Decision 07-09-016 September 6, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Approval of Economic Development Rates.	Application 04-04-008 (Filed April 5, 2004) (Rehearing Granted May 25, 2006)
Application of Pacific Gas and Electric Company to Modify the Experimental Economic Development Rate (Schedule ED). (U 39 E)	Application 04-06-018 (Filed June 14, 2004) (Rehearing Granted May 25, 2006)
Application of Southern California Gas Company (U 904 G) for Approval of Long-Term Gas Transportation Agreement with Guardian Industries Corp.	Application 05-10-010 (Filed October 7, 2005) (Discount Issues)

DECISION REJECTING DISCOUNTING PUBLIC PURPOSE PROGRAMS

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DECISION REJECTING DISCOUNTING PUBLIC PURPOSE PROGRAMS

In Application (A.) 04-04-008, Southern California Edison Company (SCE) requested approval of its proposed economic development rate (EDR) tariffs. In A.04-06-018, Pacific Gas and Electric Company (PG&E) requested approval of its proposed electric EDR tariffs. On August 30, 2004, the Commission consolidated those two applications and the utilities subsequently submitted a joint EDR proposal (Joint Proposal). In Decision (D.) 05-09-018, the Commission approved the Joint Proposal, with modifications, for uniform EDR discount tariffs for SCE and PG&E. In D.06-05-042, the Commission granted limited rehearing to consider whether the floor price under the utilities' Joint Proposal should include public purpose program surcharges. The issue was: Could nonbypassable charges be discounted?

In D.06-04-002, in A.05-10-010, the Commission approved a long-term gas transportation agreement between Southern California Gas Company (SoCalGas) and Guardian Industries Corp. In that decision, one issue was whether gas public purpose program surcharges (G-PPPS) could be discounted to a ratepayer under Pub. Util. Code § 740.4[1] to prevent the ratepayer from relocating out of state or to encourage a prospective ratepayer to locate within the state. The decision noted the conflict between § 890, imposing a G-PPPS, and § 740.4(a), requiring an economic development program which permits rate discounts. The Commission ordered the application to remain open to consider whether the G-PPPS can be discounted.

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[1] All references to various statutes are to the Public Utilities Code unless otherwise noted.

By Administrative Law Judge's ruling on July 25, 2006, these three dockets were consolidated for decision.

The Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN), Aglet Consumer Alliance (Aglet), Consumer Federation of California (CFC), Utility Consumers' Action Network (UCAN), National Consumer Law Center (NCLC), the Greenlining Institute (Greenlining), Latino Issues Forum (LIF), Disability Rights Advocates, the California Citizens for Health Freedom, and the Environmental Center of San Luis Obispo (ECOSLO) (collectively the "Coalition to Protect Public Purpose Funding" or "Coalition") filed joint opening comments. Opening comments were filed by PG&E, the California Manufacturers and Technology Association (CMTA), the Merced and Modesto Irrigation Districts (the Irrigation Districts), SCE, and SoCalGas. All parties submitting opening comments submitted reply comments. In addition, the Alliance for Retail Energy Markets (AReM) submitted reply comments.

1. Background[2]

1.1. The Beginning of the California Alternate Rates for Energy (CARE) and EDR Programs

In 1988, the Legislature amended § 739 to require the Commission to institute a Low-Income Ratepayer Assistance (LIRA) program to provide financial assistance to the California utilities' low-income electric and gas customers to help them afford essential utility services. In D.89-09-044, 32

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2 We are indebted to the Coalition for its excellent review of the pertinent statutes, legislative history, Commission decisions, and chronology regarding discounting of public purpose programs.

CPUC 2d 406,417, the Commission provided that the utilities recover LIRA costs through a surcharge on volumetric rates (e.g., on an equal cents per kilowatt hour (kWh) basis), because the statute required that program costs not be borne by a single ratepayer class. In 1989, the Legislature added § 2790, which required low-income energy efficiency (LIEE) assistance, as well.

In 1991, § 740.4 was added, which authorized the Commission to approve economic development programs by the California utilities to benefit certain industries or business entities within boundaries of economic enterprise zones or incentive areas. Pursuant to § 740.4(g), the Commission may authorize rate discounts for such industries or businesses. However, in order for the Commission to approve the EDR discounts, § 740.4(h) requires the utility to demonstrate that the ratepayers of the utility will derive a benefit from the economic development programs.

In 1993, the Legislature changed the name of the LIRA program to the CARE program and authorized the energy utilities to offer discounts to "eligible facilities" where low-income ratepayers might be located. (*See* D.94-12-049, 58 CPUC 2d 278, 279.) These CARE program requirements are set forth in §§ 739.1 and 739.2.

When the California utilities first implemented EDR programs, which gave certain large business customers rate discounts pursuant to § 740.4, the utilities did not discount the LIRA or CARE surcharge. (S*ee, e.g.,* D.95-05-035, 59 CPUC 2d 717, 719, "Applicable federal, state, and local governmental agency fees or surcharges, including … the low-income surcharge …, are not subject to the rate discount.")

1.2. The Restructuring of the California Electric Market

In 1994, when the Commission began considering restructuring the electric industry in California into a more competitive market, it considered two alternative funding arrangements for the CARE program and other public benefit programs: using an end-user surcharge, which would subject all electricity consumers to the fee, or funding these types of programs through the state's general fund. (*See* D.94-12-029, 58 CPUC 2d at 287.) By the end of 1995, the Commission recognized that the CARE program, energy efficiency programs, and renewable energy programs would continue to be needed. However, subjecting the utilities to the costs of those programs in a more market-based electric services industry would not be a sustainable strategy if competitors did not bear those costs. (*See* D.95-12-063, 64 CPUC 2d 1, 69.) The Commission recommended a nonbypassable surcharge on all retail sales of electricity to fund those programs but deferred to the Legislature, since the programs had been created by statute. (*See id.*, 64 CPUC 2d at 69.)

