BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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Application of Pacific Gas and Electric Company Proposing Cost of Service and Rates for Gas Transmission and Storage Services for the period of 2015-2017. (U 39 G)	Application No. 13-12-012 (Filed December 19, 2013)
And Related Matter.	Investigation 14-06-016

RESPONSE OF SCHOOL PROJECT FOR UTILITY RATE REDUCTION TO APPLICATION FOR REHEARING OF DECISION NO. 16-06-056 FILED BY COMMERCIAL ENERGY AND TIGER NATURAL GAS

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. ARGUMENT 3

A. Applicants Bear the Burden to Demonstrate Error 3

B. The Vast Majority of Applicants' Arguments Merely Repeat Arguments Made Previously 4

C. The Commission Committed Neither Legal nor Factual Error in Issuing the Decision 5

1. The Commission Was Not Required to Permit Further Comment Before Adopting the Decision 5

2. Substantial Evidence Supports the Findings and Conclusions Claimed to Be in Error in Applicants' "Specifications of Legal Error" 2 through 6 8

3. The Commission Did Not Err in Determining the January Allocator Is Contrary to Principles of Cost Causation 11

4. The Commission Properly Discounted the Testimony of CEM's Expert Witness 12

D. The Commission Properly Refused to Accept Applicants' Cost Causation Arguments 14

E. Applicants Do Not Show the January Capacity Allocator Should Be Reinstated 17

1. The Commission Did Not Inconsistently Decide Issues of Backbone and Interstate Pipeline Capacity Allocation and Local Transmission Cost Allocation 17

2. Applicants Illegally Purport to Wrest Authority over the Core Pipeline Capacity Allocation Issue from the Commission 17

III. CONCLUSION 18

TABLE OF CASES

Cases

California Portland Cement Co. v. Public Util. Com'n (1957) 49 Cal.2d 171 ..... 3, 11

Clean Energy Fuels Corp. v. Public Utilities Com'n (2014) 227 Cal.App.4th 641 ..... 4, 8

Greyhound Lines, Inc. v. Public Utilities Com'n (1968) 68 Cal.2d 406 3

Pacific Gas & Electric Co. v. Public Utilities Com'n (2015) 237 Cal.App.4th 812 ..... 3, 8, 11

The Utility Reform Network v. Public Utilities Com'n (2014) 223 Cal.App.4th 945 7

Toward Utility Rate Normalization v. Public Utilities Com'n (1978) 22 Cal.3d 529 ..... 3, 11

Utility Consumers' Action Network v. Public Utilities Com'n (2004) 120 Ca1.App.4th 644 6

Statutes

Public Utilities Code § 311(d) 6

Public Utilities Code § 311(e) 6

Public Utilities Code § 367(e)(1) 15

Public Utilities Code § 1701(a) 6

Public Utilities Code § 1735 18

Public Utilities Code § 1757(a)(4) 8

Court Rules

California Rules of Court, Rule 8.1115(a) 7

California Public Utilities Commission Decisions

D.92-12-058 14

D.94-12-052 14

D.95-12-053 14

D.97-08-056 14

D.99-06-058 15

D.00-06-034 15

D.01-08-020 15

D.02-02-052 16

D.03-12-061 16

D.04-05-061 6
D.06-04-033 15
D.06-05-043 7
D.06-06-009 ..... 3, 8
D.10-07-050 ..... 3, 12
D.12-06-025 15
D.14-06-050 15
D.14-12-024 15
D.15-06-063 15
D.15-10-050 15
D.16-06-056 ..... 1, 2, 3, 4, 5, 6, 7, 11, 13, 14, 15, 17

California Public Utilities Commission Rules of Practice and Procedure

Rule 12.5 16
Rule 13.9 18
Rule 14.1 6
Rule 14.1(d) 6
Rule 14.3(a) 6, 7
Rule 14.3(d) 7
Rule 16.1(b) 18
Rule 16.1(c) 3
Rule 16.1(d) 1

Other Authority

California Constitution Article XII § 2 6
California Public Utilities Commission Resolution G-3512 16

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I. INTRODUCTION

Pursuant to Rule 16.1(d) of the Commission's Rules of Practice and Procedure,[1] the School Project for Utility Rate Reduction ("SPURR"), a Core Transport Agent ("CTA"),[2] files its Response to the Application for Rehearing of Decision No. 16-06-056 Filed by Commercial Energy and Tiger Natural Gas ("Response"), which was filed and served on August 1, 2016.

Throughout this proceeding, Commercial Energy of Montana ("CEM")[3] has engaged in a campaign of obfuscation and confusion in addressing the issue of allocation of core backbone and interstate pipeline transmission capacity. CEM's Application for Rehearing (in which Tiger Natural Gas ("TNG") joins)[4] of Decision No. 16-06-056[5] continues that tactic. At its center, the

[1] Unless otherwise noted, all citations to rules in this Response are to the Commission's Rules of Practice and Procedure.
[2] SPURR is a joint powers authority whose members are California public school districts, county offices of education, and community college districts. Among other utilities services, SPURR has conducted a natural gas procurement program under which it offers gas service to core and noncore gas customers (including a limited number of eligible non-member agencies, such as public universities and special districts) on the PG&E system since at least 1995. Ex. SPURR-1, Rochman/SPURR, 1:26-2:2.
[3] CEM's legal name is Commercial Energy of Montana, Inc. Commercial Energy of California is a dba. Ex. Commercial Energy-1, Monsen/CEM, 2:2-3.
[4] CEM and TNG are also CTAs. At times hereinafter CEM and TNG are collectively referred to as "Applicants."
[5] Hereinafter the Application for Rehearing will be referred to as "Application" and Decision No. 16-06-056 will be referred to as "Decision."

issue of allocation of backbone and interstate transmission pipeline capacity to the Core, as actually addressed in the Decision, is simple. PG&E made a specific proposal for a Seasonal Capacity Factor allocator and submitted testimony to support it. CEM made a specific, alternative proposal for a Peak Day allocator, not an allocator based on any other demand measure. CEM's experienced expert witness relied on the wrong evidence to support the Peak Day proposal and ignored interstate capacity, which is the vast majority of the capacity being allocated.[6] Evidence at hearing proved those facts. SPURR did not make a proposal. SPURR noted that under the circumstances, the proper allocation would be Equal Cents Per Therm, and since the PG&E proposal was close to that, SPURR supported the PG&E proposal. TURN also supported PG&E's Seasonal Capacity Factor proposal.

