Decision **PROPOSED DECISION OF ALJ VIETH** (Mailed 5/12/2015)

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

| | |
|---|---|
| Forecast Group, L.P., Forecast Homes of California, Inc., K. Hovnanian Forecast Homes Northern California, Inc., K. Hovnanian Homes Northern California, Inc., and K. Hovnanian Communities, Inc.,<br><br>Complainants,<br><br>vs.<br><br>Pacific Gas and Electric Company (U39E),<br><br>Defendant. | Case 14-05-029<br>(Filed May 2, 2014) |

## DECISION ON TWO ISSUES REFERRED BY BANKRUPTCY COURT

# Table of Contents

Title Page

# DECISION ON TWO ISSUES REFERRED BY BANKRUPTCY COURT

## Summary

We interpret the tariffs necessary to address two issues referred to us by the United States Bankruptcy Court with jurisdiction over enforcement of certain creditors' claims approved in the Chapter 11 bankruptcy prior to the Pacific Gas and Electric Company (PG&E) Plan of Reorganization. The issues concern the method for properly calculating refunds PG&E owes to Forecast Group et al. (Forecast Group), builders who constructed line extensions or had PG&E construct line extensions for them.

Issue #1 concerns how to calculate contract refunds and in-series refunds for non-residential line extensions under the 10-year refundable option, pursuant to PG&E's tariff Rule 15, particularly Rule 15.E.5. We conclude that Issue #1 should be resolved using PG&E's comparative methodology for calculating non-residential refunds.

Issue #2 concerns whether PG&E must pay Forecast Group refunds on the distribution revenue collected from street lights and traffic control/traffic signals under PG&E's now-cancelled tariff Schedules LS-2, LS-3, and TC-1, as effective January 1, 1998, through March 1, 2006. We conclude that Issue #2 should be resolved to require inclusion of separately metered (but not unmetered) street lights and traffic control/traffic signals in the separately metered permanent load used for the purpose of tariff Rule 15 refund calculations.

In deference to the Bankruptcy Court, we address these two issues only and close this case.

## 1. Background and Procedural History

An order of the United States Bankruptcy Court, entered on January 27, 2014, has referred two issues to the California Public Utilities Commission (Commission) for determination.[1] The issues concern the method for properly calculating monies owed by Pacific Gas and Electric Company (PG&E) to Forecast Group et al. (Forecast Group or Forecast) stemming from creditors' claims filed in PG&E's Chapter 11 bankruptcy case. The claims are based on distribution-level line extension contracts Forecast Group members executed with PG&E prior to April 12, 2004, the effective date of PG&E's Plan of Reorganization. In an earlier order, dated March 25, 2002, the Bankruptcy Court required PG&E to pay Forecast Group all amounts owed under those line extension contracts and the Court retained jurisdiction over enforcement.

A dispute over payment arose and in September 2013, Forecast Group filed a motion for enforcement with the Bankruptcy Court. After the Bankruptcy Court's January 27, 2014 order, the parties met and conferred but were unable to resolve their differences. Forecast Group then filed this complaint with the Commission; PG&E filed an answer on July 11, 2014; and the assigned Administrative Law Judge (ALJ) held a Prehearing Conference (PHC) on August 15, 2014.

At the PHC, the parties agreed to file a joint stipulation of fact by September 17, 2014. Subsequently, the parties jointly sought and were granted two extensions of time and, on October 1, 2014, they filed the joint stipulation.

---

[1] The Bankruptcy Court's order in Case 01-30-923, United States Bankruptcy Court, Northern District of California, San Francisco Division is Exhibit A to the complaint and also is attached to the request for official notice filed on December 19, 2014.

The joint stipulation identifies, in a general way, three groups of allegedly material facts that "potentially" remained in dispute between the parties at that time and it also proposes dates in October 2014 for the parties to distribute prepared testimony. (Joint Stipulation at 1.) By email ruling on October 9, 2014, the ALJ directed the parties to meet and confer to discuss the three groups of facts in an effort to clarify and narrow their dispute and to renegotiate the dates for prepared testimony, should that testimony remain necessary. The assigned Commissioner's scoping memo, filed on October 20, 2014, reiterates this direction to the parties and includes a schedule for hearing and for briefing, as necessary.

On October 30, 2014, the parties filed a joint supplemental stipulation of fact. Thereafter, following a procedural telephone conference with the ALJ on December 9, 2014, held at the parties' request, they determined to cancel hearing and to brief the case based upon documents each selected and which they mutually agreed should be received in evidence as the documentary evidence of the case. On December 18, 2014, the parties filed an additional joint stipulation, entitled *Stipulation Re: Documents Admitted in Evidence*; on December 19, 2014, they filed concurrent opening briefs and Forecast Group also filed a request for official notice of facts. On January 14, 2015, following the ALJ's grant of their joint request for an extension, the parties filed reply briefs and Forecast Group filed a supplemental request for official notice of facts.

On March 26, 2015, the Commission issued Decision (D.) 15-03-046 for good cause pursuant to Pub. Util. Code § 1701.2(d), thereby extending to November 2, 2015, the deadline for resolving this case, an adjudicatory proceeding. The ALJ submitted the case for decision on the same date.

## 2. Issues Referred by the Bankruptcy Court

The Bankruptcy Court has referred these issues to the Commission:

> Issue #1: PG&E connected ***non-residential customers*** to the gas and electric line extensions Forecast installed for their residential projects. ***Forecast requested that PG&E pay Forecast refunds on the annual distribution revenue each non-residential customer generates in the first three years*** after PG&E begins service to the non-residential customer. ***PG&E does not agree with Forecasts' methodology for calculating such refunds***.
>
> Issue #2: PG&E connected ***street lights and traffic signals*** to the electric line extensions Forecast built in their residential projects. ***Forecast requested that PG&E pay refunds on the distribution revenue collected from street lights and traffic control customers*** under the street light and traffic control tariffs in effect from January 1, 1998 through the Effective Date. ***PG&E does not agree that the tariffs provide for the refunds sought by Forecast***.
>
> (Complaint, Exhibit A at 2 *emphasis added*; also Request for Official Notice, December 19, 2014, *emphasis added*.)

In response to the ALJ's query at the PHC, counsel for the parties affirmed that this complaint does not raise safety issues[2] but "is a purely financial matter" and "we've only talked about money and tariff interpretation." (PHC Tr. 4:9-10 and 4:15-16.)

[2] Following adoption of a Safety Policy Statement on July 10, 2014, the Commission, among other things, has heightened its focus on every formal proceeding's potential safety implications.

## 3. Standard of Review

The complainant bears the burden of proof in an adjudicatory proceeding and the standard of proof is the preponderance of the evidence.[3] As discussed in Section 4 of today's decision, the parties have reached consensus as to the material facts. Thus, given the uncontested facts, Forecast Group must establish that applicable law and established public policy support the tariff interpretations it advances.

