BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2014 (U39M).	Application 12-11-009 (Filed November 15, 2012)
And Related Matter.	Investigation 13-03-007

COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE THOMAS R. PULSIFER

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the Office of Ratepayer Advocates (ORA)[1] submits these Opening Comments to the Proposed Decision (PD) of Administrative Law Judge Thomas R. Pulsifer in the above-captioned matter.

The PD would authorize test year revenue requirement increases of $453 million for the Test Year 2014.[2] This represents a 6.8% increase over present rates,[3] and 39.1 percent of the $1.160 billion increase[4] PG&E was requesting for the Test Year.

For 2015 and 2016, the PD would authorize post-test year revenue increases of $322 million and $371 million, respectively. If adopted, the PD approves a cumulative increase of $2.37 billion over the three-year General Rate Case period.

ORA's Comments address only the areas in the PD where there are legal, factual, or technical errors. The Commission should not construe ORA's silence on a particular issue as an assent on that issue. ORA recommends that the final decision the Commission adopts in this proceeding include the changes described in these Comments and in Appendix A.

II. LEGAL ISSUES

A. Burden of Proof and Standard of Proof

The PD notes that PG&E, as the applicant, has the burden of proof "… that it is entitled to the relief sought in this proceeding, and of affirmatively establishing the reasonableness of all aspects of the application."[5] The PD then goes on to say that "[w]ith the burden of proof placed on PG&E, the Commission has held that the standard of proof PG&E must meet is that of a preponderance of the evidence."[6] While it is true that, in recent years, the Commission has

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[1] On September 26, 2013, Governor Edmund G. Brown signed Senate Bill (SB) 96 into law. Among other things, SB 96 amends Section 309.5 of the Public Utilities Code changing the name of the Division of Ratepayer Advocates to the Office of Ratepayer Advocates. The PD refers to ORA by its previous name, Division of Ratepayer Advocates as that was used during the course of most of the litigation in this proceeding. (PD, p. 12, footnote 2.)

[2] PD, p. 1.

[3] PD, p. 1.

[4] PD, p. 2.

[5] PD, p. 16.

[6] PD, p. 16.

begun applying a lower standard of proof to large energy utility General Rate Cases (GRCs), it has never explained why. To lower the standard of proof without explanation is arbitrary and capricious and legal error. The appropriate standard of proof is "clear and convincing evidence."

Since at least 1952, the standard the Commission applied to GRCs was "clear and convincing evidence."[7] Then, in 2009, the Commission began applying the lower "preponderance of the evidence" standard.

Clear and convincing evidence is "proof by evidence that is clear, explicit and unequivocal; that is so clear as to leave no substantial doubt; or that is sufficiently strong to demand the unhesitating assent of every reasonable mind."[8] "Preponderance of the evidence" has been described as a standard that "asks the court simply to make a comparative judgment about the evidence to determine whether a proposition is more likely true than not true based on the evidence in the record; it does not require a court to reach a conclusion about whether that proposition is actually true."[9]

The Public Utilities Code charges the Commission with the responsibility of ensuring that all rates demanded or received by a public utility are just and reasonable; "no public utility shall change any rate… except upon a showing before the Commission, and a finding by the Commission, that the new rate is justified."[10] Thus, California law requires this Commission to find that a new rate ***is*** justified, not that it ***probably*** is.[11]

Public Utilities Code Section 963(b)(3) states: "It is the policy of the state that the commission and each gas corporation place safety of the public and gas corporation employees as the top priority. The commission shall take all reasonable and appropriate actions necessary to carry out the safety priority policy of this paragraph consistent with the principle of just and reasonable cost-based rates." There is no equivocation in the statute – the Commission is

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[7] See *Southern Counties Gas Company of California* (1952) 51 CPUC 533, 534; D.46876.

[8] *Application of Pacific Gas and Electric Company* (2000) D.00-02-046, mimeo, p. 38 quoting from *Application of PT&T Col. For A General Rate Increase* (1970) 2 CPUC 2d 89, pp. 98-99, D. 90642.

