

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



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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. (U39M)

Application 10-03-014

(Filed March 22, 2010)

**REPLY COMMENTS OF THE GREENLINING INSTITUTE ON THE PROPOSED
DECISION AND THE ALTERNATE PROPOSED DECISION**

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I. Introduction

In accordance with Rule 14.3(d) of the California Public Utilities Commission’s (“CPUC” or “the Commission”) Rules of Practice and Procedure, the Greenlining Institute (“Greenlining”) submits these Reply Comments on both the Proposed Decision of ALJ Pulsifer (“PD”) and the Alternate Proposed Decision of Commissioner Peevey (“APD”).¹ Greenlining restates that the Commission should reject the APD completely and modify the PD to minimize the impact of multiple rate increases on California Alternate Rates for Energy (“CARE”) customers.

II. There Is No Statutory or Commission Support for Moving Rates towards the Cost of Service.

A number of parties support the proposed customer charge and CARE Tier 3 rate by asserting the principle that rates should more closely reflect the cost of service.² However, despite the fact that these parties cite this “cost of service” principle as a “fundamental goal of ratemaking policy,” none of these parties cite *any* statutory *or* Commission authority for the principle that rates should closely reflect the cost of service.³ None of the parties construct an argument as to why the cost of service

¹ Where the PD and the APD are identical, Greenlining will address both proposed decisions simultaneously and refer to both proposed decisions as the “PD/APD.”

² See Opening Comments of PG&E on Proposed Decision by ALJ Pulsifer Regarding Residential Rate Design Issues (“PG&E Comments on PD”), p. 10; Opening Comments of Southern California Edison Company on Proposed Decision of ALJ Pulsifer on Residential Rate Design Issues, p. iv; Comments Regarding Administrative Law Judge Pulsifer’s Proposed Decision (“Cal. League of Food Processors Comments on PD”], p. 3.

³ See Cal. League of Food Processors Comments on PD, p. 3.

principle, even if it was a fundamental goal of ratemaking, should take precedence over actual statutory authority concerning Tier 1 and 2 and CARE rates.⁴ In fact, many of these statutes require rate structures that clearly do not reflect the cost of service.

Unfortunately, the PD/APD commits the same error of law. The PD/APD cites – without analysis or substantiation – the cost of service principle to support the need for the proposed rate changes.⁵ Throughout the evidentiary phase of the proceeding, the *only* support for the cost of service principle consisted of PG&E’s unsupported assertions that it should supersede all other priorities, including “public policy goals.”⁶ Greenlining recognizes that rates should be just and reasonable,⁷ and that upper tier rates should not be set at extremes without a valid basis. However, statutory law requires protections for basic energy usage and CARE rates, necessitating that upper tier rates be set accordingly. The Commission cannot institute a new cost of service public policy goal that contradicts or supersedes existing statutory authority. Such a significant shift in ratemaking public policy should be left to the legislature. In any case, the Commission cannot introduce this “fundamental” new ratemaking policy based on the scant analysis and reasoning provided by the PD/APD in support of this drastic policy shift.

Both the parties cited above and the PD/APD commit an error of law in citing the completely unsubstantiated “cost of service” principle. This is the only support provided by the APD for the customer charge proposal⁸ and main support provided by the PD/APD for the CARE Tier 3 rate proposal.⁹ The Commission must reject these proposals, as the need for these changes has not been adequately supported.

II. Adoption of Multiple CARE Increases Will Result in “Rate Shock.”

The California Large Energy Consumers Association and the California Manufacturers and Technology Association (“CLECA/CMTA”) urge modification of the PD and the APD so that the proposed CARE Tier 3 rate is increased in each year of the

⁴ See Cal. Public Util. Code §§ 382, 739, 739.1.

⁵ See PD, pp. 13, 36, 44-45, 46, Conclusion of Law 2; APD, pp. 14, 27, 33, 41, 42-43, Conclusion of Law 2.

⁶ See Opening Post Hearing Brief of PG&E on Residential Rate Design, filed Dec. 20, 2010, pp.5- 6

⁷ See Cal. Public Util. Code § 451.

⁸ See APD, p. 27

⁹ See PD, p. 36; APD, pp. 33-35.

General Rate Case cycle.¹⁰ CLECA/CMTA dismisses the PD/APD finding that a CARE Tier 3 rate increase for all three years would result in “rate shock,” arguing that given the current CARE rates on usage above 130% of baseline, “starting at such a low base,” that a 3 year increase of more than 50% on the CARE rates will not result in rate shock.¹¹ However, this reveals a mistaken view of how “rate shock” is determined. It does not matter how low initial rates are, if the rates increase rapidly, then “rate shock” occurs. CLECA/CMTA is mistaken in stating that a low initial rate mitigates rate shock.

A. SB 695 Prohibits Rate Shock, Requiring that the Initial CARE Tier 3 Rate not Increase until the Next General Rate Case.