## 4. Undisputed Facts

The factual record includes admissions in PG&E's answer, two joint stipulations of fact and a third, jointly submitted stipulation regarding the parties' documentary evidence. Forecast Group also has requested official notice of additional facts. No material facts remain at issue and, as noted above, resolution of this case turns on law and public policy.

### 4.1. Stipulated Facts

The parties' extensive factual agreement includes two joint stipulations of fact.[4] Forecast Group members are "homebuilders." (Stipulation 1.) Forecast and PG&E acknowledge the respective builder and utility roles in the construction of new, distribution-level line extensions and they identify PG&E's Electric Rule 15 and Gas Rule 15 as the tariffs governing payment of

---

[3] *See* Decision 07-01-027, *Bee Sweet Citrus, Inc. v. Southern California Edison Company*, 2007 Cal. PUC LEXIS 73, *14, quoting *Sargent Fletcher Inc. v. Able Corp. (2003) 110 CA 4th 1658, 1667* and other authority.

[4] Citations in today's decision refer to each stipulation by number. The parties' October 1, 2014 stipulation includes numbers 1 through 41; their October 30, 2014, stipulation includes numbers 42 through 43.

non-residential refunds to builders.[5] They agree that PG&E's former tariff Schedules LS-2, LS-3 and TC-1 govern street light/traffic control connections; these tariffs took effect on January 1, 1998 and were superseded on March 1, 2006. The parties also lay out, factually, the different methodologies each of them endorses for calculating refunds.

#### 4.1.1. Non-Residential Refunds

With respect to Issue #1, non-residential refunds for line extensions, the parties stipulate that Rule 15 provides "when and under what circumstances" PG&E must pay refunds. (Stipulation 3.) They focus on the 10-year refundable option[6] in Rule 15, agreeing that it permits a builder to "receive refunds from PG&E for connected load within the builder's own project and for connected load that is dependent upon the builder's project as direct source of supply." (Stipulation 3.) They agree that these refunds are distinguishable from reimbursements, which are not at issue; reimbursements are paid to a developer "for performing work PG&E would otherwise perform when installing line extensions, such as installing services". (Stipulation 3, footnote 1.)

The parties further specify that their dispute encompasses two types of potential, non-residential refunds: (1) "contract refunds" (also termed "project

---

[5] For the purposes of the non-residential refund provisions at issue in today's decision, PG&E's Electric Rule 15 and Gas Rule 15 are identical and unless otherwise specified, we generically refer to Rule 15.

[6] Under Rule 15 a builder has an alternative contractual choice, termed the non-refundable 50% discount option. However, since Forecast Group elected the 10-year refundable option, the 50% discount option is only relevant here in the context of "in series" refunds. As the parties stipulate, "even though the non-refundable 50% discount customer cannot receive a refund, its connected load can still generate an

*Footnote continued on next page*

refunds") and (2) "in-series refunds." (*Id*.) The former, governed by Rule 15.E.5, are "refunds from connections Forecast contracted with PG&E to connect." (*Id*.) The latter, governed by Rule 15.E.11, are "refunds from connections Forecast did not contract with PG&E to connect;" rather, these refunds are attributable to "connected load where Forecast is not the builder/customer" -- essentially this is additional load that piggy-backs onto Forecast Group's line extensions at some later date. (*Id*.)

Though the precise amount in dispute is not an issue for us to adjudicate, several stipulations provide some context for the size, not insignificant, of the parties' monetary disagreement: "In 2001, Forecast submitted its creditors' claim in PG&E's bankruptcy, estimating that PG&E owed Forecast more than $1.9 million in line extension claims … PG&E has paid Forecast over $2.3 million, largely as a result of Forecasts' investigation … Forecast believes more money is owed …." (Stipulation 4.) The parties agree that until they entered into a non-disclosure agreement in 2010, Forecast Group did not have access to the PG&E third party customer information needed to determine "whether in-series refunds … and non-residential refunds were owed and had been properly paid." (Stipulation 5.) The parties agree that Forecast Group had no other means to make those determinations, but now has access to that third party data.

Thus, the pending dispute is methodological – how to calculate Rule 15.E.5 non-residential refunds due in the first three years based on the 10-year refundable option. (*See* in particular, Stipulations 11-20, 23-25.) The parties agree

"in series" refund to a prior customer under Rule 15.E.11, assuming the prior customer has a refundable contract and has not yet been fully refunded." (Stipulation 14.)

that Rule 15.E.5 does not prescribe "how non-residential refunds are to be paid if and when they are owed." (Stipulation 8.) Forecast Group contends that non-residential refunds should be calculated using what the parties term the *cumulative* method; PG&E uses what the parties term the *comparative* method.[7] As between the two, the comparative method yields lower refunds, no refunds, or may even result in a balance due from Forecast to PG&E. Further complicating this matter, however, "PG&E did not consistently use its comparative methodology on non-residential refunds paid to Forecast." (Stipulation 42.) Exhibit M, a February 2012 e-mail from PG&E to Forecast's Counsel, identifies two accounts where PG&E actually paid refunds based on a cumulative revenue assessment, rather than a comparative one. The e-mail admits PG&E's error and advises that for each of the first three years, Forecast Group is "not entitled to the full amount that's generated each year, but instead the amount that <u>exceeds the prior year's review</u>. (Exhibit M, emphasis in original; see also Stipulation 33.) The stipulated examples, below, provide context for PG&E's representation.

To implement Rule 15.E.5, PG&E must perform a "Base Annual Revenue Calculation" (termed a BARC review); PG&E uses the same approach "as the tariff prescribes for determining allowances." (Stipulation 10, 11.) The next step, calculating whether a refund is due, is where the parties' methodological differences arise, since mathematically, the comparative and the cumulative methods produce the different results illustrated below. The assumptions, taken from Stipulations 12 and 18, are not in dispute here. The refund calculations, which show the parties' two approaches, are taken from Stipulations 19 and 20.

[7] We review each of these methods in Section 5 of today's decision.

<u>Assumptions:</u>

- $16 in anticipated annual Net Revenue
- Cost-of Service Factor of 0.16
- Allowance = <u>$16 (Net Revenue)</u> = $100
  0.16 (Cost-of Service Factor)
- Actual Annual Net Revenue

  Year 1 BARC = $100

  Year 2 BARC = $110

  Year 3 BARC = $120

<u>Comparative Method Refund Calculations (PG&E) with Allowance</u>:

1st Year Refund Payment = $ 0

($100 Year 1 BARC - $100 Allowance = $0 )

2nd Year Refund Payment = $ 10

($110 Year 2 BARC - $100 Year 1 BARC = $10)

3rd Year Refund Payment = $ 10

($120 Year 3 BARC - $110 Year 2 BAR = $10)

<u>Cumulative Method Refund Calculations (Forecast ) with Allowance</u>:

1st Year Refund Payment = $ 0

($100 Year 1 BARC - $100 Allowance = $0 )

2nd Year Refund Payment = $ 10

($110 Year 2 BARC - $100 Allowance = $10)

3rd Year Refund Payment = $ 20

($120 Year 3 BARC - $100 Allowance = $20)

Changing the assumptions – no allowance but same year 1 through 3 BARC calculations -- affects the first year refund under both methods and also affects the second and third year refunds under the cumulative method, as illustrated below.

