BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of Economic Development Rate for 2013-2017. (U39E)	A.12-03-001 (Filed March 1, 2012)

CONCURRENT DIRECT TESTIMONY OF MERCED IRRIGATION DISTRICT AND MODESTO IRRIGATION DISTRICT

August 24, 2012

{00953494}

CONCURRENT DIRECT TESTIMONY OF
MERCED IRRIGATION DISTRICT
AND MODESTO IRRIGATION DISTRICT

SUBJECT MATTER INDEX

SUBJECT	PAGE
CHAPTER 1: INTRODUCTION	1
A. Summary of Position (Witnesses: Kimball /Ouchley)	1
1. Any Economic Development Rate Should Benefit Ratepayers	1
2. Summary of Recommendations	2
B. Legal Issues	2
C. Organization of Remainder of Testimony	3
CHAPTER 2: MERCED ID ELECTRIC SERVICE	5
A. Authority and Area Where Merced ID Provides Electric Service	5
1. Merced ID is a California Irrigation District	5
2. Merced ID's Electric Service Territory	5
3. Merced ID's Generation, Sales, and Distribution Services	6
4. Merced ID's Economic Development Efforts	6
B. Scope of Merced ID Electric Service	6
CHAPTER 3: MODESTO ID ELECTRIC SERVICE	8
A. Authority and Areas Where Modesto ID Provides Electric Service	8
1. Modesto ID is a California Irrigation District	8
2. Modesto ID's Historic Electric Service Territory	8
3. The Joint Electric Distribution Service Area Where Modesto ID and PG&E Compete	8
4. Modesto ID's Economic Development Efforts	9
B. Scope of Modesto ID Service	10

{00953494}

CHAPTER 4: POLICY ISSUES ASSOCIATED WITH THE NEED FOR ED RATE REDUCTIONS ... 11

1. Will the proposed EDR Option attract, retain and encourage expansion of companies and reduce unemployment in PG&E's service territory? ... 11
2. Should the Commission continue to require that the EDR maintain the floor price program component that was established in 2005 and modified in 2007? ... 11
3. Is PG&E's proposal to allow a negative distribution rate consistent with the Commission's existing policy? ... 13
4. Does the proposed EDR result in discounts to Non-Bypassable Charges if it results in negative distribution rates for some customers? ... 14
5. Is the proposed EDR competitively neutral with respect to Community Choice Aggregators, Energy Service Providers and irrigation Districts (IDs)? If not, in what respects is the proposed EDR not competitively neutral and how may competitive neutrality be achieved? ... 15
6. Does the proposed EDR (either standard or enhanced) favor large businesses and thereby inadvertently exclude small and medium sized businesses? Should there be a percentage quota established across business category types who enroll in the EDR? ... 17

CHAPTER 5: PROGRAM DESIGN ISSUES ... 18

1. Are the proposed 12% and 35% EDR discount rates the most appropriate discount rates? ... 18
2. Should the Commission remove the 200 MW participation cap it currently requires as an element of PG&E's current EDR? ... 19
3. Should the Commission modify the EDR participation verification requirements by eliminating the current requirement that the Office of California Business Investment Services conduct an independent evaluation of a customer's eligibility for Economic Development Rates? ... 19
4. Should the Commission establish a requirement that all EDR Agreements must contain a provision that requires cost-effective conservation or other equivalent demand -side management and load reduction discussions between PG&E and the applicant? Should any post discussion actions be required? ... 20
5. Should potential EDR customers be required to demonstrate that electricity makes up a threshold percentage of operating costs in order to qualify for the EDR discount? ... 21
6. Is there value in the current requirement that the "Customer Affidavit" be signed "under penalty of perjury" in attesting that but for this rate, the business would not expand, stay in, or come to California? ... 21
7. Should the enhanced EDR option be for a more limited or a different term than the standard EDR option? ... 22

8. Should there be a limit on the number of times that a customer's EDR participation may be extended for another term? 25

9. What provisions of an EDR are necessary to guard against free riders? 25

CHAPTER 6: CALCULATION OF CONTRIBUTION TO MARGIN AND PRICE FLOORS 27

1. Which elements of the current floor price (e.g. generation marginal costs) have decreased the headroom available for discounting rates? Would modifying the terms of discounting floor price elements (e.g. indexing the price of natural gas to generation rate discounts) significantly increase the headroom available for discounting rates? 27

2. Does the existence of a price floor act as a disincentive to business participation in the EDR program? 29

3. Should the Commission eliminate the currently required after-the fact annual review and true up that ensures that the discounted rates charged remained above the floor price? 29

4. Should contribution to margin be required of each participant, or of the program generally? 29

5. Should contribution to margin be calculated annually, or over some other time period? 29

CHAPTER 7: PROGRAM REQUIREMENTS FOR APPROPRIATE PROTECTION OF NON-PARTICIPATING RATEPAYERS 31

1. What must the Commission do in order to ensure that rates remain just and reasonable rates for non-EDR participants? 31

2. Should PG&E shareholders bear some of the costs of any rate increases to non-EDR program participants that occur because of the rate reductions given to EDR program participants? 31

CHAPTER 8: SHAREHOLDER FUNDING OF ED RATE REDUCTIONS 32

1. Should there be a provision that requires shareholders to bear the cost of the EDR rate differential if an *ex-post* review of the program reveals that it has not resulted in benefits to ratepayers?

CHAPTER 9: DOCUMENTING RATEPAYER BENEFITS OF ECONOMIC DEVELOPMENT RATE 33

1. To what extent have previously authorized EDR programs accomplished these objectives? 33

2. Should the EDR include a requirement that each participant provide a good faith *ex ante* projection of the number of jobs the discounted rate will produce, and an accurate ex-post assessment of what jobs were actually created? 33

CHAPTER 10: OTHER 35

1. Any other relevant and material factors raised by parties and specifically added to the list of issues by subsequent ruling of the Presiding Officer........ 35

Statement of Qualifications Don Ouchley 36

Statement of Qualifications Thomas S. Kimball 37

Statement of Qualifications Steven McClary 38

CHAPTER 1

INTRODUCTION

A. Summary of Position. (Witnesses: Kimball/Ouchley)

1. Any Economic Development Rate Should Benefit Ratepayers.

Merced Irrigation District ("Merced ID") and Modesto Irrigation District ("Modesto ID", together the "Districts") appreciate that California continues to suffer the effects of a long economic downturn. The Districts support economic development efforts, including job creation and retention efforts – ***done in a sustainable manner***.

As a practical matter, that means utility economic development measures should not harm other ratepayers. Each of the Districts competes with Pacific Gas and Electric Company ("PG&E") for customers. It is good for the Districts and PG&E when our customers and potential customers are faring well economically. It is not good for the Districts and PG&E when our customers and potential customers are suffering.

Applicable law goes further than ensuring no harm to customers. Public Utilities Code section 740.4 requires that the utility proposing rate discounts in support of economic development programs demonstrate that its ratepayers will benefit from such programs.

The California Public Utilities Commission ("Commission" or "CPUC") previously – in 2005 – characterized the Economic Development Rate ("EDR") as "a stopgap measure to address a small part of the harmful impacts the current rate levels have on California's economy and the state's potential for economic growth and development."[1] PG&E recently submitted a notice of intent for its 2014 General Rate Case, indicating it will be proposing a total funding request of $1.25 billion in 2014 compared to current levels.[2]

Against that background, it seems clear that as in 2005, an EDR today is not going to solve the problem of high rates in California. While it may make sense to consider modifications to the current EDR program, there does not appear to be a good reason to effectively do away with what's in place, in favor of minimal or no limitations and deeper discounts, as PG&E proposes, particularly where doing so appears to create a very real potential for harm to other ratepayers.

---

1 D.05-09-018, p. 12.

2 *See, e.g.,* PG&E web site: http://www.pge.com/about/newsroom/newsreleases/20120702/pacific_gas_and_electric_company_submits_preliminary_filing_in_2014_general_rate_case.shtml.

2. Summary of Recommendations.

PG&E's current EDR, which provides a five-year, 12% discount off of an eligible customer's otherwise applicable tariff, subject to a floor price and other requirements, closes to new customers at the end of 2012. In its Application for Approval of Economic Development Rate for 2013-2017 ("Application"), PG&E proposes to replace the existing EDR with (1) a Standard EDR option which will continue the five-year 12% discount, and (2) an Enhanced EDR option, which will provide a five-year 35% discount to eligible customers in counties where the annual unemployment rate for the prior calendar year exceeded 125% of the state annual average.[3] PG&E also proposes loosening or eliminating a number of EDR requirements that were put in place to protect ratepayers. As discussed above, the Districts' primary concerns relating to the proposed EDR program are that it provide benefits to ratepayers and not shift costs to non-participating ratepayers. Additionally, the Districts seek to ensure a level playing field between each District and PG&E. Accordingly, the Districts recommend that the Commission take the following actions:

(1) Deny PG&E's request for approval of the Enhanced EDR option;

(2) Maintain the price floor requirement and modify the floor price calculation to use updated marginal costs for the Standard EDR option;

(3) Retain non-participating ratepayer projections, including (a) review by the California Business Investment Services ("CalBIS"), as well as the relevant local economic development agency, (b) a 200 MW program cap, and (c) the customer affidavit requirement, including an attestation that electricity costs comprise 5% of operating costs; and

(4) Avoid implementing any EDR in a manner that conflicts with laws governing competition between each District and PG&E, and that grants PG&E a competitive preference compared to the Districts.