[9] See *Almerfedi v. Obama* 654 F. 3d 1 (D.C. Cir 2011)

[10] Public Utilities Code Sections 451, 454.

[11] See *Getty v. Commissioner (1990)* 913 F.2d 1486; 1990 U.S. App. LEXIS 16074*19.

required to set rates that ***are*** just, reasonable and cost-based, not merely "***more likely than not***" to be just, reasonable and cost-based."[12]

The last thorough analysis of the standard of proof applicable to General Rate Cases that ORA is aware of was in a decision on PG&E's Test Year 2000 GRC, Application (A.) 97-12-020.[13] The original Commission decision in A.97-12-020 was challenged on rehearing by both TURN and PG&E on grounds relating to the clear and convincing standard of proof. TURN challenged a Conclusion of Law that said a utility only had to "generally support its application through clear and convincing evidence," when it should have said that a "utility must support every part of its application with clear and convincing evidence."[14] PG&E argued that the appropriate standard of proof was "a preponderance of the evidence."

D.01-10-031 modified the Conclusion of Law consistent with TURN's position noting that:

> [W]e have historically, although not wholly consistently, applied the clear and convincing burden of proof to utilities seeking general rate increases. We applied the clear and convincing standard to PG&E in this case. This standard is applicable to all aspects of PG&E's showing.[15]

In so doing, the Commission said:

> We must insist upon PG&E demonstrating for each component of its proposed revenue requirements, that it produce clear and convincing evidence. To the extent it fails do, we cannot grant the requested revenue increase.[16]

D.01-10-031 appears to be the last time the Commission included a thorough legal analysis of the standard of proof in a General Rate Case decision, and in that decision, the Commission concluded that the proper standard is clear and convincing evidence. The

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[12] *Almerfedi v. Obama* 654 F. 3d 1 (D.C. Cir 2011).

[13] *Application of PG&E to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 1999* (PG&E TY 1999 GRC) (2000) D. 00-02-046, §4.4.4, "Burden of Proof and Evidentiary Standard."

[14] *Order Granting Rehearing of and Modifying Decision 00-02-046* (2001) D.01-10-031, 2001 Cal LEXIS 917 *3.

[15] *Order Granting Rehearing of and Modifying Decision 00-02-046* (2001) D.01-10-031, 2001 Cal LEXIS 917 *6.

[16] D.01-10-031, 2001 Cal LEXIS 917 *6.

Commission affirmed this long-standing rule in its 2004 decision in the Test Year (TY) 2003 GRC of Southern California Edison Company (SCE):

> ORA reminds us that SCE must meet the burden of proving by clear and convincing evidence that it is entitled to the relief it is seeking in this proceeding, and that the burden is not on ORA or other intervenors to demonstrate that SCE's request is unreasonable. We intend to hold SCE to this standard as we examine individually myriad components of SCE's request.[17]

In a 2008 decision addressing arguments on rehearing in the Sunrise Powerlink case, the Commission decided not to apply the clear and convincing standard to that Certificate of Public Convenience and Necessity proceeding, but said:

> Moreover, we adequately explain in the Decision that *the clear and convincing standard has generally been limited to general rate cases and reasonableness reviews which are specialized proceedings*.[18]

But then, in 2009, the Commission inexplicably departed from this long line of precedent, and applied a "preponderance of the evidence" standard to an SCE General Rate Case. No reason was given in the decision for this change except to say that the Commission had, "at times incorrectly referred to [the standard of proof] as 'clear and convincing' evidence."[19]

In its decision in SCE's TY 2012 GRC,[20] the Commission again declared "preponderance of the evidence" to be the standard, quoting from the Evidence Code definition of proof as "the establishment of evidence of a requisite degree of belief."[21] But nothing in that definition justifies lowering the standard of proof. To ORA's knowledge, the Commission has never provided any legal analysis explaining why, as utilities' applications become even more complex, their standard of proof should be lower. This PD does not do so either.

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[17] D.04-07-022, p. 10.