Comparative Method Refund Calculations (PG&E) – No Allowance:

1st Year Refund Payment = $100

($100 Year 1 BARC - $0 Allowance = $100)

2nd Year Refund Payment = $ 10

($110 Year 2 BARC - $100 Year 1 BARC = $10)

3rd Year Refund Payment = $ 10

($120 Year 3 BARC - $110 Year 2 BARC = $10)

Cumulative Method Refund Calculations (Forecast) No Allowance:

1st Year Refund Payment = $100

($100 Year 1 BARC - $0 Allowance = $100)

2nd Year Refund Payment = $110

($110 Year 2 BARC - $0 Allowance = $110)

3rd Year Refund Payment = $120

($120 Year 3 BARC - $0 Allowance = $120)

Under either method, any net refund calculated may be subject to other offsets or factors that will determine the size of the refund (or whether a refund actually is due), but those concerns are not before us. (*See* Stipulation 23, 24.) However, regarding the comparative/cumulative methodology dispute, the parties stipulate "PG&E does not have any manuals or guidelines explaining this process to anyone outside of PG&E." (Stipulation 21.) They also stipulate that contrary to initial assertions, "PG&E does not contend that Forecast will receive a windfall under their [Forecast's] method." (Stipulation 44.)

#### 4.1.2. Street Light/Traffic Control Refunds

With respect to Issue #2, refunds for street lights and traffic control/traffic signals, Forecast Group and PG&E agree upon the underlying, material facts. The parties agree that both metered and unmetered street lights and traffic control/traffic signals are connected to the distribution line extensions that Forecast Group installed or asked PG&E to install and that all of those line extensions were built to serve separately metered permanent load "generated from connected homes, commercial entities, and government entities. (Stipulation 37.) They agree that PG&E collects distribution revenue from street light and traffic control customers, such as cities, whether or not such lights are metered. PG&E bills those customers for the electricity that powers the street light and traffic control systems and the charges include a distribution component, which is distribution revenue to PG&E. They agree that during the period at issue, January 1, 1998 to April 12, 2004, the operative rate schedule tariffs were the versions of PG&E's LS-2, LS-3 and TC-1 in effect prior to March 1, 2006 (those tariffs were superseded in 2006).

The parties' disagreement is this: Forecast Group contends that PG&E owes refunds on distribution revenues collected under the tariffs; PG&E claims it must only pay refunds under those tariffs where the street lights or traffic control systems are "utilized to serve new separately metered permanent load for which an excess allowance is allowed under Rule 15." (Answer at 1, quoting PG&E Schedule LS-2, Special Condition 9, Cal. PUC Sheet No. 15403-E [superseded].)

### 4.2. Requests for Official Notice

Forecast Group's unopposed December 19, 2014, and January 14, 2015, requests for official notice concern the following:

- The Bankruptcy Court's January 27, 2014, order (identified above), which refers two questions to this Commission;
- Former PG&E tariff Electric Rule 15.D, repealed July 1, 1995;
- Former PG&E tariff Electric Rule 15.2, repealed July 1, 1995;
- Former PG&E tariff Schedule LS-2, Customer-Owned Street and Highway Lighting, Special Condition #9 Line Extensions, PG&E tariff sheet #15403-E, effective January 1, 1998, repealed March 1, 2006;
- Former PG&E tariff Schedule LS-3, Customer-Owned Street and Highway Lighting Electrolier Meter Rate, Special Condition #8 Line Extensions, PG&E tariff sheet #15407-E, effective January 1, 1998, repealed March 1, 2006; and
- Former PG&E tariff Schedule TC-1, Traffic Control Service, Special Condition #6 Line Extensions, PG&E tariff sheet #15410-E, effective January 1, 1998, repealed March 1, 2006.

We take official notice of the Bankruptcy Court's order and the repealed PG&E tariffs in accordance with Rule 13.9 of the Commission's Rules of Practice and Procedure (Rules).

## 5. Discussion

We review the parties' positions, as developed in their opening and reply briefs, and conclude: Issue #1 should be resolved using PG&E's comparative methodology for calculating non-residential refunds; Issue #2 should be resolved to require inclusion of separately metered (but not unmetered) street lights and traffic control/traffic signals in the separately metered permanent load used for the purpose of tariff Rule 15 refund calculations.

We address these two issues, only, as they are the only issues referred to us by the Bankruptcy Court, which has retained jurisdiction over enforcement of creditors' claims approved in the PG&E bankruptcy filing.

### 5.1. Issue #1 – Interpreting Tariff Rule 15.E.5

The parties agree that the answer to Issue #1, the first referral from the Bankruptcy Court, turns on tariff interpretation. As we have seen, while the parties agree the Rule 15.E.5 process begins with a base annual revenue review to determine if a builder is entitled to a refund, they disagree on the calculation methodology. PG&E concisely describes the core difference between the parties as focusing on "what threshold a non-residential applicant's revenue must meet or exceed to warrant a refund in the second and third year." (PG&E Opening Brief at 2.)

Before we examine the parties' specific legal and policy arguments, some additional background is helpful. In 1994, the Commission's D.94-12-026 approved the settlement[8] in a rulemaking opened in 1992 to update the line extension rules and "more appropriately assign extension costs." (58 CPUC 2d at 8, quoting *Order Instituting Rulemaking 92-03-050*.) D.94-12-026 itself observes, "the current rules result in all ratepayers subsidizing the construction of utility facilities of commercial and residential developers … this results in higher rates for all ratepayers." (*Id*. at 9.) The settlement proposed uniform rules to govern distribution-level line extensions and service extensions for natural gas service and for electric service offered by Commission-regulated utilities. The settlement provisions, set out in Appendix B to D.94-12-026, were the foundation for the utilities' new Rule 15 and Rule 16 tariffs, which took effect on July 1, 1995, concurrently with repeal of the prior tariffs.

Rule 15.E.5, a subpart of Rule 15, expressly concerns non-residential refunds and both parties acknowledge it applies to the time period of their dispute. Both parties acknowledge that the text of Rule 15.E.5, unchanged from July 1995 to the present, references neither the comparative nor the cumulative method for calculating refunds.

