' noncore commercial and industrial class ($.0044/therm).[71] To the extent that the rising costs are higher than Joint Applicants' arbitrary estimates, the rate impact on residential ratepayers will be much higher than the Joint Applicants suggest. Yet, nowhere in their opening briefs or their oral argument do Joint Applicants or their supporters ever address this issue.

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[67] Exhibit 31:17; Exhibit 25, Sheet 26650-G.

[68] Exhibit 3, pp. 13-14.

[69] Exhibit 32, p. 2, as explained in DRA's brief, p, 20, n.83.

[70] Exhibit 1, p. 3-4. Table 3-4, line 2.

[71] Exhibit 65, p. 42.

C. Joint Applicants' Imaginary Monthly Impacts to the Residential Ratepayer from EPBR Were Thoroughly Discredited in the Hearing

1. The WACOG forecasts were underestimated

Joint Applicants' and their supporters' initial briefs continued to rely upon their monthly rate impact amounts from EPBR to residential customers as if the cross-examination and exhibits provided in the hearing never took place. In DRA's brief, pp. 19-35, it established six fundamental problems with the rate impact analysis on residential customers from Joint Applicants' proposed EPBR. First, is the issue that AECA itself called the skyrocketing energy costs. AECA Brief, p.1. As DRA's brief, pp. 23-25, pointed out, to calculate the costs of the CARE program from just the 20% discount of the utilities' weighted average cost of gas ("WACOG") for CARE recipients, PG&E's witness forecast a $.7616/therm rate[72] and SoCalGas/SDG&E's witness forecast a $.516/therm rate for SDG&E and a $.56/therm rate for SoCalGas.[73] As the record reflects, however, by July 1, 2008, SoCalGas' WACOG had risen to $1.22/therm[74] and PG&E's WACOG had grown to $1.18/therm.[75]

In Joint Applicants' Brief, pp. 22-23, they make two arguments on this issue. First, they state it was the best evidence that they had at the time of their filing. Whether or not that was true in December, 2007 when they made their filing,[76] it was not true in July, 2008 when they filed their rebuttal.[77] Yet, they were totally silent about their higher prices in their July 3, 2008 rebuttal.

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[72] Exhibit 1, p. 4-4 at lines 7-9.

[73] Exhibit 1, p. 3-5 at lines 7-9.

[74] Exhibit 20.

[75] Exhibit 26.

[76] It certainly was not true with regard to SoCalGas and SDG&E witness Lenart, who prepared his analysis in August, 2007, four moths before Joint Applicants made their filing. 7 R.T. 383:26-28. SoCalGas/SDG&E Lenart.

[77] *See* DRA Brief, pp.23-24 (both utilities filed tariffs effective July 1, 2008 reflecting these higher prices.)

The second argument Joint Applicants make is that the WACOG data filed was just one month, but the WACOG is for a whole year, and prices are starting to come down. Joint Applicants' Brief, p. 23. However, the WACOG data was for six months by July, 2008, not one month. The six months of WACOG data for SoCalGas was from January, 2008 to July, 2008. Although the highest price was July, 2008 at $1.22/therm, the six month average was still approximately $1.12/therm.[78] The six months of WACOG data for PG&E was from January, 2008 to July, 2008. Although the highest price was July, 2008 at $1.18/therm, the six month average was still more than $1.00/therm.[79]

Although prices have dropped in August, 2008, they have not dropped as low as SoCalGas/SDG&E witness Lenart's forecast. Moreover, since the first six months' average was at twice the amount that he had forecast, they would have to drop to zero for the last six months to end up the year without an undercollection. Similarly, natural gas prices would have to drop to less than $.50/therm for the rest of the year for PG&E not to have an undercollection. Both of these scenarios are extremely unlikely.

CMTA cites Platt's Gas Daily (August 20, 2008), which is evidence outside the record for what spot prices were on that one day. Suffice it to say that one day does not make up for six months of data in the record. Moreover, it does not indicate what prices will be in September, if for example, a hurricane causes much damage to natural gas platforms in the Gulf of Mexico, let alone the rest of the year.

As PG&E witness Blatter testified: "The one thing that you know about a forecast is that it's wrong, generally speaking."[80] As he further acknowledged in the hearing, in all likelihood, there will be an undercollection in its CARE gas balancing account this year, which would have to be made up next year.[81]

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[78] Exhibit 20.

