

**PUBLIC UTILITIES COMMISSION**605 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

August 11, 2016

Agenda ID #15094

**Ratesetting****TO PARTIES OF RECORD IN RULEMAKING 12-06-013:**

~~This is the proposed decision of Administrative Law Judge Jeanne McKinney. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's September 15, 2016 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.~~

~~Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.~~

~~The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, ex parte communications are prohibited pursuant to Rule 8.3(c)(4)(B).~~

~~/s/ DOROTHY J. DUDA for  
Karen V. Clopton, Chief  
Administrative Law Judge~~

~~KVC:avs~~~~Attachment~~ ALJ/JMO/avs **PROPOSED DECISION**

Agenda ID #15094

Ratesetting

[9/15/16 Item 22](#)Decision **PROPOSED DECISION OF ALJ MCKINNEY (Mailed 8/11/2016)**

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

Order Instituting Rulemaking on the Commission's Own Motion to Conduct a Comprehensive Examination of Investor Owned Electric Utilities' Residential Rate Structures, the Transition to Time Varying and Dynamic Rates, and Other Statutory Obligations.

Rulemaking 12-06-013  
(Filed June 21, 2012)

**PROPOSED DECISION ON THE REQUIREMENTS OF  
CALIFORNIA PUBLIC UTILITIES CODE § 745  
FOR DEFAULT TIME-OF-USE (TOU) RATES  
FOR RESIDENTIAL CUSTOMERS**

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**PROPOSED DECISION ON THE REQUIREMENTS OF  
CALIFORNIA PUBLIC UTILITIES CODE §745  
FOR DEFAULT TIME-OF-USE (TOU) RATES  
FOR RESIDENTIAL CUSTOMERS**

**Summary**

Decision (D.) 15-07-001 set forth steps to transition California's default residential rate structure from tiered, non-time-varying rates to time-of-use (TOU) rates. Public Utilities Code Section 745 sets forth conditions, including findings regarding the impact of default TOU on certain customer groups, that must be met prior to the implementation of default TOU. In order to comply with Section 745, we must first identify the specific data that should be evaluated. Today's decision adopts an interpretation of Section 745 that will allow the Commission and parties to this proceeding to take the appropriate steps to obtain those data. Once obtained, and prior to implementation of default TOU, the data will be the subject of future Commission actions that will determine if the findings and conditions of Section 745 have been met.

Today's decision focuses specifically on the terms in Section 745(c)(2) ("unreasonable hardship," "senior citizens," "economically vulnerable customers," "hot climate zones") and Section 745(d) ("hardship," "hot inland areas," "hot summer weather," and "seasonal bill volatility"). This decision also addresses requirements for the semi-annual bill comparisons required under D.15-07-001 and the mechanics for meeting certain other Section 745 requirements such as application of Section 745(c)(4) bill protection to customers who stay on default TOU for less than 12 months.

Rulemaking 12-06-013 remains open.

## 1. Factual and Procedural Background

The Commission issued Decision (D.) 15-07-001 (*Decision on Residential Rate Reform for Pacific Gas and Electric Company (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric (SDGE) and Transition to Time-of-Use Rates*) on July 3, 2015, ordering the shift to residential default time-of-use (TOU) rates, conditioned on meeting the requirements of Section 745. Currently, with the exception of net energy metering customers, unless a residential customer affirmatively chooses another option, customers are automatically placed on a tiered, non-time-varying rate.<sup>1</sup> Under D.15-07-001, ~~the default rate for new customers will change to TOU, and all customers who have not affirmatively chosen an opt-in rate alternative will be placed on the new TOU~~most residential customers will be migrated to a default TOU rate.<sup>2</sup> Under Section 745 of the California Public Utilities Code,<sup>3</sup> certain customers are excluded from default TOU, and certain requirements must be met before any residential customers are put on a default TOU rate.

<sup>1</sup> A “tiered rate” is a rate schedule on which price varies by the total amount of electricity used in a one-month period. In contrast, under a TOU rate the price varies by *when* the electricity was used. Many optional TOU rates offered by California utilities are hybrids that are both tiered and time-varying.

<sup>2</sup> A default rate is not mandatory; customers are still allowed to opt-in to a different rate.

<sup>3</sup> All subsequent Section references are to the California Public Utilities Code unless otherwise indicated.

The relevant portions of Section 745 were added to the Public Utilities Code by two bills. Assembly Bill (AB) 327 (Perea, 2013) modified existing law to allow the Commission greater flexibility in designing the residential default rate. Senate Bill (SB) 1090 (Fuller, 2014) added subsection 745(d), a requirement for the Commission to evaluate “evidence addressing the extent to which hardship will be caused to customers living in hot, inland areas ... and areas with hot summer weather,” prior to implementing TOU as the default rate structure.<sup>4</sup>

Pursuant to D.15-07-001, a working group was formed to design TOU pilots that would allow study of TOU rates. The TOU working group first designed opt-in TOU rate pilots, to begin in summer 2016, in order to gather information on customers’ ability to accept and respond to TOU rates. These pilots are currently underway. The TOU working group then worked on the design of default TOU rate pilots to begin in ~~2018, for the purpose of assessing~~2018. The purposes of these pilots include an opportunity to assess the IOUs’ operational capacity to default customers to a new rate. ~~The default pilots may also provide information for further refinement of the final, as well as a further opportunity to review customer impacts and refine plans for~~ default TOU rat design and roll-out. The Investor-Owed Utilities (IOUs) will propose actual 2019 default TOU rate structures in separate rate design window (RDW) applications due in 2018.

On October 15, 2015, the assigned Commissioner issued a new scoping memo and ruling to address Phase 3 issues (Phase 3 Scoping Memo), including Section 745. The Phase 3 Scoping Memo set forth the next steps to meet the Section 745 requirements. In order to reduce the number of issues in dispute, the Phase 3 Scoping Memo directed the parties to develop consensus Section 745

<sup>4</sup> S. B. Legis. Counsel’s Digest. No. 1090, (2014).

definitions/interpretations through the TOU working group that was already tasked with designing the opt-in pilots.

In fall 2015, the TOU working group, assisted by consultant Dr. Stephen George of Nexant, developed a design for the opt-in pilots and issued a TOU working group report on opt-in pilot design (TOU Working Group Report) in December 2015.<sup>5</sup> In accordance with D.15-07-001 the IOUs then filed individual advice letters seeking approval of their respective opt-in pilots.<sup>6</sup>

In accordance with the Phase 3 Scoping Memo, the following parties filed opening briefs on Section 745 on December 22 and 23, 2015: Consumer Federation of California (CFC), Center for Accessible Technology (CforAT), The Utility Reform Network (TURN), Utility Consumers' Action Network (UCAN), and Office of Ratepayers Advocates (ORA). The three IOUs filed a joint opening brief (Joint Opening Brief).

Reply briefs were filed by the following parties on January 11, 2016: TURN, ORA, UCAN, and CforAT. The three IOUs again filed a joint brief (Joint Reply Brief).

The briefs identified areas where the TOU working group had reached consensus, and areas where it did not. The parties filing briefs agreed that the definitions and interpretations developed in the working group are sufficient to proceed with the opt-in pilots.

A prehearing conference (PHC) was held on February 4, 2016. Parties had the opportunity to further discuss the definitions. At that PHC, the assigned Administrative Law Judge (ALJ) directed the IOUs to move forward with the

<sup>5</sup> Stephen S. George, *Time-of-Use Pricing Opt-in Pilot Plan*, 2 (2016), <https://www.sce.com/NR/sc3/tm2/pdf/3335-E.pdf> (Attached as Appendix A to Advice Letter 3335-E and 3335-E-A).

