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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company to Revise Its Electric Marginal Costs, Revenue Allocation, and Rate Design Including Real Time Pricing, to Revise Its Customer Energy Statements, and to Seek Recovery of Incremental Expenditures. (U 39 M)

Application No. 10-03-014
(Filed March 22, 2010)

**OPENING BRIEF OF THE
KERN COUNTY TAXPAYERS ASSOCIATION
REGARDING THE GENERAL RATE CASE APPLICATION
OF THE PACIFIC GAS AND ELECTRIC COMPANY**

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Michael Peevey, Commissioner
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TABLE OF CONTENTS

I.	INTRODUCTION AND GENERAL BACKGROUND.....	3
A.	The Central Valley disproportionately bears burdens imposed by sophisticated interest through inverted sliding block rates.....	4
B.	CARE recipients must realize current economic and conservation realities	6
C.	Residential Rooftop Solar Subsidies must be limited to protect Central Valley residents	7
D.	Reactive ratemaking will create additional rate crises for Central Valley residents.....	10
II.	RESIDENTIAL RATE DESIGN	11
A.	Background	11
B.	Legal Argument.....	14
III.	PROPOSAL FOR MONTHLY CUSTOMER CHARGE	20
A.	Background	20
B.	Legal argument.....	21
IV.	PROPOSAL FOR CARE TIER 3	22
A.	Background	22
B.	Legal argument.....	23
V.	PROPOSAL TO REDUCE BASELINE PERCENTAGE FROM 60 % TO 55%	25
A.	Background	25
B.	Legal Argument.....	27

I. Introduction and General Background

KERNTAX is a member-supported, non-partisan, 501(c) 4 non-profit corporation, whose purpose is to bring about, through cooperative effort and communication, greater economy, efficiency, and effectiveness in government, basing its recommendations upon the analysis of facts obtained through research. Being non-partisan, KERNTAX is politically independent, viewing matters and policies in an objective, impartial manner, and taking positions based on the Association's adopted principles. Founded in 1939, KERNTAX has had only one bias, the best interests of Kern County taxpayers.

KERNTAX views any government collection of funds through any financial conduit to be taxation, be it a clearly identified as a tax, a fee for government service or a regulated rate structure. If it is excessive or not appropriate, KERNTAX must, by charter, act to educate and facilitate resolution and ensure fair representation and treatment. Kern County citizens should expect no less from KERNTAX and its members. We do not seek subsidies; we simply seek fair return to our local citizens from all regulatory bodies and their agent for levied taxes, fees, etc. We believe that this perspective aligns closely with the underlying constitutional compact [California Public Utilities Code Section 202] from which the CPUC derives authority as well as the goals of PG&E shareholders, and we hope to assist the company and the CPUC in achieving a lasting resolution of the current structurally flawed residential rate system.

It is the absence of just and reasonable pricing designs, and the unduly discriminatory or preferential treatment extended to selected beneficiaries both external to the residential rate class

1 and within PG&E’s single massive rate class that causes KERNTAX to participate in this
2 hearing before the Commission to advocate for rational improvements to current structurally
3 flawed residential electricity rates.

4

5 **A. The Central Valley disproportionately bears burdens imposed by**
6 **sophisticated interest through inverted sliding block rates.**

7 PG&E’s residential service territory is unique in the United States in the fact that it extends 500
8 miles North-to-South (equivalent to the North-to-West distance from Canada to Georgia) and
9 330 miles East-to-West (covering the Coast, Mountains and Desert Regions and yet has no
10 regional specific rates resolving the usage patterns of residential ratepayers reflective of the
11 breadth of climate regions other than a single simple baseline adjustment with which to balance
12 not only the gross statistical variance in energy need but also the entire complex spectrum of
13 California’s policy objectives within on single non-subsidized rate class that carries all burdens.

14

15 KERNTAX believes that policy and legislation has not evolved to form a well defined or
16 organized framework and resulting in the recently failed five-tier inverted sliding block pricing
17 structure that was obscured by the Smart Meter rollout fiasco.¹ It is the complexity of existing
18 regulation and policy which subsequently caused the mutation from a deliberative process of
19 rational protection of ratepayer interests to a confusing set of rapidly changing directives,

¹ Prepared Direct Testimony of R. Thomas Beach on behalf the Solar Alliance, “Given the hot summer of 2009 and PG&E’s problems with Smart Meter program, it is clear that PG&E’s residential rate structure was not solely responsible for the high bill complaints...” KERNTAX was contacted by many Kern County residents; most of the complaints were related to the false perception that the Smart Meter was the cause of their high bill since most customers are not able to interpret complex five-tier rate tariffs. The accuracy and precision of PG&E’s “Smart Meter” was found to be unflawed. KERNTAX cautioned all parties that the complex rates needed to be fix and not the meter needed attention. The presentation as fact that a “hot summer” in the Central Valley is a unique occurrence flies in the face of science and reason. It is expected that sophisticated negotiators will attempt to dissemble but one cannot blame hot weather for the posted rates in PG&E’s service territory that are punitive to non-subsidized Central Valley residents.

1 formulae and has allowed the presentation of philosophical issues as facts and abandonment of
2 facts such as equal percentage of marginal cost, long and short avoided cost and financial costs
3 in lieu of policy and intangibles. Coupled with the scope and size of the PG&E residential rate
4 class and one can see how regulatory and legislative elements containing otherwise minimal
5 discriminatory impacts can be brought together in a complex synergism of special interests
6 leading to otherwise avoidable substantial discrimination being levied on the most exposed rate
7 class in the territory.

