BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

| Order Instituting Rulemaking on the Commission's Own Motion to Conduct a Comprehensive Examination of Investor Owned Electric Utilities' Residential Rate Structures, the Transition to Time Varying and Dynamic Rates, and Other Statutory Obligations. | Rulemaking 12-06-013<br>(Filed June 21, 2012) |
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# PROPOSED CORRECTIONS OF THE OFFICE OF RATEPAYER ADVOCATES ON THE ENERGY DIVISION STAFF PROPOSAL ON RESIDENTIAL RATE REFORM


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# PROPOSED CORRECTIONS OF THE OFFICE OF RATEPAYER ADVOCATES ON THE ENERGY DIVISION STAFF PROPOSAL ON RESIDENTIAL RATE REFORM

## I. INTRODUCTION

On January 6, 2014, the Assigned Commissioner issued an amended Scoping Memo and Ruling to: (1) Issue the Energy Division's ("ED's") "Staff Proposal for Residential Rate Reform: in Compliance with Rulemaking 12-06-013 and Assembly Bill 327" ("Staff Proposal"), (2) Amend the scope of Phase 1 of this proceeding and re-categorize it as ratesetting, and (3) Set the category for Phase 2 of this proceeding as ratesetting. This Assigned Commissioner ruling ("ACR") instructed that parties may file proposed corrections to the ED Staff Proposal no later than January 20, 2014, which was later amended to January 31, 2014 by the Administrative Law Judge ("ALJ") at the January 8, 2014 prehearing conference ("PHC"). The ACR provides guidance that the parties' proposed corrections must be limited to correcting characterizations of a party's position and any factual or typographical errors.

Pursuant to the January 6, 2014 ACR, the Office of Ratepayer Advocates ("ORA") hereby files proposed corrections to the Staff Proposal on residential rate reform. The ACR characterizes the Staff Proposal as representing both a recommended residential



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rate structure and a tool for evaluating residential rate designs. ORA applauds ED's effort in summarizing and synthesizing party proposals filed in 2013 as well as presenting ED's own proposal. This ED report will be a useful tool to facilitate parties' continuous discussion on the residential rate reform for the next five years and to assist the Commission in making informed decisions. Although ORA supports the general policy direction established by ED in the report, ORA does not endorse every policy position advocated in the report. Because the ACR restricts the scope of this pleading to "factual errors or mischaracterizations of a party position," ORA has focused its discussion herein on identifiable errors or where clarifications may make the report more informative.

## II. DISCUSSION

ORA groups issues into the following categories: A) assertions versus facts; B) California Alternate Rates for Energy ("CARE"); C) Baseline Credit; D) Combined Tiered and Time-of-Use ("TOU") Rates; and E) Bill Protection.

### A. The ED Report Should Separate Assumptions from Facts

It is important that the report clearly identify debatable assumptions. In several places of the report, there are assertions of opinion that are not factual. The following are some of the examples:

> 1. "……such an approach [lump-sum discount] could be more economically efficient by separating the discount from the pricing, and thus ensuring that customers make consumption and conservation decisions based on price signals that more closely represent marginal costs, rather than being faced with discounted price signals." (Staff Report, p. 88.);

While a lump-sum discount is the approach most divorced from prices, the other approaches also require a separation of the discount from the pricing. This is because, for the first time, the total amount of CARE subsidy available for allocation will be capped by utility. Therefore, any discount off rates or usage will have to be "solved" for a total dollar limit. No discount will be purely tied to rates and usage as it has been historically. It will depend on the new considerations of number of customers enrolled in CARE and



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the level of consumption of CARE customers. Secondly, any CARE discount can be presented on bills separately as a lump-sum, regardless of how it is calculated.

> 2. discounted price signals "….will tend to result in an inefficient level of overconsumption for CARE customers." (Staff Report, p. 88)

While ORA understands the theoretical basis for such a statement, ORA is unaware of the evidence showing actual CARE customer overconsumption during the current era of discounted price signals. In fact, evidence in various Commission proceedings (A.11-05-017 and R.10-02-005) and reports (Residential Appliance Saturation Survey 2009, CPUC Policy and Planning Division's "Electricity Use and Income, A Review."[1]) hints at the opposite. Until actual CARE overconsumption is established, the Staff paper should explain that this is theory.

> 3. "such a program [discount differentiated by income]…..would require more complete income verification, rather than relying on the current self-certification and selective audit approach." (ED report, p. 89)

ORA challenges the assertion that the option of varying the CARE discount by income would require a change of the current CARE verification process. The ED Proposal correctly characterizes the current CARE income verification process as self-certification and selective audit. Especially in light of the overall decrease of the CARE discount likely to occur for several utilities, it is not a given that more income verification than currently exists will be required.