[18] *Order Modifying Decision 08-12-058 and Denying Rehearing of Decision as Modified* (2009) D.09-07-024, mimeo, p. 3, emphasis added.

[19] D.09-03-025, mimeo, p. 8. The citations were to *In the Matter of the Application of California Water Company* (D.03-09-021, pp. 17-19), which referred to "clear" evidence, and Section 190 of the Evidence Code.

[20] *Decision on Test Year 2012 General Rate Case for Southern California Edison Company,* D.12-11-051, mimeo, p. 9.

[21] D.12-11-051, p. 9.

When the Commission held in 2000 that a clear and convincing standard should be applied to rate increase proceedings, the Commission quoted from a treatise first published in 1926 which described the advantage utilities have in ratemaking litigation:

> Successful regulation of great public utility corporations, with their properties and their services ramifying in every direction, with vast revenues flowing in continuously, with nationwide alliances, and clearing-houses of technical information and expert service, is no simple and easy matter. The utilities …. stand ready to produce all the facts which they themselves declare to be pertinent and to explain them to the Commission, and to tell the Commission what its duty is.
>
> … If the Commission depends upon the consumers or the municipalities to present the public side of the controversy, the evidence in most cases will be heavily one-sided.
>
> … Financial resources, experience, inside knowledge, expert affiliations, great things at stake and continuity of interest, combine to give the utilities an overwhelming advantage in the presentation of their cases before Commission and Courts.[22]

In its 2000 decision, this Commission noted that the problems identified in 1926 – utility control through "inside" information and ratepayer funding of their efforts to "defeat the consumers" -- still exist.[23] In that decision, the Commission concluded that:

> The natural litigation advantage enjoyed by utilities, and the fact that we must rely in significant part on their experts, combine to reinforce the importance of placing the burden of proof in ratemaking applications on the applicant.[24]

Large energy utility GRCs have steadily gotten more complex and more voluminous since 2000. Now, with the incorporation of a risk assessment process into the already complex GRC proceedings, the "natural litigation advantage" of the utilities is even more pronounced.

The PD says that "[t]he burden is on PG&E to establish that its proposed work activities are necessary, and that it has prudently examined alternatives before receiving ratepayer

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[22] D.00-02-046, p. 34.

[23] D.00-02-046, p. 35.

[24] D.00-02-046, p. 36.

funding."[25] To ensure that PG&E has done so, the Commission should hold PG&E to the clear and convincing standard of proof.[26]

B. Supplemental Executive Retirement Plan (SERP)

The PD says that "PG&E forecasts $3.485 million in 2014 for non-qualified pensions and administrative costs."[27] The PD then "approves PG&E's full forecast …"[28] The PD also says that "[t]hese non-qualified plans make employees whole for benefits they would have received, but for IRA limitations on qualified trust funding."[29] While true, this does not mean that ratepayers should have to make up the difference. ORA had recommended that the Commission not allow any SERP costs to be included in TY expenses for rate recovery, and the PD did not adequately address why it rejected ORA's recommendation.

In its two most recent decisions regarding non-qualified pensions, the Commission has ordered ratepayer funding of only 50%.[30] The PD's unexplained and arbitrary departure from this policy for the sole benefit of PG&E's shareholders is legal error.

This PD would require ratepayers to pay 100% of PG&E's Supplemental Executive Retirement Plan costs saying that, "[i]n view of the fact that PG&E's forecast does not include active executives earning current benefits, the rationale for a reduction in funding in the Sempra and SCE proceedings does not apply here."[31] The PD contains no citations to support its conclusion. The Sempra TY 2014 decision, the SCE TY 2012, and the SCE TY 2009 decisions all ordered a 50/50 split of Supplemental Executive Retirement Plan costs.

The common denominator in these recent Commission decisions is that Supplemental Executive Retirement Plans primarily benefit the executives and shareholders of the company.[32] Nothing in these GRC decisions suggests that the rationale for the 50/50 sharing is to apportion

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[25] PD, p. 28.

[26] The appropriate standard of proof is an issue in other proceedings pending before the Commission including R.13-11-006 and A.12-02-013.

