BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into Transfer of Master-Meter/Submeter Systems at Mobilehome Parks and Manufactured Housing Communities to Electric and Gas Corporations.	R.11-02-018 (Filed February 24, 2011)

OPENING BRIEF OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M), SOUTHERN CALIFORNIA GAS COMPANY (U 904 G), THE OFFICE OF RATEPAYER ADVOCATES, THE UTILITY REFORM NETWORK, PACIFICORP D.B.A. PACIFIC POWER, BEAR VALLEY ELECTRIC SERVICE (U 913 E), AND LIBERTY UTILITIES (CALPECO ELECTRIC), LLC (U 933-E)

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Pursuant to Rule 13.11 of the California Public Utilities Commission (Commission or CPUC) Rules of Practice and Procedure and the Assigned Commissioner's Second Amended Ruling and Scoping Memo (Scoping Memo) issued on July 17, 2013, as amended by Assigned ALJ in the evidentiary hearings on September 10, 2013, The Utility Reform Network (TURN) hereby files this opening brief on behalf of the Office of Ratepayer Advocates (ORA),[1] Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), Southern California Gas Company (SoCalGas), PacifiCorp d/b/a Pacific Power (PacifiCorp), Bear Valley Electric Service (BVES) and Liberty Utilities (CalPeco Electric) LLC (Liberty Utilities) (collectively, the Joint Parties) on the issues to be decided in this proceeding.

[1] The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013: public resources), which was approved by the Governor on September 26, 2013.

I. INTRODUCTION

In accordance with the Assigned Commissioner's Scoping Memo, the Joint Parties propose a three-year pilot program to convert, up-to-the-meter, a limited number of mobilehome parks (MHPs) that voluntarily seek direct natural gas and/or electric service from a Commission-jurisdictional utility in lieu of continuing to operate a master-metered/submetered utility system at ratepayers' expense.[2] The MHP conversions will be prioritized by the Commission's Safety and Enforcement Division (SED). The Joint Parties' proposal offers a significantly higher incentive than the current statutory structure to increase prior low MHP conversion rates and presents an opportunity for MHP owners to convert their systems while enabling the Joint Parties and the Commission to obtain pertinent data on MHP conversions and cost of conversions for future assessment of the incentive. The Joint Parties' proposal meets the Rulemaking's objectives and recommendations for the program going forward.

Conversely, Pacific Gas and Electric Company (PG&E), Southwest Gas Corporation (SWG), Western Manufactured Housing Communities Association (WMA), Golden State Manufactured Home Owners League (GSMOL), Coalition of California Utility Employees (CCUE) and San Luis Rey Homes (SLRH) propose an open-ended program to convert all MHPs, including facilities beyond-the-meter, at 100% ratepayer expense (the PG&E proposal).[3]

There are fundamental problems with the PG&E proposal, and the Commission should therefore reject it.

- The Commission does not have the jurisdiction and authority to approve PG&E's beyond-the-meter proposal.

[2] Exhibit 17.
[3] Exhibit 19.

- There is no specific grant of authority for the Commission to regulate any non-utility electric or gas service equipment beyond-the-meter.
- Non-utility beyond-the-meter facilities fall under the local governments' jurisdiction and these regulations can vary dramatically.
- PG&E's beyond-the-meter proposal violates long-standing utility tariff rules, which have the force and effect of state law, that prohibit the utility from funding any beyond-the-meter facilities.
- PG&E's beyond-the-meter proposal imposes an impermissible tax burden on the MHP resident as it will result in income tax collection from the MHP residents for any beyond-the-meter facilities funded by the utility.

- There is no evidence that the existing MHP submetered service, taken as a whole, poses an imminent and serious safety risk which warrants conversion of all MHPs as proposed by PG&E.
- The PG&E proposal imposes a substantial and unreasonable burden on utility ratepayers and has no built-in regulatory controls built-in to minimize cost impacts on ratepayers.

II. JURISDICTION AND AUTHORITY

The issue of jurisdictional authority over beyond-the-interconnection-point or beyond-the-meter facilities was raised at the September 9-10, 2013 evidentiary hearings for Rulemaking 11-02-018, conducted by Administrative Law Judge (ALJ) Jean Vieth in San Francisco.[4] The discussions at these evidentiary hearings indicated that the proceeding might benefit from a legal briefing on the issue of "if the Commission were to adopt the PG&E proposal or some form of it, that would be an unlawful act, the Commission would act beyond its jurisdiction."[5] ALJ Vieth specifically requested parties file legal briefs that thoroughly address "whether or not statute

[4] Evidentiary Hearing Transcript dated September 10, 2013, at pp. 222 -232.
[5] Evidentiary Hearing Transcript dated September 10, 2013, at p. 230, ll. 22-27.

permits or prohibits the PG&E proposal"[6] to "include these beyond-the-meter improvements"[7] and "fund certain project costs typically funded by the MHP owner under existing line extension tariffs[8] and Public Utilities Code[9]".[10]

As will be described in greater detail below, the Commission does **not** have explicit authority to regulate non-utilities beyond-the-meter or require beyond-the-meter improvements.

A. The Commission has no explicit authority to regulate behind-the-meter-facilities.

The Commission has no specific grant of authority to regulate any non-utility electric or gas service equipment at MHPs beyond the interconnection point or beyond the utility meter facilities. Furthermore, the Commission does have explicit authority to regulate certain other aspects of MHPs, like pipeline safety and propane master systems. Thus, the Commission cannot lawfully use and should not use its implicit regulating authority under Public Utilities Code § 701[11] to regulate the remaining aspects of MHPs, including beyond-the-meter facilities, for which it does not have explicit statutory authority to regulate.

1. The CPUC's powers are derived from both the California Constitution and from Legistlature.

The scope of Commission jurisdiction and authority is central to a determination of the Commission's ability to adequately regulate beyond the interconnection point or fund the construction of customer owned gas or electric facilities beyond-the-meter. The CPUC is a regulatory body of constitutional origin established in Article XII of the California

[6] Evidentiary Hearing Transcript dated September 10, 2013, at p. 359, ll. 20-24.
[7] Exhibit 3 at p. 1-3, l. 14.
[8] Gas and Electric Rules 15 and 16.
[9] *See* Cal. Pub. Util. Cod §§ 2791-2799.
[10] Exhibit 3 at pp. 1-5, ll. 27-29; MHPs that take natural gas service through a master meter and then distribute it to park residents through their own system of underground pipes (MHP).
[11] The Legislature has enacted Public Utilities Code § 701, conferring on the Commission authority to supervise and regulate every public utility in California and do all things, whether specifically designated in the Public Utilities Act or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

Constitution.[12] The Commission's powers are derived in part from the Constitution and in part from the Legislature.[13] With respect to those powers derived from the Legislature, the Constitution confers plenary power, unlimited by other provisions of the Constitution, upon the Legislature to grant additional regulatory authority to the CPUC.[14] This plenary power is subject to certain limitations; mainly that any additional powers bestowed upon the Commission are cognate and germane to the jurisdictional regulation of utilities.[15]

2. The CPUC's power is extensive but still limited to power that is "congnate or germane to the regulation of public utilities."