Other than PG&E, TURN and SPURR, CEM and TNG were the only other parties who took a position on the issue of core pipeline capacity allocation. Only three CTAs addressed the issue, SPURR supporting PG&E's Seasonal Capacity Factor proposal, and CEM and TNG opposing it and supporting CEM's Peak Day proposal. Neither the Core Transport Agent Consortium nor any of the remaining 19 CTAs identified by code letter in Exhibit Commercial Energy-23[7] addressed the issue.

"Based on the testimony presented by the parties," the Commission found "that PG&E's proposed Seasonal Capacity Factor is reasonable and should be adopted."[8] The Commission did "not find Commercial Energy's proposed Peak Day methodology to be reasonable."[9]

That CEM and TNG would apply for rehearing is scarcely surprising. It is readily inferable that they are the two large CTAs who have benefited the most from the prior January allocator and who have the most to lose under the Decision's replacement of the January allocator with the Seasonal Capacity Factor allocator[10] – meaning they have the most to gain from a rehearing of the pipeline capacity allocation issue. But that does not change the fact that

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[6] The record establishes that 94% of the unsubscribed capacity costs borne by CTAs between April 2012 and November 2014 were from interstate pipelines, not PG&E's backbone. See Exs. SPURR-3 & SPURR-4 and analysis on pp. 11-12 & fns. 79-83 of Concurrent Opening Brief of School Project for Utility Rate Reduction filed April 29, 2015 ("SPURR OB").
[7] Ex. Commercial Energy-23, white column labeled "Core Procurement Groups ID."
[8] Decision, *mimeo*, p. 356.
[9] *Id.*
[10] See Ex. Commercial Energy-23 and analysis regarding it on pp. 3-4 & fns. 14-17 of Concurrent Reply Brief of School Project for Utility Rate Reduction filed May 20, 2015 ("SPURR RB").

PG&E made a proposal for a fairer allocation methodology, supported it in evidence, and the Commission chose to rely upon that evidence and adopt PG&E's proposal.

The Application's assertions to the contrary, the Commission proceeded as required by law in issuing the Decision. Further, the Decision is presumed correct, and the Commission's factual findings, with which a reasonable person would concur, are almost always treated as conclusive, final and not subject to review. Applicants have not met their burden to show any error requiring rehearing of the issue of allocation of backbone and interstate transmission pipeline capacity within the core customer class. The Application should be denied.

II. ARGUMENT

A. Applicants Bear the Burden to Demonstrate Error.

Rule 16.1(c) requires an application for rehearing to "set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and . . . make specific references to the record or law." These are the grounds the Commission considers. In alleging these specific errors, an applicant "has the burden to support its specific contentions of error"[11] and must demonstrate error to justify rehearing.[12] The Commission is not legally required to adopt a party's policy views on rehearing.[13]

A Commission decision is strongly presumed correct and valid, and a party challenging the decision must prove prejudicial error.[14] Judicial reweighing of evidence and testimony is not permitted; in the face of conflicting evidence from which conflicting inferences can be drawn, the findings of the Commission are final.[15] The weighing of whatever factors the Commission weighed in making an implied finding is within the Commission's exclusive jurisdiction.[16] A demonstration that "based on the evidence before the Commission, a reasonable person could not reach the same conclusion" is required to overturn a Commission finding for failure to be

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[11] D.06-06-009, *mimeo*, p. 20
[12] *Id.*, pp. 1-2, 49.
[13] D.10-07-050, *mimeo*, p. 45.
[14] *Greyhound Lines, Inc. v. Public Utilities Com'n* (1968) 68 Cal.2d 406, 410; *Toward Utility Rate Normalization v. Public Utilities Com*'n (1978) 22 Cal.3d 529, 538; *Pacific Gas & Electric. Co. v. Public Utilities Com'n* (2015) 237 Cal.App.4th 812, 838 ("*PG&E*").
[15] *Toward Utility Rate Normalization v. Public Utilities Com'n* (1978) 22 Cal.3d 529, 538; *PG&E, supra,* 237 Cal.App.4th at 838.
[16] *California Portland Cement Co. v. Public Util. Com'n* (1957) 49 Cal.2d 171, 175; *PG&E, supra,* 237 Cal.App.4th at 838.

supported by substantial evidence.[17] For this reason, the Commission's factual findings are almost always treated as conclusive, final, and not subject to review.[18]

Applicants have failed to meet their burden to demonstrate error. The Decision is not legally erroneous and is supported by more than substantial evidence. The Application must be denied.

B. <u>The Vast Majority of Applicants' Arguments Merely Repeat Arguments Made Previously.</u>

Although in places the Application relies on legal citations in addition to those from Applicants' prior briefing, almost all of Applicants' arguments are repetitive, again advancing Applicants' view of cost causation and how they assert it should apply here. Specifically:

- Applicants' overarching argument is that in some way, all gas transmission systems are designed based on some sort of peak load analysis. This argument appears in the Application at pages 6-9 and 12-17. Argument making the same claim appears in CEM's opening brief (filed April 29, 2015) at pages 37-41,[19] CEM's reply brief (filed May 20, 2015) at pages 19-25, and TNG's opening brief (filed April 29, 2015) at pp. 4-6.
- The examples cited on page 10 of the Application to assert PG&E recognizes rates should be based on cost causation are, with one exception, the same as those cited on page 38 of CEM's opening brief and its witness' testimony in Exhibit Commercial Energy-1, p. 19.
- The argument that the Seasonal Capacity Factor methodology allocates based on off-peak usage is made both in the Application at pages 7 (in footnote 19) and 11-12, and in CEM's opening brief on p. 43 and its reply brief at pages 10-12.
- The argument that Figure 19-2 in the direct testimony of PG&E witness David Elmore[20] is misleading, found in the Application at pages 17-18, also appears in CEM's opening brief at page 44-45 and its reply brief at page 14.