B. Legal Issues

The Scoping Memo and Ruling of Assigned Commissioner ("Scoping Memo"), issued August 7, 2012, identifies the list of issues to be considered within the scope of this proceeding. One category of issues within the list is legal issues (Scoping Memo Section 5.B). The Districts note that testimony generally focuses on factual, not legal, issues. The Scoping Memo appropriately contemplates that some issues identified as within the scope of

[3] In this testimony, the Districts generally refer to PG&E's proposal as the EDR, and specifically identify the Standard EDR option and the Enhanced EDR option where appropriate.

this proceeding may be addressed in testimony and others in briefs: "We ask parties to provide responses to the questions in the scope of the proceeding when filing testimony *and/or* briefs and require that they provide a reference to the applicable questions within their testimony *and/or* briefs."[4]

The Districts plan to address the legal issues identified in the Scoping Memo in briefs (or as otherwise appropriate) and hereby reserve the right to do so. Thus, the Districts do not include responses to legal issues (Scoping Memo Section 5.B) in this testimony.

C. Organization of Remainder of Testimony.

This testimony is organized as follows:

Chapter 1: Introduction

- Section A – Summary of Position
- Section B – Legal Issues
- Section C – Organization of Remainder of Testimony

Chapter 2: Merced ID Electric Service

- Section A – Authority and Area Where Merced ID Provides Electric Service
- Section B – Scope of Merced ID Service

Chapter 3: Modesto ID Electric Service

- Section A – Authority and Areas Where Modesto ID Provides Electric Service
- Section B – Scope of Modesto ID Service

Chapter 4: Policy Issues Associated with the Need for ED Rate Reductions

Chapter 5: Program Design Issues

Chapter 6: Calculation of Contribution to Margin and Price Floors (including whether price floors are necessary)

Chapter 7: Program Requirements for Appropriate Protection of Non-Participating Ratepayers

Chapter 8: Shareholder Funding of ED Rate Reductions

Chapter 9: Documenting Ratepayer Benefits of Economic Development Rate

Chapter 10: Other

4 Scoping Memo, p. 11 (emphasis added).

Statements of Qualifications

Attachments A – R

CHAPTER 2

MERCED ID ELECTRIC SERVICE

A. Authority and Area Where Merced ID Provides Electric Service.

1. Merced ID is a California Irrigation District.

Merced ID is a California Irrigation District formed in 1919 under the Irrigation District Law, Division 11 (commencing with Section 20500) of the California Water Code and a local publicly owned electric utility as that term is defined in Public Utilities Code section 224.3.

Within the area where it provides electric service, which is described below, Merced ID provides service to approximately 7,500 customers with a combined 2012 peak retail load of approximately 98 megawatts ("MW").

2. Merced ID's Electric Service Territory.

Since 1919, irrigation districts have been formally authorized by the California Legislature to "provide for the acquisition, operation, leasing and control of plants for the generation, transmission, distribution, sale and lease of electric power . . . ."[5] Merced ID provides electric supply and distribution services pursuant to that longstanding authorization.

Merced ID provides retail electric service within its political boundaries, which encompass most of eastern Merced County. Merced ID provides electric services to customers in the Cities of Livingston, Atwater and Merced, as well as the Castle Airport. A portion of Castle Airport is located outside of Merced ID's boundaries. The Irrigation District Act specifically authorizes irrigation districts to provide electric service outside their boundaries.[6] Additionally, the Public Utilities Code recognizes Merced ID's authority to serve Castle Airport.[7]

The service territory within and outside of Merced ID's boundaries where Merced ID provides retail electric service also lies within PG&E's service territory. Both entities are authorized to provide service in the areas within and outside of Merced ID's boundaries where Merced ID provides service and, therefore, both compete head-to-head to do so. Merced ID is also a PG&E customer.

---

5 Water Code § 22125.

6 Water Code § 22120.

7 *See, e.g.*, Public Utilities Code § 9607(h).

3. Merced ID's Generation, Sales, and Distribution Services.

Merced ID has generated wholesale electrical power at its hydroelectric facilities – two plants at the New Exchequer and McSwain Dams on the Merced River – for over 80 years. Merced ID generates an average of approximately 335,000 megawatt hours per year at these two facilities. That power is presently delivered to PG&E.

Merced ID also distributes to retail customers power it purchases through secure long-term and flexible short-term agreements, and has done so since 1996. As noted above, Merced ID currently serves approximately 98 MW of peak retail load.

Merced ID has constructed substations in Livingston at Castle Airport, and in Merced. These substations are tied into a transmission and distribution system that serves Livingston, Atwater, and City of Merced area customers (the Livingston/Merced transmission loop).

4. Merced ID's Economic Development Efforts

As noted above, Merced ID supports economic development efforts, done in a sustainable way. In order to attract or retain customers in the Merced area, Merced ID occasionally offers customers discounted rates, typically for a five-year term. Terms of service may be negotiated upon expiration of the contract. Merced ID has never had more than four discounted contracts in place at one time; there are presently two such contracts in place.[8] Additionally, on the limited occasions when Merced ID has entered into electric service contracts at discounted rates, Merced ID has ensured the discounted rate paid by the customer covers Merced ID's marginal costs of serving the customer.

B. Scope of Merced ID Electric Service.

Because Merced ID has a nonexclusive area – Merced ID and PG&E both provide service in the area where Merced ID provides service – Merced ID has not formally adopted an obligation to serve. Merced ID will serve any applicant for electric service within the area where it provides service as long as the applicant complies with Merced ID's electric service rules. Merced ID's electric service rules generally include the same requirements as PG&E's Commission-approved Electric Service Rules. In both cases, potential electric service

---

[8] Merced ID is not including its contract with Foster Farms, which arose out of Foster Farms' request that Merced begin to provide electric service to customers in the Merced area in the first instance under the Water Code. Specifically, Foster Farms receives a negotiated rate in exchange for its investment in Merced ID's distribution system.

customers may be required to identify themselves, establish creditworthiness, comply with technical and inspection standards, and pay line extension and service costs less any applicable line allowances. Thus, like PG&E, Merced ID may decline to provide service to applicants who do not meet the requirements of applicable electric service rules.

CHAPTER 3

MODESTO ID ELECTRIC SERVICE

A. Authority and Areas Where Modesto ID Provides Electric Service.

1. Modesto ID is a California Irrigation District.

Modesto ID is a California irrigation district established under the Irrigation District Law, Division 11 (commencing with section 20500) of the California Water Code, and a local publicly owned electric utility as that term is defined in Public Utilities Code section 224.3. Within its electric service area, which is defined in Public Utilities Code section 9610, Modesto ID provides service to approximately 113,650 customers with a combined peak load of approximately 641 MW for 2011.

2. Modesto ID's Historic Electric Service Territory.

Historically, Modesto ID provided retail electric service within almost all of its political boundaries. That area consists of a major portion, but not all, of Stanislaus County lying north of the Tuolumne River, east of the San Joaquin River and south of the Stanislaus River. Modesto ID has also traditionally provided service to certain customers located outside its political boundaries. Water Code section 22115 et seq. specifically permits irrigation districts to provide electric service outside their boundaries.

3. The Joint Electric Distribution Service Area Where Modesto ID and PG&E Compete.

Since 1919, irrigation districts have been formally authorized by the California Legislature to "provide for the acquisition, operation, leasing and control of plants for the generation, transmission, distribution, sale and lease of electric power … ."[9] Modesto ID began providing power in 1923 pursuant to that authorization. Modesto ID and PG&E both provided electric service in the Modesto area from 1923 through 1940. In 1940, Modesto ID and PG&E entered into an agreement, approved by the CPUC, that established exclusive service areas between Modesto ID and PG&E. The provisions of that agreement that restricted Modesto ID's electric service area expired in 1954 without renewal or extension. In 1995, Modesto ID began receiving requests from both customers and city governments for Modesto ID electric service, and Modesto ID's Board of Directors approved a process to address those requests. In 1996, Modesto ID began providing retail electric service to

[9] Water Code § 22125.

customers located beyond its historical electric service area. In 1997, after intensive negotiations undertaken at the request of a California legislator, Modesto ID and PG&E tentatively resolved their electric service area disputes. PG&E filed Application 97-07-037 requesting the Commission to approve the sale of PG&E's electric distribution facilities serving customers in the Cities of Escalon, Oakdale, Ripon, Riverbend and adjacent rural areas (the "Four Cities Area"), and certain related transmission facilities, to Modesto ID. PG&E also requested approval of a long-term service area agreement between PG&E and Modesto ID. In D.98-06-020, the Commission rejected the sale of facilities agreement and the long-term service area agreement, choosing to preserve the competition between Modesto ID and PG&E.