The breadth of regulatory authority granted to the CPUC by the Legislature demonstrates a comprehensive but not omnipotent jurisdiction. The California Public Utilities Code and relevant case law shed further light on the scope and reach of the Commission's powers derived from the Legislature. The exclusivity of the CPUC's jurisdiction encompasses the broad authority to regulate the operations of public utilities, including the power to fix rates, establish rules, hold various types of hearings, award reparations, and establish its own procedures.[16] However, the limits of the CPUC's scope of authority is made abundantly clear by the constitutional derivations (in accordance with a statewide scheme that the operations of public utilities are matters of statewide concern) and with respect to those specific legislative powers granted over matters involving public utility activities.

In other words, the extent of authority and jurisdiction bestowed upon the CPUC is measured by the specific constitutional or statutory origin from which it derives its regulatory power. Authority is not created by the Commission's own acts or obtained by its assumption of

[12] *See* Cal. Const, art. XII, §§ 1-6.
[13] *See* Cal. Const, art. XII, §§ 2, 4, 5, and 6.
[14] *See* Cal. Const, art. XII, § 5(a).
[15] *See Consumer Lobby Against Monopolies v. PUC*, 25 Cal. 3d 891 (1979).
[16] *See* Cal. Const, art. XII, §§ 2, 4.

authority. Likewise, the primary limiting factor on the Commission's authority and jurisdiction to regulate entities that are not public utilities is that the "Commission's action must be cognate and germane to utility regulation."[17] (emphasis added)

3. MHP owners/operators are not "public utilities" or "electrical corporations" and are therefore not explicitly subject to CPUC regulation as public utilities, but Cal. Pub. Util. Code §§ 4351-4360 gives the CPUC jurisdiction over the safety of master-metered natural gas systems.

As specifically set forth in section 216, subdivision (a), the definition of "public utility" encompasses entities that include pipeline corporations, gas corporations, and electrical corporations. Section 218, subdivision (a), further defines the term "electrical corporation" to include every corporation or person owning, controlling, operating, or managing any electric plant[18] for compensation within this state, except where electricity is generated on or distributed by the producer through private property solely for its own use or the use of its tenants and not for sale or transmission to others.

Significantly, MHP master-meter/submeter systems are private distribution systems interconnected with the larger electricity grid. Thus, the owners and operators of electric master-meter/submeter systems at MHPs where electricity is distributed for residents or tenants are not "public utilities" or "electrical corporations" and, therefore, are not explicitly subject to the Commission's cognizable authority to regulate public utilities.

Public Utilities Code §§ 4351 through 4360 gives the Commission jurisdiction over the safety of master-metered natural gas systems[19] in MHPs.[20] Public Utilities Code §§ 4451

[17] *See PG&E Corp. v. CPUC,* (2004) 118 Cal. App. 4th 1174, 1201, review *denied*.

[18] "Electric plant" pursuant to section 216, includes all real estate, fixtures and personal property owned, controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits, ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying conductors used or to be used for the transmission of electricity for light, heat, or power.

[19] Master Meter Natural Gas System means a pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases

through 4465 gives the Commission jurisdiction over Propane Master Tank systems serving two or more customers inside a MHP.

4. The CPUC has no specific grant of authority to regulate any electric or gas service equipment installed beyond the interconnection point or beyond the utility meter facilities.

The Commission has explicit authority to (1) monitor and regulate public utilities, (2) cite and fine small system operators at MHPs for failure to comply with pipeline safety regulations,[21] and (3) regulate propane master tank systems serving 2 or more customers inside a MHP. There is no specific grant of authority, however, for the Commission to regulate any electric or gas service equipment in MHPs beyond the interconnection point or beyond the utility meter facilities. Any attempt to regulate or fund those private house line or piping facilities possessed and maintained by the customer or MHP owner would improperly rely on the Commission's implicit authority under Public Utilities Code § 701.

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metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as by rents.

[20] Specific requirements delegated to the CPUC by the United States Department of Transportation (DOT) apply to natural gas. The DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) Office of Pipeline Safety (OPS) is the federal safety authority for ensuring the safe, reliable, and environmentally sound operations of our nation's pipeline transportation system. PHMSA authorizes State agencies such as CPUC to conduct oversight and enforcement of pipeline operators through PHMSA's State Pipeline Safety Program. Federal statutes also provide for State assumption of all or part of the intrastate regulatory and enforcement responsibility of utility companies through annual certifications and agreements issued under this program.

[21] *See* PG&E Corp., at 1199- 1201, citing *Television Transmission v. Public Util. Com.* (1956) 47 Cal. 2d 82 and *Hartwell Corp. v. Superior Court*, (2002) 27 Cal. 4th 256; see also CPUC Resolutions SU-24, dated December 17, 1993 and USRB-001, dated July 31, 2008.

B. Local Jurisdictions have jurisdiction over Behind-The-Meter facilities.

The Commission does not have jurisdiction over beyond-the-meter construction permit applications or applicable Municipal Building, Electrical and Plumbing Standards Codes.[22] The construction, design, operation and maintenance of occupancies (and associated equipment, appliances, facilities) are matters of strictly local concern that do not impede or impair the placement of public electrical and gas corporations' facilities necessary for the rational development of a statewide utility system.[23] Business and Professions Code section 7042.1 explicitly restricts Commission-regulated gas or electrical corporations and their subsidiaries from conducting work for which a contractor's license is required beyond a customer's utility meter except where necessary to protect the public safety or to avoid interruption of service.[24]

The California Supreme Court identified the basic tenets of preemption in Sherwin Williams Co. v. City of Los Angeles.[25]

> Under article XI, section 7 of the California Constitution, "[a] county or city may make and enforce within its limits all local, police, and other ordinances and regulations not in conflict with [state] laws." "If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void." "A conflict exists if the local legislation 'duplicates, contradicts, or enters an

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[22] Code of Regulations (CCR), Title 24, also known as the California Building Standards Code, is a compilation of three types of building criteria from three different origins:

- Building standards that have been adopted by state agencies without change from building standards contained in national model codes;
- Building standards that have been adopted and adapted from the national model code standards to meet California conditions; and
- Building standards, authorized by the California legislature, that constitute extensive additions not covered by the model codes that have been adopted to address particular California concerns

Notwithstanding, the national model code standards adopted into Title 24 apply to all occupancies in California except for modifications adopted by state agencies and local governing bodies.

[23] The 2010 edition of the California Building Standards Code were adopted by the California Building Standards Commission at their January 12-13, 2010 meeting. The State regulations are in effect and enforced, as adopted and modified, at the local municipal level for residential projects whose construction permit applications are deemed completed on or after January 1, 2011.

[24] It is the intention of the Legislature in enacting this section that public utility regulations be clearly based on the principle that the energy conservation industry should be allowed to develop in a competitive manner, as declared in Chapter 984 of the Statutes of 1983.

[25] *See* 4 Cal. 4th 893, 897-98 (1993).

> area fully occupied by [state] law, either expressly or by legislative implication.'" Local legislation is 'duplicative' of [state] law when it is coextensive therewith. Similarly, local legislation is 'contradictory' to [state] law when it is inimical thereto. Finally, local legislation enters an area that is 'fully occupied' by [state] law when the Legislature has expressly manifested its intent to 'fully occupy' the area, or when it has impliedly done so… .

As stated above, local governments retain certain police powers which are bestowed by California Constitution, Article XI, Section 7:

> A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.

Public Utilities Code § 2902 recognizes that notwithstanding comprehensive statewide utility regulation, certain existing municipal powers are retained by municipalities:

> This chapter shall not be construed to authorize any municipal corporation to surrender to the [PUC] its powers of control to supervise and regulate the relationship between a public utility and the general public in matters affecting the health, convenience, and safety of the general public….