[27] PD, p. 525.

[28] PD, p. 525.

[29] PD, p. 525.

[30] D.12-11-051, p. 477; D.13-05-010, p. 887.

[31] PD, p. 526.

[32] D.13-05-010, p. 877; D.09-03-025, p. 146.

to ratepayers all the SERP costs for current retirees or their surviving spouses/ beneficiaries, as opposed to current active executives. The PD provides no factual evidence showing any ratepayer benefit derived for funding excessive compensation for supplemental pensions of "retired PG&E executives" or the reason it is an appropriate ratepayer expense.

The Commission should deny PG&E's request for ratepayer funding, as ORA recommends. However, if the Commission is inclined to authorize ratepayer funding, it should apportion no more than 50% of the Supplemental Executive Retirement Plan costs to PG&E ratepayers.

ORA also notes what may be a typographical error in the PD in its reference to "$250,000 of administrative costs that relate to administering all employee pension plans, which DRA should not have objected to and which should be allowed separately in full." In Rebuttal testimony, PG&E refers to $225,000 in administrative costs which are for both tax qualified and non-qualified benefit plans.[33]

C. Settlements, Judgments and Claims Regarding Equal Employment Opportunity Litigation Costs

The PD adopts PG&E's 2014 forecast of $21.0 million for settlements and judgments, finding "no basis to reduce PG&E's forecast based on DRA's claim that employment and discrimination cases should be removed before forecasting Test Year expenses."[34] The PD's rationale is that:

> None of the settlements and judgments used in PG&E's 2014 forecast includes punitive damages or a court finding of bad faith. Thus, there is no basis to reduce the forecast consistent with the policy adopted in D.83-12-068.[35]

As support for this conclusion, the PD appears to rely on PG&E's characterization of the Commission decision, D.83-12-068, as a specific directive[36] to PG&E exempting it from the Federal Energy Regulatory Commission (FERC) Accounting Release 12 (AR 12).

The PD's conclusion is based on an incomplete reading of D.83-12-068, and contrary to the long-standing policy the Commission has applied since. This is legal error.

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[33] Hearing Ex. 37 (PG&E-8, WP), p. 7-11; Hearing Ex. 35 (PG&E-23), p. 8-5.

[34] PD, p. 562.

[35] PD, p. 562.

[36] PG&E Opening Brief, p. 9-48.

AR-12 says that the proper accounting treatment for expenditures made by a utility resulting from employment practices that "…were found to be discriminatory ... *or that were the result of a compromise settlement or consent decree* ... should not be considered as just and reasonable charges to utility operations and should be classified to the appropriate non-operating expense accounts."[37]

The part of D.83-12-068 that PG&E cited and upon which the PD appears to rely said:

> As we have done in the past, we will allow reasonably incurred costs of EEO (equal employment opportunity] litigation. The reasonable cost of each suit will be included in the general rate case following settlement or conclusion of the proceeding. We will disallow all expenses where PG&E has had to pay punitive damages or where the court has found that PG&E acted in bad faith.[38]

The part of D.83-12-068 which PG&E did not mention, and which the PD does not address says:

> Further, the *reasonableness of out-of-court settlements will also be examined.* We instruct the Executive Director to provide for a legal analysis, as needed, to determine whether future requests for EEO compensation are reasonable.[39]

Since that 1983 decision, the Commission has issued at least two decisions where the proper ratemaking treatment of employment discrimination litigation costs was fully litigated, and the reasonableness of out-of-court settlements carefully examined. The PD does not mention either decision.

In D.96-01-011, the decision resolving an SCE GRC, the Commission held that prior Commission precedent and FERC AR-12 should be applied to the case. In doing so, the Commission said that:

> Although we support alternative dispute resolution in appropriate situations, one of the policies behind AR-12 is that costs incurred in meritorious employment discrimination suits should not be charged to ratepayers. If we reversed this long-standing policy, we

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[37] See *SoCal Edison Company* (1980) 5 CPUC 2d 39; D.92549; 1980 Cal PUC Lexis 1296* 48, emphasis added.