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[17] *Clean Energy Fuels Corp. v. Public Utilities Com'n* (2014) 227 Cal.App.4th 641, 649; *PG&E, supra*, 237 Cal.App.4th at 839.
[18] *PG&E, supra*, 237 Cal.App.4th at 839.
[19] These pages are part of CEM's argument in favor of its now-rejected Peak Day proposal. The Application does not allege error in failure to adopt the CEM proposal. Nonetheless, the argument in CEM's opening brief advances the concepts regarding cost causation and peak usage upon which Applicants rely in attacking adoption of PG&E's Seasonal Capacity Factor methodology.
[20] Ex. PG&E-2, Elmore/PG&E, 19-17.

- The argument that reliance on percentage of total core load is not an appropriate allocation method can be found both on pages 11-12 and 17 of the Application and pages 44-45 of CEM's opening brief. The assertion that the PG&E analysis based on such percentage is misleading based on the same hypothetical question posed to Mr. Elmore appears in the Application at page 18 and also in CEM's opening brief at page 45.[21]
- The same graph comparing the load of CTA customers and bundled core customers appears on page 12 of the Application and page 15 of CEM's reply brief.
- The same claim of a $10 million cost shift appears in the Application at page 19, and CEM's reply brief at page 17.[22]

The Commission has already considered these repetitious arguments and found them unconvincing. Merely reiterating the same arguments in the Application does nothing to meet Applicants' significant burden to demonstrate error that would justify rehearing.[23]

C. <u>The Commission Committed Neither Legal nor Factual Error in Issuing the Decision.</u>

Applicants neither meet their burden of supporting their specific contentions of error nor demonstrate based on the evidence in this proceeding that a reasonable person could not reach the same conclusion as did the Commission. The Application must be denied.

1. The Commission Was Not Required to Permit Further Comment Before Adopting the Decision.

Applicants' assertion in their first "Specification of Legal Error" that the Commission failed to proceed in the manner required by law[24] is erroneous, if not frivolous. The Commission

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[21] Mr. Elmore responded to the CEM hypothetical, which in assuming all CTAs had 100% load factors was not based on anything in the real world, by noting that the Seasonal Capacity Factor methodology allocates capacity held in the seasons in the real world. "We hold less capacity during the summer than we do in the winter just to reflect the fact that loads are decreased and need is decreased." Tr., Vol. 33, 4749:19-4750:4.

[22] CEM's opening brief alleges the dollar impact is $10.36 million. CEM opening brief, p. 56.

[23] One exception to the repetitious advocacy is the claim that there is no substantial evidence supporting Finding of Fact 214 and Conclusion of Law 271, both of which discuss optimization of annual flow in the transmission system. See, e.g., purported "Specifications of Legal Error" nos. 3 and 5, Application, p. 4. This issue will be discussed in section II.C.2 below. Another new argument is the claim that the Commission inconsistently decided issues of allocation of backbone and interstate pipeline capacity and local transmission costs. Application, p. 20. SPURR addresses this argument in section II.E.1 below.

[24] Application, pp. 3-4 & 5-6.

was not required to permit further review and comment on the Decision.

Public Utilities Code section 1701(a)[25] calls for the Commission to adopt rules of practice and procedure applicable to hearings.[26] Section 311(e)[27] directs the Commission to "adopt rules that provide for the time and manner of review and comment" on alternate decisions. Comment on proposed and alternate decisions occurs under one such adopted rule, Rule 14.3(a). Section 311(d) specifically authorizes the Commission, in issuing a decision, to "adopt, modify, or set aside the proposed decision or any part of the decision."

Besides the specific statutory authority in section 311(d), the Commission has adopted rules of practice and procedure that define "alternate proposed decision" and dispose of the spurious assertion that the Commission erred in not permitting CEM or TNG yet another opportunity to comment.[28] Rule 14.1 defines "alternate proposed decision." First, to be an alternate, a substantive revision to a proposed decision must be proposed by a commissioner other than the one who originally proposed the decision.[29] Second, a substantive revision is not an alternate "if the revision does no more than make changes suggested in prior comments on the proposed decision . . . or in a prior alternate to the proposed decision. . ."[30]

In D.04-05-061, the Commission relied upon the predecessor rule[31] to current Rule 14.1 in rejecting a claim nearly identical to that made here. Parties claimed that after an alternate had been issued and comments were filed, the alternate was substantively revised and made public about an hour before the Commission meeting commenced, thus violating section 311(e).[32] The Commission quoted former Rule 77.6(a), which like current Rule 14.1 defined an alternate as "a substantive revision by a Commissioner to a proposed decision *not prepared by that Commissioner*,"[33] and, again like current Rule 14.1, excluded from the definition a substantive revision that "does no more than make changes suggested in prior comments on the proposed

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[25] Hereinafter all statutory citations are to the Public Utilities Code.
[26] The Commission has broad authority to adopt its procedural rules. See, e.g., Cal. Const. Art XII § 2; *Utility Consumers' Action Network v. Public Utilities Com'n* (2004) 120 Ca1.App.4th 644, 654.
[27] See Application, pp. 1-2 & fn. 3.
[28] Applicants each filed briefs after hearing and before issuance of the Proposed Decision and Alternate Proposed Decision and comments after their issuance. Importantly, as discussed in Section II.B *supra*, Applicants previously made the arguments on which they rely in the Application regarding cost causation. The Commission was not required to afford them the opportunity to repeat the same arguments.
[29] Rule 14.1(d), first ¶.
[30] Rule 14.1(d), final ¶.
[31] D.04-05-061, *mimeo*, p. 12, cited to and quoted from then-applicable former Rule 77.6(a).
[32] D.04-05-061, *mimeo*, pp. 11-12.
[33] *Id.*, p. 12 (emphasis added by Commission).

decision, or in a prior alternate to the proposed decision."[34] Relying on the quoted portions of former Rule 77.6(a), the Commission "conclude[d] that the Commission was not required to re-circulate the [alternate proposed decision] under these circumstances."[35]