Local jurisdictions must provide permits before the installation of beyond-the-meter customer owned electric and gas equipment serving a home or business. Local jurisdictions ensure that the design and installation is safe and follows local building codes.[26]

Local jurisdictions ensure that electric and gas house line or piping systems must comply with all applicable requirements and regulations, including zoning, structure height, and prior development permits governing the site.[27] The interpretation of these requirements and the

[26] The laws governing the construction of Mobilehome and Manufactured Housing are in the Health and Safety Code, Division 13, Part 6, Commencing with Section 19960. Part 6 is entitled the "California Factory-Built Housing Law." The Housing and Community Development (HCD) regulations adopted to interpret, clarify, or otherwise carry out the law are contained in the California Code of Regulations, Title 25, Division 1, Chapter 3, Subchapter 1, commencing with Section 3000.

[27] Cal. Code of Regs. Title 25, § 1004 allows for assumption of responsibility for the enforcement of Parts 2.1 and 2.3 of Division 13, of the California Health and Safety Code and the provisions of Title 25, California Code of Regulations, Division 1, Chapters 2 and 2.2, relating to enforcement within parks by a city, county, or city and

requirements themselves can vary dramatically from city to city, and jurisdiction to jurisdiction. Many licensed electrical and plumbing installers will perform installations throughout a region and face vastly different processes from each local building department. For example, the County of San Diego has 19 different jurisdictions, each with their own building codes and permitting processes. Understanding the various permitting processes for beyond-the-meter electric and gas systems can be a complex, challenging, and time- consuming undertaking. Again, these are matters of strictly local concern.

C. Pipeline Safety Regulation Boundaries of Authority

The jurisdictional issues presented involve the scope of federal preemption of state pipeline safety law, the boundaries of authority to establish and enforce safety standards for the interstate transmission of gas by pipeline, and the Natural Gas Pipeline Safety Act of 1968, as amended ("NGPSA"), 49 United States Code ("U.S.C.") §§ 60101- 60128.

1. Under the NGPSA, the Department of Transportation regulates MHP gas systems.

The authority to establish and enforce minimum safety standards for the interstate transmission of gas by pipeline is vested exclusively in the United States Secretary of Transportation by virtue of the provisions of the NGPSA, 49 U.S.C. §§ 60101- 60128.[28] The United States Secretary of Transportation is the head of the Department of Transportation (DOT). In this context, a master-metered MHP natural gas pipeline is an interstate gas pipeline regulated by the DOT minimum safety standards under the NGPSA because "Transportation of gas" is defined broadly in 49 U.S.C. § 60101(21) as:

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county by means of an ordinance of the city council or board of supervisors subject to the California Department of HCD approval.

[28] *See* 49 U.S.C. § 60102(a)(2).

> [T]he gathering, transmission, or distribution of gas by pipeline, or the storage of gas, in interstate or foreign commerce.

Under NGPSA a master-metered MHP gas system is subject to 49 CFR Part 192 as a distribution system used in the transportation of gas. Supplementary, the definition of "service line," in § 192.3, represents the limit of Part 192 jurisdiction over gas distribution piping. Under this definition, Part 192 jurisdiction ends at the outlet of the last downstream meter that measures the transfer of gas to a consumer, or at the connection to piping not owned by an operator through which the "ultimate consumer" receives gas, whichever point is farther downstream. Also, the DOT's Office of Pipeline Safety (OPS) has interpreted this transportation to involve both the sale and delivery of gas through pipelines to the farthest downstream point where the gas is finally consumed.

Where, as here, when there is an interstate sale of gas, based either on a meter reading or a flat rate, and a delivery of gas by pipeline continues past the utility meter to an "ultimate consumer," the person distributing the gas past the utility meter is an operator of a gas distribution system subject to Part 192. For instance, the owner of a MHP complex who furnishes gas to each tenant through pipelines and charges for gas directly through a meter or as part of the monthly rent is an operator under Part 192. The pipelines subject to federal jurisdiction are those transporting gas to the downstream side of each meter or to the customer's piping, whichever is farther downstream.

The question of how far downstream the federal standards apply depends on who buys and receives gas for consumption. In the case of the master-metered MHP complex, the park operator buys gas from the public utility serving the area and, in turn, resells it to tenants for their consumption; therefore, the underground or exterior lines used to transport the gas from the utility meter to tenants are a master-metered MHP distribution system subject to the federal

standards. The MHP landlord, therefore, is engaged in the transportation of gas through "main" and "service" distribution pipelines and an "operator" under the federal standards

2. The NGPSA preempts state regulation of MHP gas systems.

State regulation relating to the minimum safety standards of an interstate natural gas pipeline, including those applicable to the master-metered MHP gas system, is preempted by Congress in the NGPSA, 49 United States Code section 60101, *et seq*., which gives the DOT the sole responsibility to prescribe the minimum safety standards for pipeline transportation.[29] The NGPSA expressly preempts state regulation relating to the safety of interstate pipelines: "A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation."[30] Correspondingly, the regulations relating to natural gas pipelines as promulgated by the Commission are found in General Order (GO) No. 112-E and provide:

> Each operator shall comply with the requirements of 49 CFR part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards. This section of the General Order addresses specific construction, testing, and safety standards in addition to those included in 49 CFR Part 192. These rules do not supersede the Federal Pipeline Safety Regulations, but are supplements to them.[31]

Similarly, the regulations relating to natural gas pipelines promulgated by the California HCD are found in Cal. Code of Regs. Title 25, § 1206 and provide:[32]

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[29] *See* 49 U.S.C. § 60102; The California Public Utilities Commission is the enforcement agent of the Department of Transportation, 49 U.S.C. 60107; See e.g., *ANR Pipeline Co. v. Iowa State Commerce Commission* (8th Cir. 1987) 828 F.2d 465, 470.

[30] *Id*.; State Pipeline Safety programs adopt the federal regulations and may issue more stringent regulations for intrastate pipeline operators under state law. The regulations are published in the Code of Federal Regulations, 49 CFR Parts 190-199.

[31] GO 112-E, Subpart C, Section 141.

[32] In addition to regulations contained in Cal. Code of Regs. Title 25, the building standards contained in Title 24, California Code of Regulations are also applicable to MHP electric and gas house line or piping systems. The law and regulations administered by HCD are applicable to manufacturers of factory-built homes and factory-built components manufactured for sale in California.

> A park gas piping distribution system is subject to the Pipeline Safety Law of 1994 (49 USC Section 1971) and regulations adopted by the Office of Pipeline Safety Operations. The applicable regulations are contained in Title 49 of the Code of Federal Regulations, Parts 191 and 192.
>
> (a) The operator of a park gas piping system is responsible for complying with the federal regulations in addition to this chapter.