[79] Exhibit 28.

[80] 7 R.T. 346:6-8/PG&E Blatter.

[81] 7 R.T. 349:22-23/PG&E Blatter.

In view of the above, it is clear that the forecasts which underlie the impact on residential rates from switching to EPBR were erroneous, and therefore, for this reason alone the rate impacts were unreliably low. However, that did not stop Joint Applicants and their supporters from relying upon these fictional amounts in each of their initial briefs.

2. The Joint Applicants' rate impact witnesses ignored future increases in enrollment in CARE

The unreliability of the rate impact analysis on residential customers is further shown by the second issue--- the witnesses did not take into account the anticipated growth in the enrollment in the CARE program. As stated in DRA's brief, pp.25-26, the Legislature has imposed a duty upon the Commission and the utilities to maximize the enrollment of customers eligible to receive CARE benefits. *See* Cal. Pub. Util. Code §§ 739.1(b), 739.1(c), 739.1(d)(1) and 739.1(f). Consequently, the Joint Applicants should have considered the impacts in rates from a growing enrollment of eligible customers in the CARE program in their analysis of the monthly impact on residential customers from switching from an ECPT allocation to their proposed EPBR allocation. Nevertheless, Joint Applicants failed to take this fact into account when they performed their rate impact analysis due to their proposal to shift from the ECPT methodology.[82]

In Joint Applicants' initial brief, p.16, they even admit that there will be rising CARE budgets due to efforts to increase participation in CARE. However, they then fail to explain why their residential rate impact analysis from EPBR should have any weight in this case when their witnesses did not take the rising enrollment into account. Due to the fact that the CARE participants do not pay for the CARE portion of the gas PPP surcharge, their increasing numbers both increase the costs in the numerator and decrease the therms of residential customers in the denominator for calculating the CARE portion of the gas PPP surcharge. Therefore, this admitted oversight by the Joint Applicants

[82] For example, SoCalGas witness Lenart admitted that he has "no knowledge of the CARE participation rates." 7 R.T. 398: 3-16/ SoCalGas/SDG&E Lenart. Yet, that never stopped him for claiming an unjustifiably low impact to residential ratepayers from the proposed EPBR methodology.

further undermines their claims as to how minimal their proposed EPBR methodology would impact the rates of residential customers.

3. Joint Applicants failed to analyze the monthly rate impacts from EPBR for residential customers from costs of public purpose programs other than the CARE

As pointed out in DRA's Brief, pp. 27-28, as part of Joint Applicants' purported justification for their filing of their application, they also complained in their prepared testimony of the cost increases related to the expansion of existing non-CARE programs and the addition of new social programs.[83] Some of these programs, such as the Self-Generation Incentive Program ("SGIP"), utilize the ECPT methodology.[84] Recently, the Commission adopted the ECPT allocation methodology to recover the costs of the California Institute for Climate Solutions ("CICS").[85] As DRA witness Sabino pointed out, the Joint Applicants' impact analysis of the cost shift from ECPT to EPBR also failed to consider the costs of these other public purpose programs, as well.[86] Both rate impact witnesses, PG&E witness Blatter, and SoCalGas and SDG&E witness Lenart, agreed that switching from ECPT to EPBR for these other public purpose programs would shift further costs to the residential ratepayers.[87]

Nowhere in the Joint Applicants' initial brief or their supporters' briefs do they address or dispute this point.

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[83] Exhibit 1, pp. 1-6 to 1-8.

[84] Exhibit 65, p. 28.

[85] *See* D.08-04-039 (April 10, 2008), pp. 25-27.

[86] Exhibit 65, p. 34; *See also* DisabRA Opening Brief, p.2 and pp.11-12 (noting that CARE participants, while exempt from paying the portion of the PPP surcharge that funds the CARE program, are still responsible for paying the portion of the surcharge that funds other programs).

[87] 7 R.T. 350-35/PG&E Blatter; 7 R.T. 399-400/ SoCalGas/SDG&E Lenart.