8

9 KERNTAX believes that in this present chaotic environment, selected special interest groups and rate
10 classes in the current rate design are represented by “sophisticated parties” that have “negotiated
11 sophisticated contracts” that are discriminatory and we remain deeply concerned that without
12 some effort to regulate unbounded access to ratepayer wallets’ we will see a return to exorbitant
13 rates that are so untenable that valley residents will simply be “quietly crushed” while others
14 flourish at their expense.² The roughly 3.4 million non-subsidized residential ratepayers
15 households (as a single pure class spread across PG&E’s 13 climate regions encompassed by
16 over 100,000 square miles) has had no special interest in pressing the CPUC to provide lowest
17 reasonable rates that helps ensure fairness and equity in proceedings of such sophistication.
18 Further, the Central Valley residential rate payer, has a set of unique climate conditions that
19 forces consumption of 30% of PG&E’s residential energy to achieve reasonable comfort.³

² See Prepared Direct Testimony of R. Thomas Beach on behalf the Solar Alliance. In their Executive Summary of Recommendations, the Solar Alliance Expert clearly underscores KERNTAX’s concern. “The Solar Alliance agrees the Division of Ratepayer Advocates (DRA) that the major changes to E-1 rates that PG&E has proposed in this case will result in adverse impacts on other residential customers.” Beech, at page ii. KERNTAX strongly believes that DRA is not prejudiced in favor of any: industry, special or subsidized group or climate region; however, the special interest belief that there is an underlying philosophical alignment with DRA increases the perception that the non-subsidized Central Valley rate payer is largely alone in treating with the sophisticated negotiators in this Phase II GRC.

³ See KERNTAX rebuttal testimony and related cross examination exhibit 68. The percentage of PG&E Region W CARE customers whose consumption of energy was above 130% in their peak usage month was 80%. In spite of the assumption that households with less income should presumably reduce their energy consumption this is very similar to the non-CARE users’ value of 84%. Further, the Kern County differential in demand above 200% of baseline is: 44% for Region R customers (mild climate), and 65% for Region W customers (valley climate). While 21% may seem like a small number to some special interests seeking favorable above marginal cost rates, the difference in dollars (for solar subsidy,

1 Realigning the cost allocations to reduce certain unintended discriminatory imbalances of
2 obligations is not a reduction of one party's right to a subsidy for the enjoyment of another party,
3 rather it is the rational return to balance of obligations and the relief of the prior discriminated
4 party from whom the subsidy funds were garnered.

5
6 To this end KERNTAX supports the proposed PG&E three tier rate structure for non-subsidized
7 residential ratepayers as it minimizes interregional discrimination.

8
9 ***B. CARE recipients must realize current economic and conservation***
10 ***realities***

11
12 The Central Valley non-subsidized ratepayer has become subject to the unintended vagaries of a
13 combination of legislative fiat coupled with ratemaking practices that focus on special subsidy
14 for classes within a single massive residential class. 1.2 million CARE subsidy recipients and
15 other special subclasses are considered part of the overall residential class for allocation of public
16 policy benefits but are granted exemption from any exposure to environmental related
17 conservation or residential rooftop solar industry subsidy. Additionally, support of otherwise
18 uneconomic business ventures in lieu of fairness to climate challenged ratepayers regardless of
19 captivity is manifest in the continuing effort to promote solar industry interests through a fourth
20 tier (herein referred to as the residential rooftop solar industry subsidy tier). This discriminatory

revenue requirement, CARE balancing, etc.) that is collected from the non-subsidized valley resident at the highest tier rate (which is well above the marginal costs) is passed directly to all non-valley residents that are not equally exposed any special subsidy balancing tiers. For this reason KERNTAX feels any effort to extend the range of the residential rooftop solar industry subsidy rate is not only prejudiced in favor of residential rooftop industry subsidies but also prejudiced in favor of coastal communities and businesses whose lower energy costs may allow more competitive prices for homes and products.

1 “Gordian knot” is tied around the individual economic resources of the non-subsidized Central
2 Valley residential rate payer who finds themselves conveniently lumped together with many
3 distinct subclasses that in many other utility service territories are as large as the entire
4 residential class⁴, and is simply viewed as the resource for all special interests. As such, until the
5 issue of inter-regional discrimination is resolved, KERNTAX believes that the use of any more
6 than three tiers will discriminate against central valley residential ratepayers as a class.

7

8 The creation of three tiers for CARE will help CARE rates to conform closely to non-CARE
9 rates and this simplification will help achieve the legislated objective⁵ of bringing CARE
10 subsidized rates to 80% of non-CARE rates.

11

12 To this end KERNTAX supports the proposed PG&E three tier rate structure for CARE
13 subsidized recipients.

14

15 ***C. Residential Rooftop Solar Subsidies must be limited to protect***
16 ***Central Valley residents***

17

18 Any effort to support unreasonable return expectations of the residential rooftop solar industry
19 and provide for the expansive support of wasteful consumption of subsidized energy by
20 beneficiaries of public programs such as CARE will create discriminatory harm to those certain

⁴ Based on PG&E Billing Determinants EL-1 users consumed 8,184 million kWh, CEC energy data indicates that of the 67 utilities serving residential in California, 64 have a total residential usage **within their entire service territory residential class** that is below the PG&E EL-1 usage were it a single class.

⁵ SB 695

1 Central Valley residents forced to carry the burden disproportionately relative to other milder
2 climate regions. Until such time as the problem of unfair allocation to the Central Valley rate
3 class is reasonably addressed any application of inverted sliding block or TOU to the entire
4 PG&E territory should be limited to three tiers with Tier three being used to balance the tier 1
5 and 2 and CARE requirements. PG&E's proposed rate structure will mitigate Climate
6 discrimination between members of the same rate class that reside in radically different climates
7 within the PG&E service territory.

8
9 Territory-wide program capital costs for non-energy of demand related charges such as
10 conversion to Advanced Metering Instrumentation (AMI) can be more reasonably tracked and
11 allocated through application of fixed service charges levied to each user. Non-subsidized valley
12 residents should not be asked to again carry the disproportionate burden of capital costs
13 imbedded in any energy-based pricing due to climate region related discrimination in any
14 inverted sliding block or TOU rate structure within PG&E's service territory. PG&E's service
15 charge proposal will provide a fair and equitable recovery mechanism to cover new metering and
16 delivery improvements that is shared amongst all similar rate class members of the service
17 territory regardless of protected status or subsidy. [PURPA Section 1307(a)(16)(b)].

