

Appendix B:

**August 7, 2012 Scoping Memo & Assigned Commissioner's Ruling:
Questions and Responses**

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Question	DRA Response
1) Will the proposed EDR Option attract, retain and encourage expansion of companies and reduce unemployment in PG&E’s service territory?	Yes. The EDR program, if structured and administered correctly and with appropriate non-participating ratepayer safeguards, could offer the necessary benefits to elicit growth in the state’s economy, and to create and retain employment opportunities.
2) Should the Commission continue to require that the EDR maintain the floor price program component that was established in 2005 and modified in 2007?	Yes, with some modification. A floor price is a necessary component of an EDR program; it should be required in order to reasonably ensure that the benefits of EDR to non-participating ratepayers outweigh the risks. The current EDR floor price consists of the sum of nonbypassable charges (“NBCs”) and marginal costs (“MCs”). As a temporary measure, DRA proposes that a three-part floor price, consisting of separate floor prices based on NBCs, and MCs, together with a modified additive price floor, be substituted for the current single additive floor price. DRA’s floor price proposal is explained in Chapter 2.
3) Is PG&E’s proposal to allow a negative distribution rate consistent with the Commission’s existing policy?	No. For Direct Access (“DA”) and Community Choice Aggregation (“CCA”) customers, all rate components with the sole exception of Distribution, are nonbypassable and/or nondiscountable. For such customers, a negative distribution rate would be equivalent to discounting one or more nondiscountable rate components, since the total rate would produce insufficient revenue to fully fund all nondiscountable rate components. Therefore the distribution rate cannot be negative for DA and CCA customers. Competitive neutrality requires that distribution rates be the same for similarly situated bundled service and DA/CCA customers. Therefore, negative distribution rates also cannot be allowed for bundled service customers either.

<p>4) Does the proposed EDR result in discounts to Non-Bypassable Charges if it results in negative distribution rates for some customers?</p>	<p>Yes. See DRA's response to Question 3.</p>
<p>5) Is the proposed EDR competitively neutral with respect to Community Choice Aggregators, Energy Service Providers and Irrigation Districts (IDs)? If not, in what respects is the proposed EDR not competitively neutral and how may competitive neutrality be achieved?</p>	<p>No. PG&E's proposed EDR is not competitively neutral with respect to DA and CCA customers relative to bundled services. In some cases, bundled service customers would pay substantially lower bills for distribution service than would similarly situated DA and CCA customers.</p> <p>DRA proposes to achieve competitive neutrality for distribution service by imposing a marginal cost floor on distribution rates: Under DRA's EDR proposal, neither bundled service customers nor DA/CCA customers' distribution rate could be discounted below a marginal cost floor. This provision would remove unequal treatment of distribution rates (a service received in common by bundled service, DA, and CCA customers) as a potential obstacle to competitive neutrality.</p> <p>DRA's proposal does allow PG&E to discount generation rates for bundled service customers, but not below the five-year net present value of marginal generation cost. Such a discount cannot be applied to DA/CCA customers: A utility cannot discount a service that it does not provide. Maintaining a marginal cost floor assures against cost shifting.</p>
<p>6) Does the proposed EDR (either standard or enhanced) favor large businesses and thereby inadvertently exclude small and medium sized businesses? Should there be a percentage quota established across business category types who enroll in the EDR?</p>	<p>DRA has not prepared a response to this question.</p>