The text of the NGPSA preemption provision[33] is very broad; however, the regulatory authority granted to the DOT to prescribe the minimum safety standards for pipeline transportation and for pipeline facilities, is expressed in equally limiting terms: the jurisdiction and standards only apply to owners and operators of pipeline facilities transporting gas to the downstream side of each meter or to the customer's piping.[34]

The regulations relating to natural gas pipelines were promulgated by the DOT's OPS department, and are found in Title 49 of the Code of Federal Regulations (49 CFR), Parts 190, 191, and 192. Part 190 prescribes specific procedures for investigation and enforcement, and for the adoption of regulations.[35] Part 191 "prescribes requirements for the reporting of incidents, safety-related conditions, and annual pipeline summary data."[36] Part 192 "prescribes minimum safety requirements for pipeline facilities and the transportation of gas."[37] It includes minimum requirements for the selection of pipe and components used in pipelines, including details of their design, chemical make-up, and construction, with references to standardized industry specifications.[38] Part 192 also "prescribes minimum requirements for the operation of pipeline facilities" and for the "maintenance of pipeline facilities."[39]

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[33] *See* 49 U.S.C. § 60104(c).
[34] *See* 49 U.S.C. § 60102(a)(1).
[35] *See* 49 C.F.R. §§ 190.1, 190.201, 190.301.
[36] *See* 49 C.F.R. § 191.1.
[37] *See* 49 C.F.R. § 192.1.
[38] *See* 49 C.F.R. §§ 192.51 et seq.
[39] *See* 49 C.F.R. §§ 192.603, 192.701.

D. The Commission generally has authority to regulate to-the-meter or to the interconnection point.

1. Gas

The SED's Gas Safety and Reliability Branch (GSRB) enforces Federal Pipeline Safety Regulations through its natural gas safety program. Public Utilities Code, §§ 4351 through 4360 gives the Commission jurisdiction over the safety of master-metered natural gas systems in MHPs.

The GSRB administers its natural gas safety program by auditing the facilities of MHP small operators and investor-owned natural gas utilities in California for compliance with the applicable codes Title 49 of the Code of Federal Regulations, Parts 190, 191, 192, 193, 199, and CPUC GO No. 112-E. The audit consists of reviewing operation and maintenance records, evaluating emergency procedures, and performing random field inspections of the natural gas facilities. If the operator fails to comply, a citation and fine may result.

2. Electric

The Electric Safety and Reliability Branch (ESRB) of the SED enforces Commission rules and regulations, GO 95, 128, and 165, to ensure utility companies run safe and reliable electric systems. Branch staff regularly conducts audits and inspections, investigates safety incidents or system problems, and advises the Commission on related matters.

E. Regulation Beyond-The-Meter

The California Building Standards Code, Title 24, is the established minimum regulations for the design and construction of buildings and structures in California. State law mandates that local government enforce these regulations, or local ordinances with qualified reasonably necessary and generally more restrictive building standards than provided for in the California Building Standards Code.

Local ordinances amending building standards approved/adopted by the Building Standards Commission are subject to requirements of California law. Ordinances generally must be more restrictive standards than the building standards approved/adopted by the Commission. These amendments must be filed, as appropriate, with either the Building Standards Commission or the Department of Housing and Community Development.

1. Gas

The State of California has adopted the 2010 California Plumbing Code (Part 5 of Title 24) based on the 2009 Uniform Plumbing Code (UPC) published by the International Association of Plumbing and Mechanical Officials, which applies beyond a customer's utility meter.[40]

2. Electric

The State of California has adopted the 2010 California Electrical Code (Part 3 of Title 24) based on the 2008 National Electrical Code (NEC) published by the National Fire Protection Association, which applies beyond a customer's utility meter.[41]

F. Utility tariffs also prohibit utilities from discriminatory treatment of MHP customers such as installing distribution facilities behind the meter.

The PG&E proposal will fund certain project costs typically funded by the MHP owner under the existing line extension tariffs and Public Utilities Code §§ 2791-2799.[42] This proposal violates long-standing utility tariff rules that provide, "Applicant shall be solely responsible to plan, design, install, own, maintain, and operate facilities and equipment beyond the service delivery point."[43]

[40] Available at http://www.iapmo.org/Pages/californiaplumbingcode.aspx.
[41] Available at http://rrdocs.nfpa.org/rrserver/browser?title=/NFPACA/CaliforniaElectricalCode2010.
[42] Evidentiary Hearing Transcript dated September 10, 2013, at pp. 286-288; *see also* Exhibit 3 at p. 1-5, ll. 27-29.
[43] Evidentiary Hearing Transcript dated September 10, 2013, at pp. 290-307; see also Exhibits 36, 37, 38 and 39.

These tariffs have the force and effect of state law.[44] A utility is under a duty to adhere strictly to its lawfully published tariffs.[45] Tariffed provisions and rates must be inflexibly enforced to maintain equity and equality for all customers with no preferential treatment afforded to some.[46] PG&E cannot ignore its general line extension tariffs and Public Utilities Code, waive the customer or applicant responsibilities, and treat MHP customers differently from PG&E's other general service rate customers.

PG&E's tariffs, which are approved by this Commission, equally bind PG&E and all of its customers.[47] Moreover, pursuant to Public Utilities Code § 532:

> [N]o public utility shall… extend to any corporation or person any form of contract or agreement or any rule or regulation or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons.

Further, the current statutory transfer requirements prohibit utilities from discriminatorily funding projects aimed at behind-the-meter facilities for MHPs because Chapter 6.5, entitled *Transfer of Facilities in Master-Metered Mobilehome Parks and Manufactured Housing Communities to Gas or Electric Corporation Ownership*, added Public Utilities Code §§ 2791-2799, which specifies that "[t]he construction and equipment replacement and the credits and allowances shall be based on the principles established in the gas or electric corporation's line and service extension rules".[48]

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[44] *See Trammell v. Western Union Tel. Co.,* 57 Cal. App. 3d 538, 550-551 (1st Dist. 1976): "California cases have held that 'A public utility's tariffs filed with the PUC have the force and effect of law."' Id. (citing *Dollar-A-Day Rent-A-Car Systems, Inc. v. Pacific Tel. & Tel. Co.,* 26 Cal.App.3d 454, 457 (2nd Dist. 1972); *Waters v. Pacific Telephone Co.*, 12 Cal.3d 1 (1974*); Dyke Water Co. v. Public Utilities Com.,* 56 Cal.2d 105, 123 (1961); *Riaboff v. Pacific T. & T. Co.,* 39 Cal.App.2d Supp. 775, 778 (App. Ct. 1940).

[45] *See* D.13-03-008 2013, Cal. PUC LEXIS 102 (Cal. PUC 2013); *see also Temescal Water Co. v. West Riverside Canal Co.,* (1935) 39 Cal RRC 398.

[46] Id.; *see Empire W. v. Southern Cal. Gas. Co.*, (1974) 12 Cal. 3d 805.

[47] *See* D.12-10-002 2012 Cal. PUC LEXIS 444 (Cal. PUC 2012).

[48] *See* Cal. Pub. Util. Code § 2793.

G. PG&E's allocation of beyond-the-meter costs to ratepayers could constitute an impermissible tax.

The PG&E proposal "that any MHP conversion program include construction beyond-the-meter"[49] could be viewed as an impermissible tax. Proposition 26 defines a "tax" as any levy, any exaction and certain charges imposed by a state or local government entity that result in a taxpayer paying a higher tax. Exactions, levies, and charges mean the following:

- **Exaction.** A monetary demand by the government from an individual or entity, with no benefit to the payer. An exaction is more forceful than a tax levy or a charge.
- **Levy.** A levy includes a new tax or tax increase – including but not limited to the personal income, corporate, sales and use, or excise tax – as defined by the *Sinclair Paint* decision.[50]
- **Charge.** A monetary demand by the government from an individual or entity for a service, an intangible benefit, or a good or product provided to the payer of the charge. A charge will not necessarily be compulsory, since not all individuals or entities desire or need a particular service, benefit or good/ product. While a charge does not always have a consistent label, most are labeled as either a "fee" or a "charge."