## B. CARE Issues

### 1. CARE Costs and Participation Numbers May be Erroneous

Tables 6-1 and 6-2 of the Staff Proposal contain data which differs significantly from existing publicly reported CARE data.[2] ORA cannot say conclusively that the

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[1] June 21, 2012 available at http://www.cpuc.ca.gov/NR/rdonlyres/609BC107-EF3C-4864-AD56-E964884D51AC/0/PPDElectricityUseIncome.pdf

[2] CARE Annual Reports: CARE Table 8 (participation), CARE Table 1 (costs).

numbers are in error without knowing what is and is not included in the numbers.[3] However, the numbers are so different from existing reported numbers that the likelihood of error is high.

In Table 6-1, the number of PG&E CARE customers is greater by approximately 20,000 customers than reported in the CARE annual reports of the last few years. The number of SCE CARE customers is less by approximately 45,000. The number of SDG&E CARE customers is less by approximately 15,000.

The costs of the CARE discount presented in Table 6-2 also differ from publicly reported CARE costs, and vary in different directions per utility and per year. For example, PG&E's costs are $80 million less in 2011 and $45 million more in 2012 than publicly reported costs including all exemptions. SCE's costs are $100 million less in 2011 and $120 million less in 2012.

If deviations from publicly accepted numbers for CARE costs and CARE participants are used in the Staff Report, the report should explain the differences. Without knowing the reasons for the inconsistencies in the data, ORA reminds the Commission that data should reflect all CARE customers taking electric service, and exclude CARE customers taking gas-only service.

### 2. The Staff Proposal Should Clarify that the CARE Discount Adjustment During Transition Years Will Be Dynamic

The Staff Proposal identifies specific CARE discount rates during transition years. For example, it recommends that, in year 2015, PG&E's CARE discount should be decreased by 3 percent, bringing it down to 44 percent, and that it should be reduced by another 3 percent in 2016, bringing it down to 41 percent.[4] The report should note that the CARE discount rate continues to change due to revenue changes, and to mitigate bill shock to CARE, the "glide path" for reducing PG&E's overall rate discount will need to take revenue changes into account. PG&E's CARE discount rate was close to 48% late

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[3] For instance, are CARE submetered customers included? Are CARE surcharge exemptions included? Are indirect CARE costs included? Are gas-only CARE customer data included?

[4] ED Report, p.18.



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2013. PG&E has projected that, without the rate reform, the CARE discount might increase due to significant expected revenue increases in 2014.

### 3. The Mechanics of the CARE Discount Explanation Should be Revised

The Staff Proposal, on p. 85, states, "In essence the CARE discount is to be derived by taking 30-35 percent of the total residential class revenue requirement and allocating that discount to CARE customers." For clarification and accuracy, this sentence should instead read "the amount available to subsidize CARE customers is to be derived by calculating a 30-35 percent discount off the total bills that CARE customers would pay at regular residential rates."

### 4. The Staff Report Should be Clarified to Explain the Four CARE Discount Options

The four potential options listed for implementing the 30-35 percent CARE discount are somewhat confusing. Option 1[5] is made confusing because of the language "a continuation of the current method of providing a discount off of the otherwise applicable rates to ensure an overall discount of approximately 30-35 percent."[6] The only way to ensure an overall bill discount of approximately 30-35 percent is to apply the discount at the bill level. There should be no reference to a continuation of the current method.

Regarding Option 2,[7] it makes no sense to say a varied percentage discount will be applied to the tiered rate but also applied to the overall bill. If a varied percentage discount is applied to the rate it cannot also be applied to the overall bill. The language about the overall bill should be deleted.

The options for allocating the CARE subsidy should be laid out as following:

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[5] Option 1 calls for an "equal 30-35 percent volumetric discount off of each customer's CARE bill."

[6] ED Report, p. 85.

[7] Option 2 is a "volumetric discount differentiated by tier."



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- Volumetric discount, either applied equally or differentiated (by tier, income level, regional differences, or other factor or combination of factors.)
- Flat dollar amount discount, either applied equally or differentiated (by tier, income level, regional differences, or other factor or combination of factors.)

### C. A Default TOU Rate Cannot Exclude Baseline Protection

The Staff Proposal recommends a default TOU rate and an opt-out tiered rate. Specifically, on page 58, it states "Staff recommends two distinct rates in parallel: (1) an un-tiered default TOU rate that meets CPUC rate design goals, and (2) an opt-out tiered rate that satisfies AB 327 requirements and represents significant progress towards cost-based rates." The Staff Proposal here does not explicitly mention baseline protections other than to say "A mildly differentiated opt-out 2-tier rate satisfies legislative requirements." Yet the baseline statute, which is contained in P.U. Code 739, remains in effect and must be implemented in the default rate.