AB 2638 was enacted in 2000. AB 2638 included Public Utilities Code section 9610, which expanded Modesto ID's electric service area boundaries by about 400 square miles to include the remaining portion of Stanislaus County lying north of the Tuolumne River and east of the San Joaquin River, as well as areas in the southern portion of San Joaquin County and the western portion of Tuolumne County. This portion of Modesto ID's service area (the "Joint Electric Distribution Service Area") is described in section 9601(b)(1) and also lies within PG&E's electric service territory. Modesto ID and PG&E compete head-to-head to serve customers in that area. AB 2638 also recognized Modesto ID's historical exclusive electric service area and added the area in western San Joaquin County known as the Mountain House Community Services District to Modesto ID's exclusive electric service area.

AB 2638 includes a provision that precludes Modesto ID from providing electric service outside specifically identified areas (section 9610(d)).

4. Modesto ID's Economic Development Efforts.

As noted above, Modesto ID supports economic development efforts, done in a sustainable way. Modesto ID offers an economic development discount to customers with load above 200 kilowatts ("kW") and who meet other qualifying criteria. Modesto ID's discount is a non-renewable three-year, 5% rate discount based on the energy, demand and fixed monthly charge portions of applicable rate schedule, excluding taxes. Modesto ID has taken this conservative approach to an economic development discount to avoid or minimize impacts to other customers.

B. Scope of Modesto ID Service.

Modesto ID's Board of Directors approved Electric Service Rules and Regulations that adopt an "obligation to serve" any applicant for electric service anywhere within the Modesto ID electric service area provided that the applicant complies with the provisions of the Electric Service Rules and Regulations. Modesto ID's Electric Service Rules and Regulations generally contain the same requirements as PG&E's Commission-approved Electric Service Rules. Under both, applicants for electric service may be required to identify themselves, establish creditworthiness, comply with technical and inspection standards, and pay line extension and service costs less any applicable allowances. Thus, like PG&E, Modesto ID may decline to provide service to potential customers who do not meet the requirements of applicable electric service rules.

CHAPTER 4

POLICY ISSUES ASSOCIATED WITH THE NEED FOR ED RATE REDUCTIONS

1. Will the proposed EDR Option attract, retain and encourage expansion of companies and reduce unemployment in PG&E's service territory? (Scoping Memo ("SM") Issue 1) (Witness: McClary)

PG&E has offered no evidence demonstrating that the proposed "EDR Option" will attract, retain and encourage expansion of companies and reduce unemployment in PG&E's service territory. In data responses, PG&E admits that it has not "performed any studies and/or undertaken any analysis that shows the proposed Standard and Enhanced Economic Development Rates for 2013-2017 will (a) stop job loss in California; (b) reduce job loss in California; and/or (c) create jobs in California."[10] Additionally, PG&E states that it "has not performed any forecasts, projections or analysis of the amount of load it expects to *attract* if PG&E's proposed revisions to Schedule ED are adopted."[11] Similarly, "PG&E has not performed any forecasts, projections, or analyses of the amount of load it expects to *retain* if PG&E's proposed revisions to Schedule ED are adopted."[12] In fact, PG&E has not even developed an estimate of the number of customers eligible for either the proposed Standard or Enhanced EDR.[13] There is no evidence that would allow the Commission to conclude that the proposed "EDR Option" will "attract, retain and encourage expansion of companies and reduce unemployment in PG&E's service territory."

2. Should the Commission continue to require that the EDR maintain the floor price program component that was established in 2005 and modified in 2007? (SM Issue 2) (Witness: McClary)

Yes, with the modifications proposed herein. In approving PG&E's current EDR program the Commission clearly stated its objective:

> The goal of the EDR program is to attract and retain those businesses in California that would otherwise go out of business or leave the state, reducing the number of jobs available to Californians. Another benefit of the program was to reduce the amount of fixed costs that would otherwise have been borne by remaining ratepayers if these businesses had gone out of business or left the

---

10 PG&E Data Response, MercedID-ModestoID_001-06 (Attachment A).

11 PG&E Data Response, MercedID-ModestoID_001-12 (emphasis added) (Attachment B).

12 PG&E Data Response, MercedID-ModestoID_001-13 (emphasis added) (Attachment C).

13 PG&E Data Response, Greenlining_001-01 (Attachment D).

state.[14]

The Commission should be equally concerned about the potential for non-participating customers to bear the costs of providing any EDR discount. In order to avoid cost-shifting, the Commission must ensure that the rate charged to customers under an EDR tariff is sufficient to cover the marginal costs of supplying service to that customer, as well as the other rate components established by the Commission that will not be reduced in the customer's absence.

Over the lifetime of utility EDR programs, the Commission has developed a well-formulated means of assurance against significant cost shifting – the floor price. The current floor price was established in D.07-09-016 and modified by D.07-11-052. In D.07-11-052, the Commission approved the EDR program with the following condition:

> 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 distribution, and, if a bundled-service customer, marginal costs for generation.[15]

It is important to note the explicit inclusion of all non-bypassable charges in the Commission-established price floor. The Commission identified its concern that the EDR program could create a loophole by which large commercial and industrial customers would be exempted from California Alternate Rates for Energy ("CARE") and other program costs, describing the "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."[16] The Commission therefore concluded that "[i]t is unlawful to exclude nonbypassable charges from the price floor."[17] The concerns identified by the Commission in 2007 remain valid today – a floor price that includes non-bypassable charges will protect against the risk of losing funding for vital programs.

---

[14] D.10-06-015, p. 2.

[15] D.07-11-052, p. 2.

[16] D.07-09-016, p. 14.

[17] D.07-09-016, Conclusion of Law 2.

3. Is PG&E's proposal to allow a negative distribution rate consistent with the Commission's existing policy? (SM Issue 3) (Witness: McClary)

No. PG&E's proposal to eliminate the price floor and allow a negative distribution rate leaves the door open for significant cost shifting to non-participating ratepayers, which is clearly inconsistent with longstanding Commission policy. The PG&E EDR proposal rests squarely on the notion that large discounts can be provided to the distribution rate, and in fact a negative distribution rate can be charged, while fully funding non-bypassable charges and keeping "rates to customers lower than they would otherwise be."[18]

Whether or not non-bypassable charges can be discounted is not an issue in this proceeding. The legislature and the Commission have clearly indicated that non-bypassable charges must be fully funded.[19] In order to protect non-participating ratepayers from significant cost shifting, the Commission should limit any discount provided under the EDR program to ensure that, after full payment of non-bypassable charges, the rate charged to the EDR customer is in excess of the marginal cost of serving that customer. This approach to protecting against cost shifting is embodied by the price floor.

Table 1 below examines marginal costs and contribution to margin after full funding of all non-bypassable charges, including the DWR Bond Charge. As shown in the example, PG&E's proposal does not protect non-participating ratepayers against significant cost shifting.

---

[18] Prepared Testimony of PG&E, p. 3-2.

[19] D.07-09-016, p. 12 and Conclusion of Law 2; Public Utilities Code §§ 365.1(c)(2)(A), 366.1(g)(2), 367, 379, and 381(a).

Table 1: E-19 S Average Bill and Contribution to Margin, After Full Funding of Non-Bypassable Charges[20]

	Average Bill	Bill with 35% EDR	Marginal Cost	Contribution to Margin
Transmission	20,182	20,182	20,182	0
Distribution	64,819	-32,295	8,120[21]	-40,415
Generation	141,440	141,440	106,520	34,920
Total	**$226,441**	**$129,326**	**$134,822**	**-$5,496**

It is important to note that any level of discount to the generation and distribution charges has the potential to result in some degree of cost shifting to non-participating ratepayers as the fixed costs associated with these services are borne by fewer ratepayers. The Commission previously adopted the price floor specifically to ensure that all customers should be responsible, at a minimum, for the marginal costs associated with providing generation and distribution. As seen in the example in Table 1, without a price floor, PG&E's EDR proposal can result in rates that do not meet even this minimal requirement. Under this scenario, significant cost shifting is troublingly likely, contrary to Commission policy.

4. Does the proposed EDR result in discounts to Non-Bypassable Charges if it results in negative distribution rates for some customers? (SM Issue 4) (Witness: McClary)

The proposed EDR does not include a price floor and, therefore, does not guarantee that non-bypassable charges will be fully funded. (See response to Scoping Memo Issue 21, Testimony Chapter 6, Question 7.) By law, there can be no discounts to non-bypassable charges.[22] Thus, an EDR program must contain a price floor that includes all non-bypassable charges. In addition, as established in the Districts' response to Scoping Memo Issues 2 and 3 (Testimony Chapter 4, Questions 2 and 3), to protect against cost shifting to non-participating ratepayers discounts must be limited to ensure funding of the marginal costs of services provided to an EDR customer after fully accounting for non-bypassable charges. PG&E's proposed EDR does not provide these needed ratepayer protections.

---

[20] Table adapted from data provided in PG&E Data Response, TURN_002-12c (Attachment E).

[21] This figure represents an unconstrained distribution marginal cost of $0.00406/kWh. For a customer assigned a constrained distribution marginal cost, the figure would be higher, resulting in an even lower "contribution."

[22] D.07-09-016, p. 12.

By creating negative distribution charges, the proposed EDR is effectively running a shell game. At the rate level proposed, PG&E clearly cannot fund non-bypassable charges and maintain a contribution to marginal distribution costs. Indeed the negative rate may reflect a subsidy from non-participating ratepayers to EDR customers.