<sup>6</sup> The advice letters have been approved and the opt-in pilots have started.

opt-in pilots using the consensus definitions and interpretations developed in the TOU working group.<sup>7</sup>

On July 8, 2016, the TOU working group emailed a matrix summarizing additional Section 745 issues, including both interpretation and implementation issues, that may need to be addressed by Commission decision. That matrix (Section 745 Matrix) was made part of the administrative record by ruling of the assigned ALJ on August 4, 2016.

Today's decision addresses the Section 745 briefs and adopts specific definitions and interpretation. It also sets forth next steps for Section 745 compliance including: (1) procedure for addressing Section 745 Matrix issues not specifically addressed in this decision, and (2) evaluating hardship in the context of the data and actual rate design. Importantly, while this decision identifies possible sources of hardship on which data should be gathered, it does not set a threshold or cut-off for hardship.

## **2. Discussion and Analysis**

### **2.1. Section 745(c)(2)**

Section 745(c)(2) is set forth below with the key terms underlined.

The commission shall ensure that any time-of-use rate schedule does not cause unreasonable hardship for senior citizens or economically vulnerable customers in hot climate zones.

#### **2.1.1. "Economically Vulnerable Customers" under Section 745(c)(2)**

The Commission currently oversees two rate assistance programs specifically targeted toward low-income customers: California Alternate Rates for Energy (CARE) and Family Electric Rate Assistance (FERA). CARE is a state-mandated program. As determined by Section 739.1(a), annual household

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<sup>7</sup> RT at 3988-89.

income must be no greater than 200% of the federal poverty guideline levels. FERA is a program established by the Commission for households of three or more having incomes between 200% and 250% of federal poverty guidelines.

The IOUs contend that “economically vulnerable customers” should be defined as those customers enrolled in the CARE or FERA programs. The IOUs point out that these programs are “long-established... low income rate discount program(s) with eligibility criterion approved by the Commission, in robust regulatory proceedings, with participation by key stakeholders representing low-income customers.”<sup>8</sup>

CforAT, ORA, UCAN and TURN, agree that CARE and FERA customers are “economically vulnerable,” but they argue such a construction is too narrow. Intervenors assert that the IOUs’ proposed interpretation of “economically vulnerable” is contrary to the Legislature’s intent. They note the Legislature could have referred to CARE and FERA if it intended to limit Section 745(c)(2). The Legislature is familiar with the CARE program, and both CARE and FERA have been in existence for many years. Therefore, they assert, an absence of reference to CARE or FERA indicates an intent for a different definition.

In light of this, CforAT recommends expanding the scope to any customer who is eligible for CARE or FERA even if that customer is not enrolled.<sup>9</sup> In addition, TURN suggest that because “customers with incomes just above the 200% poverty level may still be severely impacted by increased bills and increased bill volatility,” some other threshold percentage standard of the federal poverty level should be used to identify “economically vulnerable customers.”<sup>10</sup>

<sup>8</sup> SCE, PG&E, SDG&E OB at 15-16.

<sup>9</sup> CforAT OB at 7.

<sup>10</sup> TURN OB at 15-16.

These proposed alternative definitions, however, would be difficult to implement. Customers who are eligible for CARE or FERA, but have elected not to enroll in CARE or FERA, are inherently difficult for the IOU to identify. Ensuring that all eligible customers are aware of these programs is already thoroughly and thoughtfully addressed in the cyclical CARE/Energy Savings Assistance proceedings. Similarly, expanding the definition beyond CARE/FERA customers would require extensive additional administrative work by the IOUs.

~~This decision finds that only customers who are enrolled in CARE or FERA are “economically vulnerable” customers for purposes of Section 745(c)(2). This means that for compliance with Section 745(c)(2) it is not necessary to evaluate possible unreasonable hardships resulting from TOU rates for these customers. The Legislature has previously adopted the CARE program to protect low-income customers. Section 745(c)(2) does not specifically mention CARE or FERA, and as such it does not require or prohibit defining economically vulnerable customers to mean CARE/FERA customers. This definition will fulfill the intent of the Legislature. This definition is reasonable and administratively efficient to implement.~~

~~All parties agree that CARE and FERA enrolled customers are economically vulnerable. Section 745(c)(2) requires only that the Commission ensure that economically vulnerable customers are not subject to unreasonable hardship caused by default TOU rates. By studying the impact of TOU rates on CARE and FERA customers, the Commission can ensure that these customers do not experience unreasonable hardship caused by default TOU rates.~~

The proposed decision found that to comply with Section 745(c)(2) it is only necessary to evaluate the potential for hardship on customers who are

enrolled in CARE or FERA. This approach is reasonable and would be administratively efficient to implement.

In comments on the proposed decision, however, numerous parties (TURN, CforAT, UCAN, CFC) objected to the exclusion of customers who are eligible but not enrolled in these programs. Essentially, these parties argue that the legislative intent is that the customer's income level should be the defining feature of determining whether a customer is "economically vulnerable," not whether the customer is enrolled in a specific program. CforAT points out that customers who are eligible but not enrolled are even more economically vulnerable than program participants.

We find the intervenors' arguments persuasive. This decision finds that evaluation of "economically vulnerable" customers should include customers who are eligible but not enrolled in CARE and FERA.

In addition, we clarify that, because of the relatively low number of FERA customers, the two groups of customers (CARE and FERA) will be studied as a single customer group.

The results of the opt-in pilots may suggest that a lower income threshold be used to define "economically vulnerable." For example, TURN suggests the Commission should consider the impacts for very low income customers (<100% of Federal Poverty Guidelines).<sup>11</sup> This can be accomplished by studying the results of the opt-in pilot for these very low-income CARE and FERA customers.

Importantly, the opt-in pilots include income information over a number of ranges measured against the Federal Poverty Guidelines.<sup>12</sup> Once collected, this information can be evaluated for CARE and FERA customers with various income ranges.

<sup>11</sup> TURN OB at 1.

<sup>12</sup> ORA OB at 3.

### 2.1.2. “Senior Citizens” Under Section 745(c)(2)

The term senior has different definitions in different programs. For example, the current age to qualify as a senior for Social Security benefits is 66 and the typical age to qualify for senior discounts in the United States is 60. Nonetheless, the TOU working group unanimously proposed 65 as the qualifying age for senior citizen.<sup>13</sup> This definition is consistent with other California programs that define “senior citizens.”<sup>14</sup> This decision confirms that for purposes of Section 745 analysis, any person 65 years or older is a “senior citizen.”

The Commission must also determine if the statute applies only to seniors who are heads of household. Currently, the IOU billing data does not include the age of occupants. The IOUs contend that for purposes of unreasonable hardship analysis, “senior citizen” should be limited to seniors who are “head of household” or customers of record. The IOUs contend that identifying seniors, even if limited to head of household, will be difficult and costly.<sup>15</sup>

Intervenors argue that the standard for “senior citizen” for purposes of unreasonable hardship review should be broadly construed to include any household customer who certifies that they or a full-time permanent occupant of the household are a “senior citizen.”<sup>16</sup> CforAT points out that limiting “senior

<sup>13</sup> See TOU Working Group Report, note 7 at 739 (“No member of the TOU Working Group sought an age cut-off other than 65 years”).