---

[8] The settlement proponents, listed in footnote 1 of D.94-12-026, included the major Commission-regulated gas and electric utilities, as well as several organizations representing residential ratepayers. Settlement opponents included the California Association of Realtors, the California Building Industry Association, the California Business Properties Association, and several others. (*Re Line Extension Rules of Electric and Gas Utilities* (1994) 58 CPUC 2d 1, 73.)

Specifically, PG&E's Electric Rule 15.E.5 states:

> NON-RESIDENTIAL: PG&E shall be responsible to review Applicant's actual base annual revenue for the first three years from the date PG&E is first ready to serve. Applicant shall be responsible for notifying PG&E if new, permanent load is added the fourth through tenth year from the date PG&E is first ready to serve. Such review shall determine if additional revenue supports any refunds to Applicant. (*See* Section E.11 for series refunding provisions.)

PG&E's Gas Rule 15.E.5 does not differ materially; it states:

> NON-RESIDENTIAL: PG&E shall be responsible for reviewing Applicant's actual base annual revenue for the first three (3) years from the date PG&E is first ready to serve. Applicant shall be responsible for notifying PG&E if new, permanent load is added the fourth (4th) through tenth (10th) year from the date first ready to serve. Such review shall determine if the additional revenue supports any refunds to the Applicant. (*See* Section E.11 for series refunding provisions.)

With one immaterial exception, both iterations of Rule 15.E.5 track, word for word, the comparable settlement provisions in Appendix B to D.94-12-026. The sole difference is that the settlement provisions use the generic term "Utility" instead of the name "PG&E." (58 CPUC 2d at 23, 41.)

In summary, Forecast Group asserts three somewhat interrelated legal and policy challenges to PG&E's application of Rule 15. First, Forecast contends that PG&E's use of the comparative method for calculating non-residential line extension refunds is not based on Rule 15 at all but relies upon provisions in earlier line extension tariffs adopted in 1971 and repealed in 1995. Second (and alternatively), Forecast Group asserts that a prior decision of this Commission, D.94-12-026, effectively prohibited ongoing use of the comparative method for calculating refunds. Either way, according to Forecast, PG&E's continued use of the comparative method lacks express Commission approval and constitutes an unlawful act, which PG&E has kept hidden from the public for over 20 years. Third, Forecast Group argues that Rule 15's silence about how refunds should be calculated creates an ambiguity, which "has a significant impact on the amount of refunds paid." (Forecast Group Opening Brief at 14.) Thus, Forecast argues, Rule 15.E.5 must be construed against PG&E. For these reasons, Forecast Group asks us to interpret the tariff to require PG&E to employ the cumulative method for calculating non-residential refunds, or at a minimum, to hold that PG&E may not recoup any payments on those Forecast accounts where, by mistake, it actually paid refunds based on the cumulative method.

PG&E counters that its use of the comparative refund method does not rely on superseded tariffs, that D.94-12-026 did not prohibit continued use of the comparative method, and that calculation of refund payments using the comparative method is lawfully based on Rule 15, read as a whole, and on principles of revenue justification established in D.94-12-026 and further discussed in D.07-07-019. PG&E states that its use of the comparative method focusses on permanent load and "compares the applicant/builders' net revenue each year, providing for refunds when there is an increase in the revenue actually generated, but not issuing additional refunds if the revenue is the same as or less than the prior year." (PG&E Opening Brief at 2.) PG&E contrasts Forecast's approach as "issu[ing] refunds in a cumulative manner, as long as the revenue exceeded the allowance." (*Id*.)

#### 5.1.1. Alleged Application of Cancelled Tariff

To support its argument that PG&E's calculation methodology relies on a repealed tariff, Forecast Group points out that a description of the comparative refunding method was in Rule 15.2.C.2.b, a subpart of former PG&E Rule 15.2, which concerned underground extensions built to support new commercial and industrial developments. Former Rule 15.2 was one of the tariffs cancelled when new tariffs were filed in July 1995, following issuance of D.94-12-026 and Forecast cites case law for the proposition that a utility may not continue to apply the terms of a cancelled tariff.[9] Forecast's argument continues that contrary to the Commission's intention, for almost 20 years from 1995 to the present, PG&E has been paying refunds using the disfavored comparative method. PG&E has been able to do this, Forecast claims, because the lack of transparency (no written polices or public term sheets, etc.) meant builders could not readily ascertain how PG&E actually was calculating refunds. According to Forecast, "The reason no one has known about this: PG&E has kept it a secret." (Forecast Group Opening Brief at 2.)

The first part of this argument is unpersuasive because, as PG&E observes, the instant dispute is about how the existing Rule 15.E.5 should be interpreted, not which of two or more versions should govern. The parties even stipulate that Rule 15.E.5 has continued in effect unchanged, from July 1, 1995 – through the time period relevant to the complaint – and onward to the present.

---

[9] Forecast Group cites G*loria Jean Smith v PG&E*, (1998) 79 CPUC 2d 693. There, the issue for the Commission was which version of PG&E's electric line extensions tariffs was applicable, the pre-July 1, 1995 version or the one in effect on July 1, 1995. On the basis of facts ascertained at hearing but not relevant here, the Commission held the current tariffs governed Complainant's proposed project and dismissed the complaint.

(Stipulation 9.) The case Forecast cites, *Gloria Jean Smith v PG&E*, simply is not relevant to the present dispute.

Failure of the first part of Forecast's argument defeats the next part; if PG&E has not been applying a superseded tariff, it had no reason to seek Commission authority before proceeding with its interpretation; rather, the question becomes whether PG&E's practice (using the comparative refund method) constitutes appropriate implementation of the current tariff. Regarding the final part of Forecast's argument, the alleged secret, we think that Forecast overstates its case. We are surprised, however, that PG&E apparently has no documentation that explains to builders how PG&E calculates non-residential line extension refunds. The parties stipulate that PG&E finally was obliged to provide Forecast Group's persistent counsel with a personal tutorial. (Stipulation 21 through 24.) On the other hand, nothing in the record indicates that any other questions or concerns about PG&E's – or other utilities' -- application of Rule 15.E.5 have arisen during the past 20 years.

#### 5.1.2. Alleged Repeal of Comparative Method

Forecast Group's second argument is that D.94-12-026 effectively prohibits ongoing use of the comparative method for calculating refunds. Forecast again focuses on PG&E's former Rule 15.2, specifically the description of the comparative refund method at subpart Rule 15.2.C.2.b: "Billed revenues for each of the second and third 12 month billing periods shall similarly be compared with the total cost and additional refunds made if and to the extent that the total refund then due exceeds the amount already refunded."