4. Joint Applicants ignored the snowballing effect on rate impacts if the Joint Applicants changed their allocation of base revenues in future BCAPs

As discussed in DRA's Brief, pp. 28-29, the Joint Applicants' proposed EPBR methodology would assign all gas PPP costs to customer classes based upon the same percentages of base transportation revenue allocated to each class, and these percentages often are litigated in biennial cost application proceedings ("BCAPS"), including SoCalGas and SDG&E's current BCAP. The Joint Applicants have not analyzed the snowballing effect on the residential ratepayers' share of gas PPP costs if there are increases in their allocation of base transportation costs in the BCAP proceedings.[88] Indeed, in their current BCAP, SoCalGas and SDG&E have advocated an embedded cost allocation methodology for the transportation costs, which, if adopted by the Commission, could increase their core ratepayers' revenue requirements by 4.7% while decreasing by 16% revenue requirements for their noncore customers.[89] SoCalGas' proposed rates under its embedded cost allocation in its BCAP, if approved by the Commission, would cause a 6.9% increase in its residential rates and a 31.6% decrease in its rates for its noncore commercial and industrial customers.[90] Nevertheless, even though he is a witness in the SoCalGas/SDG&E BCAP, SoCalGas/SDG&E witness Lenart did not reflect or presume that their embedded cost proposal would be approved and was not part of his total cost shift analysis in the present proceeding.[91]

The Joint Applicants' proposed EPBR methodology is based upon the current allocation of their base revenues. Therefore, in the current SoCalGas and SDG&E BCAP, in their future BCAPs, and in future PG&E BCAPs, to the extent that the Commission were to change the allocation of base revenues, there would be a compounding effect upon the allocation of PPP costs if the Commission were to adopt the EPBR allocation

[88] Exhibit No. 65, p. 35.

[89] Exhibit 30, p.13.

[90] Exhibit 30, second to last page, Table 1, lines 1 and 12.

[91] 8 R.T. 385/ SoCalGas/SDG&E Lenart.

methodology proposed by the Joint Applicants in the present proceeding. Consequently, this is the fourth variable, which the Joint Applicants failed to consider when they tried to illustrate the monthly or total rate impacts upon their residential customers.

Nowhere in the Joint Applicants' or their supporters' brief do they address this issue or dispute it.

5. Winters would be particularly harsh under EPBR

The above-mentioned matters show how much higher the impact could be to residential ratepayers under EPBR than Joint Applicants or their supporters have indicated. Yet, in their initial briefs, they refer to the Joint Applicants' imaginary monthly rate impacts from EPBR of $.69/month for PG&E's residential ratepayers and $1.20/month for SoCalGas' residential ratepayers as if these amounts had any legitimate basis, the hearing did not even occur and the record is meaningless.

It is all but certain that the rate impact would be much higher than what Joint Applicants' witnesses have indicated the impact to residential ratepayers would be from EPBR. Moreover, as discussed in DRA's Brief, p. 29, the Joint Applicants' rate analysis was based upon average usage for residential customers, and during the winter, many residential customers' usage is double their average usage.[92] So, however high the switch to EPBR's real impact may be for residential ratepayers, it may be double that amount during the winter.

CMTA attempts to address this point, by stating in its initial brief, p. 23, that the residential ratepayers would at least pay less in the summer. That is little consolation to the customers whose heating services are shut off during the winter due to their inability to pay during that time. For example, during January, 2006 and February, 2006, due to non-payment of utility bills, PG&E had shut off service to approximately 15,000 non-CARE residential customers each month, SoCalGas shut off service to approximately 13,000 non-CARE residential customers each month, and SDG&E shut off service to

[92] Exhibit 66, p. 4.

approximately 2000 non-CARE customers each month.[93] As the U.S. Supreme Court declared in *Memphis Light, Gas & Water Division v. Craft* (1978) 436 U.S. 1, 18: " Utility service is a necessity of modern life; indeed, the discontinuance of … heating for even short periods of time may threaten health and safety."

In the record in this case, DisabRA's witness provide examples of people with disabilities, who turned off their utilities during the winter, because their bills were already too high, and relied upon blankets, and one woman who was hospitalized with pneumonia last winter due to insufficient heat.[94]

In view of the above, the impacts upon many residential customers would be very harsh if the Commission were to allow the utilities to switch to the EPBR methodology, particularly during the winter.