<p>7) Will the proposed EDR result in benefits to ratepayers as required by Public Utilities Code section 740.4(h)? If so, what are those benefits, and how can those benefits be measured?</p>	<p>PG&E’s proposed EDR may or may not result in benefits to ratepayers as required by Public Utilities Code section 740.4(h). Net benefits to ratepayers equate to the contribution to margin (“CTM”) from attracted or retained “at risk” customers, less the revenue shortfall due to discounts provided to “free riders”. Net benefits may also be enhanced to the extent of utility shareholder contributions to the cost of discounts or to offset any negative CTM. However, PG&E proposes no shareholder participation.</p> <p>PG&E’s proposed 35% Enhanced EDR Option discount, combined with its proposed elimination of the current EDR floor price and the easing of some current eligibility requirements, greatly increases both the risk of negative CTM, and the risk of free riders, relative to the current EDR program. While PG&E has calculated that its proposals will produce a positive CTM over 10 years in all cases, the 5-year CTM is negative for some of its proposed Enhanced EDR Option cases. This poses the risk of negative CTM if customers leave shortly after, or even before, the expiration of their 5-year EDR contracts. The risk of negative CTM also is increased, relative to the current EDR, by PG&E’s proposed discontinuance of an annual “true-up” of customer bills for changes in the marginal cost.</p> <p>In summary, the increased risk of negative CTM, together with increased risk of free riders, renders questionable any conclusion that PG&E’s proposed EDR will result in net benefits to ratepayers.</p>
<p>8) Does the Commission have authority, broader than that provided in section 740.4(h), to undertake programs to foster and encourage economic development?</p>	<p>The Commission’s economic development authority is broader than §740.4(h). PUC §740.4(a) specifies the Commission’s authority to authorize the utilities to engage in programs to encourage economic development. Section 740.4(c) enumerates a broad list of economic development activities included under the Commission’s purview. These activities include community marketing and development, technical assistance to support technology transfer, market research, site inventories, industrial and commercial expansion and relocation assistance, business retention and recruitment, and management assistance. PUC §740.4 gives the Commission the authority to approve and regulate PG&E’s proposed EDR program.</p>

<p>9) Must the proposed EDR schedule of rates generate a positive contribution to margin in order to comply with section 740.4(h), or are there other benefits that will suffice to demonstrate compliance with this statutory requirement?</p>	<p>Yes. The EDR program must generate a positive contribution to margin over the 5-year term of the EDR contract on an ex ante basis in order to comply with PUC §740.4(h). DRA recognizes that the EDR program could benefit ratepayers in other indirect ways. These indirect benefits are not sufficient to satisfy the ratepayer benefit requirement in PUC §740.4(h). Indirect benefits cannot substitute for the requirement of a positive ex ante contribution to margin over the 5-year term of the EDR contract.</p>
<p>10) Are there discriminatory impacts in offering the enhanced EDR in counties with unemployment levels at 125% or more above the state average? Should customers outside those geographic areas bear the costs of the deeper discount? Should the economic development needs of counties with higher unemployment obtain an advantage over economic development needs of other counties?</p>	<p>DRA has not prepared a response to this question.</p>

<p>11) Should the Commission deny PG&E the ability to offer an EDR discount in the areas where it competes with Merced ID and Modesto ID and already has the statutory ability to offer discounts?</p>	<p>DRA has not prepared a response to this question.</p>
<p>12) Do the geographic distinctions in the proposed EDR comport with laws prohibiting rates that grant preferences or advantages to some customers and that prejudice and disadvantage others?</p>	<p>DRA has not prepared a response to this question.</p>
<p>13) Does California Environmental Quality Act require the Commission to review the environmental impact of any EDR agreements that PG&E proposes to execute?</p>	<p>DRA has not prepared a response to this question.</p>

<p>14) What provisions of an EDR are necessary in order to avoid conflicts with the existing legislative framework relative to competition between PG&E and Modesto ID and PG&E and Merced ID?</p>	<p>DRA has not prepared a response to this question.</p>
<p>15) Are the proposed 12% and 35% EDR discount rates the most appropriate discount rates?</p>	<p>No. DRA has no objection to the 12% Standard EDR Option discount, but has determined that the PG&E's proposed 35% Enhanced EDR Option discount would result in a negative CTM in some cases, over the proposed five-year contract term.</p> <p>DRA has proposed a five-year discount schedule, beginning at 35% but declining year by year, such that the five-year CTM is positive in all cases.</p>
<p>16) Should the Commission remove the 200 MW participation cap it currently requires as an element of PG&E's current EDR?</p>	<p>No. The Commission should retain the 200 MW participation cap in order to limit the risk to non-participating ratepayers.</p>