<sup>14</sup> See, Pub. Util. Code § 779.1(c) (Phrasing of “residential customers who are 65 years of age or older” with “dependent adults” implying senior status for prior group); Cal. Civ. Code § 1761(f) (“Senior citizen” means a person who is 65 years of age or older”); Cal. Civ. Code § 2944.8 (defining senior citizen as person 65 years of age or older); Cal. Bus. & Prof. Code § 17206.1 (defining senior citizen as person 65 years of age or older).

<sup>15</sup> See SCE, PG&E, SDG&E OB at 14; see also TURN OB at 12; see also George, *supra* note 7 at 39; see also SCE, PG&E, SDG&E RB at 3.

<sup>16</sup> See CforAT OB at 7; see also TURN OB at 13.

citizen” to head of household, “. . . leaves open the possibility that the senior [sic] who are not head of household will be at risk of unreasonable hardship . . .”<sup>17</sup>

We agree with the intervenors. The language of §745 does not expressly limit the evaluation of seniors for unreasonable hardship to customers of record or “head of household.” The plain meaning rule of statutory interpretation clarifies that absent ambiguous statutory language, “we presume the lawmakers meant what they said and the plain meaning of the language governs.”<sup>18</sup> The statute does not require or suggest that seniors who are not head of household should not be entitled to protection from unreasonable hardship caused by default TOU rates.

Because the IOUs do not currently track this information, the IOUs will need to implement a procedure obtaining and tracking this information in the future. The TOU working group has suggested a certification process. The IOUs should work with the TOU working group to develop reasonable rules for this process. These rules developed in consultation with the TOU working group should be included as part of the default TOU pilot plan Tier 3 advice letters due December 16, 2016.<sup>19</sup>

Finally, the IOUs argue that Section 745(c)(2) should only apply to low income seniors. The intervenors assert that the IOUs’ interpretation is not consistent with the language of the statute itself because it renders the reference to seniors superfluous and because it does not achieve the Legislature’s purpose.<sup>20</sup> CforAT points out that seniors are more likely to be retired and

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<sup>17</sup> CforAT OB at 7.

<sup>18</sup> *Cal. Teachers Ass’n. v. Governing Bd. of Hilmar Unified School Dist.*, 95 Cal. App. 4th 183, 191 (2002).

<sup>19</sup> The December 16, 2016 due date for these advice letters was set by ruling on December 29, 2015.

<sup>20</sup> TURN OB at 12-13.

therefore more likely to be at home during hot summer days when air conditioning is desirable.<sup>21</sup> Because of this, seniors may have a different load profile or ability to shift usage from other customer groups. TURN points out that “reduced air conditioning use on the hottest days may create health risks for seniors.”<sup>22</sup>

There is no indication in the language of the statute or the legislative materials cited by the IOUs that would support their proposal to limit senior citizens to low-income seniors. If the term “senior citizens” is interpreted to be limited to low-income seniors, then there is no reason for the Legislature to list senior citizens as a separate group from economically vulnerable customers. This interpretation renders the language of the statute superfluous.

### **2.1.3. Application of “Hot Climate Zones” to “Senior Citizens” and “Economically Vulnerable Customers” under Section 745(c)(2)**

The Commission must determine whether the “hot climate zones” modifies both “senior citizens” and “economically vulnerable customers,” or only “economically vulnerable customers,” under § 745(c). The IOUs contend “hot climate zones” should modify both terms given the statutory construction of the condition as well as the Legislature’s focus on customers in hot climates.<sup>23</sup> UCAN contests this construction, stating that the plain meaning and last antecedent rules of statutory construction, as well as the legislative intent expressed by Senate floor reports (given their consistent grammatical construction and punctuation), require “hot climate zones” to only modify the

<sup>21</sup> Cf. AT OB at 9.

<sup>22</sup> TURN OB at 13.

<sup>23</sup> See SCE, PG&E, SDG&E OB at 13; see also SCE, PG&E, SDG&E RB at 5.

words immediately preceding the last antecedent; here “economically vulnerable customers,” not “senior citizens.”<sup>24</sup>

We disagree with UCAN and find that the term “hot climate zones” modifies both “senior citizens” and “economically vulnerable customers.” Such construction is supported by the legislature’s intent to focus the evaluation of hardship caused by default TOU rates upon areas of hot temperature in § 745(d).<sup>25</sup>

UCAN contends that under the application of the doctrine of the last antecedent, “qualifying words, phrases and clauses are to be applied to the words or phrases immediately preceding and are not to be construed as extending to or including others more remote.”<sup>26</sup> However, UCAN neglects to note the exceptions to the doctrine which are applicable here: “when several words are followed by a clause that applies as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all” and, “when the sense of the entire act requires that a qualifying word or phrase apply to several preceding words, its application will not be restricted to the last.”<sup>27</sup>

Both exceptions to the last antecedent doctrine are satisfied here. The phrase in “hot climate zones” applies to “economically vulnerable customers” as well as “senior citizens,” and therefore limits the scope of analysis for unreasonable hardship caused by default TOU rates for both groups. Although today’s decision confirms that Section 745(c)(2) does not include seniors who live

<sup>24</sup> UCAN RB at 5-8.

<sup>25</sup> Assemb. B., *supra* note 3 (establishing preconditions of § 745(c)); S. B., *supra* note 4 (establishing provision § 745(d)).

<sup>26</sup> *Lockyer v. R.J. Reynolds Tobacco Co.*, 107 Cal. App. 4th 516, 161 (2003); UCAN Reply Brief, at 7.

<sup>27</sup> *Mt. Hawley Ins. Co v. Lopez*, 215 Cal. App 4th 1385, 1413 (2016).

outside of hot climate zones, the Commission is permitted on its own initiative to evaluate other customer groups and the opt-in pilots will provide some relevant data.

#### **2.1.4. Hot Climate Zones Under Section 745(c)(2)**

The working group reached consensus that “hot climate zones” for purposes of Section 745(c)(2) are:

SCE: Regions 13, 14, and 15;

PG&E: Regions P, R, S and W; and

SDG&E: Mountain and Desert zones in Figure 3-9 of the TOU Working Group Report.

#### **2.1.5. “Unreasonable Hardship” under § 745(c)(2)**

In the preceding sections of this decision, we established details regarding the types of customers that are covered by Section 745(c)(2). Section 745(c)(2) requires that the Commission ensure that these customers do not face “unreasonable hardship” caused by default TOU rates. This decision finds that for purposes of Section 745(c)(2), there are two possible sources of hardship caused by default TOU rates: (i) economic impacts and (ii) health and safety impacts resulting from reduced air conditioning use. The opt-in pilots are designed to gather the data necessary to determine if either of these impacts could lead to unreasonable hardship caused by default TOU rates.

TURN, UCAN and ORA recommend that the analysis of economic impacts include bill impacts, energy burden changes, load-shifting behavior during hot summer peaks, and impacts on energy insecurity. Information on disconnections and arrearages for pilot participants should also be examined.<sup>28</sup> We agree with TURN and the other intervenors that it is appropriate to consider all of this information when evaluating economic impacts. In addition, the data collected

<sup>28</sup> TURN OB at 10, 16.

through the opt-in pilots should ~~also~~ include any economic reasons that have caused customers to drop out of the pilot. The data on drop outs for economic reasons will be tracked by obtaining verbatim responses and using best efforts to categorize responses into a defined set of categories that has been developed and reviewed by Energy Division staff. This decision confirms that this process is reasonable and sufficient for the purpose of evaluating economic reasons for opt-outs. In comments on the proposed decision, the IOUs point out that the term “energy security” has not been clearly defined in this proceeding.