D. Joint Applicants Failed to Address the Increasing Discrepancy in Rates between Core Customers and Noncore Customers under the Proposed EPBR, Which Would Cause Further Increases in the Remaining Core Customers' Rates and Threaten the Funding of the Public Purpose Programs

Joint Applicants and their supporters do not deny the widening discrepancy in the gas PPP surcharge between *core* commercial and industrial customers and *noncore* commercial and industrial customers.[95] Whether or not it results in a death spiral, at the very minimum it would create a stronger incentive for large commercial and industrial customers to switch to noncore status to lower their gas PPP costs. This in turn would leave the remaining core customers with even higher gas PPP surcharges to make up the

[93] Exhibit 12, p. 2.

[94] Exhibit 40, p. 8 (While the effects of the gas surcharge are likely to be most severe in the Winter, an increased utility bill may lead to health and safety concerns and sacrifices throughout the year for people with disabilities. For example, the record includes information on a single mother in Berkeley who has two sons with Cerebral Palsy requiring constant use of electricity to power the medical equipment necessary to care for them. Another woman in Bakersfield has a disability that requires her to be in a cool environment as well as to have constant power for a breathing machine. *Id.* These two people, along with many others, face health risks throughout the year if they cannot pay an increased utility bill).

[95] *See* DRA Brief, pp. 29-33.

difference, and the ever increasing gas PPP surcharge could cause still remaining large core commercial and industrial customers to finally switch, as well.[96] Thus, this vicious circle should be stopped by keeping ECPT for CARE, so there is no extra motivation to use the gas PPP surcharge to reach decisions between core and noncore status.

Although Joint Applicants and their supporters claim that nobody is proposing to abolish the gas PPP programs, they do not address the fact that the vicious cycle can occur. Nor do they address that at a minimum, it would cause even higher rates for the residential class, who are captive customers and must pay higher gas PPP surcharges under EPBR even if they purchase natural gas from a core aggregator. This ultimately could lead to a reduction in funding for these gas PPP programs, because the residential customers are voters and can complain to their legislators or vote to change their elected officials. The reasons that it could ultimately occur are not only because of the higher rates charged to residential customers, but also due to the inequity many will feel for having to pay such higher rates to make up for the difference under EPBR for noncore commercial and industrial customers paying much less of the gas PPP rate as residential customers.[97]

In Joint Applicants' Brief, p. 26, they claim that such a scenario has no basis in fact and is unrealistic and alarmist. In terms of facts, they ignore that SoCalGas/SDG&E witness Lenart agreed that under EPBR, a core commercial or core industrial customer switching to noncore status would see a lower gas PPP rate due to the switch.[98] In terms of being "unrealistic and alarmist," they ignore that the Commission expressed these very concerns last year in D.07-09-016, p.14, when it stated:

> Once one large customer is allowed a discounted PPP surcharge, others will follow suit. Confidential information provided by SoCalGas, DRA, and TURN, shows that numerous customers are seeking discounted rates. Large

[96] 8 R.T. 587-588/DRA Sabino.

[97] 8 R.T. 542-545/DRA Appling.

[98] 7 R.T. 377-379/SoCalGas/SDG&E witness Lenart.

> industrial and commercial customers need to merely threaten to leave the state and provide statistics showing California energy customers pay more for social programs than neighboring states, and they could be granted a long-term contract that will exempt them from paying their full share of CARE and other program costs. Once the loophole is opened, it will only continue growing and growing until there is a sub-class of the largest customers paying less than all other customers for valuable social programs. There is a very real risk of losing a funding source for these programs – fewer and fewer customers paying higher and higher portions of the costs, until this funding source is depleted.

This scenario leads to two types of risk for the fundamental soundness of the PPP programs. The first, as recognized by the Commission, is that a single change in the funding mechanism will inspire other customer classes or groups (or their representatives) to seek further changes in the funding system for their own advantage. Arguments against such changes will be weakened by the fact that the longstanding ECPT formula was already changed; the entire funding mechanism could be revisited either by the Commission or the legislature. While there is no telling what changes might be put in place in this scenario, it can be avoided by a reaffirmation of the existing, longstanding precedent of ECPT. The second risk to the soundness of the PPP programs is the "death spiral" in which an ever smaller group of customers is forced to pay an ever larger share of program costs until they revolt and leave the programs underfunded.