18
19 Unlike any other industry, residential rooftop solar providers seek above avoided-cost returns
20 directly from PG&E's captive customers. Balancing residential rooftop return expectation with
21 all other program costs has created a severe skew in inverted sliding block rates (and there is no
22 countervailing pressure or incentive to reduce cost or prices). No other electric utility obligation
23 or conservation program has been priced directly to captive customers in this manner with no

1 regulatory foundation in cost management, no transparent critical analysis of costs due to adverse
2 impacts to Integrated Resource Planning at the sub-transmission and distribution levels, no
3 critical analysis of any Participants Test impacts related to non-cost of service ratemaking, no
4 Rate Payer Impact Test, no Total Resource Cost or Administrator Cost Test or any other effort to
5 control costs to the ratepayer through realistic avoided-cost analysis. The failure to subject the
6 residential rooftop solar industry to reasonable market controls due to absence of prudence is not
7 excused under a rubric of legislated necessity; the CPUC should guarantee that both legislative
8 intent and prudent oversight must remain intact and integral to rates. Rooftop residential solar
9 use will be fed by PG&E's proposed tier 3 rate which balances all revenue requirements and
10 policy objectives including those required by AB1X and SB 695. Doing so will ensure a
11 reasonable price signal to create price discipline and competitive efficiency in the residential
12 solar industry over a demand range of 130% of baseline. PG&E's tier three pricing provides
13 incentive for residential rooftop solar industry to focus on California's common objective of
14 **conservation** [SB 695 at (5)] and **affordable** renewable energy [AB1X at 80100(c)] and rates
15 that are "**just and reasonable**" [SB 695 at (1)].

16

17 To this end KERNTAX supports the proposed PG&E three tier rate structure and believes that
18 the resultant allocations will provide sufficient incentive for residential energy consumers (who
19 elect to use a Time of Use tariff) and residential rooftop solar installers to develop marketable
20 efficiencies and technological improvements.

21

22

1 **D. Reactive ratemaking will create additional rate crises for Central**
2 **Valley residents**

3
4 The rate shock of 2009 did not appear absent deliberations. The erosion of least cost in favor of
5 policy objective resulted in a process that finally achieved a tipping point.

6
7 No ratepayer should feel that participation in CPUC proceedings is vital to protecting their right
8 to quiet enjoyment. The shared burden of service provided for the common good does not
9 provide a conduit for imposition of preferential entrance of otherwise unwelcome trespass in the
10 form of special incentives for one party at the expense of another. KERNTAX views the CPUC
11 and its departments as essential to protect our members and Central Valley constituents from
12 being railroaded by special interests deftly cutting deals that create rates that are suddenly so out
13 of sync with either historic price structures or current adjacent market price structures that
14 California must turn to legislative adjustments to immediately fix these problems created by
15 special interests. SB695, passed in 2009 states:

16
17 *“In order to avert a rate crisis involving unfair and unreasonable rates being*
18 *charged for electric and gas service by electrical and gas corporations, it is necessary that*
19 *this act take effect immediately”.* [SB695]

20
21 To this end KERNTAX believes that PG&E’s current rate design will mitigate the impact of
22 distorted price structures and will provide a platform for deliberative ratemaking in future

1 proceedings that will have to include a entirely new set of GHG-related facts as they become
2 tangible.

3
4

5 Specifically,

6 **II. Residential Rate Design**

7

8 **A. Background**

9 KERNTAX recommends that the CPUC find in favor of the PG&E’s overall rate design which
10 incorporates three tiers and a customer charge.

11

12 The PG&E proposed framework fairly adheres to the mandatory tier 1 and tier 2 allocation
13 providing legislated subsidy to the first 130% of baseline. The tier 3 provides for even balancing
14 of all non-subsidy levies on the 3.2 million non-subsidized residential users of energy above
15 130% of baseline and the customer charge has the effect of ensuring that costs related to capital
16 are more evenly spread to all 4.5 million beneficiaries in the residential class. Assuming the
17 determination Phase I revenue requirements proceed in a rational framework and customer
18 charge remains in effect, the proposed rates will be reflective of PG&E’s E-1 and EL proposal:

19

ENERGY CHARGE (\$/kWh)			
	E-1	EL	Diff.
Baseline Usage	.11877	.08316	70%
101% - 130% of Baseline	.13502	.09563	71%
131% - 200% of Baseline	.29025	.12474	43%

201% - 300% of Baseline	.29025	.12474	43%
Over 300% of Baseline	.29025	.12474	43%

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All other related rate tariffs would be rationally adjusted to reflect the above. Note that in no case does the differential legislative approach of bringing fairness and reason between the unsubsidized and subsidized rate.⁶

Given the inherent climate related discrimination of tier 4 and tier 5 arrangements, KERNTAX requests that the CPUC order that future ratemaking proceedings that consider tier 4 and tier 5 reflect the valley resident’s discriminatory reality stemming from extreme climate differences⁷ coupled with both inverted sliding blocks and TOU which forces a shift of financial burdens within PG&E’s residential class that are disproportional to the marginal costs of service. Also, we request that the CPUC move to ensure that central valley non-subsidized residents are fairly treated with the same level of deference granted to the residential solar panel industry, disabled persons, CARE customers, etc.

KERNTAX believes that: 1) the allocation of revenue requirements through inverted sliding blocks cannot be reasonable or fairly applied to a system that has provisions for public policy programs that removes system-wide obligations to certain sub-classes or subsidizes certain subclasses (i.e., such as CARE), 2) the allocation of revenue requirements to a single system-wide residential class cannot be reasonably or fairly applied to a system having vastly different

⁶ SB 695 mandates that subsidized rates should be brought into a more rational relationship and that the subsidized rate shall not be greater than 80% of the unsubsidized rate.

⁷ REBUTTAL TO EVIDENTIARY HEARING STATEMENTS REGARDING THE GENERAL RATE CASE APPLICATION OF THE PACIFIC GAS AND ELECTRIC COMPANY BY THE KERN COUNTY TAXPAYERS ASSOCIATION at p12, ln6. The city of Wasco has 59 times more Cooling Degree days than Monterey. But the baseline is only 2.45 lower than Wasco’s.

1 climate conditions, and 3) the allocation of special incentive oriented pricing designed to
2 stimulate contracting for demand reduction technology that is more than twice the avoided cost
3 based solely on higher tier users cannot be reasonably or fairly applied given the climate
4 differences discussed above.