Offering a default rate without a baseline tier or credit constitutes a legal error. ORA does not believe that providing baseline protection through a voluntary tariff to which a customer may opt-out satisfies the requirements of the baseline statute (P.U. Code Section 739). A residential customer can opt out of a default rate that has the baseline protection into a voluntary schedule that does not provide those protections. But the customer cannot be *required* to opt into a voluntary rate in order to receive the protections that are guaranteed by law.

The relevant section of the P.U. Code is Section 739.9 (c), as amended by Assembly Bill 327, which states:

> except as provided in subdivision (c) of Section 745, the Commission shall require each electrical corporation to offer default rates to residential customers with at least two usage tiers. The first tier shall include electricity usage of no less than the baseline Quantity established pursuant to paragraph (1) of subdivision (d) of Section 739.

It is fairly clear that the *default* tariff must include at least two tiers of usage. What may be somewhat ambiguous is the exception clause, which states: "Except as



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provided in subdivision (c) of Section 745 …" Section 745 in turn authorizes default TOU rates beginning in 2018 subject to several conditions, none of which pertain to baseline. That section does not specify what those TOU rates should look like, but all the conditions can be satisfied while having a baseline credit. While the exception clause could be interpreted as allowing the default rate to not include baseline protections, the inclusion of a baseline credit would best implement the intent of the baseline statute, which still remains in the P.U. Code in Section 739. Moreover, such a credit would not be in conflict with any of the provisions of Section 745.

This issue of whether protections provided by law are sufficiently implemented if a customer must actively choose to receive them arose in A.10-08-005, PG&E's default residential Peak Day Pricing ("PDP") application, which effectively has been suspended indefinitely. Although parties submitted legal briefs on this issue, no rulings were ever issued.[8] In that proceeding, the debate concerned the rate protections on tiers 1 and 2 from Assembly Bill 1X and Senate Bill 695. Though Assembly Bill 327 has removed those protections, the principle about whether it is sufficient to provide *any* statutory protections through a voluntary tariff still remains.[9]

ORA argued that it is insufficient to provide these protections through a tariff to which the customer must voluntarily opt in. PG&E had argued the opposite, stating in its application that a customer's "non-exercise of the ability to opt-out of default PDP to the flat rate is sufficient to treat the customer as foregoing the Tier 1 and 2 rate limitations." (See PG&E application at p. 7.) In response, ORA stated:

> PG&E's proposal to involuntarily put customers on a rate that violates the P.U. Code and expect the customers to have to affirmatively do something to remedy this violation is clearly contrary to the intent of the law which limits the applicability of

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[8] ORA's briefs in that proceeding are available on these links:
http://docs.cpuc.ca.gov/PublishedDocs/EFILE/BRIEF/163086.PDF

http://docs.cpuc.ca.gov/PublishedDocs/EFILE/BRIEF/165418.PDF

[9] In its legal brief, ORA argued extensively about the meaning of a reference to Part 1 of the Public Utilities Code in Section 745. Assembly Bill 327 removed that language and thus ORA does not comment on it here.

> default time variant rates and is designed to protect customers. To expect customers to take action to opt into a rate program with more protections unfairly burdens these customers with the task of understanding arcane rate structures. (ORA Opening Brief at p. 7).

TURN also made an argument similar to ORA's. It stated:

> A waiver of this statutory protection must be knowing, voluntary and intelligent. Even an implied waiver requires some affirmative action... The fact that a customer does not "opt-out" from a default tariff cannot meet the standard for a voluntary waiver. Behavioral economics research and empirical evidence show that customers remain on default provisions even if it is against their economic interest or preference.

The Commission has ruled on a similar argument in the original PG&E Smart Meter proceeding (A.05-06-028) stating the converse, that customers may opt out of a default tariff that contains certain statutory protections and into a voluntary rate that excludes them. But it also stated that there must be adequate disclosure to customers signing up for the rate that by doing so they are waiving certain statutory protections:

> DRA also argues that in order for there to be a knowing waiver of the AB 1X protections, a customer must be informed of what those protections are. **We agree that customers should be informed before they sign up for the CPP program of the AB 1X protections they may be giving up**.
>
> Accordingly, when PG&E signs customers up for the CPP program we will require it to provide, along with the other materials it provides customers (e.g., an application form), a disclosure notice that must include at least the following points ….(D.06-07-027, pp. 31-32, emphasis added)

A disclosure statement stating that the default tariff excludes statutory protections, and that a customer can only receive these protections by opting-out to a different rate schedule, is difficult to communicate to customers.