5. Is the proposed EDR competitively neutral with respect to Community Choice Aggregators, Energy Service Providers and Irrigation Districts (IDs)? If not, in what respects is the proposed EDR not competitively neutral and how may competitive neutrality be achieved? (SM Issue 5) (Witness: Kimball/Ouchley)

The Districts seek to ensure that any EDR be implemented in a manner that does not conflict with the statutory framework governing competition between Merced ID and Modesto ID, on the one hand, and PG&E, on the other hand, and that does not establish a competitive preference for PG&E compared to Merced ID and Modesto ID.

AB 2638, enacted in 2000, codified very specific rules for competition between irrigation districts and PG&E. For example, Public Utilities Code section 9610 defines the areas where Modesto ID is the exclusive provider of electric service, and the areas where Modesto ID and PG&E compete for customers (*i.e*, the Joint Electric Distribution Service Area, described above). Public Utilities Code sections 9607(b) and (h) require that Merced ID obtain Commission approval prior to constructing or operating facilities for the distribution or transmission of electricity to transferred municipal departing load customers once Merced ID serves 90 MW of load (calculated in accordance with section 9607(h) and (i)).

AB 2638 also authorized PG&E to offer discounts to customers or potential customers of irrigation districts. Public Utilities Code section 454.1(a) provides that if a customer with a maximum peak demand of 20 kW located or planning to locate within the service territory of an electrical corporation receives a bona fide offer for electric service from an irrigation district, the electrical corporation may discount its electrical rates, but not below its distribution marginal cost of serving that customer.[23] PG&E is not allowed to discount non-bypassable charges as part of calculating a discounted rate under section

[23] PG&E may not offer discounts to transferred municipal departing load customers in the area served by Merced ID until Merced ID serves 75 MW of load (calculated in accordance with Public Utilities Code section 454.1(b)). (Pub. Util. Code § 454.1(b).)

454.1(a).[24] If PG&E seeks to offer a discount under section 454.1(a) to a customer in the Joint Electric Distribution Service Area, then PG&E's resulting rate for distribution service may not be less than 120 percent of its marginal distribution cost of serving that customer.[25]

To the extent that the Commission determines it is appropriate to allow PG&E to offer an EDR in areas where Merced ID and Modesto ID also provide electric service, and where PG&E presently has the authority to offer rate discounts, the Districts propose that the Commission require that PG&E not be allowed to offer a discount below its marginal cost of serving that customer. As discussed below, current prohibitions against discounting non-bypassable charges should also apply to calculation of an EDR.

Under current Commission decisions, PG&E is allowed to offer the *existing* EDR in areas where PG&E and the Districts compete for customers. The *proposed* EDR represents a considerable departure from existing EDR rules and policies. If the Commission were to now allow PG&E to offer significantly increased EDR discounts (whether the Standard or especially the Enhanced EDR), without a floor price and other current program limits as PG&E proposes, the Commission would inappropriately establish a competitive preference for PG&E. PG&E could pick and choose between discounts, depending on the circumstances, knowing other ratepayers (or possibly shareholders) are available to pay the costs of any EDR discounts not tied to a floor price. The Districts, on the other hand, could not pass the costs of a 35% discount on to other customers, and the Districts do not have shareholders to turn to.

The Districts suggest that the Commission should not act in a manner that establishes a competitive preference for one electric supplier over another. Here that means not allowing PG&E to offer the proposed 35% discount in areas where it competes with Merced ID and Modesto ID. Additionally, the proposed Standard EDR should be modified to include a price floor and other restrictions as proposed herein to move closer to competitive neutrality.

24 *See, e.g.*, PG&E Electric Schedule E-31.

25 Pub. Util. Code § 454.1(d).

6. Does the proposed EDR (either standard or enhanced) favor large businesses and thereby inadvertently exclude small and medium sized businesses? Should there be a percentage quota established across business category types who enroll in the EDR? (SM Issue 6) (Witnesses: Kimball/Ouchley)

The Districts reserve the right, as appropriate, to address as appropriate issues raised by other parties in direct testimony.

CHAPTER 5

PROGRAM DESIGN ISSUES

1. Are the proposed 12% and 35% EDR discount rates the most appropriate discount rates? (SM Issue 15) (Witness: McClary)

The Commission has defined the goal of the EDR program as follows: "[t]he goal of the EDR program is to attract and retain those businesses in California that would otherwise go out of business or leave the state, reducing the number of jobs available to Californians."[26] The most appropriate EDR discount rate is the minimum discount level that will accomplish these economic development goals. A discount in excess of the level necessary to attract or retain load would create an additional and unwarranted subsidy from non-participating ratepayers to EDR customers.[27]

PG&E has not presented evidence in support of any specific level of discount, much less in support of a determination of the minimum discount that would achieve the program goal. Similarly, PG&E has not demonstrated that any specific discount level is too low. While PG&E states that the current program has proven inadequate at offering "a sufficiently meaningful incentive to sway the location decision,"[28] PG&E links this inadequacy not to the discount level of 12%, but "to the changes in, and the interaction between, the floor price and rate components since the initial adoption of Schedule ED in 2005."[29] In other words, there is no evidence demonstrating that a 12% discount, with appropriate ratepayer protections, is inadequate to meet economic development goals. While it may be consistent with prior Commission decisions to maintain a 12% discount with the right ratepayer protections for the next program cycle, there is no evidence justifying a 35% discount. Accordingly, the Commission should reject the Enhanced EDR proposal.

---

[26] D.10-06-015, p. 2.

[27] Consider, for example, a hypothetical customer that could be incented to remain in California if given a 12% discount. Were that customer instead offered a much larger discount of 35%, the non-participating ratepayers would bear the costs of the additional 23% discount with no additional benefit because even at a 12% discount level, the customer would have chosen to remain in California.

[28] Prepared Testimony of PG&E, p. 2-4.

[29] Prepared Testimony of PG&E, p. 2-3.

2. Should the Commission remove the 200 MW participation cap it currently requires as an element of PG&E's current EDR? (SM Issue 16) (Witness: McClary)

No. Another means to ensure appropriate protection of non-participating ratepayers is to limit the overall size of the EDR program. In past proceedings, the Commission has imposed an enrollment cap based on demand of participating customers. In 2005, the Commission approved the EDR program with a 100 MW cap.[30] In a later proceeding, the Commission increased the cap for PG&E's program to 200 MW.[31] In the current Application, PG&E is proposing to eliminate any cap on EDR enrollment.[32]

As of January 1, 2012, total cumulative electric demand contracted under PG&E's current Schedule ED was only 34.2 MW.[33] This level of subscription is far below the current cap of 200 MW, and PG&E has provided no evidence that the 200 MW cap would restrict future enrollment.[34] In order to forestall any potential risk of cost shifting to non-participating ratepayers, the Districts recommend that the Commission maintain the current program cap of 200 MW. If, at some point in the future, subscribed EDR demand approaches 200 MW, PG&E may file a request to increase the cap. The Commission would then have the opportunity to determine, with input from interested parties, whether an increase in EDR program enrollment is merited and that cost shifting to non-participating ratepayers is still prevented.

3. Should the Commission modify the EDR participation verification requirements by eliminating the current requirement that the Office of California Business Investment Services conduct an independent evaluation of a customer's eligibility for Economic Development Rates? (SM Issue 17) (Witness: McClary)

No. Objective third party review is critical to ensuring the EDR is properly implemented, and that non-participating ratepayers benefit as required by law. Under the current program, CalBIS must verify EDR program eligibility in order for a customer to receive an EDR discount. PG&E's proposal eliminates any requirement for third-party

---

[30] D.05-09-018, p. 25.

[31] D.10-06-015, p. 7.

[32] Prepared Testimony of PG&E, Attachment A.

[33] PG&E Data Response, MercedID-ModestoID_002-02 (Attachment F).

[34] PG&E has indicated that is has not performed any forecasts, projections, or analysis of the amount of load it expects to attract or retain if its proposed revisions to Schedule ED are adopted. (PG&E Data Response, MercedID-Modesto ID_001-12 and 001-13 (Attachments B and C).)

verification of EDR program eligibility, by CalBIS or by any other economic development entity.[35] In support of its proposal, PG&E claims that CalBIS verification "has proven to be redundant in the approval process, with PG&E and CalBIS performing similar but separate evaluations."[36] However, PG&E has reported that it has not experienced any problems in relying on CalBIS for third-party approval, nor have there been any instances in which CalBIS and PG&E disagreed on customer eligibility.[37]

Third-party verification by CalBIS is essential to ensure against free-ridership. The Districts also propose that involvement by local economic development agencies in reviewing and verifying potential EDR contracts will provide for a stronger economic development program. For example, a local economic development agency can help coordinate a customer's participation in any available relevant local economic development programs, in addition to an EDR. PG&E characterizes CalBIS as "the primary state clearinghouse for business attraction, expansion and retention projects."[38] The EDR program can be most effective if it is coordinated with other economic development initiatives.