Shortly before the enactment of the electric restructuring legislation, the Commission continued its practice of not allowing the utilities' EDR programs to discount the CARE surcharges and other mandated surcharges. In D.96-08-025, 67 CPUC 2d 297, 307, the Commission approved, with modifications, SCE's new EDR options, which provided "five years of rate discounts … applied to all charges on the customer's bill related to the eligible load, with the exception of mandated charges such as … the California Alternative Rates for Energy (CARE) surcharge, and any future public goods surcharge."[3]

In 1996, the Legislature restructured the electric market, and, among other things, added §§ 381 and 382. Section 381(a) requires electrical corporations to charge customers a nonbypassable surcharge to fund certain PPPs described in § 381(b) (i.e., energy efficiency activities, research and development, and operation and development of renewable resource technologies) and § 382 (i.e., the CARE and LIEE programs). Section 367 provided the utilities an opportunity to recover their uneconomic costs (stranded costs) and certain other costs through a competition transition charge (CTC). In their cost recovery plans, the electric utilities were required to separately identify individual rate components, such as energy, transmission, distribution, public benefit programs, and recovery of stranded costs. (*See* Pub. Util. Code § 368(b).) This separation was required to ensure that customers purchasing power from suppliers other than the utilities (direct access customers, or DA customers) pay the "same unbundled component charges, other than energy, that a bundled service customer pays." (Pub. Util. Code § 368(b).) Section 368(b) further states, "No cost shifting among customer classes, rate schedules, contract or tariff options shall result from the separation required by this subdivision."

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[3] The Commission found that a fair balance would be a 50-50 sharing between shareholders and ratepayers of net revenues from discounted sales. The Commission defined "net revenues" as revenues from increased sales, less all the costs of serving the increased sales customers, including "pass through costs." (See id., 67 CPUC 2d at 324.) These pass through costs included "the CARE surcharge, and any future public goods surcharges." (See id., 67 CPUC2d at 353, n.2.)

The Commission understood that under §§ 381 and 382, there was no discretion to discount the electric utilities' PPP surcharges. In D.97-09-047, 75 CPUC 2d 349, 353, the Commission stated, *"Discounting of* either the CTC or the *public purpose program charge is precluded by AB 1890* which specifies that these charges are *nonbypassable and must be recovered from all customers* (§§ 371(a) and 381(a).)" (Emphasis added.)

In 2000, the Legislature enacted the Reliable Electric Service Investments Act, which added §§ 399-399.9. Section 399.8(c)(1) extended the electric PPP surcharges to 2012, and § 399.9 clarified that the surcharges for funding the CARE and LIEE programs, referenced in § 382, shall continue.

1.3. The Gas PPP Surcharges

During 1997, the Commission was considering a surcharge to fully fund the natural gas utilities' public purpose programs (PPPs). In D.97-06-108, 73 CPUC 2d 298, 300, we decided to pursue legislation "to require all end-use customers to pay a nonbypassable gas surcharge to fund PPPs, such as energy efficiency and low-income assistance programs."[4]

In 2000, the Legislature added § 890, *et seq*. which mandated: (1) an unbundled natural gas PPP surcharge on all natural gas consumed in California (§§ 890(a) and (b)); (2) that the Commission annually establish a surcharge rate for each class of customers of the natural gas utilities (§ 890(c)); and (3) that the Commission inform the State Board of Equalization of the surcharge rate so that

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[4] We recognized that the natural gas utilities' customers, who were wholesale customers or utility electric generation (UEG) companies, should be exempt from the nonbypassable gas surcharge to the extent that they had their own PPP surcharges charged to their customers. (See Id., 73 CPUC 2d at 303.)

it may collect the same surcharge rate from customers of interstate pipelines (§§ 890(e)(g)-(i)).[5]

2. Positions of the Parties

The Coalition requests that the Commission find that under the statutory framework establishing the PPP surcharges set forth for California electric utilities in §§ 381, 382, 399-399.9, 739.1, and 739.2, and for California natural gas utilities in §§ 739.1, 739.2, and 890-899, the Commission must direct all California electric utilities and all California natural gas utilities to collect the statutorily-mandated PPP surcharges from each of their distribution customers. The only exceptions are the exemptions set forth in the statutory provisions establishing the PPP surcharges. The Commission should find that it does not have authority to provide additional exemptions or approve individually negotiated discounts. The statutory mandates for the funding of the electric and natural gas PPPs preclude the Commission from authorizing the utilities to provide exemptions or negotiate discounts to the PPP surcharges for the EDR customers under § 740.4.

PG&E agrees with the Coalition that the G-PPPS should not be discounted for individual customers, but it is appropriate for the Commission to create a new customer class for the purpose of setting a lower, incentive G-PPPS rate. In regard to electric rate discounts, PG&E argues that the Commission was authorized to discount nonbypassable charges in D.05-09-018. However, PG&E states that the Commission should issue certain findings of fact and a conclusion

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[5] There were also explicit exemptions from the natural gas PPP surcharge for certain specified customers (e.g., electric generators and municipalities, which have their own public purpose programs, and customers with grandfathered contractual arrangements). (See §§ 896 and 898).

of law conforming D.05-09-018 with the legal arrangements establishing the Department of Water Resources (DWR) recovery bonds.[6] PG&E argues that ratepayers, not shareholders, are the true beneficiaries of the EDRs. Like SCE, PG&E is willing to commit to allocating revenues received under the EDRs first to the nonbypassable components of the rate, and then to the distribution portion of the rate.

SCE agrees with the Coalition that nonbypassable charges should not be discounted. In SCE's accounting for the incremental EDR revenues the nonbypassable charges are fully funded first, with the discounts reflected in reduced contributions to the generation and distribution components. SCE asserts that the Commission can establish the floor price anywhere above the sum of the nonbypassable charges, and if this overall rate were to fall below total marginal costs, agrees that other ratepayers would be paying a customer to continue buying its energy in California. However, SCE contends that any contribution to the nonbypassable charges made by a customer that would otherwise leave the state is essentially equivalent to a contribution to margin. SCE believes the Commission can resolve the issue of not discounting the nonbypassable charges by maintaining its existing floor definition, but requiring the nonbypassable charges to be paid first as is SCE's current practice. While this could result in some negative margin for some distribution and generation

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[6] DWR issues bonds to purchase power to be sold to customers of electric utilities (Water Code § 80000, *et seq.*; Pub. Util. Code § 366.2(d)(1).) To protect the charges ratepayers pay to service bonds, Pub. Util. Code § 366.2(g)(2) provides: Charges imposed pursuant to [Pub. Util. Code § 366.2} subdivisions (d), (e), and (f) shall be nonbypassable.

components, this is well within the Commission's discretion and results in an overall ratepayer benefit.