In addition, the definition of “energy security” is currently under review by the Low Income Needs Assessment (LINA) effort. The IOUs are concerned that use of this term will be confusing and could invite litigation.

In joint reply comments, TURN and CforAT assert that the impact of energy insecurity is essential to the hardship analysis. TURN and CforAT state that the planned survey for the opt-in pilots covers five of the six behaviors used by the LINA to assess energy insecurity.

We agree with TURN and CforAT regarding the importance of including energy security in the hardship analysis. We also agree with the IOUs regarding the challenges of using a term that has been previously contested and has not been formally defined in this proceeding. We therefore provide additional guidance for purpose of this proceeding. For purposes of evaluating the impact of energy insecurity, parties should look to the data collected by the TOU opt-in pilot surveys. At this time, we are not adopting any current or future LINA definition for purposes of the Section 745 analysis in this proceeding. However, we invite parties to refer to any of the data collected by the TOU opt-in pilot surveys that they believe is relevant in their filings on the question of unreasonable hardship next year.

TURN and CforAT argue that the language of 745(c)(2) requires the Commission to consider impacts beyond economic.<sup>29</sup> TURN cites published studies on the health risks that can result from individuals, especially seniors, not using air conditioning during hot conditions.<sup>30</sup> For example, the CDC states that “[p]eople 65 years of age or older may not compensate for heat stress efficiently.” We agree that health impacts should be examined when determining whether TOU rates could cause an unreasonable hardship. The opt-in pilots will collect data on certain health and safety impacts as reported by customers through a survey, as well as load shift patterns for senior households in SCE’s and PG&E’s hot climate region.<sup>31</sup>

The IOUs and the intervenors contend that the Commission should not attempt to predetermine a definition of hardship caused by default TOU rates without first obtaining results from the opt-in TOU pilots and default TOU pilots.<sup>32</sup>

We agree with the parties that the determination of whether default TOU rates would cause unreasonable hardship under Section 745(c)(2) should not, and cannot, be made until the data are gathered. For this reason, this decision does not set a threshold or cut-off for determining if an unreasonable hardship caused by default TOU rates exists. That analysis will be done after the data are collected and examined by the parties. The initial evaluation will be done using

<sup>29</sup> See CforAT OB at 10; *see also* UCAN RB at 8.

<sup>30</sup> TURN OB at 13 -14 (citing material from the National Safety Council, the Center for Disease Control and Prevention (CDC) and the National Institutes of Health).

<sup>31</sup> Because SDG&E’s hot climate zones have few customers, the study will not be able to collect information with this level of granularity for SDG&E.

<sup>32</sup> SCE, PG&E, SDG&E OB at 20.

the opt-in pilots and other existing data; any relevant findings from the default TOU pilots can be incorporated into the analysis at a later date.<sup>33</sup>

## **2.2. Section 745(d)**

Section 745(d) is set forth below with the key terms underlined.

(d) The commission shall not require or authorize an electrical corporation to employ default time-of-use rates for residential customers unless it has first explicitly considered evidence addressing the extent to which hardship will be caused on either of the following:

- (1) Customers located in hot, inland areas, assuming no changes in overall usage by those customers during peak periods.
- (2) Residential customers living in areas with hot summer weather, as a result of seasonal bill volatility, assuming no change in summertime usage or in usage during peak periods.

### **2.2.1. “Hot, Inland Areas” and “Areas with Hot Summer Weather” Under Section 745(d)**

Section 745(d) uses terms “hot, inland areas” and “hot summer weather.” The TOU working group agreed that “hot climate zones” (in Section 745(c)(2)) and “hot, inland areas” (in Section 745(d)) refer to the same geographic areas. This interpretation is supported by all parties to the TOU working group and is consistent with the language and legislative intent of AB 327 and SB 1090. Therefore, as set forth in Section 2.1.4, the following regions are considered “hot, inland areas”:

SCE: Regions 13, 14, and 15;

PG&E: Regions P, R, S and W; and

SDG&E: Mountain and Desert zones in Figure 3-9 of the TOU Working Group Report.

<sup>33</sup> Prior to putting any customers on a default TOU pilot rate, the Commission must make sure that there will not be an unreasonable hardship under Section 745(c)(2).

The TOU working group, however, did not reach complete agreement on whether “areas with hot summer weather” should also be treated as referring to the same geographic areas. In briefs, the parties generally agreed that the three terms are close to identical, but TURN in particular reserved its right for further identification of areas with hot summer weather. TURN expressly noted in its opening brief that it had “not confirmed that the proposed segmentation corresponds to ordinary definitions of ‘areas with hot summer weather’ based on actual meteorological data.”<sup>34</sup> TURN argues that “The fact that Section 745(d) separately enumerates ‘inland areas’ from areas with ‘hot summer weather’ evidences legislative concern regarding seasonal bill volatility even in coastal areas that experience hot summer weather.”<sup>35</sup>

This decision finds that “areas with hot summer weather” may include other climates zones, such as PG&E’s Zone X, which do not have the same level of hot weather as inland areas, but do experience hot weather during certain times of the year. In other words, we find this term is intended to expand the Section 745(d) paper study to additional ~~geographic areas~~ [climate zones](#). We direct the TOU working group to develop a list of ~~areas~~ [climate zones](#) that qualify as having “hot summer weather” for purposes of Section 745(d). To facilitate this process, we direct the TOU working group to begin this list using the following definition of areas with hot summer weather: “Climate zones where the temperature reached 98 degrees on ten or more days during the summer in each of the past three years, where summer is defined as the months of June, July, August and September.”

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<sup>34</sup> TURN OB at 11.

<sup>35</sup> TURN OB at 10.

### **2.2.2. Bill Volatility Reporting for Evaluation of Hardship Under § 745(d)**

The Commission must determine whether an evaluation of bill volatility requires monthly, seasonal, or annual reporting under § 745(d). The IOUs contend that the Commission should hold off on rendering a decision on requirements of bill volatility until after the opt-in pilot TOU study is concluded, and “reserve the right to argue ... whether the required statutory findings must be made with reference to monthly bill changes.”<sup>36</sup> In contrast, the intervenors argue that seasonal bill impacts should include analysis of monthly bills. The intervenors state that this was an area of general agreement in the TOU working group, and that this interpretation is consistent with the plain meaning of the statute.<sup>37</sup>

Under the plain meaning rule of statutory construction, words within statutory language are “given their usual and ordinary meaning. If there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs.”<sup>38</sup> Here the word “seasonal” can be read to mean volatility between seasons, or volatility within a season. Bill volatility has been an important issue throughout this proceeding and we recognize that it is likely to have the greatest customer impact in the summer. An additional concern is the need to provide a mechanism for customers who face high summer bills but low winter bills to evenly distribute bill amounts throughout the year. In order to evaluate volatility within a season, monthly bill data is necessary. Month-to-month data should not be difficult for the IOUs to obtain. More importantly, it is consistent with the Legislature’s policy goals and concerns regarding the implementation of default TOU.

<sup>36</sup> See SCE, PG&E, SDG&E RB at 10.

<sup>37</sup> See CforAT RB at 10; see also TURN OB at 20.

<sup>38</sup> *Cal. Teachers Assn.* at 191.

We agree with the intervenors that to fully evaluate the possibility that TOU rates cause hardship we must consider volatility of bills between months and between seasons. This means that the Section 745(d) evidence should provide analysis by season and by month, as reasonably requested by parties and by Energy Division staff, and as included in the IOU filings for default TOU pilots in December 2016 and for default residential TOU rates in January 2018.