PG&E has not provided any evidence that CalBIS verification has impeded the current EDR program. PG&E's purported "redundancy" is exactly what the CalBIS involvement was intended to provide: an independent review of the eligibility of EDR participants. CalBIS review, combined with review by the local agency responsible for economic development, will help to maximize economic development efforts, while providing needed protection against cost shifting to non-participating ratepayers. PG&E has not provided a credible reason to abandon third-party review.

4. Should the Commission establish a requirement that all EDR Agreements must contain a provision that requires cost-effective conservation or other equivalent demand-side management and load reduction discussions between PG&E and the applicant? Should any post discussion actions be required? (SM Issue 18) (Witness: McClary)

The Districts generally support efforts to educate customers about cost-effective conservation and/or other demand-side management and load reduction options.

---

[35] Prepared Testimony of PG&E, p. 2-5.

[36] Prepared Testimony of PG&E, p. 2-5.

[37] PG&E Data Response, TURN_002-9a-c (Attachment G).

[38] Prepared Testimony of PG&E, p. 2-2.

5. Should potential EDR customers be required to demonstrate that electricity makes up a threshold percentage of operating costs in order to qualify for the EDR discount? (SM Issue 19) (Witness: McClary)

Yes. Potential EDR customers should be required to demonstrate that billed electricity costs account for at least 5% of the customer's operating costs, less the cost of raw materials, on an annual basis. Such a threshold requirement helps target the EDR program toward customers for whom the discount makes a "but for" difference to location decisions.

At this minimum 5% threshold, a 12% discount on electricity rates would amount to only 0.6% of the customer's operating costs. It is unlikely that customers whose electricity costs fall below the 5% threshold would receive a discount that would meaningfully tip the balance towards load attraction or retention, much less constitute the "but for" factor. In fact, is unlikely that the benefits from such a discount would warrant the transaction costs involved.

The 5% threshold is a requirement under the current program authorized by D.10-06-015.[39] PG&E has not provided any evidence that the current requirement has resulted in significant exclusion of participation by customers who would otherwise have qualified for an EDR discount. In response to discovery, PG&E reported that it had received only one application that did not appear to comply with the 5% threshold.[40] This application was considered incomplete and the project withdrawn.[41]

6. Is there value in the current requirement that the "Customer Affidavit" be signed "under penalty of perjury" in attesting that but for this rate, the business would not expand, stay in, or come to California? (SM Issue 20) (Witness: McClary)

The Districts believe there is value in the current requirement that a customer affidavit be signed under penalty of perjury, attesting that but for the EDR, the customer would locate outside of California. Customers who qualify for the EDR program receive an economic benefit. If that benefit were provided to a customer who was not truly eligible, the cost of the discount would be financed by non-participating ratepayers who would receive no benefit from the customer's participation. In order to make sure that a customer meets

---

39 D.10-06-015, p. 8.

40 PG&E Data Response, MercedID-ModestoID_003-04b (Attachment H).

41 PG&E Data Response, MercedID-ModestoID_003-04b (Attachment H).

eligibility criteria and minimize freeloading, thereby protecting non-participating ratepayers, it is reasonable and not unduly burdensome to require that the customer affidavit be signed under penalty of perjury.

7. Should the enhanced EDR option be for a more limited or a different term than the standard EDR option? (SM Issue 21) (Witness: McClary)

As demonstrated herein, the Enhanced EDR option does not provide benefits to non-participant ratepayers and creates troubling policy implications. Examination of the net present value of the Enhanced EDR program shows that 35% discounts for EDR customers would result in significant cost shifting to non-participating ratepayers. While PG&E's testimony tries to show that the Enhanced EDR program would have a positive net present value, there are several errors in its calculations that result in an inaccurate assessment of benefit.

In its proposal, PG&E chose to analyze the costs and benefits for the proposed five-year program over a 10-year period. During the first five years, the customer was assumed to take service under the EDR tariff and during the second five years the customer was expected to return to full tariff rates.[42] This approach is flawed for the following reasons:

- First, PG&E's proposal allows EDR customers to renew their participation for a second five-year term.[43] It is reasonable to assume that a portion of EDR customers will renew their EDR contracts and remain on discounted rates for a total of 10 years. PG&E's analysis does not take this into account.

- Second, it must be assumed that there will be some level of customer attrition. By signing the "but for" affidavit the customer demonstrates that without the discount the customer would cease PG&E service; therefore it is reasonable to assume that when the discount sunsets some number of customers may depart from PG&E service and that some may even cease service during the discount period. In fact, of the 15 customers with whom PG&E signed EDR contracts under the current program, two have since ceased service, one after only seven months on the EDR tariff and one after 10 months.[44]

Due to the uncertainty regarding whether an EDR customer will return to full tariff rates at the sunset of the original contract and whether the customer will remain on PG&E service long enough to complete the entire contract term, it is more appropriate to analyze the

[42] Prepared Testimony of PG&E, p. 3-2.
[43] Prepared Testimony of PG&E, Attachment A.
[44] PG&E Data Responses, MercedID-ModestoID_001-4g and 002-11 (Attachment I).

costs and benefits of the EDR program only over the contract term of five years.[45] If an analysis is to consider a 10-year period, it should be based on the assumption that the EDR customer will receive the discounted rate for the full 10-year period, to account for the ability to renew participation for a second five-year term.

In addition, PG&E's analysis appears to be based on inaccurate use of the base rates underlying the calculation for the otherwise applicable tariff. PG&E reported that the rates used in the calculation were rates put into effect January 1, 2012 through Advice Letter 3896-E-B (Annual Electric True-up filing).[46] However, comparison of the rates in that Advice Letter show that PG&E chose to round the rates when performing the EDR analysis. This simple rounding change – to four significant digits rather than the standard five significant digit rates used in nearly all Commission ratemaking – improperly inflated the otherwise applicable rate by as much as 3.6% for some customers.[47] When analyzing headroom for a specific EDR discount, this level of error can have a substantial impact.

Finally, PG&E uses a misleading basis for its cost assessment underlying the net present value calculation. PG&E chooses to include only marginal generation costs, marginal demand costs, transmission costs and DWR Bond Charges in its cost assessment.[48] This methodology excludes other non-bypassable charges, such as public purpose program charges, nuclear decommissioning charges, competition transition charges and new system generation charges, which, by law, must be fully funded.[49] As a result, PG&E's analysis does not ensure full funding of non-bypassable charges and contribution to marginal costs and therefore does not provide an accurate assessment of benefit.

I updated the PG&E analysis to calculate the net present value of the Enhanced EDR program over the five-year contract period using accurate rates as established in Advice Letter 3896-E-B and including full funding of non-bypassable charges in the net cost figure. The results of this analysis are shown in Table 2 below. The Districts' five-year net present

---

[45] Note that the Districts propose that the EDR contract term be shortened to three years and be established as part of the GRC cycle. (*See* response to Scoping Memo Issue 24, Testimony Chapter 6, Question 1.)

[46] PG&E Data Response, MercedID-Modesto ID_002-9a (Attachment J).

[47] Advice Letter 3896-E-A, Table 3; PG&E Workpaper ED NPV.xls tab: First Year ED by Schedule.

[48] PG&E Data Response, MercedID-Modesto ID_002-6b (Attachment K).

[49] D.07-09-016, p. 12 and Conclusion of Law 2; Public Utilities Code §§ 365.1(c)(2)(A), 366.1(g)(2), 367, 379, and 381(a).

value results are shown in comparison to the 10-year net present value figures presented in PG&E's opening testimony.

Table 2: Net Present Value Per Customer of Enhanced EDR Program ($000)[50]

	E-20 T	E-20 P	E-20 S	E-19 P	E-19-S	A-10 S
35% Discount, Unconstrained[51]						
PG&E	498	1,470	1,751	410	469	253
Districts	-690	-255	-169	-42	-42	1
35% Discount, Constrained						
PG&E	498	588	854	177	223	128
Districts	-690	-775	-699	-180	-187	-72

As shown in Table 2, the net present value for nearly every rate class is negative by up to $775,000 per customer. The one case that shows benefits, the unconstrained DPA case for Schedule A-10 S, shows benefits that are so small at just $1,000 per customer, that even if 1% of the A-10 S customers taking the EDR discount were free riders, the net present value would be negative. It is clear from these calculations that a 35% discount would not result in a contribution to margin after full funding of the non-bypassable charges.

Additionally, PG&E is drawing a sharp distinction between "coastal" and "inland" California in its application in its effort to justify the Enhanced EDR Option. Aside from the legal question of whether this represents discriminatory action (which, as noted above, the Districts reserve the right to address in briefs), PG&E's proposal poses a serious policy issue – is a public utility justified in offering different rates to ratepayers who happen to be located in different geographic areas regardless of any relation to the cost of serving those customers? Other geographic distinctions, for example between climate zones, are rooted in the differing cost of serving customers in those areas. The proposed geographic distinction for applying the Standard EDR option and the Enhanced EDR option has no such cost basis.

Further, PG&E has not demonstrated why the economic development needs of counties with higher unemployment should obtain an advantage over the economic

---

50 PG&E figures are taken from PG&E Testimony, p. 3-3 with the exception of the values for Schedule A-10 S, which were provided in PG&E Data Response, TURN_002-13 (Attachment L). Both PG&E's and the Districts' figures assume a free-ridership rate of zero.