SoCalGas takes the position that the Commission is authorized under §§ 890 and 740.4 to establish a competitive G-PPPS rate. It argues that § 890(e) further directs the Commission to "annually establish a surcharge rate for each class of customer for the service territory of each public utility gas corporation." The fact that § 890(e) instructs the Commission to adopt surcharge rates for "each customer class" plainly contemplates that class-specific rates will exist. SoCalGas reasons that the Commission can form a customer class consisting of Guardian and similarly-situated customers and authorize low G-PPPS rates which would not violate § 890. In SoCalGas' opinion, it is clear that the discretion under § 890 to set the amount of the surcharge applicable to individual customer classes rests with the Commission.

The Irrigation Districts support the Coalition's position. The Districts argue that discounting of nonbypassable charges is allowed only when the Legislature grants such authority. The Commission should not allow revenue from nonbypassable charges to be treated as contribution to margin, nor should the Commission grandfather EDR contracts entered into after D.05-09-018 regardless of any changes made in this rehearing phase. Lastly, there are shareholder benefits to EDR programs. Section 740.4(h) does not forbid the Commission to require utility shareholders to bear part of the cost of an EDR program.

CMTA supports discounting the PPP. It recommends forming a separate class of customers comprised of customers such as Guardian Industries taking service under a long-term service agreement with approved rate discounts. For this class, the Commission could establish a lower surcharge rate that would accommodate most of the rate discount authorized by the Commission, but not below marginal costs. Furthermore, CMTA urges the Commission to deal with the problem itself – the allocation of PPP costs – rather than just the symptom. CMTA requests us to undertake a comprehensive reevaluation of how PPP costs are allocated with the goal of reducing the economic burden that the current allocation method places on large customers.

AReM argues on behalf of direct access customers. AReM supports the floor rate methodology adopted in D.05-09-018, but argues that if the Commission decides on rehearing to include nonbypassable charges in the floor rate as provided in the Joint Proposal, it will be necessary to discount some or all of the nonbypassable charges for direct access customers that participate in the EDR program (or exempt such customers from such charges) to ensure that they receive the same overall rate discounts as similarly situated bundled customers. If the Commission concludes that it can discount some but not all of the nonbypassable charges, or that it does not have the authority to allow any discounts (or exemptions), then some other method should be utilized to ensure equivalent discounts for direct access customers. AReM is concerned that the EDR program will be discriminatory against DA customers and the competitive balance between the utilities and direct access providers would be disturbed, as the utilities would be able to attract DA customers back to bundled service. Lastly, to the extent any cost shifting or revenue shortfalls may result from the participation of DA customers in the program the utilities' shareholders should bear some of the costs.

3. Discussion

The pertinent statutes, case law, and final Commission decisions uniformly hold that PPP surcharges are nonbypassable and cannot be discounted.[7] Four statutes are involved in deciding the PPP surcharge issues: AB 2054 enacted in 1991 providing for economic development programs in § 740.4; AB 1890 enacted in 1996 providing, in pertinent parts, for PPP surcharges in §§ 381 and 382; AB 995 enacted in 2000 providing for electric PPP surcharges through 2012 in §§ 399-399.9; and AB 1002 enacted in 2000 providing for natural gas PPP surcharges in §§ 890-899.

We begin our review by referring to established principles of statutory interpretation. In analyzing different statutes which may cover the same subject, to the extent they conflict on any element, the Commission should strive to harmonize them by resolving any conflict with later enactments superseding earlier ones and more specific provisions taking precedence over more general ones. (*See, Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 310.) We summarized these principles recently:

> We look to the well-organized principles of statutory construction. The California Supreme Court has stated: "To interpret statutory language, the courts must ascertain the intent of the legislature so as to effectuate the purpose of the law." (*California Teachers Assn. v. Governing Bd. Of Rialto United School Dis.* (1997) 14 Cal.4th 627, 632.) In determining the legislature's intent, they are to "scrutinize the actual words of the statute giving them a plain and common sense

[7] The phrase "nonbypassable and cannot be discounted"is is a redundancy (also, a tautology). "Nonbypassable" means "cannot be discounted." Perhaps the Legislature should have footnoted each time it enacted "nonbypassable" with the phrase "and we mean it."

> meaning." *(People v. Vallodoli* (1996) 13 Cal.4th 590, 597.) "In construing a statute, a court may consider the consequences that would follow from a particular construction and will not readily imply an unreasonable legislative purpose. Therefore, a practical construction is preferred." *(California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1147.) "In analyzing statutory language, we seek to give meaning to every word and phrase in the statute to accomplish a result consistent with the legislative purpose. … " *(Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1159.) (D.03-09-021 at *mimeo.*, p. 63; D.01-11-031; D.04-04-020.)

We must therefore review the applicable code sections and determine the Legislature's intent from their plain words. We are to seek a reasonable and practical interpretation that accomplishes the Legislature's goals.

The objectives of the PPP surcharge go to the core of providing basic electricity and natural gas service in California. "Both the CPUC and the Legislature have recognized that electricity is an essential commodity. (Pub. Util. Code §§ 330(r), 391(a); D.97-10-087, p. 41; D.97-05-040, p. 49.) As an essential commodity that 'is of utmost importance to the safety, health, and welfare of the states' citizenry,' we intend to ensure that every residential energy consumer in California be able to afford the cost of electricity and natural gas." (D.99-10-065, 3 CPUC 3d 150, 185.) The Legislature's purpose in requiring all of the utilities' customers to pay nonbypassable PPP surcharges was to ensure funding for these essential public purpose programs. (*See,* Pub. Util. Code §§ 381(a), 382(a) and (b), 399(c) and (e), 399.4, 399.6, 399.7, 399.8, 399.9, 739.1(f), and 890(a), (b), and (e).)

The Coalition argues that the most equitable manner to fund the PPP is to have all customers contribute on an equal-cents-per-unit basis. The Coalition asserts that the risk to the funding and, by extension, the programs and the consumers and communities served by those programs, is that once this allocation is abandoned in favor of one that allows some customers to pay lesser amounts, there are only two possible outcomes – the funding level is reduced or the remaining customers pay more.

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 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. That is precisely why we recommended to the Legislature a nonbypassable surcharge on all retail sales of electricity to fund these programs. Otherwise, in a competitive market, they may not be sustainable. (*See* D.95-12-063, 64 CPUC 2d 1 at 69.)[8]

The plain language of §§ 381 and 399.8 confirms that the Commission is prohibited from discounting or exempting electric customers from the PPP surcharge. The specific language provides in § 381(a) that: "To ensure that funding for the programs described in subdivision (b) and section 382 are not commingled with other revenues, the C*ommission shall* require each electrical

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[8] An additional consequence is that large customers who do not get the discount will pay higher rates, thus actually subsidizing their competitors.

corporation to identify a *separate rate component* to collect the revenues used to fund these programs. The rate component *shall be a nonbypassable* element of the local distribution service and *collected on the basis of usage*." Pub. Util. Code § 381(a). (Emphasis added.)