While allowing for the introduction of a CARE Tier 3 rate, SB 695 also guarded against the rapid increase of the CARE Tier 3 Rate; thus, not only is the 2012 increase advocated by CLECA/CMTA illegal, but the 2013 increase approved by the PD/APD is as well.

SB 695 provided that for a utility that introduced a new CARE Tier 3 rate, the initial rate could be no more than 150% of the CARE baseline rate.¹² The reason for this provision is clearly to protect CARE customers from “rate shock.” Earlier within the same paragraph, SB 695 states that “in order to moderate the impact on [CARE Tier 3 customers, the CARE Tier 3 rate] shall be phased in...”¹³ Thus, this “initial rate” – which may be no more than 150% of the baseline CARE rate – must be in place until the utility’s next general rate case.¹⁴ Otherwise, there would be no protection in SB 695 or in any other statute governing rate design, against a utility instituting an “initial rate” at 150% of the baseline rate and then immediately seeking a much higher increase.¹⁵

¹⁰ See Comments of CLECA/CMTA on the Proposed Decision of ALJ Pulsifer, pp. 11-12; Comments of CLECA/CMTA on the Alternate Proposed Decision of Commissioner Peevey, pp. 7-8.

¹¹ See Comments of CLECA/CMTA on the Proposed Decision of ALJ Pulsifer, p.12; Comments of CLECA/CMTA on the Alternate Proposed Decision of Commissioner Peevey, p. 8.

¹² See Cal. Public Util. Code § 739.1(b)(5).

¹³ See *id.*

¹⁴ See Opening Comments of The Utility Reform Network on the Proposed Decision of ALJ Pulsifer, pp. 3-4.

¹⁵ Other statutes, such as § Cal. Public Util. Code §§ 382(b) & 739.1(b)(1) require that the CARE rate provide for affordable energy and that the CARE discount reflects the level of need; thus, these statutes would limit increases in the CARE Tier 3 rate due to affordability concerns. See Opening Comments of Greenlining on the PD and the APD, pp. 2, 9. However, these statutes do not address the issue of rate shock – only SB 695 governed CARE rates in terms of rate shock.

Thus, if CLECA/CMTA's (and the PD's) interpretation of the "rate shock" provisions of SB 695 is to be believed, immediately – even one day after¹⁶ – the initial CARE Tier 3 rate of \$0.12474 per kWh were introduced, PG&E could then seek another increase up to \$0.224. This would amount to an immediate increase of 135 percent. Even if this increase was delayed until the next year after the introduction of the initial rate, a 135 percent increase over two years is clearly too fast and would produce undue rate shock.¹⁷ Thus, this interpretation of SB 695's "phase in" provisions for the CARE Tier 3 rate that allows for increases over the initial rate before the next general rate case is incorrect. In protecting against rate shock, SB 695 does not allow for an additional increase in the CARE Tier 3 Rate after the initial rate is introduced. SB 695 requires that the PG&E's proposed additional increases in the CARE Tier 3 rate for 2012 *and for 2013* must be rejected.¹⁸

III. Conclusion

The Commission's actions in this proceeding are governed by statutes that require affordable rates for basic energy usage and for CARE customers. Any increase in the CARE Tier 3 Rate is also governed by the provisions of SB 695 that limit rate shock. The Commission cannot ignore these governing statutes in pursuit of an unsubstantiated "cost of service" principle. The Commission should also not adopt an incorrect view of SB 695's limitations on the "phasing in" of the CARE Tier 3 rate.

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¹⁶ PG&E's witness argued that SB 695 contemplated annual increases in the CARE Tier 3 rate, although he recognized that there is no language within the statute reflecting this view and that the statute allowed for an immediate increase after the introduction of the initial rate. *See* Opening Brief of The Utility Reform Network on Residential Rate Design Issues, pp. 15-16.

¹⁷ *See* PD, pp. 37-38, finding that a 50% increase for CARE Tier 3 rates over three years would produce undue rate shock. *See also* APD, pp.

¹⁸ The Commission should also reject the introduction of the CARE Tier 3 rate, as it, combined with the bill increases resulting from the baseline allowance adjustment, would overburden CARE customers.

The Commission must recognize that the proposed increases for CARE customers are far from “modest.”¹⁹ As demonstrated in Greenlining’s Opening Comments on the PD/APD, they will cause much harm to CARE customers struggling to pay their bills. The Commission cannot think of the \$2.40 CARE customer charge as the cost of a large cup of coffee.²⁰ It must also represent the cost of a meal for a hungry family.²¹

Respectfully submitted,

Dated: May 2, 2011

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¹⁹ See PG&E Comments on PD, p. 11. PG&E claims that the customer charge proposal would cause no harm, even though it has not conducted any analysis or studies to provide evidence for the statement.

²⁰ See Comments of CLECA/CMTA on the Proposed Decision of ALJ Pulsifer, p. 10.

²¹ See Opening Brief of Disability Rights Advocates, p. 9.