51 The terms "unconstrained" and "constrained" refer to characteristics of the distribution planning area ("DPA"). A DPA is considered constrained when it has a planned capacity-related project in excess of $1 million. A DPA is considered unconstrained if it has no such larger capacity-related capital project planned. (PG&E Presentation, Economic Development Workshop, A.12-03-001, July 6, 2012, slide 10 (Attachment M).)

development needs of other counties. In fact, PG&E indicates that a majority of the customers who have previously signed up for the EDR are not located in counties that meet the 125% unemployment criteria.[52]

PG&E provides no real basis for distinguishing between potential EDR recipients in one county versus another. Why would a customer at risk of leaving eastern Contra Costa County not provide a similar economic benefit to the state as a customer relocating from Alpine County? In sum, PG&E has provided no basis for treating customers and locations differently in implementing an EDR program.

The Commission should deny PG&E's request for approval of the Enhanced EDR program.

8. Should there be a limit on the number of times that a customer's EDR participation may be extended for another term? (SM Issue 22) (Witness: McClary)

Yes. The aim of the EDR program is to provide temporary rate relief to customers that, without the EDR discount, would go out of business, move out of state or not choose to locate within the state. The EDR program was never intended to create a permanent class of customers that receive rate discounts at a cost to remaining ratepayers. PG&E's proposal limits a single customer's enrollment in the EDR program to two contract terms. The Districts believe this restriction is appropriate.

9. What provisions of an EDR are necessary to guard against free riders? (SM Issue 23) (Witness: McClary)

PG&E's proposed EDR program will result in substantial discounts for participating customers. Availability of these discounts will create the incentive for free-ridership – participation in the program by customers who would locate or remain in California even without the EDR discount. Any discount provided to a customer who does not truly qualify would result in some level of cost shifting to non-participating ratepayers. Preservation of the mandated price floor will protect against cost shifting; however, if the Commission is to appropriately protect non-participating ratepayers, it must also minimize free-ridership by ensuring that EDR discounts are given only to customers who truly qualify for the program.

---

[52] PG&E Data Response, MercedID-ModestoID_001-4f (Attachment N).

The Commission should, therefore, preserve program elements that guard against free-ridership. Of primary importance in this regard is the requirement of third-party verification by CalBIS as described in the District's response to Scoping Memo Issue 17 (Testimony Chapter 5, Question 3.) The Districts propose that the CalBIS verification be enhanced by also requiring that PG&E coordinate review of potential EDR contracts with the relevant local economic development agency. In addition, preservation of the program cap would provide a stopgap measure if free-ridership results in higher than expected levels of participation. This issue is addressed in the Districts' response to Scoping Memo Issue 16 (Testimony Chapter 5, Question 2.)

CHAPTER 6

CALCULATION OF CONTRIBUTION TO MARGIN AND PRICE FLOORS (INCLUDING WHETHER PRICE FLOORS ARE NECESSARY)

1. Which elements of the current floor price (e.g. generation marginal costs) have decreased the headroom available for discounting rates? Would modifying the terms of discounting floor price elements (e.g. indexing the price of natural gas to generation rate discounts) significantly increase the headroom available for discounting rates? (SM Issue 24) (Witness: McClary)

The price floor established by the Commission in D.07-09-016 and modified by D.07-11-052 provides a straightforward means to ensure that non-participating ratepayers benefit from the program as required by law. The price floor should continue to limit any discount provided under the EDR program to ensure that revenue does not fall below the non-bypassable charges, transmission charges, and the marginal costs of distribution and generation. This floor will continue to protect ratepayers from significant and illegal cost shifting.

Use of outdated distribution and generation marginal cost inputs to the current price floor methodology has decreased the headroom available for discounting rates. The Districts recommend that marginal costs used to determine the existing price floor be updated to reflect values adopted in the most recent General Rate Case ("GRC"). This modification will preserve the protection afforded by the price floor while basing the availability of headroom on more recent and realistic input assumptions. This will increase the ability to discount rates, while still protecting non-participating ratepayers. Even with the updated assumptions, however, it appears that the Enhanced EDR will not meet the standards embodied in the price floor.

Under the current EDR program, the most recent CPUC-adopted marginal costs in effect at the time of contract execution are used in calculating the floor price for the length of the five-year EDR contract period and revenues are trued up annually to ensure that they equal or exceed the price floor.[53] PG&E has found that this methodology "proved unworkable for its customers, and diminished the effectiveness of the rate."[54] This result was largely due to a significant increase in marginal costs resulting from the 2007 GRC, which

---

[53] PG&E current Schedule ED.

[54] Prepared Testimony of PG&E, p. 2-7.

was adopted at a time of historically high prices for natural gas.[55] Over time those natural gas prices have abated, and with subsequent Energy Resource Recovery Account ("ERRA") and GRC proceedings, so have rates.

It appears that this combination of events has made it difficult to offer EDR discounts. However, issues with a single component of the price floor do not rationalize complete elimination of ratepayer protection. In fact, it appears likely that use of updated marginal cost inputs would significantly alleviate the problems identified by PG&E. There will undoubtedly be some issues of detail in implementing such updates; these details would be most appropriately addressed in workshops. However, as a starting point for such workshop discussions, the Districts would support the following overall program changes along with updated inputs.

As a general approach, the Districts recommend the EDR program be included as part of PG&E's GRC. This proposal would shorten the EDR contract period from five years (as proposed by PG&E) to three, commensurate with the GRC cycle. PG&E has not conducted any studies or undertaken any analysis that shows that five years is the optimum term for the EDR program.[56] Under a three-year program cycle, the Commission could set the marginal costs for generation and distribution based on current information upon adoption of the GRC decision. These marginal costs would be used for the length of a three-year EDR contract term and revised upon completion of the next GRC. This method would avoid the disconnect between the marginal costs included in the floor price and the marginal costs underlying rates that was seen as a result of the high 2007 GRC costs. The price floor could be adjusted annually to reflect ERRA-related changes in the marginal cost of generation. This methodology would result in a flexible floor price that would most accurately reflect the true marginal cost of generation and distribution. Such a methodology could be used to protect against cost shifting in connection with the Standard EDR Option. (As noted above, the Districts recommend that the Commission deny the request for approval of the Enhanced EDR option.)

Consistent with the Districts' proposal that the EDR program be implemented as part of the GRC, for the current proceeding marginal costs adopted in the most recent GRC could

---

[55] Prepared Testimony of PG&E, p. 2-3.

[56] PG&E Data Response, MercedID-ModestoID_003-05 (Attachment O).

be used for contracts entered into between the effective date of a decision in this proceeding and the next GRC.

2. Does the existence of a price floor act as a disincentive to business participation in the EDR program? (SM Issue 25) (Witness: McClary)

On the contrary, by providing greater assurance that the program is meeting legislative requirements and providing benefits to non-participating ratepayers, a floor adds to the certainty that the program will remain in place as an option for the customers to whom it is targeted.

3. Should the Commission eliminate the currently required after-the-fact annual review and true up that ensures that the discounted rates charged remained above the floor price? (SM Issue 26) (Witness: McClary)

By creating the more flexible updated floor price described in the Districts' response to Scoping Memo Issue 24 (Testimony Chapter 6, Question 1), the Commission could reduce or obviate the need for after-the-fact annual true-up. The Districts propose continuing the annual after-the-fact review to ensure that ratepayer benefits are being derived from the EDR, at least for a limited transition period after implementing the proposed flexible price floor. The details of such a program would be most appropriately addressed collaboratively by affected parties in workshops.

4. Should contribution to margin be required of each participant, or of the program generally? (SM Issue 27) (Witness: McClary)

While a customer-by-customer analysis might be a "perfect" means of assuring positive benefit of the program, a properly constructed floor price, along with other non-participant protections as proposed herein, provide a reasonable means of providing that assurance without the unwieldy and time-consuming burden of a customer-by-customer analysis.

5. Should contribution to margin be calculated annually, or over some other time period? (SM Issue 28) (Witness: McClary)

Any analysis of program benefits should be considered over the time period in which the customer receives the EDR discount. As described in detail in response to Scoping Memo Issue 21 (Testimony Chapter 5, Question 7), PG&E's methodology of analyzing benefits over a 10-year period for a 5-year EDR contract is flawed because it ignores the considerable uncertainty as to whether a customer will renew its discounted contract or remain on PG&E service at the sunset of the original contract. As a result, the most appropriate time period for calculation of program benefits is commensurate with the contract term.[57]

[57] Note that the Districts have proposed that the EDR contract term be shortened to three years and be established as part of the GRC cycle. (*See* response to Scoping Memo Issue 24 (Testimony Chapter 6, Question 1).

CHAPTER 7

PROGRAM REQUIREMENTS FOR APPROPRIATE PROTECTION OF NON-PARTICIPATING RATEPAYERS

1. What must the Commission do in order to ensure that rates remain just and reasonable rates for non-EDR participants? (SM Issue 29) (Witness: McClary)

As outlined in other responses in this testimony, the Commission should adopt a realistic and practical price floor that limits the EDR discount to a level that provides for payment toward the marginal cost of generation, distribution and transmission and guarantees full funding of non-bypassable charges. In addition, the Districts recommend that the Commission preserve the current 200 MW cap on participation, continue the requirement for CalBIS approval of customer eligibility, enhanced by coordination with the relevant local economic development agency, and require that customers demonstrate by affidavit that electricity costs account for at least 5% of their operating costs.