Section 891(b) identified the programs, which would be funded by the nonbypassable charges as: (1) energy efficiency and conservation activities; (2) public interest research and development, and (3) new and emerging renewable resource technologies. Section 382(a) identified the additional programs, which would be funded by the nonbypassable charges as the LIEE and CARE programs.

Section 399.8(b)(1) provides that "*Every customer* of an electrical corporation, *shall* pay a *nonbypassable* system benefits charge authorized pursuant to this article. The system benefits charge *shall* fund energy efficiency, renewable energy, and research, development and demonstration." (Emphasis added.) And section 399.8(c)(1) states: "The commission *shall* require each electrical corporation to identify a *separate rate component* to collect revenues to fund energy efficiency, renewable energy, and research … through January 1, 2012. The rate component *shall* be a *nonbypassable* element of the local distribution service and *collected on the basis of usage.*" (Emphasis added.)

The term "nonbypassable" has been consistently interpreted by this Commission and state courts as meaning no exceptions. The California Supreme Court has recently affirmed that the term "nonbypassable" means that the surcharge has "to be paid to the utility whether the consumer bought power from the utility, [or] from a generator. … " (*Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781 at 788.) This Supreme Court case is consistent with Commission decisions finding that no exemptions exist to the electric PPP surcharge because, simply stated, no exemptions are set forth in the statute. (*See* D.99-10-058, 3 CPUC 3d 72, 81.[9]) A customer is not entitled to an exemption from this charge even if a customer opts to buy its energy from a non-utility source. In D.03-07-030, we reaffirmed that in addition to "the nonbypassable charges that were part of R.02-01-011, DA customers are still responsible for other charges, including Public Purpose Program Charge, Nuclear Decommissioning Charge and Trust Transfer Amount (TTA) for DA customers under 20 kW." (D.03-07-030 at *mimeo.*, p. 5.)

The PPP surcharge has been deemed so important that customers must still pay this surcharge even when customers leave the distribution system by relying upon "distributed generation." "California law dictates that exiting the public electric network does not end a customer's responsibility to provide financial support for public purpose programs. In particular, Pub. Util. Code §§ 381-382 make low-income and certain other public interest programs 'nonbypassable.' As implemented, customers departing for distributed generation must continue to pay for these programs, thereby avoiding unwarranted cost shifts to other ratepayers." (*See* D.03-02-068, *mimeo.,* p. 45). Again, the term "nonbypassable" is interpreted as meaning no exceptions.

The statutory term "nonbypassable" has been consistently interpreted by this Commission to mean "nondiscountable." In D.97-09-047, 75 CPUC 2d 349

[9] "In this case, we must construe § 374 within the context of AB 1890 and the intent of electrical restructuring … Sections 379, 381, and 382 were added to the Pub. Util. Code at the same time as § 374(b) – all as part of AB 1890. They impose nonbypassable charges on all electric customers, regardless of whether they take service in a bundled or unbundled manner. On their face, they provide for no exceptions to this general rule … " (D.99-10-058, 3 CPUC 3d 72, 81.)

at 353, we said "Discounting of either the CTC or the public purpose program charge is precluded by AB 1890 which specifies that these charges are nonbypassable and must be recovered from all customers. … we are statutorily required to ensure that both the CTC and public benefit programs charge components of the energy bill are collected on a nonbypassable basis. This *precludes any discounting* of these elements." (*Id.* at 359.) (Emphasis added.)

In Resolution E-3650, 2000 Cal. PUC LEXIS 424 at *74, Finding No. 39, we said "AB 1890 and Commission decisions require that utility rates be unbundled into their respective components and that the utilities are legally precluded from discounting the energy, public purpose, or competitive transition charge portion of their bills."

3.1. Applicability of § 740.4

Section 740.4 authorizes discounts to encourage economic development.

> 740.4.(a) The commission shall authorize public utilities to engage in programs to encourage economic development.
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> (b) Reasonable expenses for economic development programs, as specified in this section, shall be allowed, to the extent of ratepayer benefit, when setting rates to be charged by public utilities electing to initiate these programs.
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> (c) Economic development activities may include, but not be limited to, the following:
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> (1) Community marketing and development.
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> (2) Technical assistance to support technology transfer.
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> (3) Market research.
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> (4) Site inventories.

> (5) Industrial and commercial expansion and relocation assistance.
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> (6) Business retention and recruitment.
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> (7) Management assistance.
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> (h) It is the intent of the Legislature that the Public Utilities Commission, in implementing this chapter, shall allow rate recovery of expenses and rate discounts supporting economic development programs within the geographic area served by any public utility to the extent the utility incurring or proposing to incur those expenses and rate discounts demonstrates that the ratepayers of the public utility will derive a benefit from those programs. Further, it is the intent of the Legislature that expenses for economic development programs incurred prior to the effective date of this chapter, which have not been previously authorized to be recovered in rates, shall not be subject to rate recovery.

We emphasize that § 740.4(h) requires the Commission to allow recovery through rates of expenses and rate discounts supporting economic development programs to the extent that ratepayers "derive a benefit from those programs."

The Coalition argues that § 740.4 is a general provision that has been superseded by more specific ones. The utilities argue that the Coalition is wrong to dismiss the importance of § 740.4. They say that § 740.4 is precisely applicable to the Commission's actions in D.05-09-018. It is the controlling statutory provision that authorizes the Commission's actions in approving economic development programs and rates, and speaks specifically to the conditions under which rate discounts are to be allowed. The fact that this provision predates the other statutory provisions at issue here, shapes how those later provisions are to be read, not the reverse. PG&E cites the established principle of law that "it is not to be presumed that the legislature in the enactment of statutes intends to overthrow long-established principles of law unless that intention is made clearly to appear either by express declaration or by necessary implication." *(Regency Outdoor Advertising v. City of Los Angeles,* 2006 Cal. LEXIS 9499, *35 (2006); *Torres v. Automobile Club of Southern California,* 15 Cal. 4th 771, 779 (1997).) PG&E concludes that given the long-established policy of California to allow rate discounts, the subsequent statutory provisions creating new charges would thus need to expressly declare that the discounting of such charges should not be allowed or it must be the statutes' necessary implications. PG&E believes none of the statutes makes such an express declaration, nor is it the necessary implication that such statutes must be read in such a way.