In joint comments on the proposed decision, the IOUs point out that steeply tiered rates lead to bill volatility. Therefore, the IOUs argue, TOU rate volatility should be compared to the average historical tiered-rate volatility. The IOUs further assert that that the historical level of bill volatility up to October 2013 should be the floor for an acceptable level of bill volatility. We agree that the analysis of bill volatility must consider the volatility of tiered-rates, including historic tiered-rates (to the extent they can be satisfactorily modeled). However, at this time it is not necessary to set bounds on the volatility analysis. The determination of what level of variability constitutes bill volatility will be considered after the data are available. We expect that the evaluation of volatility of specific rates may be an iterative process. We therefore direct the IOUs to initiate the process by providing preliminary volatility assessments comparing existing residential opt-in TOU rates with the existing default tiered rate. The IOUs may, at their option, include other comparisons such as average historical tiered-rate volatility. The IOUs are directed to serve (not file) this information on the service list no later than October 15, 2016. The TOU working group can then use this preliminary analysis to begin developing consensus thresholds and standards to evaluate the default TOU pilot rates and the default TOU rates to be proposed in the IOUs' individual residential rate design window filings in 2018.

### **2.2.3. “Peak Period” Under § 745(d)**

The term “peak period” refers to on-peak periods – not to off-peak or mid-peak periods. As the IOUs note this is consistent with the definition of “peak” in the terms “peak pricing” and “peak time rebates” used in Section 745(a). The IOUs’ Commission-approved tariffs employ peak time rebates and critical peak pricing where the term “peak” means “on-peak.” A final evaluation of possible hardship under Section 745(d) cannot be completed until the peak periods for the default rate are determined. However, we find it will be useful for the IOUs to provide preliminary results using the TOU peak periods as proposed in the IOU filings for default TOU pilots in December 2016 and for default residential TOU rates in January 2018, as well as a variety of alternative TOU periods at the request of Energy Division staff.

### **2.2.4. Distinguishing “Unreasonable Hardship” Under § 745(c)(2) and “Hardship” Under § 745(d)**

The Commission must determine whether “unreasonable hardship” under § 745(c)(2) and “hardship” under § 745(d) represent the same form of hardship. IOU’s contend “the Commission should not attempt to predetermine a definition without having the benefit of the results of the ‘paper’ studies for Section 745(d) and both the opt-in and default TOU pilot results, and the actual IOU default TOU filings.”<sup>39</sup> Intervenors argue the evaluation of unreasonable hardship and hardship under § 745(c)(2) and § 745(d) should be “based upon the same analyses of bill impacts, energy burdens, and the same considerations of energy insecurity resulting from surveys as will be done to satisfy § 745(c)(2) requirements.”<sup>40</sup> Other intervenors argue that to construct such a narrow standard of financial

<sup>39</sup> SCE, PG&E, SDG&E OB at 20.

<sup>40</sup> TURN OB at 10.

hardship caused by default TOU rates would be to overlook issues of health and safety;<sup>41</sup> they find no reason to harmonize § 745(c) and § 745(d).

Unreasonable hardship under § 745(c)(2) and hardship under § 745(d) do not express an identical form of hardship. The scope of hardship analysis under § 745(c)(2) is limited to seniors and economically vulnerable customers in hot climate zones. § 745(d) is more expansive, including all residential customers in synonymously defined hot climate zones. Section 745(d)'s reference to bill volatility and hardship incurred assuming no changes in overall use make clear that § 745(d) restricts its scope of hardship analysis to financial hardship. Such a construction is supported by the legislative intent concerning the implementation of § 745(d).

The addition of the word “unreasonable” for purposes of analysis of senior citizens and economically vulnerable customers in § 745(c) cannot justly be applied as a restrictive modification of the interpretation of hardship of § 745(d). To apply such a restrictive construction consistent with the plain meaning of the language would be to require a higher burden of hardship despite the heightened vulnerability of these specified groups.<sup>42</sup> As such, “unreasonable hardship” must be constructed as a more expansive term than the financial “hardship” construction of § 745(d). Such an interpretation is supported by the legislative intent of § 745(c); noting concern for health, safety, and financial

<sup>41</sup> See CforAT OB at 10; *see also* UCAN RB at 8.

<sup>42</sup> See Vocabulary.com, <https://www.vocabulary.com/dictionary/hardship> (last visited June 17, 2016) (definition of hardship as “suffering” or “affliction” taken with unreasonable requires high threshold for vulnerable parties).

impact following default TOU upon these designated groups.<sup>43</sup> Given this construction, unreasonable hardship analysis should take into consideration factors including but not necessarily limited to financial factors and energy insecurity.<sup>44</sup>

### **2.3. Other Provisions of Section 745**

Section 745(c)(4) is set forth below with the key terms underlined.

A residential customer shall not be subject to a default time-of-use rate schedule unless that residential customer has been provided with not less than one year of interval usage data from an advanced meter and associated customer education and, following the passage of this period, is provided with no less than one year of bill protection during which the total amount paid by the residential customer for electric service shall not exceed the amount that would have been payable by the residential customer under that customer's previous rate schedule.

This decision addresses several interpretation questions related to the bill comparison mailers required by Section 745(c)(4), but leaves the remaining details to be resolved by future advice letters (or decisions) as appropriate.

<sup>43</sup> See Assemb. Comm. on Utils. and Commerce, California Assembly Committee of Utilities and Commerce Report, SB 1090 (June 2014), [http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201320140SB1090](http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140SB1090) (“While we are hopeful that rate reform will help customers in inland areas with regard to heavy air conditioning bills, we are still very concerned about potential hardships of default TOU rates on very hot climates in which there may be very little ability to adjust electricity usage”); see also S. Rules Comm., Senate Third Reading Report, SB 1090, at 1-2 (May 2015), [http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201320140SB1090](http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140SB1090) (“concern about the potential hardships of default time-of-use rates on very hot climates in which there may be little ability to adjust electric usage”).

<sup>44</sup> See *Needs Assessment for the Energy Savings Assistance and the California Alternate Rates for Energy Programs*, 1 Evergreen Economics 29-30 (Dec. 16, 2013) <http://www.energydataweb.com/cpucFiles/pdaDocs/1016/ESA%20CARE%20LI%20Needs%20Assessment%20Final%20Report%20-%20Volume%201%20-%202012-16-13.pdf> (energy insecurity measures).

### **2.3.1. Application of Bill Protection to TOU Opt-Out Customers Under Section 745(c)(4)**

A customer may opt-out of default TOU, even within the first year of default TOU. The statute does not specify whether a customer who opts out of the default TOU before 12 months is eligible for bill protection under § 745(c)(4). All parties briefing this issue suggested that the Commission wait until the pilot default TOU study is concluded before deciding this matter.<sup>45</sup>

We find that, under plain meaning of the statute, customers who affirmatively opt out of default TOU to an alternative rate remain eligible for bill protection for the time period during which the customer was enrolled in default TOU. This situation is straightforward and does not need additional briefing. This bill protection includes both customers who opt-out to a new rate and customers who leave the default rate to relocate or terminate service.

Additional briefing, however, is necessary to determine the mechanics and timing of a bill protection refund. For this reason, today's decision does not address the mechanics and timing of the bill protection refund.