The same conclusion applies here. The Alternate Proposed Decision voted on by the Commission was prepared by Commissioner Peterman, who proposed the original alternate on May 4, 2016, meaning further comment was not permitted under Rules 14.3(a) and (d). Further, the document voted on by the Commission merely made changes suggested in comments by SPURR and TURN,[36] which urged the Commission to adopt the PG&E proposal.[37]

Applicants' reliance on D.06-05-043[38] is misplaced because the portions to which Applicants cite are *dicta*. The Commission declared the arguments made there to be moot, since the Commission was modifying the resolution in issue to restore language the deletion about which an applicant there complained.[39] This rendered the discussion *dicta* because it was unnecessary to the decision. Applicants fare even worse in improperly citing to an unpublished court decision they refer to as "*TURN I*."[40] *TURN I* was discussed in *The Utility Reform Network v. Public Utilities Commission* (2014) 223 Cal.App.4th 945, not as legal precedent, but merely as factual background. Despite the fact that the court in that case was careful to state that the citation to "prior unpublished opinion" *TURN I* did not violate rule 8.1115(a) of the California Rules of Court, because *TURN I* was cited for factual background and not as legal authority,[41] Applicants cite *TURN I*, not as factual background, but as authority for the legal proposition that substantive changes to an alternate require comment.[42]

The Commission committed no legal error in issuing the Decision without permitting further comments.

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[34] *Id.*, p. 12.
[35] *Id.*
[36] SPURR Comments filed May 25, 2016, p. 11 & Appendix of Proposed Changes; TURN Comments filed May 25, 2016, pp. 24-25 & Appendix A, proposed Finding of Fact 190A and proposed Conclusion of Law 260; TURN Reply Comments filed May 31, 2016, p. 5.
[37] The Commission's interpretations of its own regulations in D.04-05-061 and again in this proceeding is given great deference, because it is likely to be intimately familiar with its own regulations and sensitive to the practical implications of one interpretation over another. *PG&E, supra,* 237 Cal.App.4th at 840.
[38] Application, p. 5 & fn. 13.
[39] D.06-05-043, *mimeo*, pp. 7-8.
[40] Application, p. 5 fn. 13.
[41] *The Utility Reform Network v. Public Utilities Com'n* (2014) 223 Cal.App.4th 945, 951 fn. 3.
[42] Application, p. 5 fn. 13.

2. Substantial Evidence Supports the Findings and Conclusions Claimed to Be in Error in Applicants' "Specifications of Legal Error" 2 through 6.

Applicants' "Specifications of Legal Error" 2 through 6 all claim that various findings of fact and conclusions of law in the Decision are not supported by substantial evidence in light of the whole record.[43] As already noted, such findings of fact are nearly always considered conclusive, final, and not subject to review, and to overturn them requires a demonstration that considering the evidence before the Commission, a reasonable person would not conclude as did the Commission.[44] Applicants have not supported these specific contentions of error,[45] and on this record cannot do so.

Alleged errors 2 and 4[46] are related, claiming substantial evidence does not support findings that CTAs are not currently allocated the capacity and associated costs for those periods when they utilize a greater percentage of pipeline capacity, and an annual allocation factor based on a single month of use does not appropriately reflect customer use throughout the year.

The evidence showed that using the prior January capacity allocator, CTAs were allocated capacity only for their customers' share of total core customer class load for just the month of January.[47] Thus, those serving load within the core customer class, whether CTAs or PG&E's Core Gas Supply Department ("CGS"), with the highest relative loads in January were allocated the most capacity in all parts of the year.[48] Historically, overall CTA market share is lowest of any month in January.[49] Thus, CTAs as a whole under the January allocator would be allocated less pipeline capacity. Under the January allocator, individual CTAs who serve load with lower January usage, but a higher share of core usage in any or all other months of the year, still received lower capacity allocations through the entire year.[50] However, customers do not use pipelines only during January; they use them all year.[51] CTAs' average annual share of core load at the time of Mr. Elmore's direct testimony was 18.3%, and their peak use, during the

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[43] Citing to Pub. Util. Code § 1757(a)(4).
[44] *PG&E, supra*, 237 Cal.App.4th at 839; *Clean Energy Fuels Corp. v. Public Utilities Com'n* (2014) 227 Cal.App.4th 641, 649.
[45] See D.06-06-009, *mimeo*, p. 20.
[46] Application, p. 4.
[47] Ex. PG&E-2, Elmore/PG&E, 19-16:7:19 - 21.
[48] Ex. PG&E-43, Elmore Rbtl./PG&E, 19-8:24-30.
[49] Ex. PG&E-2, Elmore/PG&E, 19-16:23 - 24; Tr., Vol. 33, Elmore/PG&E, 4759:13-21.
[50] Ex. PG&E-43, Elmore Rbtl./PG&E, 19-8:22 - 30; see also Tr., Vol. 33, Elmore/PG&E, 4748:13-4749:6.
[51] Ex. PG&E-2, Elmore/PG&E, 19-17, Figure 19-2; Ex. PG&E-43, Elmore Rbtl./PG&E, 19-9:10 - 11.

summer months, exceeded 22%.[52] Under the January allocator , CTAs were allocated 2.3% less capacity than their average load.[53] Capacity is acquired to meet load throughout the year, and varies throughout the year, with more capacity held in winter and less in summer.[54] However, pipeline capacity does not increase or decrease in lockstep to match core load, and in winter, storage is used to meet a lot of bundled core load.[55] Pipeline capacity acts as a base holding to build a portfolio to respond to load.[56]

All this recited evidence shows that, contrary to the assertions of error, under the January allocator, CTAs were not allocated the capacity and associated costs for those periods when they utilize a greater percentage of pipeline capacity, and that an annual allocation factor based on a single month of use does not appropriately reflect customer use throughout the year. An allocation that appropriately reflects such use is more fair. Any associated change in responsibility for unsubscribed capacity costs is due to increased fairness. These two assertions of error are groundless.