The Coalition in reply cites another well-established principle relied on in a case where the Commission rejected a request by the Bay Area Rapid Transit for exemption from PPP surcharges. The Commission found the PPP surcharges resulted from specific provisions which cannot be avoided. We explained: "It is a well established rule of statutory construction that a specific provision relating to a particular subject will take precedence over a more general provision, even if that general provision could be construed broadly to include that subject." (D.99-10-058, 3 CPUC 3d 72 at 83, *citing, San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 577; *Rose v. State of California* (1942) 19 Cal.2d 713, 723-724.)

We agree with the Coalition. The specific provisions relating to the public purpose programs – statutory language that states they are nonbypassable – must take precedence over the more general discount language of § 740.4.

Our holding in no way diminishes the salutary objective of § 740.4. We can still approve rate discounts to attract and retain business. We can discount other portions of the rate: distribution and generation; we can modify tariff requirements; but we cannot discount nonbypassable charges (nor any other components of service prohibited by law). We note that SCE and PG&E in their original application in A.04-04-008 and A.04-06-018 did not propose discounting nonbypassable charges.

3.2. The Gas Public Purpose Program Surcharge

We kept SoCalGas' A.05-10-010 open to consider whether the G-PPPS can be discounted. Comments were filed by SoCalGas, SCE, PG&E, CMTA, Merced Irrigation District, and the Coalition. The only issue is whether the G-PPPS can be discounted, and all parties agree that the G-PPPS cannot be discounted.

No party argued that the Commission has authority to discount the Guardian-PPPS. To the contrary, they either explicitly or implicitly said that the Commission cannot discount the G-PPPS. PG&E stated that "the Commission is not permitted to discount the G-PPPS"[10] and "the G-PPPS constitutes a tax that the Commission does not have legal authority to discount."[11] PG&E further stated, "while the Commission has no authority to discount G-PPPS for a single customer, the Commission is vested with the authority to set G-PPPS rates by customer class."[12]

Even SoCalGas, the applicant in A.05-10-010, reversed its position that the Commission can discount the G-PPPS. In its initial application filed on

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[10] PG&E's Opening Comments, page 2.

[11] *Id*. at 5.

[12] *Id*. at 6.

October 7, 2005, SoCalGas wanted Commission approval for a "Five-year declining discount to the Public Purpose Program Surcharge."[13] However, in its comments in this rehearing, SoCalGas no longer requests that the Commission provide Guardian Industries with a discount to the G-PPPS. Instead, SoCalGas states that "it is clear that the discretion under § 890 to set the amount of the surcharge applicable to individual customer classes rests squarely with the Commission."[14]

PG&E agrees with the Coalition that the Commission has no authority to approve a single-customer discount of G-PPPS. PG&E argues that the G-PPPS constitutes a tax. It says Assembly Bill (AB) 1002 (§ 890 *et seq.*) -- the genesis of G-PPPS -- was a tax equity measure to collect funds from entities that were taking service from interstate pipelines, rather than from the California utilities. Gas consumed by customers who are exempt from taxation under the United States Constitution or the California Constitution also are exempt from paying G-PPPS. G-PPPS funds are remitted to the California Board of Equalization (BOE) and deposited in the State Treasury. The BOE treats G-PPPS as an excise tax. In short, PG&E asserts no party has disputed that AB 1002 was specifically enacted as a tax; as a tax, the Commission has no authority to approve a single-customer discount of G-PPPS.

PG&E points out that while the Commission has no authority to discount G-PPPS for a single customer, the Commission is vested with the authority to set

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[13] Application of Southern California Gas Company for Approval of a Long-Term Gas Transportation Agreement with Guardian Industries, A.05-10-010, page 3.

[14] SoCalGas' Opening Comments, page 5.

G-PPPS rates by customer class. (Pub. Util. Code § 890(e) [The Commission shall annually establish a surcharge rate for each class of customer for the service territory of each public utility gas corporation.]) Other parties acknowledge this authority. For example, CMTA argues that:

> [T]he Commission has discretion under Section 890(e) to determine how to allocate PPP costs among various classes of consumers. The Commission also has discretion to create a class of customers comprised of customers such as Guardian Industries taking service under a long-term service agreement with approved rate discounts. For this class, the Commission could establish a lower surcharge rate that would accommodate most of the rate discount authorized by the Commission. (CMTA, Comments, page 2.)

SoCalGas supports the creation of a new customer class for end-use customers that would otherwise leave California and consequently provide no contribution to public purpose programs or to any fixed costs. It argues that the discretion under § 890 to set the amount of the surcharge applicable to individual customer classes rests with the Commission. Approval of a competitive G-PPPS rate for customers such as Guardian that would otherwise relocate out-of-state and make no contribution to these costs is entirely in keeping with § 890's objective of distributing the cost of social programs and maximizing the contribution toward these costs.

The Coalition opposes creating a separate subclass. Regardless, it argues that the Commission cannot set G-PPPS class rates in this proceeding, because the parties have not been given notice, a chance to gather facts, provide testimony, or conduct hearings. We agree with the Coalition that we cannot define the parameters of a new subclass to receive a lower G-PPPS in this proceeding. It is beyond the scope of the rehearings and there is no record on which to construct the subclass. But we do wish to note some practical problems should there be an application to create a subclass.

One proposal is that the class should consist of "similarly-situated customers." Similarly situated customers are those "that would otherwise relocate out-of-state and make no contribution to these costs." (SoCalGas Opening Comments, page 5.) Another proposal is that an end-user getting the discount must show that "it contributes to the California economy by providing jobs, purchasing from California based suppliers, and contributing sales and property taxes." (PG&E Opening Comments, page 6.) Every business in California meets PG&E's standard. As to SoCalGas' standard, because many states do not have the public purpose programs that California has, any business could argue that the G-PPPS is a burden relative to other states and threaten an exodus. Such classification is very broad and probably includes the entire current noncore industrial class, if not more.

We conclude that we do not have the authority to discount the G-PPPS, but we do have the authority to create a new class of customers. However, the record in this proceeding is devoid of evidence to create a new customer class.