All state levies, exactions, and charges require approval of two-thirds of the Legislature, unless they satisfy one of the exceptions. Locally imposed levies, certain charges and exactions that will be used for specific purposes are subject to two-thirds approval by the local electorate. However, general purpose levies, certain general purpose charges, and general purpose exactions can be approved by a majority vote of the public.

Not every gas or electric corporation ratepayer owns or resides in a master-metered MHP, nor will all of these ratepayers otherwise directly or indirectly benefit from funding a MHP conversion program that includes construction beyond-the-meter that is not owned,[51] necessary or useful in the performance of any public utility duties to the public. Accordingly, this is not a true regulatory charge or a reasonable charge imposed for a specific government service

[49] Exhibit 19 at p.1-1.
[50] *See Sinclair Paint Company v. State Board of Equalization*, 15 Cal. 4th 866 (1997).
[51] *See* Exhibit 3 at p. 2-6, ll. 5-8, "MHP owners/residents will retain ownership of the newly-installed meter panels and/or pedestals, gas piping and all service facilities beyond the service delivery point, usually at the meter location".

benefitting the payer. Thus, based solely on the hypothetical MHP benefit or service derived from including construction beyond-the-meter, PG&E'sallocation of beyond-the-meter costs to rates would constitute a tax.[52]

Moreover, state and local governments must be able to demonstrate through a preponderance of the evidence that any charge is reasonable. A charge is reasonable if it does not exceed the necessary cost of the governmental activity and if the cost allocated to the payer bears a fair or reasonable relationship to the payer's burden and/or benefits. Furthermore for such beyond-the-meter charges to be permissible the benefit must accrue to the payer only, and cannot exceed the reasonable costs to the government of providing the benefit or privilege.

In addition, the PG&E proposal carries an inherent risk that the premise owners, many of which may be small or risky business enterprises (or potentially the MHP residents), will bear the effect of income tax on any costs for all beyond-the-meter facilities paid by utilities. Because of tax rules, significant administrative burdens or financial risk are also unfairly placed upon utilities. To protect themselves against future tax liability, the utilities could require that all premise owners execute an indemnity agreement that provides for reimbursement in the event that the Internal Revenue Service (IRS) later assesses income tax on the beyond-the-meter improvements. However, this approach carries an inherent risk that the premise owners may not still be around or will not have the financial ability to pay said taxes at the time the IRS audits the utility's tax returns.

In fact, the utilities must incur the administrative burden of collecting taxes upfront from the various MHP premise owners or customers and promptly submit the taxes to IRS and state

[52] *See* Exhibit 3 at p. 1-3, ll. 8-17, "PG&E proposes the MHP owner hire a private electrical and/or plumbing contractor to install a new electric pedestal and service delivery point, and a new gas houseline, and these cost be included in the program and recovered from ratepayers", "By including these beyond the meter improvements, MHP residents are assured that they will obtain the full benefit…".

taxing authorities without any compensation for their administrative costs. In effect, the utility is forced to assume the role of an IRS collection agent without being paid for such work.

The statute authorizing the current MHP utility transfer program only allows costs related to gas and electric distribution facilities which are to be owned, operated, and maintained by the gas or electric corporations providing the service in the area. Thus, the Commission cannot authorize a utility to expand the overall budget for utility transfers from MHPs to include beyond-the-meter house line and piping facilities that will be owned by third parties. Accordingly, the statute prohibits the PG&E proposal.

H. The current, statutorily-created program to transfer MHP facilities to utilities does not contemplate passing costs on to ratepayers for work related to behind-the-meter facilities that the gas or electric corporation will not own, operate, or maintain

Chapter 6.5, entitled *Transfer of Facilities in Master-Metered Mobilehome Parks and Manufactured Housing Communities to Gas or Electric Corporation Ownership*, which added Public Utilities Code §§ 2791-2799.[53] Chapter 6.5 establishes the process by which "[t]he owner of a master-metered mobilehome park or manufactured housing community that provides gas or electric service to residents may transfer ownership and operational responsibility to the gas or electric corporation providing service in the area in which the park or community is located pursuant to this chapter, or as the park or community owner and the serving gas or electric corporation mutually agree."[54] Section 2793 addresses the transfer process and articulates the factors and two approaches for the transfer of ownership of the system to the gas or electric corporation or as the park or community owner and the gas or electric corporation mutually agree:

[53] *See* reference Exhibit A; Stats. 1996, ch. 424, Sec. 1 (effective on January 1, 1997), added Chapter 6.5 to Part 2 of Division 1 of the Code.
[54] *See* Cal. Pub. Util. Code § 2791.

> (1) The park or community owner is responsible for all construction and equipment replacement activity, if any, at the park or community owner's expense less any credits or allowances, if any, including credits or allowances based on incremental increases in the gas or electric corporation's revenues associated with the park or community owner's investment in the gas or electric system. **The construction and equipment replacement** and the credits and allowances **shall be based on the principles established in the gas or electric corporation's line and service extension rules**, if applicable.
>
> (2) The gas or electric corporation shall pay the park or community owner for the appraised value to the gas or electric corporation **of any gas or electric distribution** facilities found to be used, useful, and compatible. If any new facilities are necessary, the park or community owner shall be responsible for the costs of the excavation, installation of substructures, conduit and meter panels, and surface repairs. (emphasis added)

Section 2795 further places certain limitations on any other factors the parties may mutually agree upon:

> The park or community owner and the gas or electric corporation shall develop a cost for the transfer of the gas or electric system **that reflects the factors in § 2793, indemnity and liability issues, and any other factors** as the parties may mutually agree upon, and **to which the gas or electric corporation's ratepayers are indifferent**. (emphasis added)

If the Commission were to adopt the PG&E proposal or some form of it, that regulation could be an unlawful act, as the Commission would act beyond its jurisdictional authority. The Commission may only adopt a proposal where the gas or electric corporation's ratepayers are indifferent per the unambiguous statutory cost responsibility factors. The Public Utilities Code § 2793 factors do not envision the utility or ratepayers paying to upgrade or replace any facilities retained by the MHP. Thus, the CPUC would exceed its authority if it acts beyond the powers conferred upon it by the constitution or statute.

In stark contrast, the Joint Parties' proposal up to the meter accomplishes the clear intention of the Legislature in enacting this section, because the statutory provisions of § 2795 specifically allow the parties to consider indemnity and liability factors (for which the utility and ratepayers may currently be at risk) as the parties may mutually agree upon to transfer or replace any facilities to be owned, operated, and maintained by the gas or electric corporation. Notably, while new construction may be desirable from the utility perspective per the indemnity and liability factors, under § 2794(b) "[t]he park or community owner shall not be responsible for betterments or improvements to the gas or electric corporation's distribution system facilities or operations that do not benefit the park or community."

I. When a regulation exceeds the scope of authority conferred on the agency by statute, that regulation should be rejected.

The principle of separation of powers holds that under our federal and state constitutions, the legislative branch enacts laws and the executive branch executes or carries out laws. Thus, an administrative agency does not have authority to enact law. Statutory law is law that has been promulgated (or "enacted") by acts of legislatures. However, in accordance with state constitutional provisions, the legislature may delegate to an agency broad rulemaking powers, authorizing the agency to implement the law a legislature passes. Statutory authority arises from statutory provisions that authorize the agency to adopt regulations and in statutory provisions that direct the agency to implement a specific statutory scheme.