Citing case law, Forecast contends that repealing Rule 15.2 without reinserting a description of the comparative refunding method in the new Rule 15 shows that the Commission intended to change the refund methodology and no other interpretation is permissible.[10] But as PG&E correctly contends, the cases on which Forecast relies, *Kaiser Steel Corp* and *Hoschler*, are not so narrow. Both begin by recognizing that the first task of statutory construction (or as here, tariff interpretation) is to ascertain legislative intent so as to effectuate a law's purpose. Moreover, as *Kaiser Steel Corp* explains, "every statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect." (*Kaiser Steel Corp v County of Solano* supra at 667, *quoting Select Base Materials v Board of Equal*. (1959) 51 Cal.2d 640, 645.)

Forecast is not persuasive that D.94-12-026 must be read to intentionally abolish the comparative refund method and to replace that method with one more financially advantageous to builders. In text and in numerous footnotes, including several in the first paragraph of D.94-12-026, the Commission expressed its intent to achieve an "equitable arrangement between the applicant and the ratepayer" in order to redress the increasing imbalance experienced during the prior two decades. (58 CPUC 2d, supra at 73, n. 2.) D.04-12-026 explains:

---

[10] Forecast Group cites two cases for the proposition that the Legislature's deliberate omission in a later statute cannot be supplemented (or reinserted) in the process of judicial construction: *Kaiser Steel Corp v County of Solano* (1979) 90 Cal.App. 3d 662, 667; *Hoschler v Sacramento City Unified School District* (2007) 149 Cal.App.4th 258, 269.

> Since 1971, the additional capital costs of line extensions (not paid for by applicants) have continued to increase. That portion of the capital costs absorbed by utilities has resulted in a larger rate base and created upward pressure on rates. The impact of having the utilities absorb all of the difference in cost further increases rate base investment and increases rates for ratepayers who do not benefit from the new extensions. The proposed rule provisions recognize this impact and use revenue-based allowances for an equitable allocation of these costs and uniform treatment of applicants. (58 CPUC 2d, supra at 74, n. 10.)

For "utilities" in the quote above, we actually must read "utility ratepayers," as it is they, and not the utilities themselves, who bear the referenced costs.

D.94-12-026 cuts against Forecast Group in other respects. Appendix B to D.94-12-026 includes the impact analysis that Pub. Util. Code § 783(b) requires before the Commission can authorize changes to utility line and service extension rules. As PG&E points out, the analysis reinforces "that one of the key effects of the new line extension rules was to materially reduce the cross-subsidization of new customers (applicants/developers) by existing customers through the focus on revenue justification. " (PG&E Reply Brief at 4.) While Forecast Group correctly notes that D.94-12-026 also provides new benefits to builders and other applicants, and separately lists ten identified benefits, that list does not include the methodology change at issue here. It is not plausible a methodology change so lucrative to builders and other applicants would not be similarly highlighted. That Forecasts' approach is financially advantageous to builders is not disputed; elsewhere Forecast admits that the comparative refund method "significantly reduces non-residential refunds due." (Forecast Opening Brief at 21.)

We need not repeat our review and rejection of Forecast Group's arguments that PG&E has continued to apply an abolished refund methodology without Commission approval and has kept its process secret. For that discussion, see subsection 5.1.1, above.

#### 5.1.3. Alleged Tariff Ambiguity

On its face and read in isolation, Rule 15.E.5 does not explain how the utility must review the actual base annual revenue to determine whether non-residential refunds are due in the first three years -- the text does not expressly prescribe one methodology or prohibit another. Interpretation of Rule 15.E.5 appears to be a matter of first impression; we are not aware of any prior Commission review of this issue and neither party has referenced one.

The parties concede that the silence creates an ambiguity. Forecast then argues that case law requires that we construe the tariff against PG&E.[11] In *CBIA v Ediso*n, the Commission determined that Edison's 2006 change in the longstanding way it calculated cost of ownership charges under its Electric Tariff Rule 15.E.6 was improper under Pub. Util. Code § 454 and General Order 96-A, not because Edison's practice was inconsistent with the tariff (the tariff was silent) but because Edison did not seek Commission approval for the change in its implementation. In a subsequent decision, *Florsheim Brothers*, which also concerns a change in utility implementation policy, the Commission held that the tariff was clear and PG&E could not change the way it calculated gas trenching costs and refunds associated with them without prior Commission approval.

---

[11] Forecast Group points to *California Building Industry Association v. Southern California Edison Compan*y *(CBIA v Edison)*, D.08-08-001; *Florsheim Brothers v PG&E (Florsheim Brothers)*, (1998) 82 CPUC2d 153.

Neither case supports Forecast here, where the issue is not whether a change in PG&E's practice was lawful but whether PG&E's long term, unchanged practice is lawful, given the ambiguity in the applicable tariff.[12]

The Commission routinely interprets tariffs, is experienced in interpreting tariff ambiguity and in so doing, applies the construction rules applicable to resolving ambiguity. PG&E's reply brief points to the guidance in *Re Southern California Utility Power Pool (*1995) 60 CPUC 2d 462, which recognizes that the general rule, requiring interpretation of an ambiguity against the utility, is not absolute.

> [T]he ambiguity must be a reasonable one. In the exercise of its discretion the Commission may determine whether an interpretation of a tariff rule, as sought, is reasonable. Accordingly, such claimed ambiguities must have a substantial basis and be considered in light of Commission decisions which set forth the policy on the matter in dispute.
>
> Under generally recognized rules of tariff interpretation the tariff should be given a fair and reasonable construction and not a strained or unnatural one. All the pertinent provisions of the tariff should be considered together, and if provisions may be said to express the intention of the framers under a fair and reasonable construction, that intention should be given effect; and *constructions which render some provisions of the tariff a nullity and which produce absurd or unreasonable results should be avoided* … (60 CPUC 2d at 471, emphasis in original [citations omitted].)

---

[12] Forecast Group does not assert that PG&E's admitted error in paying several Forecast accounts in accordance with the cumulative method constituted a changed practice. Forecast's opening brief states: "It is now clear -- PG&E's claim that its practice did not change is correct." (Forecast Group Opening Brief at 12.)

Likewise, as the Commission stated more recently, "the words of a tariff must be construed in context, and different provisions relating to the same subject matter must be harmonized to the extent possible." (D.12-04-071 at 7.)

PG&E argues that Rule 15.E.5 should not be construed "in a vacuum" but in the context of the package of line extension tariffs developed and approved in accordance with D.94-12-026 and the settlement it adopts – and that a "multitude of factors 'fill the silence'" to support PG&E's use of the comparative method. (PG&E Reply Brief at 8.) According to PG&E, these factors include the following:

- The final sentence in Rule 15.E.5, which provides the BARC review "shall determine if additional revenue supports a refund to Applicant." (*Id*.) PG&E argues that the point of the BARC review is "to see **if** additional revenue supports any refunds, **not** to provide refunds for the same revenue year after year. (*Id*., emphasis in original.)