5
6 KERN TAX believes that current rate making using a single residential class (with several
7 subsidized subclasses) for a vastly diverse service region should be carefully designed to ensure
8 inter-regional parity such that those ratepayers in more severe climate regions are not forced to
9 pay discriminatory rates that subsidize other ratepayers in less severe climate regions.⁸

10
11 One may argue that discrimination has been historic and unavoidable in ratemaking for natural
12 monopolies, however, the historic facts supporting the past acceptable levels of discrimination
13 reflected natural limitations (such as average cost based pricing, now abandoned for inverted
14 sliding blocks) and simple concepts of Equal Percentage of Marginal Costs could be applied with
15 reasonable certainty of understanding and balance. The recent shocks of electrical deregulation's
16 failure which resulted from accumulated price fixing for special groups and the synthesis of solar
17 initiative pricing have led to a new application of inverted sliding block rates that represents a
18 system-wide 10% per year increase in rates that were already higher than the national average
19 that in combination with Central Valley climate region impacts go beyond the pale of
20 "reasonable" discrimination.⁹

21

⁸ Inter-regional parity for residential solar installation is defined as a point at which top rate structures achieve the same target percentage of market penetration of residential rooftop solar in varying climate zones.

⁹ EVIDENTIARY HEARING STATEMENT OF THE KERN COUNTY TAXPAYERS ASSOCIATION REGARDING THE GENERAL RATE CASE APPLICATION OF THE PACIFIC GAS AND ELECTRIC, Exhibit 05.

1 **B. Legal Argument**

2

3 KERNTAX views the philosophy of “fair and reasonable” as a primary element in any
4 ratemaking proceeding. It is our concern that the California State Constitution’s directive
5 concerning nondiscriminatory rules has been relegated to a secondary function in pursuit of
6 narrow policy objectives.¹⁰ And KERNTAX views PG&E’s proposal as an effort to return to
7 fair and reasonable rates.

8

9 KERNTAX recognizes with great concern the alignment of special interests in preserving the
10 prior failed rate structures.¹¹

11

12 KERNTAX believes that there is no specific legislative act that directs CPUC to order onerous
13 rates that grant special benefit to certain ratepayers within a given rate tariff (i.e., there is no
14 specific legislative wording that directs CPUC to select which regional group of non-subsidized
15 E-1 ratepayers should or shouldn’t bear conservation burdens or residential rooftop solar
16 subsidies through a 4 or 5 tier system as opposed to a simple 3 tier system). Claims made by
17 groups representing the conservation and solar interests indicate that it is imperative that the
18 residential rooftop solar subsidy tier (tier 4 or tier 5) retain their subsidy over the largest demand
19 range possible (i.e., any demand above 200%) that they can ensure that the resultant reduction in

¹⁰ PUBLIC UTILITIES CODE SECTION 201-248

201. This part may be cited as the "Public Utilities Act."

202. Neither this part nor any provision thereof, except when specifically so stated, shall apply to commerce with foreign nations or to interstate commerce, except insofar as such application is permitted under the Constitution and laws of the United States; but with reference to passenger stage corporations operating in interstate commerce between any point within this State and any point in any other state or in any foreign nation, the commission may prescribe such reasonable, uniform and nondiscriminatory rules in the interest and aid of public health, security, convenience, and general welfare as, in its opinion, are required by public convenience and necessity.

¹¹ “The Solar Alliance agrees the Division of Ratepayer Advocates (DRA) that the major changes to E-1 rates that PG&E has proposed in this case will result in adverse impacts [a reduction of unintended subsidy to more balanced rates] on other residential customers [coastal residents and subsidy recipients].”[ed.]Beech, at page ii.

1 non-subsidized ratepayer's demand relieves the electrical system during peak demand period in
2 sufficient quantities to allow for meaningful progress toward GHG related targets. They fail to
3 mention one of the skeins in the Gordian knot-- if they were indeed successful in reducing the
4 kWh consumption of the non-subsidy residential user (regardless of climate region) then the next
5 rates would have to include a new fact--- there would be fewer kWh to spread all revenue
6 requirements including the unreduced costs related to the CARE subsidy (increasing the
7 discriminatory effect felt by the already stressed Central Valley residents. Claims made by
8 advocacy groups such as Sierra Club, Disability Rights Advocates and Solar Alliance imply that
9 legislative decree rightfully forces PG&E to create residential rate structures that discriminate
10 against certain captive E-1 and TOU ratepayers regardless of facts of varying climate conditions
11 using sophisticated analysis in favor of their particular programs for which they seek the
12 equivalent benefit of sophisticated contracts (i.e., tariffs underwritten by CPUC).

13
14 AB1X simply imposed a rate cap on residential rates for usage less than 130% of baseline (tiers
15 one and two). But did not create a special requirement that limited tier 3 to only 200% or that any
16 tier 4 rate should be applied to any energy consumption above 200%.¹² The articulate effort on
17 the part of certain advocacy groups to justify such a favorable rate requirement so as to stimulate

¹² Assembly Bill No. 1
CHAPTER 4

DIVISION 27. PURCHASE AND SALE OF ELECTRIC POWER
CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

80000. *The Legislature hereby finds and declares all of the following:*

*(a) The furnishing of **reliable reasonably priced electric service** is essential for the **safety, health, and well-being** of the people of California. A number of factors have resulted in a rapid, unforeseen shortage of electric power and energy available in the state and **substantial increases in** wholesale energy costs and **retail energy rates**, with statewide impact, to such a degree that it **constitutes an immediate peril to the health, safety, life and property** of the inhabitants of the state, and the public interest, welfare, convenience and necessity require the state to participate in markets for the purchase and sale of power and energy.*

...

80110
"In no case shall the commission increase the electricity charges in effect on the date that the act that adds this section becomes effective for residential customers for existing baseline quantities or usage by those customers of up to 130 percent of existing baseline quantities, until such time as the department has recovered the costs of power it has procured for the electrical corporation's retail end use customers as provided in this division."

1 in a targeted energy user (non-subsidized Central Valley residential household) a sense that
2 commercially offered solar prices (that fly in the face of avoided cost) are reasonable is
3 disturbing. This cynical interpretation by sophisticated experts is designed to grant unchecked
4 favor to the residential solar rooftop industry whose natural desire for maximum profit puts it in
5 direct economic conflict with non-subsidized captive Central Valley residents. And the only
6 hope for the non-subsidized Central Valley resident is that the solar cartel will be self-policing.