A primary reason for rejection of a regulation is that the regulation exceeds the scope of the authority conferred on the agency by statute. Before adopting regulations, the agency should scrutinize the authorizing statute to determine the extent to which the legislature has delegated rulemaking authority. If an agency adopts a regulation that falls outside of the rulemaking

powers delegated by statute to that agency, then the regulation exceeds statutory authority and is theoretically invalid.

Similarly, no matter how noble the Commission's goal here, a statute that authorizes regulations to govern the voluntary transfer of a particular type of master-metered electric and gas distribution facilities in MHP to Gas or Electric Corporation "Ownership" does not, by itself, authorize the regulations to provide for the gas or electric corporation to pay any costs for non-utility owned facility improvements, including any customer's or premise owner's private house line or piping facilities. The California Legislature can pass laws for good and compelling reasons or for no reason at all. As long as the command of the statute is clear, constitutional and within the Legislature's powers, it must be obeyed. Only the Legislature can amend a statute.

III. ISSUES

A. Policy, Safety, and Reliability

The Commission stated in its February 25, 2012 Decision: "We have no evidence that existing MHP submetered service, taken as a whole, poses an imminent and serious safety risk."[55]

And this remains so today.

During the September 9-10, 2013 Evidentiary Hearing in this proceeding, PG&E admitted that it has not submitted:

- any evidence related to safety concerns,
- any reliable quantification of safety infractions,
- any analysis of safety issues,
- or any statistics on safety.[56]

[55] R.11-02-018, Decision Granting Petition In Part And Instituting Rulemaking Into Issues Concerning Transfer Of Electric And Natural Gas Master-Metered Service At Mobilehome Parks And Manufactured Housing Communities To Direct Service By Electric And/Or Natural Gas Corporations. February 25, 2012, p. 15.
[56] Evidentiary Hearing Transcript dated September 10, 2013, at p.274:20-275:8.

There is no evidence in the record whatsoever that existing MHP submetered service, taken as a whole, poses an imminent and serious safety risk.

A significant majority of MHP operators safely maintains master-metered systems, and information from the Commission's Safety and Enforcement Division (SED) (formerly known as the Consumer Protection and Safety Division (CPSD)) demonstrates that the vast majority of MHPs is sufficiently safe. SED performed an analysis using both inspection data and self-reported Annual Report data from the MHP operators, which concluded:[57]

- Approximately 50% of natural gas master-metered system operators would be candidates for an extended cycle;
- Approximately 43% would remain on the current inspection frequency; and
- 7% of operators would have inspection frequencies increased to fewer than 5 years.[58]

The SED analysis showed that less than 10% of the existing MHPs pose enough risk to warrant more frequent inspections, while the overwhelming majority (93%) does not require increased inspection standards.

Nevertheless, to address MHP safety and reliability concerns raised by parties related to the age and condition of the MHP systems, the Joint Parties' proposal aims to encourage transfers of MHP sub-meter systems to direct service based on criteria to be developed by the Joint Parties in collaboration with SED. The Joint Parties' program will target MHPs with the worst safety records, while helping the Commission gather necessary data on the parks before committing utilities, ratepayers, and residents to burdensome and lengthy construction projects.

PG&E posits that the Joint Parties "have not demonstrated that limiting ratepayer funding to only the construction and maintenance of distribution systems to the meter and no funding for work beyond-the-meter is in fact sufficient to encourage participation and solve the safety and reliability issues identified by the CPUC."[59] This assertion rings empty, however, as it is both

[57] State of California Public Utilities Commission Mobile Home Operator's Annual Report. Available at http://docs.cpuc.ca.gov/PUBLISHED/GRAPHICS/111660.PDF
[58] Analysis before the Assembly, published 04/05/2012. http://leginfo.ca.gov/pub/11-12/bill/asm/ab_1651-1700/ab_1694_cfa_20120626_141611_sen_floor.html
[59] Exhibit 20, 2:8-12.

the Joint Parties' and the Commission's goal[60] during the initial three years of the program to gather data to determine just this—whether such ratepayer funding will significantly increase MHP conversions. The PG&E proposal cannot demonstrate that the Joint Parties' proposal will be inadequate any more than the Joint Parties can demonstrate that its proposal will yield maximum participation. Determining what will work best is the very purpose of implementing a three-year pilot program.[61]

Moreover, as mentioned above, PG&E itself admits that there is no evidence in the record regarding safety concerns, infractions, issues, or statistics.[62] Second, PG&E admits that it is not aware of any evidence in the record that the Joint Parties' proposal would not sufficiently encourage participation by MHPs.[63] Third, PG&E admits that there is no evidence in the record establishing that owners actually lack sufficient funds to pay for conversions.[64] In fact, in a CPUC-Sponsored Survey, a significant number of MHP operator respondents indicated that they would not be interested in having their local utility provide service directly to residents for reasons other than insufficient funding for conversions, including wanting to maintain control over their electric and/or natural gas systems, already having upgraded or improved their existing electric and/or natural gas systems, or not wanting to disturb their tenants with major construction.[65]

From a policy perspective, the Joint Parties' proposal truly weighs the overall costs of the choices being considered. The Joint Parties' proposal accomplishes the goals of this rulemaking in a fair and balanced manner while providing more information to the Commission. While the Joint Parties have carefully contemplated and presented a reasonable compromise proposal,

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[60] Scoping Memo, pp. 4-5.
[61] Exhibit 17, 4:15-18 ("The Joint Parties' proposed MHP Conversion Pilot Program is designed to convert a limited number of MHPs over a three-year period in order to gather and assess pertinent information on converted MHPs and associated costs.").
[62] Evidentiary Hearing Transcript dated September 10, 2013, at p. 274:20-275:8.
[63] Evidentiary Hearing Transcript dated September 10, 2013, at p. 275:9-276:21
[64] Evidentiary Hearing Transcript dated September 10, 2013, at p. 277:5-9.
[65] Exhibit 16: Summary of Responses: Questionnaire to Mobilehome Parks And Manufactured Housing Communities. August 10, 2011. Question 19. 212 of 592 respondents responded that they are not interested in a transfer to direct service.

PG&E has completely refused to alter its original proposal and continues to call for the utilities to replace entirely, at ratepayer expense, the gas and electric systems of potentially every MHP in the state, regardless of condition. The Commission should not support such a costly open-ended program with no apparent cap.

The PG&E proposal for the utilities to assume responsibility for work beyond-the-meter, on the other side of the utility/customer demarcation point, does not make sense. Commission policy should continue to approach the utility domain and consumer domain separately. Traditionally, the load side of the electric meter, based in part on state and local jurisdictional boundaries, has served as the demarcation of responsibilities between the two parties for safety, delivery and custody of electricity. From a strict operations and liability perspective, where utilities do not undertake a duty on the customer's side of the meter by providing services on that side of the meter, the clear establishment of the meter as a physical demarcation between the utility domain and the consumer domain makes sense. Indeed, the utility should not be thrust into a position of assuming responsibility for house electric or gas facilities past the meter or the costs of installation incurred by the customer. In this regard, it should be recognized that establishing physical responsibility and costs zones often represent the first layer of defense in regulating utility assets. Without physical demarcations for these purposes, it can be difficult to determine a responsible party's respective obligations.