[38] D.83-12-068, 14 CPUC 2d 15, 122.

[39] D.83-12-068, 14 CPUC 2d 15, 122, emphasis added.

> would be sanctioning ratepayer funding of these types of costs, provided a settlement occurred[40]

In its most recent GRC, SCE again asked the Commission to change the policy. In its 2012 decision, the Commission reaffirmed the policy stating:

> As to settlement of discrimination claims, we decline to alter our longstanding policy on this issue because the risks of a potentially adverse verdict still drive any settlement. Unchecked ratepayer recovery could result in a loss of vigilance in preventing discriminatory practices.[41]

In both decisions, the Commission reviewed and considered the legal theories of all parties and concluded that costs incurred in settlements of discrimination claims should not be charged to ratepayers. Since the Commission itself has conducted the legal analysis D.83-12-068 contemplated, the special exemption PG&E claims is no longer valid. The final decision in this GRC should remove $1.228 million from PG&E's Test Year 2014 estimate for Equal Employment Opportunity Litigation Costs.[42]

III. FACTUAL AND TECHNICAL ISSUES

A. Energy Supply - Maintain Fossil Generating Equipment (MWC KL)

In the discussion on page 417 of the PD regarding the Colusa Long Term Service Agreement (LTSA), including the payment that does not occur until 2019 as a cost in the TY 2014 forecast is inappropriate because it is factually inaccurate and the reasoning is internally inconsistent. The following paragraph of the PD regarding the Humboldt facility states, "We conclude that the test year forecast should be based on 2014 operations, rather than changes expected in 2015 and 2016." The same logic should be applied to the Colusa LTSA milestone payment which does not occur until 2019. As ORA proposes, the issue should be addressed in the next GRC and the payment for 2019 should not be amortized into 2014 since the event will not occur in 2014 or within the current GRC cycle. The final decision should adopt a 2014

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[40] *In Re Southern California Edison Company (*1996) D.96-01-011, 1996 Cal CPUC LEXIS 23.

[41] *Decision on Test Year 2012 General Rate Case for Southern California Edison Company* (2012) D.12-11-051, mimeo, pp. 491-492.

[42] Ex. 374 (Joint Comparison Exhibit), p. 2-359.

expense for MWC KL which is reduced by the 6-year amortized/levelized amount that PG&E included in its request.[43]

B. Employee Compensation

For PG&E employee compensation, the PD adopts a limit of 5% above market, which is consistent with previous Commission decisions. The PD finds, however, that PG&E employee compensation is 5.2% above market, rather than the 9.9% above market, as stated in the actual Total Compensation Study jointly administered by PG&E and ORA. This is factual error.

As the PD states, PG&E and ORA jointly administered the Total Compensation Study (TCS), selecting Mercer (US) Inc. to perform it.[44] This means "PG&E and DRA jointly developed the scope of the study and [jointly] participated in team meetings through the study."[45] The end result of that *jointly* conducted study was that PG&E's "overall position to market" was 9.9% above it.[46]

After the Total Compensation Study (based on 2011 data) was issued, and after ORA submitted its testimony, PG&E unilaterally contacted Mercer and "… asked Mercer to re-run the TCS using employee benefit plan designs PG&E proposed for its 2014 GRC that were not included in the initial study."[47] As the PD notes, Mercer used "different benefits valuation assumptions for "pension, employee medical, 401k."[48] In this new run, Mercer only updated what PG&E asked it to. The results of the new run brought PG&E's total compensation down from 9.9% over market to 5.2% over market.[49]

The PD accepts the 5.2% figure with the comment that "[n]o party offered evidence to dispute that result."[50] This is factually incorrect. PG&E introduced this new run for the first

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[43] The amount is considered confidential and can be derived from information appearing in Hearing Exhibit 25C, Confidential Workpapers supporting Chapters 2 and 4 of Exhibit 25-C (PG&E-6) Energy Supply, page WP4-27.

[44] PD, p. 504.

[45] PD, p. 504.