Joint Applicants and their supporters find no difficulty in hypothesizing a death spiral *if* a number of businesses ceased doing business in California.[99] However, contrary to their statement that DRA's policy witness agreed with them, DRA Director Appling stated that "there has not been any testimony that the public- purpose-program costs are causing businesses to leave California."[100]

Joint Applicants further argue, without any evidence, that a consumer revolt could only occur if property owners and businesses combined to support a proposition, because

[99] Joint Applicants' Brief, p. 26; 7 R.T. 418:27-421:1/AECA Geis.

[100] 8 R.T. 548:9-11/DRA Appling.

that allegedly is what once happened in a taxpayer revolt, known as Proposition 13. Without reciting a list of other propositions, which have passed over the opposition of businesses,[101] suffice it to say that voters can just influence their legislators to pass amendments to the California Public Utilities Code.[102]

Joint Applicants also refer to evidence outside of the record as to PG&E's proposed new budgets for LIEE programs and energy efficiency programs, which will purportedly be doubled, in order to suggest that these programs could trigger a death spiral.[103] This reference should be entitled to zero weight for the following reasons. First, it is not in the record as evidence and nobody sponsored it or was familiar with it in cross-examination.[104] Secondly, there is no breakdown in these references in the brief as to how much of the energy efficiency program costs will be directly beneficial to the commercial or industrial customers and allocated to them. Thus, there is no way to tell if under EPBR, residential ratepayers would pay more for these energy efficiency costs then under the currently allocation (i.e., direct benefits) or under any new allocation scheme, which the Commission may adopt in the new energy efficiency proceedings. Nor is any reason given as to why it is only PG&E's LIEE or energy efficiency budgets that are referenced in the brief, why PG&E's CARE budget and efforts to increase enrollment were excluded from the brief and why none of the budgets for SoCalGas and SDG&E were in the brief.

At some point, due process requires that parties have notice and an opportunity to respond to evidence, and this was not evidence in this proceeding. Therefore, it would violate the fundamental due process rights of parties for any weight to be given to these

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[101] For example, over the opposition of businesses, voters passed Proposition 65, which prohibited contamination of drinking water and required businesses to warn of chemicals known to cause cancer or reproductive toxicity. *See* Cal. Health and Safety Code §§ 25249.5-25249.13.

[102] 8 R.T. 545:26-546:14/DRA Appling.

[103] Joint Applicants' Brief, p. 27.

[104] Although PG&E's attorney attempted to cross-examine DRA's two witnesses about these budget proposals, neither of them were familiar with the proposals and PG&E never offered the filings as exhibits herein. 8 R.T. 544/DRA Appling; 8 R.T. 557, 564/DRA Sabino.

references in the Joint Applicants' brief to PG&E's budgets, which are outside of the record. As the California Supreme Court stated in *Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control* (1970) 2 Cal. 3d 85, 104, quoting *English* v. *City of Long Beach* (1950) 35 Cal.2d 155, 158: "Administrative tribunals which are required to make a determination after a hearing cannot act upon their own information and nothing can be considered as evidence that was not introduced at a hearing of which the parties had notice or at which they were present. [Citation.] [The] right of a hearing before an administrative tribunal would be meaningless if the tribunal were permitted to base its determinations upon information received without the knowledge of the parties. A hearing requires that the party be apprised of evidence against him so that he may have an opportunity to refute, test, and explain it, and the requirement of a hearing necessarily contemplates a decision in light of the evidence there introduced."

Whether or not a death spiral were to occur, the evidence in the record is that EPBR would, at a minimum, create an incentive to have more migration from core to noncore status for commercial or industrial customers. This would be the sixth reason why there would be a much larger impact on residential ratepayers from a switch to EPBR for gas PPP costs than indicated by Joint Applicants' rate impact witnesses.

E. The Hardship to Residential Customers from the Significant Cost Shift Has Never Been Refuted

Except for their reliance upon EPBR's purportedly "modest" impact on the residential class, which the above analysis reveals is grossly understated, Joint Applicants and their supporters never refute the hardship caused to the residential ratepayers from the significant cost shift which would occur. How could they?

What is in the record is the hardship that this significant increase would cause, particularly to the senior citizens on fixed incomes, people just above the CARE eligibility limits and the disabled community. *See* Exhibit No. 40, pp. 5-8 and Exhibit No. 66, pp. 2-4. Approximately 15% of the population in California would not qualify for

CARE, but do not make much income above the CARE eligibility limit of $35,800 for a family of three.[105]

As made clear in DRA's brief, pp. 33-35, DisabRA's brief, pp. 4-11 and LIF's brief, pp. 3-5, people who are lower income, but who do not qualify for CARE, are in dire circumstances. Every dollar increase in monthly utility bills can mean a dollar less for food, medicine, or other life necessities.