Customers who opt out of default TOU prior to the conclusion of one year are eligible for bill protection such that the "total amount paid by the residential customer for electric service shall not exceed the amount that would have been payable by the residential customer under that customer's previous rate schedule."<sup>46</sup> The construction of the language "with no less than one year of bill protection" indicates that periods of time less than one year are protected. Such a construction of bill protection is distinguished from D.03-06-032 where the Commission held, as "CPP (Critical Peak Pricing) is a voluntary tariff ... a customer who leaves before the 12-month commitment ends will not receive bill

<sup>45</sup> See SCE, PG&E, SDG&E OB at 17-18; CforAT OB at 13.

<sup>46</sup> § 745(c)(4).

protection.”<sup>47</sup> Here bill protection is administered as part of a default, not voluntary, program. Requiring customers who opt-out of the default rate to forgo bill protection would be counter to legislative intent. In keeping with the statutory requirement, bill protection for customers shall extend for the lesser of the first 12 months of service under the default TOU rate or the months of service under the default TOU rate prior to opting out to an alternative rate.

### **2.3.2. “Not Less Than One Year of Interval Usage Data” Under Section 745 (c)(4)**

Under Section 745(c)(4), prior to being put on a default TOU rate, residential customers must receive one year of interval usage data from an advanced meter. The Commission must consider how this requirement should be applied to customers who do not have 12 months of interval data, either because they are new customers or because they do not have the necessary advanced meter. ~~CforAT argues that new customers cannot be put on a TOU rate by default because these customers do not have 12 months of interval data.<sup>48</sup> CforAT also argues that the requirement for 12 months of interval data continues indefinitely. There are many potential problems arising from this interpretation, such as customer confusion when new customers are defaulted to a tiered rate when the default rate for all other customers is TOU. Customer turnover is currently estimated at 20% per year and the result could undermine the goals of a default TOU rate.~~ If these details are not clearly resolved in this proceeding, many potential problems could arise. Each year the IOUs enroll a substantial number of new customers<sup>48</sup> so the handling of new accounts will have a significant impact. This issue was included in the Section 745 Matrix.

<sup>47</sup> D.03-06-032 at 45.

~~<sup>48</sup> CforAT OB at 11.~~

<sup>48</sup> Customer turnover is currently estimated at 20% per year.

We agree that this is an important issue that must be examined by the Commission, but additional fact-finding and briefing is necessary before the Commission can make a ruling.

For purposes of 2018 default pilot, customers lacking one year of interval usage data should be excluded. For purposes of full roll-out of default TOU, this issue should be briefed and decided upon in the next Section 745 decision.

### **2.3.3. Section 745(c)(5)**

Section 745(c)(5) is set forth below with the key terms underlined:

Each electrical corporation shall provide each residential customer, not less than once per year, using a reasonable delivery method of the customer's choosing, a summary of available tariff options with a calculation of expected annual bill impacts under each available tariff. The summary shall not be provided to customers who notify the utility that they choose not to receive the summary. The reasonable costs of providing this service shall be recovered in rates.

This decision addresses several interpretation questions related to the bill comparison mailers required by Section 745(c)(5), but leaves the remaining details to be resolved by future advice letters (or decisions) as appropriate.

#### **2.3.3.1. "Reasonable Delivery of the Customer's Choosing" Under Section 745(c)(5)**

The Commission must determine whether "reasonable delivery method of the customer's choosing" requires delivery of a paper bill comparison or if, upon request, it may be provided electronically. This issue has not been raised by the parties in briefs, but has come up in the TOU working group and in filings by the IOUs this spring.<sup>49</sup>

While the issues were not fully briefed by all parties, the arguments are already well-established in Commission precedent. Because many customers do

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<sup>49</sup> See Section 745 Matrix.

not have access to the internet or do not use the available internet features, notice by paper is best.

However, some customers have expressly asked not to receive paper notifications from their IOU. For these customers it is reasonable to deliver the tariff and bill comparison information via email or other mechanism chosen by customer.

The information can be part of a bill insert provided that it complies with the other delivery requirements and content requirements being developed in the Marketing, Education and Outreach (ME&O) working group.

Reasonable delivery method of the customer's choosing shall require paper bills or, upon customer request, may be provided electronically <sup>50</sup>

#### **2.4.2. Decision 15-07-001 Bill Comparisons and Section 745 (d) Annual Summary**

The bill comparisons required under D.15-07-001 are similar in purpose to the statutorily required tariff comparison. The Commission intends that the D.15-07-001 bill comparisons provide educational materials to help customers understand their different rate options and ways in which they could save. The bill comparisons are also intended to provide a test-and-learn opportunity for the design of the statutorily required bill comparisons. While the statute requires one comparison per year in the year prior to default TOU, D.15-07-001 requires bill comparisons twice per year starting in 2016. On April 15, 2016, at the direction of the assigned ALJ, the IOUs made supplemental filings (April 2016 Filings) describing proposals for the 2016 and future bill comparisons.

<sup>50</sup> See generally Res. W-4935, at 8 ("The customer may elect to receive and view regular bills for service and other legal and mandated notices electronically and to no longer receive paper bills and legal and mandated notices"); see also *id.* at 9 (Findings and Conclusions 25 and 26 detailing reasonableness of electronic bill payment and notices).

On July 22, 2016, the assigned ALJ issued a ruling clarifying how the IOUs should comply with the D.15-07-001 bill comparison requirement. This decision confirms that guidance. Specifically, the ruling directed the IOUs as follows:

This ruling allows the IOUs to adopt an approach to bill comparisons that starts with limited mailings that focus on educational messages in 2016, followed by a roll out to all eligible customers and increasingly specific messaging. By 2018, bill comparisons should be in a format that will fulfill the statutory requirements of Section 745(c)(2). This approach will limit customer confusion during the early glide path period, will allow for test-and-learn, and will allow time to align bill comparisons with the ME&O Plans due November 1, 2016.

Based on the foregoing, the following guidelines are adopted for the IOU bill comparisons:

1. The first bill comparison shall be delivered in fall 2016 for SCE and PG&E, and spring 2017 for SDG&E.
2. The first bill comparison can be delivered to all or a representative subset of customers, with a minimum of 100,000 for SCE and PG&E, and 50,000 for SDG&E.
3. The first delivery may exclude the customer groups identified in the PG&E and SDG&E April 2016 Filings.
4. The first deliveries can be sent on the schedules proposed by the IOUs in their respective April 2016 Filings.
5. The first deliveries may emphasize rate education rather than individual customer bill comparisons. For example, PG&E's April 2016 Filing provides details of such a strategy and SCE suggested a segmented approach.
6. The bill comparison can be, but is not required to be, delivered as part of the customer's regular monthly bill or energy statement. However, if the customer only receives their bill electronically, the bill comparison should be sent as a complete document (not a link) and be sent separately from the bill.

7. For customers who have requested not to receive paper bills or mailings, the bill comparisons ~~should~~may be delivered via email (or in such other format as the customer and IOU have affirmatively agreed on) instead of or in addition to paper format. References to mailings or paper bill comparisons are hereby deemed to include other delivery methods agreed to by the customer. However, paper bill comparison mailings should be used unless the customer has affirmatively opted for a different delivery method. If the customer has affirmatively opted for a different delivery method, including large print or Braille, the household should receive the bill comparison in the same format (although additional copies of the bill comparison may be sent in other formats).
8. To ensure that customers without internet access are able to easily follow up on the bill comparison, the bill comparison must include a customer service phone number.
9. The IOUs should use a test-and-learn approach and be cognizant that future bill comparisons will need to align with the ME&O plans due November 1, 2016.
10. The IOUs should study the effectiveness of the bill comparisons to increase customer understanding of rate options.
11. Each IOU should include the details of its bill comparisons in its quarterly Progress on Residential Rate Reform (PRRR) report. The PRRR report should include information such as sample bill comparisons used to communicate with customers via mail and email; number of mailings sent by mail and email; and impacts on customer call centers.