If the questionable language about legislative requirements is allowed to remain in Staff Report, then legal briefs should be required in the current rulemaking to settle this legal dispute.

### D. Combination Tiered/TOU Rates

The Staff Proposal, at p. 57, mischaracterizes ORA's introductory TOU rate as having fifteen different rates, and thus being confusing to customers. It actually has three rates (for three tiers) plus a surcharge and credit – or five rates in total, not fifteen. Perhaps the ED was thinking that the tariff can be expanded to nine different summer rates and six different winter rates, for a total of fifteen rates. But the Staff Proposal fails to mention that the underlying tiered rates and surcharges and credits are identical in the summer and winter except for the fact that there's no surcharge in the winter. In any case, even though the rate can be expanded to nine rates in the summer and six in the winter, there is no need for the customer to keep track of fifteen rates. The whole intent of ORA's proposal was to simplify a more complex rate structure.

Although the Staff Proposal attempts to clarify the intent of ORA's proposal, it misses one key reason for this type of hybrid rate, and that is reduce the potential for revenue shortfalls from low-usage customers migrating from TOU rates to tiered rates, thus undermining the default TOU rate. ORA discussed the revenue shortfall problem in response to Question 5 of the March 19, 2013 ALJ ruling, which asked "What unintended consequences may arise as a result of your proposed rate structure and how could the risk of those unintended consequences be minimized?" The unintended consequence is revenue shortfall and that risk could be minimized by using an introductory TOU rate design. The Staff Proposal does not appear to address this important issue of revenue shortfall at all.

Perhaps the authors of the Staff Proposal feel they can avoid this issue because there is sufficient time to reduce the tier differentiation and revenue shortfall before 2018, when TOU rates would become the default residential tariff. But two issues must be considered. First, will the level of revenue requirement increases between now and 2018 allow for a reduction of the tier differential to 20%?[10] Second, what kinds of voluntary

[10] A 20% differential is the target provided on page 13 of the Staff Proposal.



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TOU rates should be offered before 2018 to get more customers accustomed to the TOU concept?

Offering attractive voluntary TOU options now is vital to working towards a transition to default status four years from now. The more customers that adopt TOU rates voluntarily, the easier that transition will be. Those voluntary options must consider the revenue losses that could occur if un-tiered TOU rates are offered in an era when the tier differentials are still fairly high. The introductory TOU rate structure addresses that problem. The only utility which has an un-tiered TOU rate open to all customers is SCE. But that rate has very high TOU differentials and a fairly long summer on-peak TOU period, making it unattractive to many customers.

If the Commission is serious about actively promoting voluntary TOU rates in the next four years, it is going to have to consider the introductory TOU rate design. Unfortunately, the Staff Proposal does not articulate how the rate design strategy should be adapted now that the landscape has changed since the May 19th ruling was written. That ruling stated in Appendix A: "For purposes of this exercise, you may assume that there are no legislative restrictions." As a result of Assembly Bill 327, we face a very serious restriction, and that is a prohibition of default TOU rates before 2018. This change in landscape should not mean that we should not allow the status quo for voluntary TOU schedules to remain for the next four year.

**E. Bill Protection**

The Staff Proposal, at page 20, states that bill protection should *not* be offered *concurrently* on CPP and the default TOU rates because doing so would "distort participant behavior on these separate tariffs." ORA believes that this is a factual error, and sees no reason for this restriction, which will likely have the opposite effect of what the Staff Proposal intends. First of all, P.U. Section 745(c) (4) specifies that the bill protection must be relative to the customer's previous rate schedule, and page 19 of the Staff Proposal envisions this as being the two-tiered non-TOU rate structure of 2017. If the customer opted for CPP rates at the beginning of 2018 (which the Staff Proposal on page 19 envisions being an overlay on the TOU rate design), it seems like this restriction

would only allow for bill protection to be applied the CPP overlay and not to the underlying TOU rate.

Thus one can conceive of a situation where customers would have to forfeit their protection on the TOU element of their rate structure when signing up for CPP. This could bias the customer against signing up for CPP, therefore distorting participant behavior. Perhaps the Energy Division has a different problem in mind. If so, it is unclear from the ED's Staff Proposal, and the problem should be explained.

## III. CONCLUSION

ORA again, complements the ED Staff Proposal, which clearly took a lot of work and provides a thorough analysis. ORA discusses errors in fact and logic in the foregoing discussion. Parties will be referring to the ED Staff Proposal when writing testimony in upcoming phases of this proceeding. Making the changes that ORA proposes here, will help the process by correcting errors and identifying areas of judgment in the report.

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