People with disabilities use and need more energy than their non-disabled peers.[106] Heat is also particularly essential for certain people with disabilities, which can be exacerbated by temperature fluctuations.[107] There is evidence in the record that some Californians with disabilities had to choose between medical care and paying their utility bills.[108]

Households with lower income devote a greater proportion of their income to utilities than other utility customers. Older Americans and retired persons' utility bills also represent a greater share of their expenditures because many are on fixed incomes.[109] Therefore, increases in these residential customers' utility bills make it much more difficult for them to be able to afford utility service and other necessities of life.

In view of the above, in sharp contrast to the "serious concerns" of large commercial or industrial customers, who advocate in favor of the cost shift from ECPT to EPBR in order to save themselves from having to pay $.02/therm to $.03/therm (out of a total delivered natural gas price of more than $1.00/therm) is the extreme hardship facing

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[105] 8 R.T. 576/DRA Sabino. It should be noted that during the August 25, 2008 oral argument before Commissioner Simon, PG&E's counsel erroneously stated that a "family of four making $58,000 a year is eligible for CARE." 9 R.T. 607: 13-14. DRA, *et al.* believe that this was an inadvertent error, but it is important to set the record straight. Therefore, pursuant to Rule 13.9 of the Commission's Rules of Practice and Procedure, DRA, *et al* respectfully request that the Commission take official notice of its own website at http://www.cpuc.ca.gov/PUC/energy/consumers/care.htm, which lists the CARE eligibility limits for June 1, 2008 through May 31, 2009 as $43,200 for a family of four and $35,800 for a family of three, as DRA witness Sabino had correctly testified.

[106] Exhibit 40, Attachment B, Part 2, KEEMA Report at pp. 5-15.

[107] Exhibit 40, Attachment A.

[108] Exhibit 40, pp. 5-8.

[109] Exhibit 66, p. 3.

many of the residential customers. The residential customers, who have lower income but do not qualify for the CARE program, are struggling to pay just for their basic life necessities.

The increase in gas PPP costs does not support a change in the allocation methodology. It supports the continuation of the ECPT methodology, so that the surcharge remains equal and a few cents per therm for all ratepayers, who pay the surcharge. Joint Applicants' proposed EPBR would cause the surcharge to the residential class to skyrocket by removing more than 50% of the therms from the denominator and allocating a disproportionately high amount of the increasing costs to the numerator. Thus, the moderating effect of ECPT as seen in the red line in the Joint Applicants' graphs in their rebuttal testimony[110] would be shattered for residential customers, whose gas PPP surcharge would grow by leaps and bounds. There is no justification for the Commission now to change from 19 years of precedents supporting ECPT to the proposed EPBR allocation, which would cause this tremendous hardship to many customers in the residential class.

VII. CONCLUSION

For the Commission to modify a methodology that it has consistently used and upheld for the pasty 19-years, the Joint Applicants must provide ample reasons with supporting evidence. The Joint Applicants and their supporters have neither provided a legitimate reason or supporting evidence to warrant a departure from a fair and legitimate cost allocation methodology. Therefore, the Commission must be consistent with its prior decisions and reject the application.

[110] Exhibit 3, pp. 13-14.

Respectfully submitted,

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September 2, 2008

APPENDIX

Parties, Glossary and Measurements

A. *Parties*

AECA – Agricultural Energy Consumers Association

CLFP – California League of Food Processors

CMTA – California Manufacturers and Technology Association

CFC - Consumer Federation of California

DisabRA - Disability Rights Advocates

DRA – Division of Ratepayer Advocates

DRA, *et al.* – DRA, DisabRA and LIF collectively

IP – Indicated Producers: BP Energy Company, Chevron U.S.A., Inc. and ConocoPhillips Company

Joint Applicants – PG&E, SoCalGas and SDG&E, the applicants in A.07-12-006

Joint Applicants and their supporters – Joint Applicants, AECA, CLFP, CMTA and IP collectively

LIF - Latino Issues Forum

PG&E – Pacific Gas and Electric Company

SDG&E - San Diego Gas and Electric Company

SoCalGas – Southern California Gas Company

TURN – The Utility Reform Network

B. *Glossary*

BCAP - Biennial Cost Allocation Proceeding- A Commission proceeding addressing natural gas issues, including cost allocation issues that could determine how certain base transportation revenues are allocated.