7
8 Clearly the intent of AB1X was the provision of reliable reasonably priced electric service and
9 the alleviation of “ *an immediate peril to the health, safety, life and property of the*
10 *inhabitants.*” No reference is made to current conservation efforts or solar program price
11 supports. Taken in its original context AB1X simply provided a means to facilitate the purchase
12 and delivery of much needed electricity while guaranteeing a secure price point for
13 approximately ½ of the electricity used. Subsequent interpretation extends the relatively simple
14 context into a complex set of rate adjustments that are discriminatory and contrary to CPUC
15 Code Section 80000.

16
17 California Senate Bill (SB695) allows the California Public Utilities Commission to authorize
18 annual increases between 3% and 5% to tiers one and two for energy usage less than 130% of
19 baseline beginning January 1, 2010. This means that rates in tiers one and two were envisioned
20 to increase to make rates more fair and equitable among all residential customers. Also CARE
21 customers are expected by the legislature (not only limited to previous CARE customers who
22 were tier 4 and 5 users) to accept a limit on their subsidy to 80% of the non-subsidized rate.
23 If CARE is limited by law to 3 tiers and CARE is limited to 80% of non-subsidized rates, then it
24 stands to reason that unless a legislative directive exists ordering more than 3 tiers, **there can**

1 **only be 3 legally mandated non-subsidized rates.** This would infer that imposition of more
2 than three tiers on the single residential rate class (i.e., four tiers or five tiers), rightly or wrongly,
3 are purely discretionary.¹³

4
5 SB695 does not authorize selective discrimination in favor of Coastal Region residents at the
6 expense of Central Valley residents who cannot afford to purchase expensive solar facilities and
7 do not qualify for CARE or other special subsidies.

8
9 Allocation of any solar incentive pricing to any ratepayer for usage above tier 3 (300% above
10 baseline) should at least reflect an aggressive “avoided cost” analysis that limits prices to create
11 fair and reasonable returns to the subsidized industry from unsophisticated customers that are
12 captive of the residential rooftop solar industry and should not discriminate against Central
13 Valley residents that are otherwise unsubsidized. It is in SB695 that one finds the crux of general
14 legislative concern regarding the “rate crisis involving unfair and unreasonable rates”.

15

¹³ SB695

...
(B) The requirement that the level of the discount for low-income electricity and gas ratepayers correctly reflects the level of need as determined by the needs assessment conducted pursuant to subdivision (d) of Section 382.

(4) Tier 1, tier 2, and tier 3 CARE rates shall not exceed 80 percent of the corresponding tier 1, tier 2, and tier 3 rates charged to residential customers not participating in the CARE program, excluding any Department of Water Resources bond charge imposed pursuant to Division 27 (commencing with Section 80000) of the Water Code, the CARE surcharge portion of the public goods charge, any charge imposed pursuant to the California Solar Initiative, and any charge imposed to fund any other program that exempts CARE participants from paying the charge.

*(5) Rates charged to CARE program participants shall not have more than three tiers. An electrical corporation that does not have a tier 3 CARE rate may introduce a tier 3 CARE rate that, in order to moderate the impact on program participants whose usage exceeds 130 percent of baseline quantities, shall be phased in to **80 percent of the corresponding rates charged to residential customers** not participating in the CARE program, excluding any Department of Water Resources bond charge imposed pursuant to Division 27 (commencing with Section 80000) of the Water Code, the CARE surcharge portion of the public goods charge, any charge imposed pursuant to the California Solar Initiative, and any other charge imposed to fund a program that exempts CARE participants from paying the charge.*

...

*In order to avert a rate crisis involving **unfair and unreasonable rates** being charged for electric and gas service by electrical and gas corporations, it is necessary that this act take effect immediately.*

1 KERNTAX believes that this fair and reasonable “cost effective” philosophy is supported by
2 federal law as well. PURPA as enacted gives direction related to rate design.¹⁴

3
4 KERNTAX in its effort to seek guidance in understanding the flaws that led to the 2009 “rate
5 crisis” looked to the lessons provided by the long abandoned Robinson-Patman
6 Antidiscrimination Act. This act was primarily used in early Public Utility issues to resolve
7 disputes related to monopolistic abuse.¹⁵ However, the past ten years has seen a steady paradigm
8 shift from well established fair and reasonable practices (which placed the Robinson-Patman Act
9 on the shelf) to the current reactive environment (where fairness is traded in favor of selected
10 parties through sophisticated contracts and negotiation). This paradigm shift has occurred in a
11 service territory that is so large that it encompasses many different geopolitical, climate and
12 economic environments that include stressed and captive economic communities and many
13 competitive communities and businesses. KERNTAX believes that the legislative, regulatory
14 and rate process conundrum that defines PG&E’s residential rates have presently evolved to a
15 point that non-subsidized residential rates, whose non-energy imbedded costs approach or exceed

¹⁴ TITLE 16 > CHAPTER 46 > SUBCHAPTER I
§ 2611. Purposes

The purposes of this chapter are to encourage—

(1) conservation of energy supplied by electric utilities;

(2) the optimization of the efficiency of use of facilities and resources by electric utilities; and

(3) equitable rates to electric consumers.

“(17) RATE DESIGN MODIFICATIONS TO PROMOTE ENERGY EFFICIENCY INVESTMENTS.—

“(A) IN GENERAL.—The rates allowed to be charged by any electric utility shall—

“(i) align utility incentives with the delivery of cost-effective energy efficiency; and

“(ii) promote energy efficiency investments.

“(B) POLICY OPTIONS.—In complying with subparagraph

(A), each State regulatory authority and each nonregulated utility shall consider—

“(i) removing the throughput incentive and other regulatory and management disincentives to energy efficiency;

“(ii) providing utility incentives for the successful management of energy efficiency programs;

“(iii) including the impact on adoption of energy efficiency as one of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives;

“(iv) adopting rate designs that encourage energy efficiency for each customer class;

“(v) allowing timely recovery of energy efficiency-related costs; and

“(vi) offering home energy audits, offering demand response programs, publicizing the financial and environmental benefits associated with making home energy efficiency improvements, and educating homeowners about all existing Federal and State incentives, including the availability of low-cost loans, that make energy efficiency improvements more affordable.”