In A.05-10-010, SoCalGas sought approval of a long-term discount gas transportation agreement with Guardian. Discounting the G-PPPS was a central issue. We found that the bypass threat involved in A.05-10-010 was imminent, and that a discount from SoCalGas' otherwise applicable tariff was needed to prevent Guardian from relocating out-of-state. Rather than specifically discounting the G-PPPS, we authorized a discount that was the dollar equivalent of the discount proposed by SoCalGas and ordered SoCalGas to establish a memorandum account to track the payments made by Guardian and the shortfall from the otherwise applicable tariff.

Because the issue was so important, we ordered that A.05-10-010 remain open to consider whether the Guardian PPPS can be discounted, and we directed the presiding ALJ to request comments from interested parties regarding Commission authority to discount the G-PPPS.

We voiced our concerns:

> No party disputed the need for a discount rate to prevent Guardian from relocating its business out-of-state. However, given the conflict between the legislative demand to protect the PPPS and the legislative demand to encourage economic development … we are reluctant to resolve the jurisdictional issue raised by DRA on a record limited to one utility and one customer. This issue affects all other gas utilities in the State, especially PG&E, and all large gas users, who should be given the opportunity to be heard. Therefore, we will bifurcate this application. We will authorize a rate discount equivalent to the discount proposed by SoCalGas and Guardian, but we will not allocate that discount to the component parts of the rate. That allocation will be made in phase two of this application where we shall invite input from a broader class of interested parties. Should we decide that we should not discount the PPPS, we are prepared, in this application, to discount the transportation rate below marginal costs. Regardless of our ultimate choice, neither SoCalGas nor the PPPS will be adversely affected because § 740.4(h) provides that any shortfall of revenue will be recovered from all ratepayers. (D.06-04-002, *mimeo.*, pp. 8-9.)

PG&E observes that for customers such as Guardian, the Commission could authorize a discount to the transportation rate to below long run marginal costs (LRMC) rather than modifying the current G-PPPS rate. However, SoCalGas notes it is unaware of any Commission precedent supporting the discounting of the transportation rate below LRMC in a given year. Applying the discount entirely to the transportation rate component, rather than at least in part to the G-PPPS, will not address the underlying problem of excessive surcharge amounts being included in utility rates and will serve only to send inappropriate price signals to the market.

We have received and considered the comments. As we have found that we cannot discount the G-PPPS, we must modify D.06-04-002 to clarify its holding. Because we have already approved the Guardian discount in a decision where we said we would discount the transportation rate below marginal costs, we are left with no alternative but to approve the SoCalGas-Guardian Long-Term Gas Transportation Agreement and order SoCalGas to allocate the discount to the transportation rate, fixed charges, and fees.

3.3. D.06-05-042 Issues and Answers

In our rehearing decision D.06-05-042, we asked the parties to comment on a variety of issues connected to discounting rates. The parties have responded as discussed above, and based on those responses we resolve the issues as follows:

1. Is it necessary to exclude some or all nonbypassable charges from the floor price in order to provide the level of EDR discounts adopted in D.05-09-018?

No. It is unlawful to exclude nonbypassable charges from the price floor. Based on the evidence submitted during the hearing, the discounts can be applied to the distribution and generation rate components to achieve the level of discounts adopted in D.05-09-018. Any calculation of a rate discount is customer-specific and beyond the scope of this proceeding.

2. Can the Commission discount any nonbypassable charges?

No. All nonbypassable charges are nondiscountable.

3. For each individual nonbypassable charge, address whether exemptions or exceptions for EDR customers are permissible under the applicable statutes and Commission decisions.

PPP surcharge: No exemptions or exceptions for EDR customers are permissible under applicable statutes and Commission decisions.

DWR charges: The Commission cannot exempt EDR customers from the payment of the DWR power charge and bond charge. The language of § 366.2(d)(1) is clear on this point. "It is the intention of the Legislature that each retail end-use customer that has purchased power from an electrical corporation on or after February 1, 2001, should bear a fair share of the Department of Water Resources' electricity purchase costs, as well as electricity purchase contract obligations … . It is further the intent of the Legislature to prevent any shifting of recoverable costs between customers." (Pub. Util. Code § 366.2(d)(1).) The statute gives us authority to make the "determination of what the 'fair share' should be."[15]

CTC charge: The Commission is not authorized to exempt EDR customers from the CTC charge or to discount the CTC charge under § 740.4.

"PG&E is only allowed to discount the distribution component of a customer's bill. PG&E is not allowed to discount the energy, CTC, public purpose program charge, or transmission components … . Discounting of either the CTC or the public purpose program charge is precluded by AB 1890 which specifies that these charges are nonbypassable and must be recovered from all customers." (D.97-09-047, 75 CPUC 2d 349 at 353.)

Nuclear Decommissioning Charge: The nuclear decommissioning charge set forth in § 379 is nonbypassable. Section 379 provides, in pertinent part, that the "Nuclear decommissioning costs … shall be recovered as a nonbypassable

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15 D.03-05-039, 2003 Cal. PUC LEXIS 307, *10.

charge until the time as the costs are fully recovered. (Pub. Util. Code § 379, emphasis added.)

4. What nonbypassable charges are subject to exception upon a Commission finding that there will be no cost shifting?

None.

a. Parties advocating exception from payment of such nonbypassable charges must submit a showing to demonstrate why cost shifting would not occur (e.g., does customer retention in fact produce benefits that would offset any shifting of costs to other customer classes?

Exceptions from the payment of nonbypassable charges are precluded by law.

b. Do any of the benefits of retaining EDR customers accrue to shareholders? If so, how should this be considered when determining cost-shifting?

In 2000, the Commission noted the strategic competitive advantages associated with attracting new customers. (Resolution E-3654, 2000 Cal. PUC LEXIS 420, Findings 14, 18, and 19.) EDR discounts benefit shareholders by maintaining or increasing customer base and market share. EDR price advantages assist utility efforts to compete for customers at the borders of their service territories, for example against irrigation districts that might serve existing utility customers. EDR discounts help promote alliances with local business communities, which could assist utility political efforts, for example opposition to municipalization initiatives. Shareholders as well as ratepayers obtain the benefits of the EDR customers. The consideration of benefits accruing to shareholders should result in some allocation of costs to the utility, but this record does not support a finding of a particular percent.

5. Can EDR program levels under Decision 05-09-018 be achieved by applying the discount to bill components other than nonbypassable charges? Are there any statutory restrictions to applying the EDR discount to the other bill components?