[46] Hearing Ex. 35 (PG&E-8), p. 8-9

[47] PD, p. 506.

[48] Hearing Exhibit 62 (PG&E-23), p. 1A-1.

[49] PD, p. 506.

[50] PD, p. 506.

time in its Rebuttal Testimony, and there was no surrebuttal opportunity included in the Scoping Memo schedule. To the extent that mathematical calculation of 5.2% is not disputed, that is simply because the model was Mercer's and was re-run by Mercer.

In addition, Mercer did not update other inputs, which skews the results and is not accurate by Commission standards. According to PG&E's Rebuttal Testimony,[51] the only things changed were benefit plan designs proposed in the 2014 GRC Application: Pension, Employee Medical, and 401k. Updating proposed labor increases of 2.79% per year, from 2011 to 2014 levels, would have affected the results. In addition, "health accounts" designed to offset the employees' increased expenses[52] for the first few years should certainly be valued as an employee benefit.

Contrary to PG&E's false assertion, ORA *did* dispute the benefit assumptions that PG&E had Mercer use as inputs to re-run the model. As the PD itself notes, ORA disputed PG&E's proposed labor escalation rates, [53] and PG&E's proposed medical benefits.[54] The final decision should reflect the results of the total compensation study that was jointly administered by ORA and PG&E. Given the study results which show PG&E's total compensation at 9.9% above market, the Commission should adjust PG&E's total compensation to bring it down to within the Commission's acceptable 5% range, or approve a "global" adjustment that would bring PG&E's total compensation to within the acceptable variance.

C. Short Term Incentive Program (STIP)

On page 512, the PD's adjustment to STIP to determine the appropriate level of ratepayer funding is inconsistent with the policy set forth in the PD. The PD develops the ratepayer funding of STIP by reducing PG&E's request by $18.786 million for the Earnings From Operations (EFO) metric and $12.5 million for the Customer Satisfaction metric. The PD states that it completely removed the two STIP metrics of EFO and Customer Satisfaction. This is factually inaccurate. As set forth in Hearing Exhibit 83 (DRA-15), EFO comprises 30% of STIP and Customer Satisfaction comprises 30% of STIP. In order to completely remove these two

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[51] Hearing Exhibit 62, (PG&E-23), p. 1A-1.

[52] Offset amounts are $1,500 per person for 65% of PG&E's employees, and $750 per person for the remaining employees.

[53] PD, p. 508.

[54] PD, pp. 520-521.

metrics from STIP as the PD states, PG&E's STIP request must be properly reduced. PG&E's requested STIP funding must be reduced by 30% for EFO and 30% for Customer Satisfaction to be consistent with the policy set forth in the PD.

Making these appropriate adjustments to PG&E's request of $130.2 million will result in ratepayer funding for STIP of $52.1 million. This amount of ratepayer funding for short term incentives is consistent with the policy that was adopted in the last Commission decision, D.00-02-046,[55] on the matter addressing PG&E incentive programs. It is also consistent with the current ratepayer funding of STIP adopted in D.11-05-018 regarding PG&E's TY 2011 GRC. The final decision should adopt a STIP amount of $52.1 million.

D. Rewards & Recognition

On pages 517-518, the PD approves PG&E's forecast of $8.734 million to fund its Rewards & Recognition (R&R) program, and concludes that PG&E's program "… is similar to those offered by the other California utilities." This is inconsistent with the Commission's treatment of such programs. In its decision resolving SCE's TY 2012 GRC, the Commission completely disallowed SCE's request for $7 million of ratepayer funding for its Awards to Celebrate Excellence (ACE) program.[56] In its decision resolving SCE's TY 2009 GRC, the Commission rejected SCE's request to include any Spot Bonus or ACE programs in its 2009 revenue requirement.[57]

The final decision should deny PG&E's request for ratepayer funding of its Rewards & Recognition program.