¹⁵ Bonbright, James C., Albert L. Danielsen and David R. Kamerschen. *Principles of Public Utility Rates*. 2nd ed. Arlington: Public Utilities Reports, Inc., 1988. Discrimination, Chapter 20, Due and Undue.

1 an order of magnitude more than the actual marginal cost¹⁶, touch on the Robinson-Patman
2 Antidiscrimination Act in so far as there are substantial interregional benefit granted to milder
3 climate region residents at the expense of the more economically challenged Central Valley
4 resident specifically to favor the residential rooftop solar cartel seeking maximum subsidy.¹⁷
5 And although KERNTAX must assume that there is no actionable nexus, we fear that there may
6 be a future where rates could bring such recourse. It is our understanding that the criteria for
7 seeking remedy under this act require certain bright line thresholds. [see 15 U.S.C. 13, 13a, 13b,
8 and 21A]
9
10 There have certainly been numerous millions of consummated sales, clearly during a reasonably
11 close point in time (same time of day and month) of commodities (electricity in this case) of like
12 grade and quality (residential and commercial voltage), with a difference in price (inverted
13 sliding blocks), by the same seller, to two or more different purchasers (Climate Region W and
14 Climate Region R as an example) for use, consumption, or resale within the United States or any
15 territory thereof which may result in competitive injury (see discussion concerning the difference
16 in Cooling Degree Days as well as discussions regarding housing valuation).
17

¹⁶ Marginal Energy Costs are reported by PG&E to be approximately 4 to 5¢/kWh and Solar Alliance alternate proposed E-7 peak summer T-O-U rates for the tier 4 or tier 5 are: 58¢/kWh and 90¢/kWh, respectively and E-6 peak summer T-O-U rates for the tier 4 or tier 5 are: 70¢/kWh and 60¢/kWh, respectively. See Prepared Direct Testimony of R. Thomas Beach on behalf the Solar Alliance, Table 3.

¹⁷ Solar Alliance's sophisticated expert deftly presents the use of 5 tiers as long standing and successful in the rate making process citing P.U. Code Section 739.7 as if it had been cast in ancient constitutional stone and that CPUC has no option but to follow his guidance that 5 tier is the only "appropriate inverted rate structure". See Beech at page 18. Further, Beech uses SB1 and references P.U. Code 2851(a)(4) to mask the claimed right of the residential rooftops industry cartel to exorbitant avoided prices through use of terms like "maximum incentive" and "due value". See Beech at page 19. The confounding point is that captive customers have yet to embrace the residential rooftop solar industry to any stated desired level. The reality in the Central Valley is that synthetically raising market prices on captive customers cannot facilitate a preferred technology if the only affordable alternative to the synthetic cost is to conserve first (i.e., suffer higher indoor temperatures in the summertime) and prudently avoid adding household debt to cover the above market prices for the preferred technology. Solar Alliance's expert appears to argue that Central Valley customers are the designated party against whom all discrimination shall be directed to ensure the hurdle rates of his clientele and that the CPUC must see needs of the Central Valley non-subsidized residential ratepayer are secondary to the needs of the residential rooftop solar cartel.

1 “[E]lectricity has been classified as a commodity subject to the Act, because “[e]lectric power
2 can be felt, if not touched. It is produced, sold, stored in small quantities, transmitted, and
3 distributed in discrete quantities.”¹⁸

4
5 KERNTAX believes that while the discriminatory rates are a relatively recent evolution of
6 ratemaking that has been driven by legislation, regulatory proceedings and skewed facts, the
7 majority of related law has been written to promote fair and equitable treatment and to protect
8 unsophisticated individuals from monopolistic predation and discrimination.

9
10 To its credit in its proposed rate structure, PG&E appears to diligently make every reasonable
11 effort to strike balance with all legislation and do so in reasonable fairness to all ratepayers in its
12 residential class.

13
14 **III. Proposal for Monthly Customer Charge**

15 ***A. Background***

16 Territory-wide program capital costs can be more reasonably tracked and allocated through
17 application of fixed service charges (Monthly Customer Charge). As previously shown energy
18 consumption varies as according to Cooling Degree Days to such an extent that any effort to
19 collect program capital costs through energy pricing will discriminate against non-subsidized
20 Central Valley residential rate payers. A coastal community such as Monterey enjoys 42
21 Cooling Degree Days whereas a central valley community such as Wasco must manage with

¹⁸ The Robinson-Patman Act: General Principles, Commission Proceedings, and Selected Issues Donald S. Clark Secretary Federal Trade Commission before The Ambit Group Retail Channel Conference for the Computer Industry, Red Lion Inn San Jose, California, June 7, 1995

1 2514 Cooling Degree Days of air conditioning load in the summer. A Monthly Customer
2 Charge prevents this narrow discriminatory application of costs.

3
4

5 ***B. Legal argument***

6 Non-subsidized valley residents should not be asked to carry the disproportionate burden of
7 capital costs imbedded in any energy-based pricing due to climate region-related-discrimination
8 in any inverted sliding block or TOU rate structure within PG&E’s service territory. PG&E’s
9 service charge proposal will provide a fair and equitable recovery mechanism to cover new
10 metering and delivery improvements that is shared amongst all similar rate class members of the
11 service territory regardless of protected status or subsidy. [PURPA Section 1307(a)(16)(b)]. In
12 this instance KERNTAX believes that PG&E is making an effort to avoid level the documented
13 disparity to help achieve an interregional parity within its residential class.

14

15 SB 695 simply limits the below baseline rates to a percentage of cost and provides for customer
16 charges. Any user connected to the grid must bear some cost related to infrastructure and system
17 integrity. The collection of a modest customer charge appears to be one method to guarantee an
18 equal spread of reasonable obligations. Certain special interest may view the customer charge as
19 an effort to create a PG&E benefit but the reality is if current rates remain in place and no
20 customer charge is collected, then the disproportionate costs go again to the non-subsidized
21 Central Valley resident and simply feeds into the residential rooftop solar industry subsidy tier,
22 which discriminates against non-subsidized Central Valley residents to the benefit of the selected
23 industry and coastal communities and businesses.