Alleged errors 3 and 5[57] are likewise related. They allege that substantial evidence does not support findings that PG&E's transmission system is designed to optimize annual flow based on an annual demand criterion and therefore the Seasonal Capacity Factor better reflects the way in which pipeline capacity is actually utilized.

Applicants take issue with the word "optimize" and the phrase "annual demand criterion."[58] However, the evidence already cited as well as other evidence supports the finding and conclusion of law. SPURR does not perceive them to be as mysterious as Applicants apparently do. They pretty clearly mean that since the core customer class uses pipeline capacity throughout the year (a) to meet customer load, (b) to deliver gas to storage in the summer, and (c) in conjunction with storage to meet winter load, then the acquisition of backbone and

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[52] Ex. PG&E-2, Elmore/PG&E, 19-17:2 - 3 & Figure 19-2; see also Tr. Vol. 33, Elmore/PG&E, 4738:16-19; see also Ex. Commercial Energy-1 (Monsen/CEM, Attachment C, PG&E's Response to Commercial Energy Data Request 3, Question 9, Attachment 1, p. 1 (row labeled "*% CTAs share*" shows CTA share of total core load was 15% in January 2013 and 25% in July 2013).
[53] Ex. PG&E-2, Elmore/PG&E, 19-16:1 - 5; Tr. Vol. 33, Elmore/PG&E, 4761:1-10.
[54] Ex. PG&E-43, Elmore Rbtl./PG&E, 19-9:8 - 13.
[55] Tr., Vol. 33, Elmore/PG&E, 4750:23-4751:5.
[56] Tr., Vol. 33, Elmore/PG&E, 4751:14-17.
[57] Application, p. 4.
[58] Applicants make a show of trying to figure out the meanings of "optimize" and "annual demand criterion." Application, p. 8.

interstate capacity occurs so that the amount of gas will flow that is necessary to accomplish those tasks.

That reading is supported by the evidence already discussed above with respect to alleged errors 2 and 4, as well as other evidence. Pipeline capacity is utilized by the core class throughout the year.[59] PG&E acquires capacity to meet annual customer load.[60] That capacity can be lower because of its use in conjunction with storage.[61] In fact, CEM's expert agreed it would not be cost-effective or make economic sense to reserve sufficient pipeline capacity to meet core peak demand as opposed to using storage during the winter.[62] Further, in the summer capacity is used not only to meet load but also to inject gas into storage.[63] Finally, assuming design criteria are relevant, the design criterion for the backbone system is cold and dry year, which was developed to be representative of both cold and dry conditions with likelihood of occurrence one year in 10.[64] This represents an average daily flow in a cold, dry year[65] – not a daily or monthly peak.

All these facts more than support Finding of Fact 214 and Conclusion of Law 271. Specifications of error numbers 3 and 5 are also baseless.

Alleged error 6[66] is simply the conclusion Applicants apparently believe must follow from alleged errors 2 through 5. Applicants assert substantial evidence does not support adoption of PG&E's proposal to change the pipeline capacity allocation methodology from a January Capacity Factor to a Seasonal Capacity Factor. SPURR will not yet again recite all the evidence discussed above that more than substantially supports the Commission's adoption of the Seasonal Capacity Factor proposal. All this evidence shows the Seasonal Capacity Factor "more accurately align[s] the allocation of the pipeline capacity to customer loads for each core provider."[67] There is neither factual nor legal error in this finding.

The Commission, not Applicants, weighs the evidence and factors in reaching its

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[59] Ex. PG&E-2, Elmore/PG&E, 19-17, Figure 19-2; Ex. PG&E-43, Elmore Rbtl./PG&E, 19-9:10 - 11.
[60] Ex. PG&E-43, Elmore Rbtl./PG&E, 19-9:8 - 13.
[61] Tr., Vol. 33, Elmore/PG&E, 4750:23-4751:5.
[62] Tr., Vol. 34, Monsen/CEM, 5061:19-25.
[63] Tr., Vol. 33, Elmore/PG&E, 4804:18-25.
[64] Ex. TURN-82, Attachment 1, at 7:4-8; Tr., Vol. 34, Monsen/CEM, 5039:27-5040:11 (referencing Ex. TURN-82, see *id.* 5041:10-24); see also CEM opening brief, p. 39, last ¶ (admitting planning criterion for PG&E's backbone is 1-in-10 cold and dry year).
[65] Tr., Vol. 34, Monsen/CEM, 5040:24-28.
[66] Application, pp. 4-5.
[67] Ex. PG&E-2, Elmore/PG&E, 19-17:9 - 10; see also 19-16:13 - 14.

decision.[68] It is entitled to believe that which it believes and discount that which it discounts. It obviously found evidence and arguments offered by PG&E, TURN and SPURR on this issue more persuasive than that relied upon by Applicants.[69] As set forth above, more than substantial evidence supports the Commission's findings, requiring denial of the Application.

3. The Commission Did Not Err in Determining the January Allocator Is Contrary to Principles of Cost Causation.

Applicants' remaining purported "Specification of Legal Error" is number 7.[70] Applicants charge the determination that the former January allocator is contrary to principles of cost causation is not supported by any findings or conclusions. Notably, in asserting this error, Applicants neither claim substantial evidence in light of the whole record fails to support this determination, nor cite to any statutory authority or any alleged legal error.

Applicants apparently reference this portion of the Decision, found on pages 356-357:

> Since pipeline capacity is used throughout the year, a seasonal allocation would better reflect the way in which pipeline capacity is actually utilized. While CTA load may be more constant throughout the year in comparison to core load, CTAs utilizes a greater percentage of pipeline capacity during certain periods of the year. Thus, CTAs are not currently allocated the capacity and associated costs for those periods when they utilize a greater percentage of pipeline capacity. This result is contrary to the principles of cost causation.

The only error asserted is that the determination identified is not supported by any findings or conclusions. However, the determination that the former January allocator is contrary to principles of cost causation is supported by the very findings of fact and conclusions of law with which Applicants take exception in alleged errors 2 through 6. If claim of error number 7 instead complains that the Decision does not contain a finding of fact or conclusion of law stating that the January Capacity Factor is contrary to the principles of cost causation, the Commission may easily respond to that claim by adding such a finding of fact and conclusion of law.