E. Bonus Depreciation

As indicated on page 577, the PD would continue the treatment of bonus depreciation as reflected in the Tax Act Memorandum Account (TAMA) per Resolution L-411A. However, the PD fails to recognize that Resolution L-411A acknowledged that the benefits of bonus depreciation should be reflected in rates through the GRC process and that the purpose of the

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[55] D.00-02-046, p. 259: "We find no compelling evidence for a change in our current practice of allowing 50% recovery of targeted incentives from ratepayers." FOF 126: "There is no compelling evidence for a change in our current practice of allowing 50% recovery of targeted PIP incentives from ratepayers."

[56] D.12-11-051, pp. 458-460, 474-475.

[57] D.09-03-025, pp. 132-134.

memorandum account was to preserve the opportunity to consider, at a later time, the impacts of the Tax Law for those utilities whose GRC rates had already been set. That is not the case for PG&E. PG&E's TY 2014 GRC rates are currently being set and there is a viable alternative to the TAMA, which is to keep the proceeding open so that rates can be adjusted if the 50% bonus depreciation is extended. The PD should be modified to keep the current rate case proceeding open for one year so that the benefits associated with any extension of 50% bonus depreciation in 2014 will be passed through in rates to customers. Ratepayers will not get the depreciation benefit unless the case is left open and it is modeled. This approach is consistent with the Commission's practice of allowing PG&E to receive its GRC rate increase effective January 1, 2014 when there is a delay in the issuance of the Commission's final decision beyond the January 1, 2014 date.

In the case of the Tax Law, it is unlikely that Congress will come to a final decision regarding 2014 tax year issues such as bonus depreciation until sometime toward the end of 2014. Therefore, similar to the consideration given to utilities when Commission decisions that authorize rate increases are delayed, the Commission should ensure ratepayers receive rate reductions given Congress' likely delay in addressing bonus depreciation. If Congress approves bonus deprecation for 2014, then PG&E ratepayers should obtain the immediate benefits in their 2014, 2015 and 2016 GRC rates. These benefits should be flowed directly to ratepayers by keeping the proceeding open for appropriate changes to the GRC revenues for bonus deprecation.

F. Other Operating Revenues

The PD adopts PG&E's forecast for Other Operating Revenues, rejecting "DRA's proposed adjustment for reimbursed revenues."[58] The adjustment ORA proposed related to Reimbursed Revenues PG&E received for its efforts to help east coast utilities in the aftermath of Hurricane Sandy.[59]

The rationale the PD uses for adopting PG&E's forecast is the following:

> As explained by PG&E, reimbursed revenues and expenses are a zero sum game. Only recorded amounts in the GRC-recoverable

[58] PD, p. 595.

[59] Ex. 370 (DRA-3-E), Ex. 71 (DRA-3).

accounts are considered in determining revenue requirements recoverable from customers.[60]

This is factually incorrect. While it is true that PG&E gets reimbursed for what it spends for mutual assistance to other utilities, it is not a "zero sum game" for ratepayers. For instance, PG&E's ratepayers did not get refunded the money PG&E spent to pay for the labor and associated costs to send PG&E employees to assist the east coast utilities. PG&E's ratepayers already funded those costs in the revenue requirement, but did not benefit from the amounts reimbursed to PG&E. To correct that error, ORA recommends that the final decision include an adjustment for reimbursed revenues.

G. Fuel Oil Inventory Costs

The PD correctly adopts ORA's position that nuclear fuel inventory be excluded from rate base.[61] The PD rejects PG&E's proposal to modify long-standing Commission policy of recovering nuclear fuel carrying costs through the Energy Resource Recovery Account (ERRA) proceeding. The PD errs in not applying the same standard for fuel oil inventory costs for the Humboldt Bay Power Plant. Concerning fuel oil inventory costs, the PD erroneously states, "there are no disputed issues concerning PG&E's forecast for …diesel fuel inventory."[62] The PD overlooks the fact that ORA does, in fact, dispute PG&E's fuel inventory costs together with the nuclear fuel inventory costs.[63] This is an oversight by the PD. The rationale for including nuclear fuel costs in the ERRA proceeding equally applies for fuel oil inventory for the Humboldt Bay Power Plant. Therefore, consistent with the treatment of nuclear fuel costs, the PD should not allow PG&E to include $1.533 million of fuel oil inventory costs in rate base. This cost should remain within the ERRA proceeding.