<p>17) Should the Commission modify the EDR participation verification requirements by eliminating the current requirement that the Office of California Business Investment Services conduct an independent evaluation of a customer's eligibility for Economic Development Rates?</p>	<p>No. The Commission should retain the requirement that the Office of California Business Investment Services (CalBIS) conduct an independent evaluation of a customer's eligibility for the EDR program. CalBIS has the necessary expertise to evaluate EDR applications and to determine if customers meet the program's minimum qualifications. Third party oversight is a vital tool to discourage free riders from applying for and obtaining EDR discounts.</p>
<p>18) Should the Commission establish a requirement that all EDR Agreements must contain a provision that requires cost-effective conservation or other equivalent demand-side management and load reduction discussions between PG&E and the applicant? Should any post discussion actions be required?</p>	<p>Yes. The Commission should require PG&E to conduct an energy audit of EDR program applicants and discuss cost effective conservation and demand side management programs with applicants. The Commission also should consider requiring EDR customers to implement cost effective energy efficiency and demand side management measures with a two-year pay-back period.</p>

<p>19) Should potential EDR customers be required to demonstrate that electricity makes up a threshold percentage of operating costs in order to qualify for the EDR discount?</p>	<p>Yes. The Commission should require EDR customers to demonstrate that electricity makes up at least 5% of their operating costs in order to qualify for the EDR discount. The Commission should require the customer affidavit to include a provision that electricity costs constitute at least 5% of the customer's operating expenses.</p>
<p>20) Is there value in the current requirement that the "Customer Affidavit" be signed "under penalty of perjury" in attesting that but for this rate, the business would not expand, stay in, or come to California?</p>	<p>Yes. The Customer Affidavit is the primary tool in the EDR program that directly discourages free-riders. Considering this and the sizable discount EDR program participants will receive, signing the affidavit under penalty of perjury is not overly burdensome and the requirement should be retained.</p>
<p>21) Should the enhanced EDR option be for a more limited or a different term than the standard EDR option?</p>	<p>No, see, however, the response to issue #22.</p>
<p>22) Should there be a limit on the number of times that a customer's EDR participation may be extended for another term?</p>	<p>Yes. The Commission should allow customers with a standard EDR contract to reapply once for a second term, provided that they continue to meet the eligibility requirements and sign another customer affidavit and contract. This proposal will maintain ratepayer risk at an acceptable level. Customers should under no circumstances be allowed two consecutive terms under an Enhanced EDR program.</p>

<p>23) What provisions of an EDR are necessary to guard against free-riders?</p>	<p>The following provisions are necessary to guard against free-riders: (1) the customer affidavit signed under penalty of perjury, (2) limiting EDR program participation to customers for whom electricity costs constitute at least 5% of their operating expenses, (3) the CalBIS review and approval of applications; (4) inclusion of a non-assignability clause in EDR contracts, and (5) inclusion of liquidated damages clauses covering premature termination of EDR customer contracts as well as misrepresentation or fraud.</p>
<p>24) Which elements of the current floor price (e.g. generation marginal costs) have decreased the headroom available for discounting rates? Would modifying the terms of discounting floor price elements (e.g. indexing the price of natural gas to generation rate discounts) significantly increase the headroom available for discounting rates?</p>	<p>The headroom for EDR discounts can be affected by changes in the marginal cost of energy (MEC), which, in turn, is sensitive to fluctuations in the market price of natural gas. In the current EDR program, increases in MEC have caused the EDR price floor to increase. In the current program, the marginal cost floor is enforced annually and retroactively, in some cases causing customers to be back-billed for previous discounts received.</p> <p>DRA does not object to PG&E's proposal to index its forecast of MEC to the price of natural gas. Assuming forecasts are unbiased, indexing should, as a general rule, neither increase nor decrease the amount of headroom available for discounts. In the particular case of PG&E's application, natural gas prices have declined relative to those assumed in PG&E's 2011 GRC Phase 2 Settlement, and PG&E's indexing proposal would increase the headroom for discounting.</p> <p>DRA's proposed marginal cost and modified additive price floors use a weighted average of PG&E's indexed MEC value and the Settlement MEC.</p>
<p>25) Does the existence of a price floor act as a disincentive to business participation in the EDR program?</p>	<p>No. The existence of a price floor should not, <i>per se</i>, act as a disincentive to business participation in the EDR program. Of course, the <i>level</i> of the floor will constrain the amount of discount available, and may, in some cases, act as a disincentive to business participation in the EDR program. Of greater concern than the existence of a price floor is the manner in which it is applied. The currently required after-the-fact annual review and true up is probably a disincentive to business participation in the EDR program, because it introduces considerable uncertainty in customers' final costs for energy.</p>