There is no question substantial evidence would support such a finding and conclusion. SPURR's witness Mr. Rochman testified on cross-examination:

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[68] See *Toward Utility Rate Normalization v. Public Utilities Com*'n (1978) 22 Cal.3d 529, 538; *California Portland Cement Co. v. Public Util. Com'n* (1957) 49 Cal.2d 171, 175; *PG&E, supra,* 237 Cal.App.4th at 838.

[69] SPURR explains why the Commission could properly discount the testimony of CEM's expert witness in section II.C.4 below.

[70] Application, p. 5.

> [M]y understanding is that the cost is caused by PG&E's procurement of capacity on an annual basis as PG&E witnesses have testified, a little bit more in the winter, but all through the summer as well.
>
> And the cost is the acquisition of that capacity, whether it's intrastate, Redwood and Baja, or interstate, GTN, Ruby, and the like. So the cost causation is the purchasing of the GTN or the Ruby or the Transwestern or the El Paso.[71]

This is consistent with the previously-discussed testimony of Mr. Elmore that pipeline capacity is needed and used throughout the year by the entire core class, in conjunction with storage, for various reasons already discussed above. The cost of the acquisition of the capacity is caused by the need to purchase it for those reasons. Similarly, the majority of the cost of installing backbone pipeline does not vary as a function of the diameter of the pipe.[72]

Applicants have consistently sought to obfuscate and confuse this issue by advancing a tunnel-visioned view of cost causation. In a nutshell, their view appears to be that if a cost is not caused by some manner of peak demand or usage, it is not included in principles of "cost causation." That is not Applicants' policy call to make.

Applicants' arguments with respect to peak measures and cost causation in this proceeding, and again on rehearing, are actually extended policy arguments asserting that backbone and interstate transmission capacity allocation, which in this proceeding was actually litigated for the first time,[73] must be allocated as a matter of policy a certain way. Here, the Commission found it appropriate to allocate transmission pipeline capacity based on the amount of usage of the pipeline on a seasonal basis, choosing an allocator that more closely reflects annual usage. The Commission is free to make such policy decisions and is not legally required to adopt the policy advanced by Applicants.[74] The Commission committed no error in approving the PG&E Seasonal Capacity Factor method.

4. The Commission Properly Discounted the Testimony of CEM's Expert Witness.

Only one of Applicants tendered a witness. CEM called William Monsen, an experienced expert witness.[75] Mr. Monsen's testimony proved unreliable here, which justified

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[71] Tr. Vol 33, Rochman/SPURR, 4842:10-20.
[72] Ex. TURN- 62, PG&E Response to TURN Data Request 51 Question & Answer 2; Tr., Vol. 25, Christopher/PG&E, 3166:13-3167:13.
[73] See SPURR RB, pp. 10-11.
[74] D.10-07-050, *mimeo*, p. 45.
[75] Ex. Commercial Energy-1, Att. A, pp. 5-12.

discounting it. The Commission obviously did just that, finding the CEM proposal not to be reasonable.[76] To cite a few examples, in creating his Peak Day proposal, Mr. Monsen admittedly relied upon entirely wrong capacity planning criteria, applicable to PG&E's local transmission, not backbone transmission.[77] He did not understand that PG&E's seasonal capacity allocation proposal applied to both interstate and intrastate pipeline capacity.[78] He admitted repeatedly during hearing[79] that his proposal only covered allocation of intrastate pipeline capacity. His testimony did not address interstate capacity at all, even though interstate capacity was shown to account for 94% of the unsubscribed capacity costs borne by CTAs between April 2012 and November 2014.[80] He began his testimony from the stand with numerous corrections to his rebuttal testimony to remove the word "storage."[81] His testimony also contained a figure stemming from a calculation with "a whole bunch of errors," so many that he was not going to correct the figure,[82] errors he only noticed upon receipt of a data request from PG&E sent on March 6, 2015.[83]

Based on this evidence, a reasonable person certainly could have chosen to reject Mr. Monsen's testimony and CEM's proposal, and instead adopt PG&E Seasonal Capacity Factor allocation method.

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[76] Decision, p. 356; see also CoL 273, p. 469 & Ord. ¶ 34, p. 483.

[77] Tr., Vol 24, Christopher/PG&E, 3051:26-3052:4; see also Tr., Vol. 33, Elmore/PG&E, 4677:24-4678:2, 4680:17-22; Tr., Vol. 34, Monsen/CEM, 5036:17-23, 5036:24-5037:3, 5037:12-5038:3, 5038:4-26, 5039:6-14, & 5039:21-5040:3.

[78] Tr., Vol. 34, Monsen/CEM, 4892:6-15.

[79] Tr., Vol. 34, Monsen/CEM, 4892:6-15 ("since I was of the impression that this proceeding was addressing intrastate capacity and storage and interstate was being addressed in a different proceeding, my testimony addressed specifically intrastate and storage"); 5034:20-27 (proposal only backbone); 5035:19-5036:2 (testimony refers to intrastate, which is the same as the backbone); 5051:16-17 ("My testimony doesn't address interstate pipeline capacity"); 5063:11-21 (p. 9 of his rebuttal [Ex. Commercial Energy-2] discusses customers who allegedly impose higher costs on "the system" and "the system means backbone"); 5065:3-13 (only looked at intrastate capacity); 5081:10-5082:3 (p. 13 of his direct testimony [Exhibit Commercial Energy-1] talks about greater need for backbone capacity on PG&E's system as a whole, and when talking there about PG&E's system he is discussing backbone not interstate capacity); 5082:8-13 ("I've tried to limit my discussion to backbone").

[80] See Exs. SPURR-3 & SPURR-4 and analysis in SPURR OB, pp. 11-12 & fns. 79-83. (An error in one line of Ex. SPURR-4 was corrected on the exhibit by hand by ALJ Yip-Kikugawa. See Tr., Vol 25, 3282:8-23.)