H. Clarifications Leak Survey and Repair (MWC DE)

The first sentence on page 74 of the PD states: "We adopt a 2014 funding for MWC DE sufficient to enable PG&E to meet a superior standard of safety, recognizing that gas leaks pose the most significant source of system safety risk." There is no factual evidence such as a risk assessment analysis to support a conclusion that gas leaks pose the most significant source of

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[60] PD, p. 595.

[61] PD, p. 606.

[62] PD, p. 420.

[63] Ex. 89 (DRA -21), p. 5.

system safety risk. The sentence should be revised to read as follows: "We adopt a 2014 funding for MWC DE sufficient to enable PG&E to meet a superior standard of safety, recognizing that gas leaks pose one of the most significant sources of system safety risk."

I. Customer Care

In connection with PG&E's incremental 2014 expense forecast for Provide Account Services (MWC IV), the PD reduces PG&E's proposed staffing level increase from 146 full time equivalents (FTEs) to 84 FTEs. [64] For ease of reference, it would be helpful if the final decision includes the corresponding dollar amount for this Major Work Category.

J. Attrition Adjustment Mechanism

The PD authorizes PG&E additional proposed revenue increases in the post-test years, 2015 and 2016. The text of the PD refers to these increases as 4.5% for 2015 and 5% for 2016, but the corresponding dollar amounts do not appear to be included in the text, only in Appendix D.[65] For ease of reference, it would be helpful if the text of the decision also includes those dollar amounts.

The PD also refers to a reduction in the 2015 attrition amounts for the "effects of DOE litigation proceeds which is carried into 2016."[66] It is not clear if the effects of the DOE litigation proceeds are incorporated in the "Overview" of PG&E's attrition rate adjustment mechanism which refers to "… additional revenue increases of $492 million in 2015 and $504 million in 2016.[67]

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[64] PD, p. 318.

[65] PD, p. 638.

[66] PD, p. 632. The text of the decision says that "PG&E also proposes to reduce the 2015 attrition amounts by $20,000…." This figure should be $**20 million.**

[67] See PD, p. 632.

IV. CONCLUSION

For all the foregoing reasons, ORA asks that the Commission incorporate the changes above into its final decision in this proceeding.

Respectfully submitted

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APPENDIX A

Proposed Findings of Fact

195. PG&E's forecast of $31.9 million []for maintenance at Gateway, Colusa and Humboldt, including labor to maintain the facilities, the Long-Term Service Agreements at Colusa and Gateway, materials and contract, and other maintenance and engineering services **should be reduced so that the test year forecast is based on 2014 operations, rather than changes expected in 2015 and 2016.**

245. Ratepayer expense funding of **$52.1** million of the STIP program for test year 2014 incorporates exclusion of the EFO and Customer Satisfaction metrics, as proposed by **TURN and DRA.**

246. **Ratepayer expense funding of** $8.734 million for the R&R program is **not** reasonable.

273. **[delete and replace with:] If bonus depreciation is approved for 2014, then PG&E ratepayers should obtain the immediate benefits in their 2014, 2015 and 2016 GRC rates. These benefits should be flowed directly to ratepayers by keeping the proceeding open for appropriate changes to the GRC revenues for bonus depreciation.**

289. PG&E and DRA differ in their OOR forecasts by $8.7 million due to differences in forecasts of reimbursed revenues and $1.0 million relating to DRA's reliance on 2012 recorded data. **Reimbursed revenues and expenses are a zero sum game for PG&E, but not for its ratepayers.**

Proposed Conclusions of Law

4. The standard of proof that PG&E must meet is that of **clear and convincing evidence. To meet the standard of proof, PG&E must present proof by evidence that is clear, explicit and unequivocal; that is so clear as to leave no substantial doubt; or that is sufficiently strong to demand the unhesitating assent of every reasonable mind.**

*ORA's proposed changes are in **bold type**.