1
2 Such effort on the part of PG&E reflects a rational effort to mitigate out-of-control rate spikes
3 that result from the synergistic accumulation of individual elements being primarily heaped on
4 energy charges to drive up the energy charge in favor the residential rooftop solar cartel at the
5 expense of Central Valley non-subsidized residential ratepayer. Such efforts include seeking that
6 the CPUC seek FERC approval to shift normal Transmission Rate design from demand charges
7 to an on-peak energy charge. Resulting in Solar Alliance being able to use their degree of
8 sophistication to justify proposing rates in PG&E’s residential rate class as high as 90¢/kWh!
9

10 **IV. Proposal for CARE Tier 3**

11 ***A. Background***

12
13 KERN TAX accepts the legislative intent of SB695 as written. Clearly the legislature recognized
14 that the CARE rate structure had remained immutable in the face of major changes in costs to
15 ratepayers and that this flaw needed to be addressed. These rates had for many years remained in
16 effect at substantial subsidy. Again, the cost allocations for such programs cannot be fairly
17 assessed to each rate payer given the climate differences upon which the funding is based and the
18 convoluted ratemaking framework where subsidized rates are frozen at two tiers and non-
19 subsidized rates are driven by the ability of the unsubsidized to bear expense at ever increasing
20 tiers and high tier rates. One can argue that a majority of the 1.2 million CARE customers are
21 situated within the economically depressed Central Valley and therefore the responsibility rests
22 with the Central Valley region to cover their subsidy however, it is the Central Valley non-

1 CARE resident that has to already carry the disproportionate burden of costs due to climate.
2 Sophisticated negotiators further claim that the purpose of their effort (to create higher tiers and
3 pump up the rates for those tiers) is to ensure further conservation, perhaps eliminating
4 unnecessary air conditioning in the Central Valley. Air conditioning is not a luxury in the Central
5 Valley; sufficient air conditioning is necessary to the health and welfare for households whose
6 use patterns are driven by daily occupation of the home by the elderly, children and primary
7 caregivers. Evaporative cooling provides some relief, but introduces mold spores, even into non-
8 subsidized rate payer homes. Careful balance must be applied to advocacy claims for rights to
9 more tiers and costly tiers that simply supply greater rates of return for the residential rooftop
10 solar industry while Central Valley non-subsidy residents languish or are forced to seek medical
11 assistance due to lack of air conditioning.

12

13 **B. *Legal argument***

14 California Senate Bill (SB695) allows the California Public Utilities Commission to authorize
15 annual increases between 3% and 5% to tiers one and two for energy usage less than 130% of
16 baseline beginning January 1, 2010. This means that rates in tiers one and two were envisioned
17 to increase to make rates more fair and equitable among all residential customers. Also CARE
18 customers are expected by the legislature (not only limited to previous CARE customers who
19 were tier 4 and 5 users) to accept a limit on their subsidy to 80% of the non-subsidized rate.
20 If CARE is limited by law to 3 tiers and CARE is limited to 80% of non-subsidized rates, then it
21 stands to reason that unless a legislative directive exists ordering more than 3 tiers, **there can**
22 **only be 3 legally mandated non-subsized rates.** This would infer that imposition of more than
23 three tiers (i.e., four tiers or five tiers) on the entirety of the single 4.5 million household

1 residential rate class, rightly or wrongly, is purely discretionary.¹⁹ Any effort by sophisticated
2 negotiators to reduce the mitigating effect of the CARE third tier on non-subsidized residential
3 ratepayers can only be viewed as a overt attempt to pump up non-subsidized high tier rates to
4 facilitate higher solar revenues for the residential rooftop solar cartel again prejudiced against the
5 health and welfare Central Valley non-subsidy residents.

6
7 The issue of too many tiers in non-subsidy and too few in subsidy tariffs is another element
8 lending to the compounded synergy leading to out-of-control high tier rates and represents
9 another skein in the Gordian knot tied around Central Valley non-subsidized residential
10 ratepayers.

11
12 The creation of three tiers for CARE will help CARE rates to conform closely to non-CARE
13 rates and this simplification will help achieve the legislated objective²⁰ of bringing CARE
14 subsidized rates to 80% of non-CARE rates.

15

¹⁹ SB695

...
(B) The requirement that the level of the discount for low-income electricity and gas ratepayers correctly reflects the level of need as determined by the needs assessment conducted pursuant to subdivision (d) of Section 382.

(4) Tier 1, tier 2, and tier 3 CARE rates shall not exceed 80 percent of the corresponding tier 1, tier 2, and tier 3 rates charged to residential customers not participating in the CARE program, excluding any Department of Water Resources bond charge imposed pursuant to Division 27 (commencing with Section 80000) of the Water Code, the CARE surcharge portion of the public goods charge, any charge imposed pursuant to the California Solar Initiative, and any charge imposed to fund any other program that exempts CARE participants from paying the charge.

*(5) Rates charged to CARE program participants shall not have more than three tiers. An electrical corporation that does not have a tier 3 CARE rate may introduce a tier 3 CARE rate that, in order to moderate the impact on program participants whose usage exceeds 130 percent of baseline quantities, shall be phased in to **80 percent of the corresponding rates charged to residential customers** not participating in the CARE program, excluding any Department of Water Resources bond charge imposed pursuant to Division 27 (commencing with Section 80000) of the Water Code, the CARE surcharge portion of the public goods charge, any charge imposed pursuant to the California Solar Initiative, and any other charge imposed to fund a program that exempts CARE participants from paying the charge.*

...

*In order to avert a rate crisis involving **unfair and unreasonable rates** being charged for electric and gas service by electrical and gas corporations, it is necessary that this act take effect immediately.*

²⁰ SB 695

1 **V. Proposal to Reduce Baseline Percentage from 60 % to 55%**

2 **A. Background**

3

4 Since June 1996, intended and unintended consequences of legislative and regulatory actions
5 have resulted in discriminatory and punitive non-subsidized residential rates being paid by 52%
6 of PG&E's ratepayers which account for less than 25% of total residential electricity sales.²¹

7 These ratepayers "normal" electric usage occurs in Tiers 3 through 5. This is in sharp contrast to
8 the remaining 48% of PG&E's residential E-1 customers that pay E-1 electric rates averaging
9 33% below PG&E's cost to generate, transmit, and distribute electricity. These ratepayers

10 "normal" electric usage is contained within Tiers 1 and 2. KERNTAX contends and provides
11 support that without major reform to PG&E's current residential baseline usage allowance
12 structure will consistently produce artificially contrived rates that will continue to discriminate
13 against 52% of PG&E's non-subsidized residential customer base²².