- Rule 15.E.5 requires examination of new, permanent load, and the comparative method pays refunds only when permanent load increases year to year, unlike the cumulative method, which "would provide additional refunds even when there is less permanent load year after year or even just temporary load." (*Id*.) Focus on permanent load serves to harmonize Rule 15.E.5 with other Rule 15 provisions, such as 15.C.1 through 15.C.4 (Rule 15.C concerns calculation of line extension allowances) and Rule 15.E.4.

- The comparative approach "integrates Gas Rule 15.D.8.a, Electric Rule 15.D.7.a, with Gas and Electric Rule 15.E.5." (*Id*. at 9.) The same approach determines both non-residential refunds under Rule 15.E.5 and the deficiency payments due from an applicant under Rule 15.D, when actual net revenue falls short of what was anticipated and does not support the allowance previously granted.

PG&E's points are logical and consistent with the revenue-based approach that underlies D.94-12-026. Mentioned in passing above, the full text of footnote 2 in the first paragraph of D.94-12-026 explains:

> Revenue-based allowances (supported by applicant revenues) for both the gas and electric line extensions provide an equitable arrangement between the applicant and ratepayer, as well as between various classes of applicants. The revenue-based allowances which represent the utility investment, are based on the expected supporting revenue from the loads to be served by the extension. This amount is then used as the allowance, and is credited to the applicant's total cost for the extension. The allowance is stated in dollars in order to maintain consistency among and between a large variety of applications. (58 CPUC 2d, supra at 73, n. 2.)

PG&E also points to the explanation in D.07-07-019 of the annual, ongoing costs that utility revenues support. Forecast Group objects to use of this 2007 authority here, partly because it issued three years after the PG&E bankruptcy settlement and partly because it concerns calculation of residential line extension allowances and refunds associated with them. Forecast Group is correct that the holdings of D.07-07-019 are not pertinent here. But PG&E cites D.07-07-019 for its succinct explanation of the annual, ongoing costs that must be supported by revenues. This text merely describes the status quo (whether 2002 or 2007) – that is, the various costs that underlie calculation of the cost of service (COS) factor. The text provides:

> Associated with the cost of the line extension facilities that go into the utility's rate base are costs for such things as depreciation, return, income taxes, property taxes, O&M costs, administrative and general (A&G) costs, and franchise fees and uncollectibles (FF&U). The COS factor is the ratio of such costs to the cost of the line extension. Thus, a COS factor of

> 0.16 means that for every $100 of line extension cost, $16 in revenues is needed to recover the associated costs. Using this hypothetical example, if the net revenue is $160 and the COS factor is 0.16, the allowance would be $1,000. (D.07-07-019 at 8-9.)

Forecast Group's argument, at its essence, appears to be that because PG&E's tariff Rule 15.E.5 is silent on refund calculation methodology, and has been for 20 years, then as between competing methodologies, builders are entitled by law to the one that provides them with the largest refund. To be sure, the record developed here does not explain why the settling parties, who represented diverse interests, did not clearly spell out the methodologic approach to calculating non-residential refunds in the settlement language that became Rule 15.E.5. However, given the revenue justification principles which underlie D.94-12-026, and considering the legal preference for harmonizing related parts of a single tariff, Forecast Group's arguments fail.

### 5.2. Issue #2

The answer to the Bankruptcy Court's referral on Issue #2 also turns on tariff interpretation: do PG&E's now-cancelled Schedules LS-2, LS-3, and TC-1, which were in effect from January 1, 1998, through March 1, 2006, require PG&E to pay refunds on the distribution revenue collected from street lights and traffic control systems?

Because the specific language at issue in this dispute is the same for each of the three former tariffs, we follow the parties' example and quote only Special Condition 9 of the former LS-2 Tariff (street light).[13] For ease of discussion, however, we have numbered each of the eight sentences in the former tariff.

> LINE EXTENSIONS: (1) Where PG&E extends its electric lines to serve customer's street lighting system, an additional monthly charge equal to the applicable percentage for PG&E-financed distribution facilities listed in Rule 2 times PG&E's estimated installed cost of such line extension, exclusive of service connection (and transformer, if required) furnished under Special Conditions 1, 4 and 5 will be made. (2) If customer elects to advance PG&E's estimated installed cost of such extension, the additional monthly charge will be the applicable percentage for customer-financed distribution facilities listed in Rule 2 times PG&E's estimated cost. (3) PG&E may waive the foregoing provisions where the extension is estimated to be of normal cost and where not more than one pole and one span of line is required. (4) If such extension, or any portion thereof, is utilized to serve new separately metered permanent load for which an excess allowance is allowed under Rule 15, such cost to be used in determining the additional monthly charge will thereafter be reduced in proportion to the relative excess allowance for the new load, if any, as compared to the cost of the original extension. (5) If an advance has been made as provided above, and if under Rule 15, an excess allowance remains after the new load is installed, all or part of the advance will be refunded without interest to the customer. (6) Such refunds, if any, will be made following the connection of such new load. (7) If such extension is part of a series of extensions, on any of which an advance is still refundable, refunds due from new

[13] Similar text is found at Special Condition 8 of the former LS-3 Tariff (street light) and Special Condition 6 of the former TC-1 Tariff (traffic control).

> load will be made in turn as provided in Rule 15. (8) No payment will be made in excess of the original amount advanced.

While the language of former Special Condition 9 is rather dense and inelegantly drafted, upon careful reading it is intelligible and the intent can be ascertained. The former tariff concerns the monthly customer charge to a street light and traffic control customer, based on whether PG&E or the customer has financed the line extension to which those systems are connected. And, where the cost of the line extension has been advanced, the former tariff authorizes refunds for excess line extension allowances. The latter assessment must be based only on separately metered permanent load.

The first sentence in the former tariff explains calculation of the monthly customer charge if PG&E finances the necessary line extension; the second explains the calculation if the customer advances the cost of the line extension. The third sentence, not directly applicable here, provides for a waiver of the monthly charge in limited circumstances. The fourth sentence provides for an additional adjustment (a reduction) to the monthly charge in situations where the necessary line extension serves "new permanently metered load for which an excess allowance is allowed under Rule 15." This is the Rule 15 refund mechanism central to Issue #1 and discussed above – it also applies to the next sentence in the tariff, the fifth. The fifth sentence explains that in keeping with the Rule 15 refund mechanism, where the customer has advanced the cost of the line extension, a refund of that advance will be paid where there is an excess allowance. The sixth sentence concerns timing of refunds – they are due after the new load has been connected. The seventh sentence states that the in-series refund provisions of Rule 15 apply if the necessary line extension is part of a series of extensions. The eighth and final sentence limits any refund to "the original amount advanced" for the line extension.