[81] Tr., Vol. 34, Monsen/CEM, 4888:7-4889:17. This was after having already sent errata to his direct testimony by email on August 19, 2014, February 11, 2015 and March 23, 2015.

[82] Tr., Vol. 34, Monsen/CEM, 4920:28-4923:18, 4926:2-4.

[83] Ex. PG&E-123 (PG&E Data Request No. PGE-CommercialEnergy-CA_004, sent March 6, 2015); Tr., Vol. 34, Monsen/CEM, 4921:18-20.

D. **The Commission Properly Refused to Accept Applicants' Cost Causation Arguments.**

The LRMC case on which Applicants so heavily rely recognizes two gas customer classes. Charts appearing on pages 4 through 6 of D.92-12-058 show only core and noncore customer classes. The Decision notes that in 1986, "D.86-12-010 separated the gas market into two classes of customers – core and noncore."[84] PG&E's Gas Rule 1 separately defines "Core End-Use Customer" and "Noncore End-Use Customer."[85] CEM obviously understands the classification system, having made a proposal in this proceeding to revise the threshold separating the core from the noncore classes.[86]

Thus, the core pipeline capacity allocation issue addresses allocation within a single customer class, not between classes. It concerns allocation among all core supply providers, called "Core Procurement Groups," including all CTAs as well as PG&E's CGS.[87] Although Applicants erroneously refer to a non-existent "CTA customer class" on page 19 of their Application, on the very same page they recognize that CTAs serve "**core customers**"[88] and that "all of the CTAs' customers are themselves core customers, including hundreds of thousands of both single family and multi-unit residential customers."[89]

Yet doubling down on the arguments made prominently and repeatedly by CEM in prior briefs and comments, Applicants cite to case after case where the allocation of costs was *between customer classes*, not *within a single class*, as in the case at hand. Each of the following cases cited by Applicants concerned inter-class allocation: D.92-12-058 (the LRMC decision principally relied upon by Applicants),[90] D.94-12-052,[91] D.97-08-056,[92]

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[84] Decision, *mimeo*, p. 338.
[85] PG&E Gas Rule 1, PG&E Sheets 5 and 12 (Cal. P.U.C. Sheet Nos. 31561-G & 29265-G), respectively. Rule 1 may be found at: http://www.pge.com/tariffs/tm2/pdf/GAS_RULES_1.pdf.
[86] See Decision, p. 339.
[87] Tr. Vol 25, Christopher/PG&E, 3262:18-23. The name Core Procurement Group "represents those that are purchasing supplies for all of the core customers." *Id*. at 3262:21-23.
[88] Application, p. 19 (emphasis in original).
[89] *Id.* CEM has stated it serves "nearly 10,000 meters and nearly 2,900 businesses on the PG&E system," with only a limited number of residential customers. CEM opening brief, p. 4, first full ¶. TNG has stated it serves "thousands of core customers in PG&E's service territory." TNG opening brief, p. 1, second ¶.
[90] See, e.g., D.92-12-058, *mimeo*, pp. 4-6.
[91] Cited in Application, p. 14 & fn. 49; D.94-12-052 was issued in a BCAP, which is a proceeding in which, among other things, the Commission "allocate[s] the utility's revenue requirement among customer classes." D.95-12-053, *mimeo*, fn. 1.
[92] Cited in Application, p. 10 & fn. 34; see D.97-08-056, *mimeo*, pp. 2 & 6.

D.99-06-058,[93] D.00-06-034,[94] D.01-08-020,[95] D.06-04-033,[96] and D.12-06-025.[97] Those cases are inapposite and do not support the claim that the Decision "contravenes longstanding cost-causation principles of ratemaking."[98]

Other cases cited by Applicants either are inapplicable or actually support the Decision. D.15-06-063[99] discussed cost causation, but the Commission did not adopt the allocation using cost causation that was proposed, instead leaving in place the then-existing peak load ratio methodology, which the Commission had adopted in D.14-06-050.[100]

Applicants omit half the story with respect to D.14-12-024.[101] In the very next paragraph after the one containing the principle cited by Applicants, that decision states that programs "available to all customers should be paid for by all customers."[102] Analogizing this principle to the current case, the Commission has now found that both interstate and intrastate transmission pipeline capacity is acquired so that PG&E will have sufficient pipeline capacity for all core customers, including core customers served by CTAs.[103] All core customers, which are all part of a single customer class, benefit from that procurement. There is no inter-class distinction requiring the sort of cost causation for which Applicants argue.

D.02-02-052[104] actually rejects use, in the context of that matter, of cost causation principles employed to allocate "revenues between different customer classes"[105] in a single utility's territory, because the issue in the case was "allocating revenues in the aggregate among

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[93] Cited in Application at p. 6 & fn. 15; D.99-06-058, *mimeo*, p. 7.
[94] Cited in Application, p. 15 & fn. 55. D.00-06-034, *mimeo*, p. 57, recognizes that in allocating transition costs under Pub. Util. Code § 367(e)(1), "some classes may pay more and some classes may pay less in either dollar or percentage terms, than they pay now." The quote in Application, fn. 55 is found at *id.,* p. 59.
[95] Cited in Application, pp. 13-14 & fns. 47 & 48. See D.01-08-020, *mimeo*, p. 22.
[96] Cited in Application, p. 13 & fn. 45. See D.06-04-033, *mimeo*, p. 2.
[97] Cited in Application, pp. 14-15 & fns. 53 & 54. Applicants' own quotation from D.12-06-025 at the top of p. 15 of the Application indicates the Commission's concern with inter-class, not intra-class, causation issues.
[98] Application, p. 1. See also, e.g., pp. 6, 15, 21 (alleging Decision is contrary to "decades of precedent" regarding cost causation).
[99] Cited in Application, p. 14 & fn. 50.
[100] D.15-06-063, *mimeo*, pp. 43, 46.
[101] Cited in Application, p. 14 & fns. 51 & 52.
[102] D.14-12-024, *mimeo*, p. 48.
[103] Decision, p. 372 & Ord. ¶ 39, p. 484 (intrastate capacity); D.15-10-050, *mimeo*, p. 27 (interstate capacity).
[104] Cited in Application, p. 15 & fn. 55.
[105] D.02-02-052, *mimeo*, p. 59.

three different utility service territories."[106] This case thus recognizes marginal cost causation principles are used to allocate costs between different customer classes, while proving that not all allocation occurs on a marginal cost basis.