14

15 KERNTAX's analysis shows that PG&E loses money on every E-1 customer with total electric
16 usage below the upper range of Tier 3, no matter where the customer is located within PG&E's
17 ten sales regions. This high breakeven point results in 75% or more of PG&E's E-1 sales being
18 sold at a loss, with the loss being levied on its remaining energy users. *It is incomprehensible*

²¹ EVIDENTIARY HEARING STATEMENT OF THE KERN COUNTY TAXPAYERS ASSOCIATION REGARDING THE GENERAL RATE CASE APPLICATION OF THE PACIFIC GAS AND ELECTRIC at p5.

²² Excerpt cited from a page titled "Residential Electric Tiered Rates" contained in a PG&E information package handed out in late 2009 to a community group in Bakersfield, California, in response to high summer electric bills and the controversy involving the accuracy of the Smart Meter:

PG&E has 4.7 million residential electric customers. Of this total, 2.2 million either maintain their usage within Tiers 1 and 2, or are CARE customers (Attachment 1). As a result, about 48% of customers have been insulated from rate increases since 2001 (or, 52% of the customers have borne all the rate increases). A large differential has grown over the last 8 years between the two frozen tiers and rates for Tiers 3 through 5 (Attachment 2). This is because all revenue increases since 2001 (including higher commodity costs, increased costs of investment in our infrastructure, general inflation etc) must be collected through Tiers 3 through 5, which account for less than 25% of the total residential sales.

1 *that this Commission has approved PG&E selling more than 75% of its E-1 residential energy*
2 *generation at a loss. Even more disturbing is that this Commission has failed to protect 52% of*
3 *PG&E's customers by approving PG&E's E-1 rate structure that places 100% of the*
4 *responsibility of making up losses on Tier 1 and 2 sales from Tier 3 and above customers that*
5 *did not create them*

6
7 The harsh reality facing these non-subsidized Central Valley residential customers is the fact that
8 their price-driven conservation efforts, when combined with a discriminatory baseline usage
9 allowance structure will actually result in even higher, punishing Tier 3 through 5 rates. The very
10 minority base that PG&E and this Commission are encouraging to conserve power will in the
11 end pay even higher rates for their needed and unavoidably used energy, all while PG&E
12 continues to sell 75% of its energy at a loss.

13
14 KERNTAX must question the basis of the Commission's prior approvals of PG&E's rate
15 structures and baseline allowances as fair and nondiscriminatory when conservation efforts
16 associated with only 25% of PG&E's total E-1 residential generation could lead to a 50%
17 increase in Tier 1 and 2 rates. While such extreme conservation efforts are not likely to occur,
18 KERNTAX's hypothetical question should not be summarily dismissed. KERNTAX's position
19 is very clear. As a narrow example of the issue, PG&E's E-1 revenue rates are a function of costs
20 and arbitrarily contrived baseline usage allowances that unfairly concentrates rather than
21 equitably distributes costs among its entire E-1 sales base. Continuing to allow 75% of PG&E's
22 E-1 energy generation to be sold at rates frozen over 14 years ago will only lead to further
23 discriminatory cost shifting and higher rates.

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The same holds true for other non-subsidized residential rate tariffs.

B. Legal Argument

AB1X provided alleviation of “ *an immediate peril to the health, safety, life and property of the inhabitants.*” No reference in AB1X spoke directly to current conservation efforts or special price support mechanisms incorporated in the efforts made by the residential rooftop solar advocates for subsidy. Taken in its original context AB1X simply provided a means to facilitate the purchase and delivery of much needed electricity while guaranteeing a secure price point for approximately 130% of the system-wide electricity baseline (average energy use). The concept of a single system-wide average, while convenient for legislative fiat, does not fit well in the statistical variations found in the PG&E service territory. The baseline appears to have been manipulated to attempt to adjust the entire statistical variation of energy users in an attempt to use a single percentage-based referent (a 65% system-wide median applied to regional use) to solve the poisson issue of mapping rates to different region’s statistical use patterns. Subsequent interpretation of “baseline” extended the relatively simple system-wide average into a complex set of multi-tiered rate adjustments that are discriminatory and contrary to CPUC Code Section 80000.

California Senate Bill (SB695) allows the California Public Utilities Commission to authorize annual increases between 3% and 5% to tiers one and two for energy usage less than 130% of

1 baseline beginning January 1, 2010.²³ SB695 does not define a special baseline calculation
2 methodology.
3
4 PG&E is attempting to return ratemaking to a more easily understood referent and less
5 discriminatory allocation within the non-subsidized residential rate class as a whole by both
6 reducing the number of tiers and returning the baselines closer to an average.

7
8 /s/ Michael Turnipseed

9
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17
18 December 20, 2010
19
20
21
22

²³ SB695

...
(B) The requirement that the level of the discount for low-income electricity and gas ratepayers correctly reflects the level of need as determined by the needs assessment conducted pursuant to subdivision (d) of Section 382.

(4) Tier 1, tier 2, and tier 3 CARE rates shall not exceed 80 percent of the corresponding tier 1, tier 2, and tier 3 rates charged to residential customers not participating in the CARE program, excluding any Department of Water Resources bond charge imposed pursuant to Division 27 (commencing with Section 80000) of the Water Code, the CARE surcharge portion of the public goods charge, any charge imposed pursuant to the California Solar Initiative, and any charge imposed to fund any other program that exempts CARE participants from paying the charge.

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...

*In order to avert a rate crisis involving **unfair and unreasonable rates** being charged for electric and gas service by electrical and gas corporations, it is necessary that this act take effect immediately.*

CERTIFICATE OF SERVICE
A1003014 KernTax's Opening Brief

I certify that I have this day served a copy of A1003014 THE OPENING BRIEF OF THE KERN COUNTY TAXPAYERS ASSOCIATION REGARDING THE GENERAL RATE CASE APPLICATION OF TNE PACIFIC GAS AND ELECTRIC COMPANY.

I have also sent hard copy by US First Class Mail to:

JERRY O. CROW
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DENNIS J. HERRERA
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Executed on December 20, 2010, at Bakersfield, California.

/s/ Michael Turnipseed

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