Factually, as noted above, the parties agree that PG&E collects distribution revenue from street light and traffic control customers, whether or not such systems are metered and that Forecast's extensions serve separately metered permanent load. Forecast Group argues that distribution revenues from street lights and traffic control/traffic signals should be factored into the measure of permanent separately metered load because those systems all use line extensions built for other purposes. "Forecast does not install line extensions solely to serve street lights or traffic controls." (Forecast Group Opening Brief at 33.) Forecast reads the former Special Condition 9 in two parts[14] and claims that the term

---

[14] Forecast Group divides the tariff as follows: The italicized text represents the language that according to Forecast, governs the monthly charge and the underlined text represents the refund obligation:

> LINE EXTENSIONS: *Where PG&E extends its electric lines to serve customer's street lighting system, an additional monthly charge equal to the applicable percentage for PG&E-financed distribution facilities listed in Rule 2 times PG&E's estimated installed cost of such line extension, exclusive of service connection (and transformer, if required) furnished under Special Conditions 1, 4 and 5 will be made.* <u>If the customer elects to advance PG&E's estimated installed cost of such extension,</u> *the additional monthly charge will be the applicable percentage for customer-financed distribution facilities listed in Rule 2 times PG&E's estimated cost. PG&E may waive the foregoing provisions where the extension is estimated to be of normal cost and where not more than one pole and one span of line is required. If such extension, or any portion thereof, is utilized to serve new separately metered permanent load for which an excess allowance is allowed under Rule 15, such cost to be used in determining the additional monthly charge will thereafter be reduced in proportion to the relative excess allowance for the new load, if any, as compared to the cost of the original extension.* <u>If an advance has been made as provided above, and if under Rule 15, an excess allowance remains after the new load is installed, all or part of the advance will be refunded without interest to the customer. Such refunds, if any, will be made</u>

*Footnote continued on next page*

"new load" must include "street lights and traffic controls connected to the line extension" because otherwise "none of that language would have been in the Street Light and Traffic Control Tariffs." (Forecast Group Reply Brief at 11.) Forecast contends that the former tariff could have ended with the fourth sentence. Forecast appears to argue that this interpretation is required to avoid construing the fifth sentence (and the remainder of the text) as surplusage, which is disfavored.[15] We do not see that problem in the former tariff, if all eight sentences are read in sequence, one after the other.

PG&E counters that "there may be refunds for excess allowances from the separately metered permanent load, but the tariffs do not provide for refunds from the distribution revenue collected from street lights and traffic control bills." (PG&E Opening Brief at 3.) We agree with PG&E on this point. Former Special Condition 9 does not mention distribution revenue. Further, as PG&E contends, "[i]t is only if there is additional separately metered permanent load that there are potentially 'excess allowances' or refunds available" from such load. (*Id*. at 13.) But PG&E does not explain why separately metered street lights and traffic control/traffic signals are not separately metered permanent load.

---

following the connection of such new load. If such extension is part of a series of extensions, on any of which an advance is still refundable, refunds due from new load will be made in turn as provided in Rule 15. No payment will be made in excess of the original amount advanced.

[15] The Commission has recognized the "settled rule of legal interpretation to avoid rendering particular terms as meaningless or surplusage." D.14-12-024 at 55 (citing *City of San Jose v Superior Court* (1993) 5 Cal4th 47, 55.)

Thus, we conclude that Special Condition 9 of former tariff LS-2 does not require refunds to builders based on distribution revenue collected from street light and traffic control customers. On its face, however, former Special Condition 9 (like the similar provisions in former tariffs LC-3 and TC-1) requires the inclusion of separately metered street lights and traffic control/traffic signals in the separately metered permanent load for the purpose of Rule 15 refund calculations.

## 6. Comment on Proposed Decision

The proposed decision in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3 of the Rules. The parties filed comments on June 5, 2015, consistent with the ALJ's grant of Forecast Group's uncontested request for an extension of time. Pursuant to Rule 1.2, the ALJ also adjusted the page length for Forecast Group's comments and PG&E's reply comments. PG&E filed reply comments on June 12.

Forecast Group's comments argue the proposed decision erroneously interprets applicable law and thus, reaches incorrect conclusions on the two questions referred to us by the Bankruptcy Court. However, Forecast Group largely reiterates the arguments set out in its briefs. These arguments do not persuade us to revise the proposed decision.

Regarding Issue #1, Forecast Group overstates the law governing interpretation of statute (or tariff) ambiguity. The totality of the tariff package D.94-12-026 adopted, and D.94-12-026's reasoned discussion of the policies underlying the tariff changes, support the proposed decision's analysis. The case law cited in the proposed decision, and in Forecast Group's briefs and comments, does not mandate a different result.

Forecast Group also argues our conclusion on Issue #1 should be applied prospectively only and we should expressly state so. The Bankruptcy Court did not ask us to opine on that matter and the proposed decision does not do so. We observe, again, that the Bankruptcy Court has retained jurisdiction over enforcement of approved creditors' claims. Moreover, while the parties have stipulated that PG&E erroneously made some payments to Forecast Group using the cumulative method rather than the comparative method, we have no record here on the facts or law necessary to resolve that question fairly.

Regarding Issue #2, Forecast Group contends that the proposed decision errs by discussing the regulatory concepts of "distribution revenue" and "separately metered permanent load." These terms appear in former tariffs, LS-2, LS-3 and TC-1, in the fourth sentence and fifth sentences, which reference Rule 15. (See section 5.2, above.) Forecast Group objects to the discussion because Rule 15 does not itself define the terms. This argument is strained; it appears to suggest that we must jettison our extensive knowledge of regulatory matters when we undertake tariff interpretation.

Though we make no changes to the proposed decision's rationale or conclusions, we have corrected several inadvertent clerical errors.

## 7. Assignment of Proceeding

Michael Picker is the assigned Commissioner and Jean Vieth is the assigned ALJ in this proceeding.

**Findings of Fact**

1. The parties agree upon the material facts; their disagreements turn on issues of established law and public policy.

2. The parties' factual agreements are contained in PG&E's admissions to the complaint, the two joint stipulations of fact, and the two, unopposed requests by Forecast Group for official notice of facts.

3. With one immaterial exception, Rule 15.E.5 tracks, word for word, the comparable settlement provisions in Appendix B to D.94-12-026. The sole difference is that the settlement provisions use the generic term "Utility" instead of the name "PG&E."

4. Nothing in the record indicates that any other questions or concerns about PG&E's – or other utilities' -- application of Rule 15.E.5 have arisen during the past 20 years

5. Forecast Group is unpersuasive that for 20 years PG&E has secretly and unlawfully been applying a tariff cancelled in 1995 (former PG&E tariff Rule 15.2); the present dispute is about how PG&E must apply current tariff Rule 15, particularly subpart Rule 15.E.5. Because Forecast has failed to establish that PG&E has been applying a superseded tariff, Forecast's contention that PG&E needed Commission authority beforehand, fails.