Cost shifting to non-participants would arguably constitute a departure from just and reasonable rates. The Districts' proposal gives much greater assurance that non-participants will benefit from the EDR program, as required by law.

2. Should PG&E shareholders bear some of the costs of any rate increases to non-EDR program participants that occur because of the rate reductions given to EDR program participants? (SM Issue 30) (Witness: McClary)

Should an EDR program be adopted without the kinds of protections proposed by the Districts, it is appropriate that any risk of cost shifting be shared with PG&E shareholders. This is analogous to the way that risks are borne by publicly owned utilities like the Districts: because the Districts' ratepayers are also its "shareholders" the interests of its "shareholders" are always a consideration when programs that might entail cost shifting are considered.

In fact, this is one reason the Modesto ID economic development discount is significantly more modest in both time and level of discount than the PG&E proposal. Similarly, in each instance where Merced ID considers an economic development provision for a customer, the impact on all other Merced ratepayer/owners must be and is considered.

CHAPTER 8

SHAREHOLDER FUNDING OF ED RATE REDUCTIONS

1. Should there be a provision that requires shareholders to bear the cost of the EDR rate differential if an *ex-post* review of the program reveals that it has not resulted in benefits to ratepayers? (SM Issue 31) (Witness: McClary)

As stated above, aligning the incentives of PG&E and its shareholders with the risks borne by non-participating ratepayers if the EDR is adopted as proposed by PG&E is appropriate. There is no apparent reason that this conclusion should be different for costs revealed in an *ex-post* review as opposed to initial program design.

CHAPTER 9

DOCUMENTING RATEPAYER BENEFITS OF ECONOMIC DEVELOPMENT RATE

1. To what extent have previously authorized EDR programs accomplished these objectives? (SM Issue 32) (Witness: McClary)

It is uncertain whether the previously authorized EDR program has created a benefit for non-participating ratepayers. PG&E has not conducted any analyses regarding whether costs may have been shifted to non-participating customers as a result of the current program.[58] In response to a data request PG&E indicated that roughly 5,000 jobs were created as a result of the current EDR program.[59] However, further analysis revealed that this number is based solely on self-reported projections from the EDR customers estimated at the time of the EDR application.[60] PG&E has not verified the accuracy of these figures, nor has any study been conducted to determine whether any of these projected figures were realized.[61]

2. Should the EDR include a requirement that each participant provide a good faith *ex ante* projection of the number of jobs the discounted rate will produce, and an accurate ex-post assessment of what jobs were actually created? (SM Issue 33) (Witness: McClary)

Even if a customer could provide a good faith *ex ante* and accurate *ex post* examination of the number of jobs the discounted rate would provide, these figures would not be readily translatable into non-participating ratepayer benefits. Any potential intangible benefits resulting from the EDR, such as job retention and/or job creation, increases in tax revenues, or broader economic gains are speculative. PG&E has not provided any evidence demonstrating the likelihood of such benefits, much less made any attempt to quantify such benefits for ratepayers if they do exist. Without a basis for credibly estimating other types of benefits – or costs – the Commission cannot rely on them to demonstrate compliance with the statute.[62]

---

[58] PG&E Data Response, MercedID-ModestoID_001-11 (Attachment P).

[59] PG&E Data Response, MercedID-ModestoID_001-4c (Attachment Q).

[60] PG&E Data Response, MercedID-ModestoID_002-10 (Attachment R).

[61] PG&E Data Response, MercedID-ModestoID_002-10 (Attachment R).

[62] For example, the Commission has no available means of reliably quantifying the benefits associated with a job created in Fresno for a ratepayer in Northern California.

With respect to economic development rates, the Commission has routinely required that a utility demonstrate that a proposed discount will result in a contribution to margin.[63] The only appropriate, verifiable measure of benefits to non-participating ratepayers is the contribution to marginal distribution and generation cost after full funding of non-bypassable charges.

[63] D.05-09-018, pp. 13-14 and Finding of Fact 2.

CHAPTER 10

OTHER

1. Any other relevant and material factors raised by parties and specifically added to the list of issues by subsequent ruling of the Presiding Officer. (SM Issue 34)

The Districts reserve the right to address any other relevant and material factors raised by parties and specifically added to the list of issues by subsequent ruling of the Presiding Officer.

STATEMENT OF QUALIFICATIONS

DON OUCHLEY

My name is Don Ouchley, and my business address is Merced Irrigation District, 744 W. 20th Street, Merced, California.

I am currently the Deputy General Manager of Energy Resources at Merced Irrigation District ("Merced ID"). In this capacity, I am responsible among other things for management of Merced ID's electrical system and hydroelectric generation facilities. I have been employed by Merced ID since September 2011.

Prior to Merced ID, I was the Director of Beaches Energy Services, a municipal electric and natural gas utility in Jacksonville Beach, Florida. I have 44 years of experience in the municipal/public electric power industry.

I hold a Bachelor of Science degree in Electrical Engineering from Louisiana Polytechnic University and a Masters in Business Administration from City University in Seattle, Washington. I am a registered Professional Engineer in the States of Florida, Texas, Louisiana and Washington.

STATEMENT OF QUALIFICATIONS

THOMAS S. KIMBALL

My name is Thomas S. Kimball, and my business address is Modesto Irrigation District, 1231 Eleventh Street, Modesto, California.

I am the Assistant General Manager, Electric Transmission and Distribution, for Modesto Irrigation District ("Modesto ID"). In this capacity, I am responsible among other things for overseeing the engineering, construction, and maintenance of Modesto ID transmission and distribution facilities, and administering the rules regarding line extensions contained in the Modesto ID Electric Service Rules and Regulations.

I received a Bachelor of Science degree in Electrical Engineering from Brigham Young University. I am a registered professional engineer in the State of California, a member of the Institute of Electrical and Electronic Engineers, and the IEEE Power Engineering Society.

I was employed with Pacific Gas and Electric Company ("PG&E") for 17 years, until 1993. I worked in a variety of assignments for PG&E, the last of which was as Oakdale area manager. I joined Modesto ID in 1993 in my current position.

STATEMENT OF QUALIFICATIONS

STEVEN MCCLARY

Q Please state your name and business address.

A My name is Steven McClary. I am a Principal with MRW & Associates, LLC ("MRW"). MRW is an energy consulting firm that was founded in 1986. MRW specializes in power and gas market assessments, regulatory matters, litigation support, expert witness testimony, contract review, and negotiations. My business address is 1814 Franklin Street, Suite 720, Oakland, California.

Q Briefly summarize your educational background and professional experience.

A I have been working at MRW since 1990 where I specialize in economic and regulatory policy analysis, gas and electric supply planning, contract development, and transmission. I work with independent power producers, public agencies, renewable energy providers, third party retailers, municipal utilities, regulators, end users, financial institutions and attorneys on issues ranging from industry restructuring to transmission planning, nuclear power to solar energy, due diligence for power plant developers and financers, utility ratemaking and exit fees, and contract disputes to asset valuation. Previously, I served as the Manager in Policy Development for Resource Management International, where I worked on regulatory and legislative affairs, transmission development, financing and economic analysis for an association of municipal utilities.

Q Have you ever testified before this Commission?

A Yes. Please see the attached list of prepared testimony and depositions.

Q For whom are you submitting this testimony?

A I am submitting testimony of behalf of Merced Irrigation District and Modesto Irrigation District.

PREPARED TESTIMONY
STEVEN C. McCLARY

1. CPUC Investigation 90-09-050
Prepared Direct Testimony of Steven C. McClary regarding Policy Issues for the Interim Transmission Access Program on Behalf of Destec Energy, Inc. March 13, 1992.

2. CPUC Investigation 90-09-050
Prepared Rebuttal Testimony of Steven C. McClary regarding Policy Issues for the Interim Transmission Access Program on Behalf of Destec Energy, Inc. March 27, 1992.

3. CPUC Investigation 90-09-050
Prepared Direct Testimony of Steven C. McClary regarding Policy Issues for the Interim Transmission Access Program on Behalf of Destec Energy, Inc. Revised April 7, 1992.

4. CPUC Application 93-12-029
Testimony of David R. Branchcomb and Steven C. McClary on Behalf of the Independent Energy Producers Association regarding an Open Access Transmission Tariff as a Condition to PBR. September 16, 1994.

5. CPUC Application 93-12-025
Testimony of Steven C. McClary on Behalf of the Independent Energy Producers Association regarding the Proposed Settlement in the Southern California Edison General Rate Case. February 14, 1995.

   5a. CEC Docket NO. 94-AFC-1
   Testimony on the Need for the San Francisco Energy Project. (draft) June 23, 1995.

6. CPUC Application 96-11-020
Testimony of Steven C. McClary on Behalf of the Independent Energy Producers Association regarding Divestiture. February 25, 1997.