Commission policy should not create new utility obligations with respect to beyond-the-meter equipment and services provided by the utility to existing MHP customers. Thus, the Joint Parties recommend that the meter should remain the physical demarcation point where utilities do not provide line extension services on the customer side of the meter.[66]

B. Regulatory

Under the PG&E proposal, the Commission will not have regulatory oversight on the conversion program once authorized, except that the Commission may terminate the program

[66] Exhibit 2, Section 5, pp. 4-5; Exhibit 17, 7:7-17.

during the initial period. However, even if the Commission terminates the program, under the PG&E proposal, PG&E and SWG may continue to convert all the MHPs in their service territories after the program has been terminated. The Commission may not set a cost cap on the program or require a reasonableness review, and the Commission may not limit the number of conversions or set the pace of conversions. The PG&E proposal has requested that there should be no regulatory restrictions on finishing the conversions for those MHPs that have volunteered for conversion. Ironically, the PG&E proposal seeks such unfettered management of their conversion programs for the same reason that the Joint Parties urge the Commission to limit the scope of the program. There is no reliable measure of the true cost of the program or how many MHP owners would volunteer for the program at this time. Every aspect of the proposed program at this point is uncertain, including the number or percentage of parks that currently pose a serious threat to safety and reliability.

There is no regulatory precedent or statutory authority for the PG&E proposal. When a program would result in such a large increase in rates as PG&E's MHP conversion program promises, the Commission has a statutory obligation to ensure that the rate increase is just and reasonable. This in turn requires that the Commission set some limits and constraints, sometimes referred to as up-front standards, on the program to ensure cost containment within the bounds of what the Commission finds to be reasonable.

The Assigned Commissioner has already acknowledged that the Commission will not authorize a program as costly as the PG&E proposal. On July 17, 2013, the Scoping Memo held that the PG&E proposal was too costly.

> [T]he PG&E proposal, which likely would result in a very high conversion rate, would be costly. Exhibit 3 describes a 10-year, "beyond the meter" conversion program with an estimated cost of approximately $2.5 billion, financed by ratepayers as additions to

> utility ratebase. Conversion would be available to every MHP that voluntarily sought direct natural gas and electric service from a Commission-jurisdictional utility in lieu of continuing to operate a master-meter/submeter system.[67]

The program PG&E and SWG submitted in their supplemental testimony is the same program the Scoping Memo criticized as too costly. In fact, it is the same program that PG&E has presented in this proceeding since 2011. PG&E does not deny that its supplemental testimony offers the same proposal it has presented from the inception of this proceeding but claims the proposal was modified to address the July 17, 2013 Scoping Memo.

> PG&E proposes to implement its MHP conversion program **as originally presented** with modifications to address the July 17, 2013 Scoping Memo. PG&E proposes to receive and process MHP conversion interest applications and accept conversion priority recommendations from the CPUC Safety and Enforcement Division (SED) and the California Dept. of Housing and Community Development (HCD) until the Commission either terminates the program or conversion of all pre=1997 MHPs to direct utility service is complete.[68] (emphasis added)

The only modification the supplemental testimony adds to the conversion program is that "PG&E proposes to receive and process applications on an ongoing basis through the 3 year initial term and beyond."[69] This modification appears to address the fact that the July 17, 2013 Scoping Memo required the parties to submit supplemental proposals for a pilot program. Regardless of the modification, the process proposed by PG&E for implementing the supplemental program's "3 year initial term" would result in the same conversions as the "10 year 'beyond-the-meter' conversion program" originally presented by PG&E in this proceeding.

1. Mobile Home Park Prioritization

There is no significant difference between the Joint Parties' proposal for prioritizing the conversions and PG&E's proposal for prioritization, except that Joint Parties have suggested a

[67] R.11-02-018, Scoping Memo issued on July 17, 2013, p.4.
[68] PG&E and SWG Joint Submission, p.1-1.
[69] Id., p.1-3.

process to address situations in which a MHP that poses more risk to safety and reliability and hence is more deserving of priority in the queue was either missed by SED and HCD records or volunteered late in the process and was thus placed farther back in the queue.

All parties still recommend that SED and HCD have the primary responsibility for determining priority and advising utilities of the order in which the conversions should proceed for those MHPs that have volunteered for conversion. Even where information that becomes available subsequent to prioritization suggests that a deviation from the initially established prioritization list would be advisable, the Joint Parties are not opposed to SED and HCD advising them on the situation. PG&E and SWG's suggestion that Joint Parties seek authority to deviate "from an impartial, objective, prioritization"[70] mischaracterizes the Joint Parties testimony.

2. Timelines

The three-year initial term in the PG&E proposal only prescribes a timeline for signing up as many "MHP conversion interest applications" as possible. Thus, both PG&E and SWG may use the three-year period to get all the MHPs in their service territories to execute conversion agreements, if possible. Once an MHP executes a conversion agreement, whether it does so on the first day or the last day of the three-year period, PG&E and SWG must convert the MHP regardless of when the actual conversion/construction may take place[71].

> At that point, PG&E would complete MHP conversions work on any MHP for which PG&E has executed a MHP conversion program agreement by the date of program termination.[72]

PG&E's supplemental "pilot" proposal would have substantially the same outcome as its original proposed program but with a slightly different timeline that limits the period during which PG&E, SWG and MHP owners may execute conversion agreements. The proposed

[70] PG&E and SWG Rebuttal Testimony, p.5.
[71] Id., p. 1-5
[72] Id.

program does not limit the time for the construction or the number of conversions that may ultimately be done. As PG&E readily admits, the revenue requirement it presented to the Commission for the pilot program is the same revenue requirement it presented in its original presentation[73], notwithstanding the fact that the Scoping Memo had dismissed the original presentation as too costly.

The added pressure of trying to execute as many conversion agreements as possible within the "pilot" period as well as the additional resources that would be committed to the effort would likely raise the cost profile for the project at least for the first three years, but PG&E continues to present the same cost for the program that it presented in 2011.[74] There is also the likelihood that the effort to execute as many conversion agreements as possible may become litigious if it creates any form of misinformation or turns MHP residents against the MHP owner/ operators in an effort to force the "voluntary" decision more quickly. Such litigation would further drive up the cost of the program. PG&E appears to allude to one of these issues in a footnote to its supplemental testimony:

> PG&E recommends the MHP conversion program interest application, as provided in the July 17, 2013 Scoping Memo, Attachment A, **specify that its purpose is for the conversion, and not transfer** of master-metered service at MHPs to the certificated utility. [Emphasis added.][75]

3. Program reporting

The Joint Parties propose to submit an auditable progress report to the Commission at the end of the three-year pilot program that gathers information on what has been learned from the pilot program including, the number of spaces converted, number converted per year and the cost of those conversions as of the end of the program. The Joint Parties intend this report to provide

[73] Evidentiary Hearing Transcript dated September 10, 2013, at p.239:12-21
[74] Id.
[75] Exhibit 19, p.1-2, footnote 2.

the Commission with the much needed information to judge the reasonableness of the program and the responsiveness of MHP owner/operators to the conversion.