6. Forecast is not persuasive that D.94-12-026 must be read to intentionally abolish the comparative refund method and to replace that method with one more financially advantageous to builders.

7. PG&E persuasively identifies factors that are logical and consistent with the revenue-based approach that underlies D.94-12-026: the point of the BARC review is to assess whether additional revenue supports any refunds, and not to pay refunds for the same revenue year after year; focus on permanent load serves

to harmonize Rule 15.E.5 with other Rule 15 provisions, such as 15.C.1 through 15.C.4; the comparative approach integrates Rule 15.E.5 with other Rule 15 provisions, both gas and electric, so that same approach determines both non-residential refunds and the deficiency payments due from an applicant when actual net revenue falls short of what was anticipated and does not support the allowance previously granted.

8. PG&E references D.07-07-019 for its succinct explanation of the annual, ongoing costs that must be supported by revenues, which underlies calculation of the cost of service (COS) factor.

9. Forecast Group is unpersuasive that silence in PG&E's tariff Rule 15.E.5 for 20 years means that as between competing methodologies, builders are entitled by law to the one that provides them with the largest refund.

10. Special Condition 9 of the former LS-2 Tariff should be read one sentence at a time, in sequence: the first sentence explains calculation of the monthly customer charge if PG&E finances the necessary line extension; the second explains the calculation if the customer advances the cost of the line extension; the third, not directly applicable here, provides for a waiver of the monthly charge in limited circumstances; the fourth provides for an additional adjustment (a reduction) to the monthly charge in situations where the necessary line extension serves new permanently metered load for which an excess allowance is allowed under Rule 15; the fifth explains that in keeping with the Rule 15 refund mechanism, where the customer has advanced the cost of the line extension, a refund of that advance will be paid where there is an excess allowance; the sixth concerns timing of refunds – they are due after the new load has been connected; the seventh states that the in-series refund provisions of Rule 15 apply if the

necessary line extension is part of a series of extensions; and the eighth limits any refund to the original amount advanced for the line extension.

11. The Rule 15 refund mechanism mentioned in the fourth sentence of Special Condition 9 of the former tariff Schedule LS-2 is central to Issue #1 and applies also to the fifth sentence.

12. If all eight sentences in Special Condition 9 of the former tariff Schedule LS-2 are read in sequence, there is no problem of surplusage.

13. Special Condition 9 of the former tariff Schedule LS-2 does not mention distribution revenue.

14. PG&E does not explain why separately metered street lights and traffic control/traffic signals are not separately metered permanent load under Special Condition 9 of the former tariff Schedule LS-2.

15. This complaint raises no safety issues.

## Conclusions of Law

1. Forecast Group bears the burden of proof.

2. We should grant Forecast Group's two, unopposed requests for official notice of facts.

3. As no material facts remain in dispute, this complaint should be decided on the basis of established law and public policy.

4. Interpretation of tariff Rule 15, particularly Rule 15.E.5, is necessary to determine Issue #1.

5. G*loria Jean Smith v PG&E* concerns which of two tariff versions should govern and is not relevant to the present dispute.

6. Forecast reads *Kaiser Steel Corp* and *Hoschler* too narrowly. Both begin by recognizing that the first task of statutory construction (or tariff interpretation) is

to ascertain legislative intent so as to effectuate a law's purpose; moreover, *Kaiser Steel Corp* explains "every statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect."

7. D.94-12-026 cuts against Forecast's arguments: in text and in numerous footnotes, the Commission expressed its intent to achieve an "equitable arrangement between the applicant and the ratepayer" in order to redress the increasing imbalance experienced during the prior two decades; the impact analysis that Pub. Util. Code § 783(b) requires before the Commission can authorize changes to utility line and service extension rules (part of Appendix B to D.94-12-026), reinforces that one of the key effects of the new line extension rules was to materially reduce the cross-subsidization of new customers (applicants/developers) by existing customers through the focus on revenue justification; D.94-12-026's list identifying ten benefits to builders and other applicants does not specify use of the cumulative method to calculate line extensions refunds.

8. *CBIA v Ediso*n and *Florsheim Brothers*, which concern changes in longstanding utility practices without Commission approval, do not apply here, where the issue is not whether a change in PG&E's practice was lawful but whether PG&E's long term, unchanged practice is lawful, given the tariff ambiguity.

9. Rule 15.E.5, unchanged from July 1995 to the present, is ambiguous because it does not specify the method for calculating refunds.

10. *Re Southern California Utility Power Pool* recognizes that the general rule, requiring interpretation of an ambiguity against the utility, is not absolute but requires consideration of a tariff in context, and the harmonizing of related parts.

11. Though D.07-07-019 issued after the time of the parties' dispute, its explanation of the cost of service factor is a relevant description of the status quo, whether 2002 or 2007.

12. Interpretation of the Special Conditions associated with former tariff Schedules LS-2, LS-3, and TC-1, which were in effect from January 1, 1998, through March 1, 2006, is necessary to determine Issue #2.

13. Special Condition 9 of the former tariff Schedule LS-2 does not provide for refunds from the distribution revenue collected from street lights and traffic control bills.

14. Special Condition 9 of former tariff Schedule LS-2 does not require refunds to builders based on distribution revenue collected from street light and traffic control customers. On its face, however, former Special Condition 9 (like the similar provisions in former tariff Schedules LC-3 and TC-1) requires the inclusion of separately metered street lights and traffic control/traffic signals in the separately metered permanent load for the purpose of Rule 15 refund calculations.

15. This decision should be effective immediately so that the parties may expeditiously advise the Bankruptcy Court of our determination of the issues it has referred to us.

## O R D E R

**IT IS ORDERED** that:

1. The response of the California Public Utilities Commission to the January 27, 2014, Order of the United States Bankruptcy Court, Northern District of California, San Francisco Division in Case No. 01-30923 is:

    a. Issue #1: Non-residential line extension refunds due to Forecast Group et al. (Forecast Group) and payable by Pacific Gas and Electric Company (PG&E) must be calculated using PG&E's comparative methodology;

    b. Issue #2: Separately metered street lights and traffic control/traffic signals, but not unmetered street lights and traffic control/traffic signals, must be included in the separately metered permanent load used for calculating tariff Rule 15 refunds due to Forecast Group and payable by PG&E.

2. The following unopposed filings are granted:

    a. *Forecast Creditors' Request for Official Notice of Facts*, filed December, 19, 2014;

    b. *Forecast Creditors' Supplemental Request for Official Notice of Facts*, filed January 14, 2015.

3. No hearings are necessary.

4. Case 14-05-029 is closed.

This order is effective today.

Dated ____________________________, at San Francisco, California.