7. CPUC 96-11-046
Testimony of Steven C. McClary on Behalf of the Independent Energy Producers Association regarding Divestiture. March 3, 1997.

8. Federal Energy Regulatory Commission EC97-20-000
Affidavits of William S. Stephenson and Steven C. McClary on Behalf of Destec Energy, Inc. and NGC Corporation. March 14, 1997.

9. Federal Energy Regulatory Commission ER98-4301-0000
Affidavit of Steven C. McClary on Behalf of Thermo Ecotek regarding the

Application of Mountainview Power Company for Market-Based Rates and Expedited Approval. August 18, 1998.

10. Federal Energy Regulatory Commission ER98-4302-0000
    Affidavit of Steven C. McClary on Behalf of Thermo Ecotek regarding the Application of Riverside Canal Power Company for Market-Based Rates and Expedited Approval. August 18, 1998.

11. CPUC Application 98-06-045
    Direct Testimony of Steven C. McClary on Behalf of California Cogeneration Council, Independent Energy Producers Association, and Monsanto Company regarding Line Loss Factors. September 1998.

12. United States District Court, Northern District of California, San Francisco Division
    Case No C00-1699 MJJ, C99-1106MJJ, C00-1698
    Declaration in Support of QST's Memorandum in Opposition to Motion in Limine to Exclude Evidence from QST Regarding CTC Credits. May 7, 2001.

13. United States District Court, Northern District of California, San Francisco Division
    Case No C00-1699 MJJ, C99-1106MJJ, C00-1698
    Declaration in Support of QST's Motion in Limine No. 1. May 7, 2001.

14. American Arbitration Association Case No. 71 198 00711 00
    Deposition of Steven C. McClary on Behalf of Sonnenschein, Nath and Rosenthal regarding PG&E vs. ISO. September 21, 2001.

    14a. State of California Case Number BS061053
    Deposition Subpoena to Morse Richard & Weisenmiller, Inc. March 6, 2000.

15. CPUC Rulemaking 02-01-011
    Direct Testimony of the Alliance for Retail Energy Markets and the Western Power Trading Forum on Direct Access Exit Fee Issues. June 6, 2002.

16. CPUC Application 00-10-045
    Reply Testimony of Steven C. McClary on Behalf of the Alliance for Retail Energy Markets. June 14, 2002.

17. CPUC Rulemaking 02-01-011
    Reply Testimony of the Alliance for Retail Energy Markets and the Western Power Trading Forum on Direct Access Exit Fee Issues. June 20, 2002.

18. CPUC Application 98-07-003
    Testimony of Steven C. McClary on Behalf of the Alliance for Retail Markets and the Western Power Trading Forum on Post-PX Direct Access Credit Issues. June 21, 2002.

19. CPUC Rulemaking 02-01-011
Testimony of the Alliance for Retail Energy Markets and the Western Power Trading Forum on Departing Load Exit Fee Issues. September 11, 2002.

20. CPUC Application 98-07-003 (Post-PX Direct Access Credits)Rebuttal Testimony of the Alliance for Retail Energy Markets and the Western Power Trading Forum on Post-PX Direct Access Credit Issues. September 13, 2002.

21. CEC Docket No. 00-AFC-1
Testimony Regarding Local System Effects of Potrero Power Plant Unit 7. November 2002.

22. Superior Court of California for the County of San Diego Case No. GIC 773867
Declaration in Support of Tenderland Power Company, Inc.'s Motion for Summary Judgment, or in the alternative Summary Adjudication. December 13, 2002.

23. CPUC Rulemaking 02-01-011
Reply Testimony of the Alliance for Retail Energy Markets and the Western Power Trading Forum on the Setting of the Direct Access Cost Responsibility Surcharge Cap. March 19, 2003.

24. CPUC Rulemaking 02-01-011
Rebuttal Testimony of the Alliance for Retail Energy Markets and the Western Power Trading Forum on CRS Cap Issues. March 26, 2003.

25. CPUC Rulemaking 01-10-024
Testimony of the Western Power Trading Forum on Utility Long Term Resource Plans. June 23, 2003.

26. CPUC Rulemaking 01-10-024
Rebuttal Testimony of Western Power Trading Forum on Utility Long Term Resource Plans. July 14, 2003.

27. Superior Court of California for the County of Orange Case No. 02CC14776
Declaration in Opposition of Plains Resources, Inc.'s Motion for Summary Judgment, or in the Alternative, Summary Adjudication. October 2003.

28. United States Bankruptcy Court
Affidavit of Proposed Ordinary Course Professional for Debtor and Disclosure Statement Pursuant to Bankruptcy Code Sections 327, 329 and 504, Bankruptcy Rules 2014 and 2016 and the Order Authorizing Retention of Ordinary Course Professionals. December 3, 2003.

29. CPUC Application 03-10-022
Prepared Testimony of the Alliance for Retail Energy Markets on Updating the Market Rate Price Benchmark for Determining the 2004 CTC Revenue Requirement. December 16, 2003.

30. CPUC Rulemaking 04-04-003
Prepared Direct Testimony of Steven C. McClary on Behalf of Duke Energy North America. August 6, 2004.

31. CPUC Applications 04-06-018 and 04-04-008
Testimony of Steven C. McClary on Behalf of the Alliance for Retail Energy Markets Concerning the Economic Development Rate Applications of PG&E and SCE. September 15, 2004.

32. CPUC Applications 04-06-018 and 04-04-008
Rebuttal Testimony of Steven C. McClary on Behalf of the Alliance for Retail Energy Markets Concerning the Economic Development Rate Applications of PG&E and SCE. October 5, 2004.

33. CPUC Applications 04-08-008
Testimony of Steven C. McClary on Behalf of the Alliance for Retail Energy Markets on Updating the Market Price Benchmark for Determining the 2005 CTC Revenue Requirement. November 12, 2004

34. American Arbitration Association Case No. 72 Y 0023604 VSS
Expert Report of Steven C. McClary on Issues Related to the California Energy Market, the PX Energy Credit and Retail Supply Provisions. November 15, 2004.

35. CPUC Application 04-12-014
Prepared Testimony of Steven C. McClary on Behalf of the Direct Access Customer Coalition in Response to Southern California Edison Test Year 2006 General Rate Case Application. May 6, 2005.

36. CPUC Application 04-12-014
Rebuttal Testimony of Steven C. McClary on Behalf of the Direct Access Customer Coalition. May 25, 2005.

37. CPUC Application 05-06-007
Prepared Testimony of the Alliance for Retail Energy Markets on Updating the Market Price Benchmark for Determining the 2005 CTC Revenue Requirement. September 19, 2005.

38. American Arbitration Association Case No. 73 198 00019 05 MAVI
Expert Report of Steven C. McClary on Issues Related to the California Energy Market, Historical Procurement Charge, and Cost Responsibility Surcharge. April 3, 2006.

39. American Arbitration Association Case No. 73 198 00019 05 MAVI
Expert Report of Steven C. McClary on Response to Expert Report of Richard J. McCann on Behalf of Claimant Oakley, Inc. April 3, 2006.

40. American Arbitration Association Case No. 72 Y 19800656 04 VSS
Expert Report of Steven C. McClary on Issues Related to the California Energy Market and Direct Access Cost Responsibility Surcharge. June 27, 2006.

41. CPUC Rulemaking 06-02-013
Testimony on Behalf of the Alliance for Retail Energy Markets (with Sue Mara). March 2, 2007.

42. CPUC Application 07-01-047
Testimony on Behalf of FuelCell Energy, Inc. August 10, 2007.

43. CPUC Application 08-03-002
Prepared Direct Testimony of Steven C. McClary on Behalf of the Simon Property Group, Inc. Concerning the Application of SCE to Establish Marginal Costs, Allocate Revenues, and Design Rates. October 31, 2008.

44. California Energy Commission
Framework for Evaluating Greenhouse Gas Implications of Natural Gas-fired Power Plants in California, on Behalf of Aspen Environmental Group (with Robert B. Weisenmiller, PhD). June 23, 2009.

45. California Energy Commission
Framework for Evaluating Greenhouse Gas Implications of Natural Gas-fired Power Plants in California, on Behalf of Aspen Environmental Group for Carlsbad, California. February 3, 2010.

46. CPUC Application 09-12-020
Direct Testimony of South San Joaquin Irrigation District Concerning Pacific Gas And Electric Company's 2011 General Rate Case Phase 1 Application (with Laura B. Norin). May 19, 2010.

47. CPUC Application 10-07-009
Testimony of Steven C. McClary on Behalf of UCAN Concerning SDG&E's Proposed Small Commercial and Residential Dynamic Pricing Programs. February 18, 2011.

48. CPUC Application 10-12-005
Testimony of Steven McClary and Laura Norin on Behalf of UCAN concerning SDG&E's General Rate Case. September 22, 2011.

49. CPUC Application 11-06-007
Testimony of Steven C. McClary on Behalf of the California Black Chamber of Commerce and County of Los Angeles. February 6, 2012.

50. CPUC Application 11-10-002
Testimony of Steven McClary and Laura Norin on Behalf of San Diego Consumers' Action Network (SDCAN) Concerning SDG&E's General Rate Case Phase II. June 12, 2012.