During the evidentiary hearings, PG&E and SWG suggested that the timing of the Joint Parties program report is inconsistent with the directives in the Scoping Memo suggesting more frequent reporting.[76]

> Q. [Ms. Mazzeo, Counsel for Southwest Gas (SWG)] And based on your understanding of that ruling, is it true that the Commissioner's looking for a prompt, I believe was his word, assessment of the program so there can be a determination as to whether it should continue?
>
> A. Yes.
>
> Q. Would it be more feasible given the program reporting that's set forth on page 13 on Exhibit 17 to do an ongoing reporting or something that's more frequent than waiting to the end of the three-year program?
>
> A. **Could you define prompt**? (emphasis added)
>
> Q. Well, let me do this. You see on page -- I'm sorry, on lines 12 and 13, it says, "The reports due 12 months after the MHP conversion pilot program is completed."
>
> A. Uh-huh.
>
> Q. Would you agree that under the joint parties' proposal, no report or other information would be conveyed to the Commission until the end of the three-year pilot program?[77]

The Joint Parties are not opposed to the Commission's requiring periodic progress reports on a more frequent basis, but what the Scoping Memo actually seeks is not a "prompt" progress report as the cross-questions above were bent to suggest, but a prompt "assessment" of whether the program should be extended[78].

> In my view, a proposal that is viable and ripe for consideration by the full Commission needs to include the following components:

[76] Evidentiary Hearing Transcript dated September 9, 2013, at p.76:25-77:80:3
[77] Evidentiary Hearing Transcript dated September 9, 2013, at p.77:6-28.
[78] R.11-02-018, July 17, 2013 Scoping Memo, at p.4.

- A three-year initial term, so that implementation can commence as soon as practicable and the Commission can assess promptly whether to extend the conversion program[79].

Such a prompt assessment should only be done at the end of the three-year program when all the information necessary to make the decision on whether to extend the program has been collected. The language of the Scoping Memo with the phrase "a three-year initial term" to describe the need for a prompt assessment appears to agree with the Joint Parties' proposal for a program report after the initial three years. In any case, the Commission always has the authority to require a report of any kind, on any project, at any time. The Joint Parties recognize this fact and will comply with any such request when made. The very fact that the "program report" has become a litigated issue in this proceeding illustrates the paucity of evidence to support the conversions. The Joint Parties urge the Commission to proceed with caution in setting the scale of the project to approve.

C. Program Cost and Ratemaking

PG&E has little or no idea how much its conversion program would cost and the costs PG&E has submitted in the record of this proceeding are far too speculative. While the Joint Parties also developed their costs on a forecast basis, the Joint Parties testimony clearly shows the number of spaces for the three-year period that form the basis of their forecast estimates[80]. The PG&E proposal has no estimates for the number of spaces that could be converted in a given year, leaving it open to the ability of staff and availability of resources for converting as many spaces as possible in a given year.

Prior to the Scoping Memo of July 17, 2013, PG&E submitted a ten-year program with a revenue requirement of about $2.5 billion dollars. However, when the July 17, 2013 Scoping

[79] Id.
[80] Exhibit 17, p.15.

Memo directed parties to submit a limited three-year pilot program, PG&E submitted a three-year program with the same $2.5 billion revenue requirement. Although PG&E's proposal suggests it has devised a way, in a three-year pilot program, to do what it was supposed to do in ten years, the plan raises doubts about PG&E's motivation in seeking to do so.

1. To-the-meter

PG&E insists on converting every inch of the MHP systems beyond what is traditionally done by utilities for new construction, ignoring the fact that to do so increases the cost of the conversions substantially. As much as 30 to 37 percent of the forecast costs in PG&E's estimates for 2014 through 2016 are costs for conversion beyond-the-meter.[81] Given how uncertain these cost estimates are, it would seem more reasonable to limit construction to-the-meter at least until the Commission has had the opportunity to collect information and assess the prudence of going forward with the exercise. This would save ratepayers about a third of these enormous and speculative costs, while addressing much of the safety and reliability issues that formed the basis for the program in the first place.

The Scoping Memo noted that PG&E has converted four MHPs since 1997 under Public Utilities Code § 2791, one of them a gas MHP.[82] It would seem that those conversions were done to-the-meter, because if they were beyond-the-meter conversions, PG&E would have used evidence of the work to support its proposal in this proceeding for going beyond-the-meter. There is no reason why the MHP owner/operator that voluntarily and in good faith complied with the legislative mandate should fare worse than those who have failed to avail themselves of the law.

[81] Exhibit 19, p.1-4, Table 1.
[82] R.11-02-018, July 17, 2013 ACR, p.3

2. Beyond-the-meter

The Commission must consider whether authorizing the utilities to convert the MHP systems beyond-the-meter would require the consent of MHP residents/tenants as well as that of the MHP owner-operator. This would increase the cost of going beyond-the-meter. Some testimony at the Evidentiary Hearings suggests that some mobile homes' wiring might require going into the homes in order to complete a beyond-the-meter conversion.[83] In those instances, it would seem reasonable that residents give their consent as well for the utility to go beyond-the-meter. This would add to the time and resources needed to complete the project, and therefore the cost.

There are also other intangible aspects of a massive beyond-the-meter construction project, such as the disruption it would cause tenants in small MHP neighborhoods that have not been quantified in terms of costs.[84] All these aspects make it more prudent to limit the conversions to-the-meter, at least for the pilot program.

3. Cost recovery

PG&E proposes to begin recovering the forecast cost of its conversion program before it has recorded a single cost in the two-way balancing account proposed for this program. In its Annual Electric True-up (AET) filing for rates to be collected starting on January 1, 2014, PG&E included a revenue requirement of $12 million dollars for MHP conversions in 2014.[85]

The AET Advice Letter was filed on August 31, 2013 just a few days after PG&E and SWG served supplemental testimony on August 19, 2013. However, the revenue requirement PG&E stated in the AET Advice Letter and the revenue requirement stated in testimony were different numbers. In the PG&E proposal, PG&E's revenue requirement for MHP conversions

[83] Evidentiary Hearing Transcript dated September 9, 2013, at pp. 98:20-100:7.
[84] Id., p.84:1-3.
[85] Exhibit 35; Tr. Vol. 2, p.243:3-19.

of the electric systems, beyond-the-meter, was $12.9 million,[86] but, in the AET, it was $12 million. When asked to explain the difference of almost $1 million, PG&E's witness claimed it was a rounding error.

> So this is electric only. So if you take line two and line five for electric from the 2014 column and add them together, it's 12.9 million. So there's a little bit of a rounding difference. But there is basically the electric numbers on page 1-4.[87]

In calling this miscalculation a rounding error, PG&E essentially admits that the degree of uncertainty in the speculative nature of its forecast costs is significant.

IV. CONCLUSION

The Joint Parties' proposal meets the Commission's objective to encourage MHPs to convert to direct utility service and is consistent with the Assigned Commissioner's Scoping Memo. As proposed, the pilot program is a reasonable method to procure accurate data to better forecast future costs of MHP conversions statewide on a long-term basis. Additionally, the Joint Parties proposal will give the Commission and the IOUs time to collect and evaluate information on topics including feasibility of conversions, best practices for converting MHPs and MHP tenant response. Without this initial data from this three-year period, the IOUs and the Commission will have great difficulty determining the most efficient and cost-effective way to proceed with MHP conversions in the future. The IOUs need a better sense of costs and program participation in order to establish the soundest way to manage necessary personnel modifications and avoid negatively impacting ratepayers in the form of higher rates.

[86] Exhibit 19, p.1-4
[87] Evidentiary Hearing Transcript dated September 10, 2013, at p.244:16-21

Pursuant to agreement of the Joint Parties, TURN is authorized to sign this brief on behalf of the Joint Parties.

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Respectfully submitted,

_____/s/_____
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