The EDR discounts approved in D.05-09-018 can be achieved by applying the discounts to the distribution and generation rate components. There are no statutory restrictions to applying the EDR discount to the other bill components.

a. What would be the resulting allocation of program costs?

Section 740.4(h) allocates the shortfall to the ratepayers, but we are not prohibited from allocating some of the costs of any undercollection to the shareholders.

b. Would applying the discount to the other bill components (e.g., distribution and transmission) result in zero or negative margin to those charges? If so, by how much (expressed as a percentage)? How should this shortfall be allocated among the remaining customer classes?

Based on the evidence presented in this proceeding, discounts could be applied to the distribution, transportation, and generation component of a rate without impacting marginal costs. However, in D.06-04-002 we permitted a discount which was less than LRMC. This record is not adequate to determine the extent of the negative margin. The shortfall was allocated to the ratepayers. (D.06-04-002, *mimeo.*, p. 10.) This allocation is not necessarily an exclusive ratepayer burden. We have the discretion to allocate all, or some portion, of the shortfall to shareholders, depending on the facts of a particular application.

c. What benefits accrue to remaining customers that offset any shortfalls?

1) Approval of a discount could prevent the out-of-state relocation of a California employer and would preserve jobs. State and local communities gain

from the economic growth generated by business activity, low unemployment, and maintenance of stable tax bases.

2) The amount that the retained business will pay are funds that would not otherwise be collected and will not be collected if the business elects to leave California.

3.4. Modification of D.05-09-018

The operative section of D.05-09-018 that concerns us is the Amended Proposal that sets forth the conditions for receiving the EDR rate and the conditions for determining the EDR rate. The entire Amended Proposal is:

1. This decision accepts an amended version of the utilities' Joint Proposal, as outlined below:[16]

Issue	Amended Proposal
Eligibility Test	"But-for" test, as proposed by SCE and described in Exhibit 2, p. 3.
Sunset Date	December 31, 2009.
Program Cap	100 MW as proposed by SCE, clarifying that the cap would apply at any point in time for active contracts, based on contract demand.
Liquidated Damages	For misrepresentation or fraud, liquidated damages equal to 200% of the cumulative differences between (i) the bills calculated under the ED rate to the date of termination and (ii) bills calculated under the OAT. For other cases of early termination (excepting business closure or reduction of load without relocation), liquidated damages equal to the cumulative

[16] The Amended Proposal is almost identical to the Joint Proposal of the utilities except that some language has been stricken from and added to the Joint Proposal. The stricken language has been left in the tables but has a line through it while the added language has been underlined.

Issue	Amended Proposal
	differences between (i) the bills calculated under the ED rate to the date of termination and (ii) bills calculated under the OAT less 15%, plus interest on that difference at the 90-day commercial paper rate. (The OAT less 15% figure was chosen because it reflects the average incentive expected over the life of the contract.)
Form of Affidavit	Separate from contract as proposed by PG&E, except that it would be modified to reflect the "but for" test and would include the following statement: "On an annual basis, the cost of electricity for [Company Name] at this facility represents approximately [Number] % of operating costs."
3rd Party Review	Office of California Business Investment Services (CalBIS) to perform preliminary review under supervision of the California Business, Transportation and Housing Agency (BTH), with the utility performing final review and determination. Approval by CalBIS is "necessary but not sufficient" for eligibility.
Eligible Customers	All customers above 200 kW, except state and local government and residential customers. Offer of rate at utility discretion.
Calculation of Incentives for Bundled Customers	Incentive calculated on total OAT ~~and, for ratemaking purposes, reflected in the utility-retained generation and distribution revenues only~~.
Calculation of Incentives for Community Choice Aggregation (CCA) and Direct Access (DA) Customers	Equivalent incentive for DA and CCA customers, based on using bundled-service customer's generation cost as a proxy.
Floor Pricing and Marginal Costs	Limit the discount to ensure revenue does not fall below floor price, which consists of ~~transmission charges, public purpose program (PPP) charges, nuclear decommissioning (ND) charges, DWR Bond charges, Competition Transition~~

Issue	Amended Proposal
	~~Charge (CTC),~~ marginal costs for transmission, distribution, and, if a bundled-service customer, marginal costs for generation. Floor price to be based on customer-specific marginal costs, up to the OAT. Unit marginal costs to be established at beginning of customer contract.
Shareholder Contributions	None

The Findings of Fact of D.05-09-018 need no modification, but Conclusion of Law 2:

> 2. The rate reductions and procedures requested by the applicants and as modified herein have been justified. (Pub. Util. Code § 454(a).)

should be stricken.

We modify the Amended Proposal by changing the description of Floor Pricing and Marginal Costs by removing the stricken language. The new language is:

> Limit the discount to ensure revenue does not fall below floor price, which consists of transmission charges, public purpose program (PPP) charges, nuclear decommissioning (ND) charges, DWR Bond charges, Competition Transition Charge (CTC), marginal costs for transmission, distribution, and, if a bundled-service customer, marginal costs for generation. Floor price to be based on customer-specific marginal costs, up to the OAT. Unit marginal costs to be established at beginning of customer contract.

We strike Conclusion of Law 2 in D.05-09-018 and replace it with a new Conclusion of Law approving the Joint Proposal as modified by this decision. In D.06-05-042, we recognized the need to modify the rate structure approved in D.05-09-018 to conform that rate structure to the law, should we determine that PPP surcharges could not be discounted. Ordering Paragraph 5 of D.06-05-042 found that "EDR charges under D.05-09-018 shall continue, subject to adjustment pending conclusion of the limited rehearing." (D.06-05-042, *mimeo.,* at page 11.) Our authority is based on § 1736, which provides, "If, after rehearing and a consideration of all the facts, … the commission is of the opinion that the original order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change, or modify it." (Pub. Util. Code § 1736.)

With respect to the specific customers that may be impacted by any resulting rate change, SCE claims that parties have acted in good faith reliance on the rate structure approved in D.05-09-018 and, as such, those executed contracts should not be disturbed. The Coalition points out that SCE's EDR contract contains a specific provision advising customers that rates therein are subject to change by the Commission. "This Agreement shall at all times be subject to such changes or modification by the Commission as said Commission may, from time to time, direct in the exercise of its jurisdiction." (SCE Form 14-758, Advice Letter 1918-A, effective Oct. 3, 2005.) While we agree with SCE that parties acted in good faith when they relied on D.05-09-018, we conclude that they had ample notice that the rate structures approved therein were subject to change.