CARE - California Alternate Rates for Energy program - Legislatively-mandated, financial assistance program to help low-income electric and gas customers pay for their utility bills. *See* Cal. P.U. Code §§ 739.1, 739.2. The CARE participants receive a 20% discount on the utilities' core procurement rate and core transportation rate.

CICS – California Institute for Climate Solutions - New institute to research solutions for global warming that in D.08-04-039, the Commission required the utilities to fund with ratepayers' funds recovered through a surcharge on an ECPT basis.

Core – Natural gas public utility ratepayers, who are residential or who are commercial or industrial and choose to purchase natural gas from utilities.

Core aggregators – Marketers of natural gas, who sell gas to aggregated residential or small commercial customers, but who receive only transportation service from utilities.

Core procurement rate – Natural gas rate charged by utilities to their core ratepayers (except those served by core aggregators) that include the weighted average cost of gas (WACOG) and which may also include other charges, such as interstate pipeline reservation charges.

Core transportation rate – Natural gas transportation rate charged by the utilities to all of their core customers to recover their transportation cost of service, such as distribution costs, transmission costs, customer-related costs, and gas storage costs.

ECPT - Equal Cents Per Therm - The cost allocation methodology utilized by the Commission for the past 19 years to recover CARE's program costs (e.g., the 20% subsidy) and certain other public purpose program costs by spreading the costs equally over all non-CARE exempt customers.

EPBR - Equal Percent of Base Revenues - The Joint Applicants' proposal in the present proceeding, which would assign costs for all gas public purpose programs, including CARE, to individual classes of customers based upon the percentage allocation of gas transportation costs to them, such as in a BCAP.

EPMC- Equal Percentage of Marginal Cost - Similar proposal to EPBR to allocate the costs for CARE's predecessor, LIRA, based upon the percentage allocation of gas transportation costs that are expressed in terms of marginal cost revenues, but the Commission explicitly rejected this proposal as inappropriate, because EPMC assumes that every cost has a functionality that allows it to be attributable to a certain class. Low-income assistance benefits society in general.

EPTR – Equal Percent of Transportation Revenue- Similar proposal to the EPBR by basing allocation formula to recover CARE's program costs to the percentage allocation of transportation revenue requirements, but the Commission rejected this proposal in PG&E's recent 2005 BCAP.

Gas PPP – Natural gas public purpose program(s), which the State requires utilities to fund through a surcharge on their rates.

KWh – KiloWatt hour - Measurement of electricity at 1,000 watts per hour, which is used by the Commission to recover CARE's electricity subsidy in an equal cents per kWh surcharge.

LIEE – Low-Income Energy Efficiency – Statutorily-required public purpose program under which utilities provide energy efficiency measures to low-income customers. *See* Cal. P.U. Code § 2790.

LIRA – Low-Income Ratepayer Assistance - Predecessor program to CARE's program to provide financial assistance to the California utilities' low-income electric and gas customers to help them afford essential utility services.

Noncore - Natural gas public utility ratepayers, who are commercial or industrial and who choose not to purchase the natural gas commodity from utilities and only use their gas transportation services.

WACOG – Weighted Average Cost of Gas – Phrase used by utilities to reflect their cost of natural gas over a certain period of time, such as a month, which factors in the average cost considering the volumes purchased at different prices.

C. Natural Gas Measurement Terms

Btu – British thermal unit reflecting heat content

Dth - Decatherm – Volume of natural gas equivalent to ten therms or 1,000,000 Btus.

MMbtus – 1,000,000 Btus

Mth – 1,000 therms of natural gas

Therm – Volume of natural gas, which is sold or transported by utilities in California, which contains heat that equals 100,000 Btus

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of "**JOINT REPLY BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES, DISABILITY RIGHTS ADVOCATES AND LATINO ISSUES FORUM"** 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 at September 2, 2008 at San Francisco, California.

/s/ Nelly Sarmiento

NELLY SARMIENTO

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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