### **2.5. Section 745(c)(1)**

Section 745(c)(1) identifies specific vulnerable customer groups, such as Medical Baseline customers and customers who cannot be disconnected without an in-person visit, that must be excluded from default TOU. These customer groups may be uniquely challenged when faced with a TOU rate or an unfamiliar

default rate structure. Section 745(c)(1) defines these groups by reference to programs that are set in statutes and Commission decisions. ~~Customers enrolled in these programs are excluded. Thus further~~ The proposed decision found that, in light of the specificity of Section 745(c)(1), no additional interpretation is not necessary. CforAT, however, asserts that to fulfill the Legislature's purpose, customers who would qualify for these programs, but are not enrolled in these programs, should also be excluded. Because we believe that the plain language of the statute is clear, parties were not asked to brief this issue. Today's decision does not address CforAT's proposed approach. This issue, and consideration of other customer group exclusions, may be raised or guidance was necessary.

However, in comments on the proposed decision, CforAT renewed and clarified its request that the Commission provide additional guidance on the Section 745(c)(1) excluded customer groups. CforAT points out that while medical baseline is a "program" with enrolled customers, the other two categories of excluded customers are not programs in the traditional sense and thus additional review is necessary. For example, at this time, a customer who is eligible for an in-person visit prior to disconnection will only be identified if that customer has previously been in arrears. In light of this, we agree with CforAT that further review is necessary and should be addressed later in this proceeding

as described in the next section of this decision.<sup>3</sup> Conclusion and Next Steps

Today's decision interprets and sets definitions for many of the terms in Section 745. Other aspects of Section 745 will need to be addressed in the coming months and years. The schedule for addressing Section 745 issues must be coordinated with other events and deadlines in R.12-06-013.

<b>Event/Activity</b>	<b>Date</b>
Opt-In TOU Pilots begin	Summer 2016
PRRR Report, filed	August 1, 2016
ME&O Plans, filed	November 1, 2016
PRRR Report, filed	November 1, 2016
Annual Residential Electricity Rate Summit (RERS)	November 2016
Report on Default TOU Pilots, issued	November 2016
Default TOU Pilot Advice Letters, submitted	December 16, 2016
Supplemental information based on first survey of opt-in TOU pilot customers, filed	March 2017
Default TOU pilots begin	January 2018
Individual IOU RDW Applications including default TOU rate design	Quarter 1 2018
Default TOU rates	2019

In March 2017, the IOUs will file supplemental information based on the first survey of opt-in TOU pilot customers to determine if seniors and economically vulnerable customers in hot climate zones suffer unreasonable hardship caused by default TOU rates. Based on that filing, the Commission will determine if the default pilots may include seniors and economically vulnerable customers in hot climate zones. Default TOU pilots will start in early 2018. At that time the IOUs will also make individual RDW applications for their respective default TOU rates. Those rates are scheduled to start in 2019, providing that all Section 745 requirements have been met.

The remaining Section 745 issues fall into two broad categories which will likely be addressed in separate decisions. First, operational and technical issues, such as those identified in the Section 745 Matrix, must be resolved. Second, after data has been collected, a decision will be made regarding whether the Section 745(c)(2) requirement to prevent unreasonable hardship caused by default TOU

rates has been met. Finally, Section 745(d) will be considered for the default TOU rates proposed this December and in 2018 by each IOU.

We will begin addressing the Section 745 Matrix issues, and any other implementation issues requiring formal Commission approval, after today's decision is issued. The procedural schedule will begin with prehearing conference statements and a prehearing conference to ensure that all issues are identified and to discuss the proper venue for Commission approval (i.e., ruling, decision, future advice letter). The Section 745 Matrix includes the following:

- How should bill protection payments be paid out? Should payments be trued-up on a monthly basis, twice per year, or at the end of 12 months/time of opt-out?
- How do IOUs handle moves or transfers?
- Should opt-outs be tracked when customers move from one home to another/from one service territory to another?
- After default implementation, must new customers continue to receive 12 months of service on a tiered rate prior to being defaulted to a TOU rate (post education, if customer doesn't opt-out)?
- What does "default" mean for a customer who establishes service after the initial transition to default TOU is complete?

#### **4. Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

Comments were filed on ~~\_\_\_\_\_~~ August 31, 2016 jointly by the IOUs and separately by CFC, TURN, CforAT and UCAN, and reply comments were filed on ~~\_\_\_\_\_~~ by \_\_\_\_\_ September 6, 2016 jointly by the IOUs and jointly by TURN and CforAT.

Based on these comments, we have made one significant substantive change. We have determined that the definition of “economically vulnerable customers” should include customers who are eligible for, but not enrolled in, the FERA or CARE programs.

Also, in light of the comments on evaluation of bill volatility for Section 745(d), we have directed the IOUs to initiate the process of developing standards and thresholds by serving preliminary volatility assessments using current rates. These preliminary assessments will serve as a tool for developing thresholds and standards for data presentation in preparation for actual default TOU rates proposals through the working group process.

A number of additional changes were made to clarify or refine the proposed decision.

## **5. Assignment of Proceeding**

Michael Picker is the assigned Commissioner and Jeanne M. McKinney is the assigned ALJ in this proceeding.

## **Findings of Fact**

1. In October 2013, the California Legislature passed AB 327, implementing Pub. Util. Code § 745.
2. In September 2014, the California Legislature amended §745 by passing SB 1090, adding subsection (d).
3. The Commission issued its Phase I, Residential Rate Design Rulemaking Decision, D.15-07-001 on July 3, 2015, directing the IOUs to implement default TOU rates, subject to the requirements of Section 745.
4. CARE household income eligibility requirements are capped at 200% of Federal Poverty Level according to household size.

5. FERA household income eligibility requirements are capped at 250% of Federal Poverty Level, with the requirement of household size of at least three persons.

6. The IOUs already administer CARE and FERA programs to provide lower-cost energy to low-income households.

7. Many California statutes and non-government programs define “senior citizen” to mean a person 65 years of age or older.

8. The language of §745(c)(2) does not require senior citizens to be customers of record or head of household.

9. The language of Section 745(c)(2) is not limited to low-income senior citizens.

10. The following climate zones constitute both hot climate zones and hot, inland areas: SCE Regions 13, 14 and 15; PG&E Regions P, R, S and W; and SDG&E, Mountain and Desert zones in Figure 3-9 of the TOU Working Group Report.

11. Economic factors and health and safety factors could contribute to unreasonable hardship for customers on default TOU rates.

12. Age is a factor in a person’s ability to compensate for heat stress.

13. Areas with hot summer weather can include areas where the temperature is consistently high on multiple days during the summer over multiple years.

14. Bill volatility analysis can mean both month-to-month variations and seasonal variations.

15. The term “peak period” means the peak or on-peak periods of time when the highest electricity rate is charged [in a TOU rate structure](#).

16. If a customer opts out of default TOU less than 12 months after the date of default, the lesser number of months still falls within the protected 12 months.

17. Bill comparisons should be mailed to each customer, or delivered by such other means as agreed to by the customer, including any alternative format previously agreed to by the customer and the IOU, such as large print or Braille. Paperless bill comparisons are not required, but should generally be used when customers indicate a preference for paperless communication or when they currently receive electronic bills.