Outstanding contracts will be modified to include all nonbypassable charges in the floor price on a going-forward basis. This means that for outstanding contracts where the current rate is more than the sum of the public purpose program charges, nuclear decommissioning charges, DWR Bond charges, and the Competition Transition Charge, no change in rate is necessary. If the negotiated rate of any outstanding EDR contract is insufficient to fully fund the nonbypassable components, the rate will increase to cover the difference. For the outstanding contracts, the past amounts paid to the IOUs will be reallocated so that NBC's are paid first, and the discounts applied to the distribution and generation components. If the past amounts paid are insufficient to cover the NBCs, then shareholders will make up the shortfall. For outstanding contracts, if, after reallocation to cover all NBCs, past amounts paid result in a negative margin, it will be recovered from ratepayers.

3.5. Modification of D.06-04-002

In D.06-04-002 we ordered that the application was to remain open to consider whether the G-PPPS can be discounted and, after receiving comments, allocate the discount among its component parts. (D.06-04-002, Conclusions of Law 2 and 3.) Having decided that we cannot discount the G-PPPS, we allocate the discount to the transportation rate, fixed charges, and fees. Any shortfall should be recovered from the ratepayers.

D.06-04-002 is modified to add the following Findings of Fact:

1. The G-PPPS cannot be discounted.
2. SoCalGas may discount to Guardian its transportation rate, fixed charges, and fees.

4. Comments on Alternate Proposed Decision

Comments on the Proposed and Alternate Decisions were timely filed on August 13, 2007 by DRA, Niagara Bottling, LLC, PG&E, SCE, and SoCalGas. Reply comments were timely filed by SoCalGas, SCE, PG&E, Niagara Bottling LLC, and Merced Irrigation District on August 20, 2007. Reply comments were also timely filed by DRA on August 17, 2007.

In its comments and reply comments PG&E urges the Commission to continue to exclude nonbypassables from the price floor and argues that in doing so the Commission will actually increase the total amount of NBC charge revenues collected by increasing the total number of EDR contracts. PG&E also asserts, however, that NBC revenues are presently being fully collected. PG&E

does not persuasively demonstrate how NBCs can be excluded from the price floor and fully funded at the same time. Today's decision simply mandates what PG&E and SCE say they are already doing -- that is fully funding all NBCs for each EDR contract each month.

SCE, Niagara and other customers benefitting from EDR contracts argue that it would be unfair to retroactively eliminate discounts that were offered as a result of D.05-09-018. We agree that existing EDR customers relied on EDR contracts in making long-term business decisions to stay in California and should continue to benefit from existing negotiated rates. However customers that so relied should be indifferent to whether that discount is taken out of the distribution and transmission components or the nonbypassable charges.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. All nonbypassable charges are nondiscountable.
2. There are no exemptions or exceptions for nonbypassable charges other than those specifically described in a statute.
3. Economic discount rates must have a floor of all nonbypassable charges.
4. Some benefits of retaining EDR customers accrue to shareholders.
5. There are no statutory restrictions to applying the EDR discount to all bill components other than nonbypassable charges.
6. In the Amended Proposal in D.05-09-018, the description of Floor Pricing and Marginal Costs is modified to read:

> Limit the discount to ensure revenue does not fall below floor price, which consists of transmission charges, PPP charges, ND

> charges, DWR Bond charges, CTC, marginal costs for transmission, distribution, and, if a bundled-service customer, marginal costs for generation. Floor price to be based on customer-specific marginal costs, up to the OAT. Unit marginal costs to be established at beginning of customer contract.

7. The modification adopted in this decision regarding electric economic development rates does not result in any inequity in EDR discount amounts between direct access and bundled customers.

8. D.06-04-002 is modified to add the following Findings of Fact:

   a) The G-PPPS cannot be discounted.

   b) SoCalGas may discount to Guardian its transportation rate, fixed charges, and fees.

Conclusions of Law

1. All nonbypassable charges are nondiscountable.

2. It is unlawful to exclude nonbypassable charges from the price floor.

3. No exemptions or exceptions for EDR customers are permissible under applicable statutes and Commission decisions for PPP surcharges, DWR charges, CTC charges, and Nuclear Decommissioning charges.

4. Nonbypassable charges are not subject to exception upon a Commission finding that there will be no cost shifting.

5. Shareholders as well as ratepayers obtain the benefits of the EDR customers.

6. We strike Conclusion of Law 2 in D.05-09-018 stating:

> The rate reductions and procedures requested by the applicants and as modified herein have been justified. (Pub. Util. Code § 54(a).)

7. The rate reductions and procedures as modified herein have been justified.

8. This Commission does not have the authority to discount the G-PPPS, but we do have the authority to create a new class of customers. However, the record in this proceeding is devoid of evidence to create a new customer class.

O R D E R

IT IS ORDERED that:

1. The economic development rates (EDR) approved in Decision (D.) 05-09-018 are modified as follows:

> The description of Floor Pricing and Marginal Costs is:
>
> Limit the discount to ensure revenue does not fall below floor price, which consists of transmission charges, public purpose program (PPP) charges, nuclear decommissioning (ND) charges, DWR Bond charges, Competition Transition Charge (CTC), marginal costs for transmission, distribution, and, if a bundled-service customer, marginal costs for generation. Floor price to be based on customer-specific marginal costs, up to the OAT. Unit marginal costs to be established at beginning of customer contract.

2. Outstanding EDR contracts shall be modified to include all nonbypassable charge components in the floor price on a going-forward basis. For past amounts paid under outstanding contracts, the funds collected will be reallocated so that NBC's are paid first, and the discounts applied to the distribution and generation components.

3. Southern California Edison Company and Pacific Gas and Electric shall file tariffs consistent with the EDR program adopted herein within 15 days of the effective date of this decision, and agreements as they are entered into. These tariffs shall be effective upon filing, subject to confirmation of compliance by the Energy Division.

4. D.06-04-002 is modified to add the following Findings of Fact:

a) The G-PPPS cannot be discounted.

b) Southern California Gas Company may discount to Guardian its transportation rate, fixed charges, and fees.

5. As modified by this decision, D.05-09-018 and D.06-04-002 are approved. Application (A.) 04-04-008, A.04-06-018, and A.05-10-010 are closed.

This order is effective today.

Dated September 6, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

I reserve the right to file a concurrence.

/s/ JOHN A. BOHN