<p>26) Should the Commission eliminate the currently required after-the-fact annual review and true up that ensures that the discounted rates charged remained above the floor price?</p>	<p>Yes, for reasons stated in DRA's response to Question 25.</p>
<p>27) Should contribution to margin be required of each participant, or of the program generally?</p>	<p>A positive contribution to margin (CTM) should be required of each participant over the term of its EDR contract, on an ex ante (forecast) basis only. For the proposed five-year contract term, each contract must show a positive five-year net present value of CTM, on a forecast basis. In addition, the Utility should be required to track EDR aggregate portfolio CTM on an ex post basis, and shareholders should be responsible for 100% of any negative CTM cumulated through year 10 (i.e., 2022).</p>
<p>28) Should contribution to margin be calculated annually, or over some other time period?</p>	<p>PG&E should be required to calculate, track, and report CTM annually by contract and for the EDR portfolio, both on an ex ante and an ex post basis. See DRA's response to Question 27.</p>
<p>29) What must the Commission do in order to ensure that rates remain just and reasonable rates for non-EDR participants?</p>	<p>First and foremost, the Commission must continue to set a marginal cost-based floor price on EDR rates, to ensure that the marginal costs of serving EDR customers are not shifted to nonparticipating ratepayers. Second, the Commission must reject PG&E's proposal to allow negative distribution rates. PG&E's proposed negative distribution rates would, in some cases, discount nondiscountable rate components, violate competitive neutrality, and would be contrary to sound public policy. Third, the Commission should tighten the current EDR programs safeguards against free riders, rather than relaxing those safeguards as PG&E proposes. Finally, the Commission should require PG&E's shareholders, if they wish to voluntarily offer EDR discounts at ratepayer expense, to assume the risk of the 10-year net present value of the CTM turning negative. Otherwise, there is risk that ratepayers will not benefit from the EDR program, contrary to the requirements of P.U. Code Section 740.4 (h).</p>

<p>30) Should PG&E shareholders bear some of the costs of any rate increases to non-EDR program participants that occur because of the rate reductions given to EDR program participants?</p>	<p>Yes. The Commission should require shareholders to bear 25% of the cost of the EDR discounts, assuming that a floor price is retained substantially as proposed by DRA. If the floor price is removed, as PG&E proposes, then shareholders should bear 50% of the cost of the EDR discounts in light of the substantially greater risk to ratepayers from absence of a floor price. The Commission does have the discretion to allocate all or some portion of the cost of voluntary EDR discounts to shareholders.</p>
<p>31) Should there be a provision that requires shareholders to bear the cost of the EDR rate differential if an <i>ex-post</i> review of the program reveals that it has not resulted in benefits to ratepayers?</p>	<p>Yes. The Commission should require shareholders to bear 100% of the cost of the EDR rate differential if an ex-post review of the EDR program reveals that it has not resulted in a positive CTM after 10 years. DRA believes that such a requirement follows from the ratepayer benefit condition of P.U. Code 740.4 (h).</p>
<p>32) To what extent have previously authorized EDR programs accomplished these objectives?</p>	<p>DRA has not prepared a response to this question.</p>

<p>33) Should the EDR include a requirement that each participant provide a good faith <i>ex ante</i> projection of the number of jobs the discounted rate will produce, and an accurate <i>ex-post</i> assessment of what jobs were actually created?</p>	<p>No and Yes. The Commission should not require EDR participants to provide a good faith <i>ex ante</i> projection of the number of jobs that discounted rate will produce but the Commission should require participants to report the number of jobs created to PG&E either annually or every other year. The Commission should require PG&E to submit an <i>ex-post</i> assessment of the number of jobs created by the EDR program every year or every other year.</p>
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