Applicants' citation of Resolution G-3512[107] is puzzling, because it did not allocate costs but rather bill credits, and references to LRMC, marginal costs, and cost causation appear nowhere in the resolution. Of note, however, is the Commission's allocation of the bill credits to noncore customers based on average annual gas consumption,[108] while the share for individual core and wholesale customers was based on an average of two billing cycles (December 2015 and January 2016), not one.[109] Thus, for core, noncore, and wholesale customers, the Commission used average, not peak, volume. Additionally, the Commission chose the noncore sharing method "to account for seasonal variations in noncore gas usage,"[110] which is of significance here in light of the Commission's adoption of a seasonal allocator for backbone and interstate capacity.

In addition, Applicants' reliance on the various Gas Accord cases is misplaced.[111] All but one of the Gas Accord-era cases were the result of settlement, and thus they are not precedential.[112] D.03-12-061, a case that was litigated rather than settled, did not address pipeline allocation *methodologies.* Rather, it discussed allocation based on January loads only in passing, in describing PG&E transportation capacity proposal the Commission rejected.[113] This proceeding constitutes the first time in the 19-year Gas Accord era that the backbone and interstate pipeline allocation methodology for the core customer class was actually litigated.[114]

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[106] *Id.* The Commission instead allocated the DWR costs among the utilities based on the size of each of their net short positions. *Id.,* pp. 59-60.
[107] Cited in Application, p. 15 & fn. 56.
[108] Res. G-3512, p. 1; Finding 4, p. 23; Ord. ¶ 2.
[109] *Id.*, pp. 1, 2; Finding 6, p. 23; Ord. ¶ 2.
[110] *Id.*, p. 13.
[111] See, e.g., Application, p. 2, fn. 7.
[112] Rule 12.5.
[113] D.03-12-061, *mimeo*, pp. 417-18 ("The pro rata allocation will be based on peak January loads of the gas ESPs' [i.e., CTAs'] customer mix.")
[114] See SPURR RB, pp. 10-11, for further discussion of this issue.

E. **Applicants Do Not Show the January Capacity Allocator Should Be Reinstated.**

1. The Commission Did Not Inconsistently Decide Issues of Backbone and Interstate Pipeline Capacity Allocation and Local Transmission Cost Allocation.

Applicants misrepresent the Decision in claiming that the Commission inconsistently decided issues of allocation of backbone and interstate pipeline capacity and local transmission costs.[115] The Commission did not "retain the January Factor" as the local transmission allocator.[116] Instead, after considering three separate proposals, the Commission adopted the one made by PG&E.[117] Applicants' argument to the contrary, this outcome is not the same as was proposed under the original Proposed and Alternate Proposed decision, which would have rejected both backbone and interstate pipeline capacity allocation proposals for failure of proof, and left the prior January allocator in place by default.

2. Applicants Illegally Purport to Wrest Authority over the Core Pipeline Capacity Allocation Issue from the Commission.

The heading of section V.B of the Application states: "The January Factor Remains in Place Under the CTA Settlement."[118] The use of the present tense in this heading is no simple rhetorical flourish. Applicant assume for themselves the authority to grant their Application,[119] and then assert "In the absence of a validly adopted alternative, the January factor must therefore remain in place until a reasonable alternative can be designed and presented at the Commission."[120]

First, this argument is not actually a rehearing request and should be ignored for that reason alone. Second, the claim is wholly specious and contrary to law. The Decision, which was effective June 23, 2016, approved the Seasonal Capacity Factor method effective August 1, 2016.[121] The filing of the Application does not "operate in any manner to stay or postpone [the

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[115] Application, p. 20.
[116] *Id.*
[117] Decision, pp. 315-316.
[118] Application, p. 21.
[119] *Id.*, 2d sentence in § V.B ("the Decision has not properly adopted PG&E's seasonal capacity factor due to the lack of adequate findings and conclusions, and the presence of legal error in the cost causation analysis").
[120] Application, p. 21.
[121] Decision, p. 494; CoL 275, p. 469; Ord. ¶¶ 33& 35, pp. 483 & 484.

Decision's] enforcement . . ."[122] PG&E filed the advice letter required by Ordering Paragraph 35 on June 30, 2016,[123] and the revised Schedule C-GT was effective as of August 1, 2016.[124] The January factor does not "remain[] in place," notwithstanding Applicants' purported usurpation of the Commission's authority under the law.

III. CONCLUSION

The Commission committed neither legal nor factual error in determining in Decision No. 16-06-056 to adopt PG&E's proposed Seasonal Capacity Factor as the method to allocate interstate and backbone capacity allocation within the core customer class. The Commission properly followed both the law and its own rules of procedure in issuing the decision without calling for yet another round of comment. Substantial evidence supported replacement of the January allocation method with the Seasonal Capacity Factor method, which is fairer and more accurately aligns the allocation of the pipeline capacity to customer load.

Applicants failed to meet their significant burden to demonstrate legal or factual error. The School Project for Utility Rate Reduction respectfully urges the Commission to deny the Application for Rehearing.

Dated: August 16, 2016

Respectfully submitted,

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[122] Pub. Util. Code § 1735; see also Rule 16.1(b) (application for rehearing shall not excuse compliance with a Commission decision).
[123] See Advice Letter 3725-G and accompanying letter approving it found at: http://www.pge.com/nots/rates/tariffs/tm2/pdf/GAS_3725-G.pdf. Under Rule 13.9, the Commission may take official notice of its own records showing approval of Advice Letter 3725-G.
[124] *Id.*; PG&E Rate Schedule C-GT, Sheet 7 (Cal. P.U.C. Sheet No. 32733-G). Schedule C-GT may be found at: http://www.pge.com/tariffs/tm2/pdf/GAS_SCHEDS_G-CT.pdf.