18. Bill comparisons are required by statute and are a necessary tool for customers to become educated about rate choices.

### **Conclusions of Law**

1. The term “economically vulnerable customers” means persons enrolled in or eligible for the CARE or FERA programs.

2. Issues of eligibility for CARE or FERA, as well as the establishment or modification of their respective eligibility conditions are out of scope and should be handled within the context of proceedings regarding those specific programs.

3. The term “senior citizen” in Section 745(c)(2) means persons aged 65 or over, does not require the person to be head of household or customer or record, and does not require the person to be in a specific income category.

4. The following climate zones constitute both hot climate zones and hot, inland areas: SCE Regions 13, 14 and 15; PG&E Regions P, R, S and W; and SDG&E, Mountain and Desert zones in Figure 3-9 of the TOU Working Group Report.

5. Economic factors and health and safety factors could contribute to unreasonable hardship for customers on default TOU rates.

6. Areas with hot summer weather can include areas where the temperature is consistently high on multiple days during the summer over multiple years.

7. Bill volatility analysis can mean both month-to-month variations and seasonal variations.

8. The term “peak period” means the peak or on-peak periods of time when the highest electricity rate is charged [in a TOU rate structure](#).

9. If a customer opts out of default TOU less than 12 months after the date of default, the customer is still entitled to bill protection for the months during which the customer took service under the default TOU rate.

10. Bill comparisons should be mailed to each customer or delivered by such other means as agreed to by the customer, [including any alternative format previously agreed to by the customer and the IOU, such as large print or Braille](#).

11. Bill comparisons are required by statute and are a necessary tool for customers to become educated about rate choices.

12. The bill comparison requirements set forth in the July 22, 2016 ALJ’s ruling are consistent with D.15-07-001 and should be affirmed by the Commission.

13. In Section 745(c)(2), the term “hot climate zones” is construed to modify both senior citizens and economically vulnerable customers.

14. The terms “hot climate zones” (§745(c)(2)) and “hot, inland areas” (Section 745(d)) are synonymous for purposes of analysis under Section 745.

15. “Unreasonable hardship” under § 745(c)(2) and “hardship” under § 745(d) are not synonymous forms of hardship.

16. § 745(d) restricts the scope of hardship analysis to financial hardship.

17. Unreasonable hardship for purposes of § 745(c)(2) should consider economic impacts and health and safety impacts caused by default TOU rates.

18. This order should become effective on the date issued.

**O R D E R**

**IT IS ORDERED** that:

1. The interpretation of Public Utilities Code Section 745 set forth above shall be utilized for default time-of-use (TOU) pilot and default TOU implementation.

2. Terms in Public Utilities Code Section 745 are defined as follows:

- “Economically Vulnerable Customers” are those customers who are ~~enrolled~~ ineligible for California Alternate Rates for Energy or Family Electric Rate Assistance.
- “Senior Citizen” means a permanent resident of a household, age 65 or older, in any income bracket.
- “Hot Climate Zones” and “Hot Inland Areas” mean (a) for Southern California Edison Company, Regions 13, 14, and 15; (b) for Pacific Gas and Electric Company, Regions P, R, S and W; and (c) for San Diego Gas & Electric, the Mountain and Desert zones, in Figure 3.9 of the time-of-use Working Group Report.
- “Peak Period” means the time period during which the highest time-of-use rate applies.

3. The requirements for bill comparisons set forth in the July 22, 2016

Administrative Law Judge’s ruling are affirmed.

4. The time-of-use working group is directed to consider the additional interpretation and implementation questions described in this decision.

5. The 12-month bill protection provided by Section 745 applies to customers who opt-out or otherwise leave service prior to the expiration of the first 12 months of default time-of-use rates.

6. Each of San Diego Gas & Electric Company, Pacific Gas and Electric Company and Southern California Edison Company are ordered to serve, no later than October 15, 2016, a preliminary bill volatility analysis as described in Public Utilities Code Section 745(d). At a minimum, the analysis should compare the existing residential opt-in TOU rates with the existing default tiered rate.

7. ~~6.~~ The assigned Commissioner and assigned Administrative Law Judge are authorized to take all procedural steps to promote the objectives in this decision and to provide clarification and direction as required to assure the effective, fair and efficient implementation of this decision in this proceeding, including authority to dispose of requests to modify the defined terms of this decision.

8. ~~7.~~ Rulemaking 12-06-013 remains open.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

## Appendix A

### Pub. Util. Code §745

#### § 745 of the Public Utilities Code

(a) For purposes of this section, “time-variant pricing” includes time-of-use rates, critical peak pricing, and real-time pricing, but does not include programs that provide customers with discounts from standard tariff rates as an incentive to reduce consumption at certain times, including peak time rebates.

(b) The commission may authorize an electrical corporation to offer residential customers the option of receiving service pursuant to time-variant pricing and to participate in other demand response programs. The commission shall not establish a mandatory or default time-variant pricing tariff for any residential customer except as authorized in subdivision (c).

(c) Beginning January 1, 2018, and subject to the commission making the findings required by subdivision (d), the commission may require or authorize an electrical corporation to employ default time-of-use rates for residential customers subject to all of the following:

(1) Residential customers receiving a medical baseline allowance pursuant to subdivision (c) of Section 739, customers requesting third-party notification pursuant to subdivision (c) of Section 779.1, customers who the commission has ordered cannot be disconnected from service without an in-person visit from a utility representative (Decision 12-03-054 (March 22, 2012), Decision on Phase II Issues: Adoption of Practices to Reduce the Number of Gas and Electric Service Disconnections, Order 2 (b) at 55), and other customers designated by the commission in its discretion shall not be subject to default time-of-use rates without their affirmative consent.

(2) The commission shall ensure that any time-of-use rate schedule does not cause unreasonable hardship for senior citizens or economically vulnerable customers in hot climate zones.

(3) The commission shall strive for time-of-use rate schedules that utilize time periods that are appropriate for at least the following five years.

(4) A residential customer shall not be subject to a default time-of-use rate schedule unless that residential customer has been provided with not less than one year of interval usage data from an advanced meter and associated customer education and, following the passage of this period, is provided with no less than one year of bill protection during which the total amount paid by the residential customer for electric service shall not exceed the amount that would have been payable by the residential customer under that customer's previous rate schedule.

(5) Each electrical corporation shall provide each residential customer, not less than once per year, using a reasonable delivery method of the customer's choosing, a summary of available tariff options with a calculation of expected annual bill impacts under each available tariff. The summary shall not be provided to customers who notify the utility that they choose not to receive the summary. The reasonable costs of providing this service shall be recovered in rates.

(6) Residential customers have the option to not receive service pursuant to a time-of-use rate schedule and incur no additional charges as a result of the exercise of that option. Prohibited charges include, but are not limited to, administrative fees for switching away from time-of-use rates, hedging premiums that exceed any actual costs of hedging, and more than a proportional share of any discounts or other incentives paid to customers to increase participation in time-of-use rates. This prohibition on additional charges is not intended to ensure that a customer will necessarily experience a lower total bill as a result of the exercise of the option to not receive service pursuant to a time-of-use rate schedule.

(d) The commission shall not require or authorize an electrical corporation to employ default time-of-use rates for residential customers unless it has first explicitly considered evidence addressing the extent to which hardship will be caused on either of the following:

- (1) Customers located in hot, inland areas, assuming no changes in overall usage by those customers during peak periods.
- (2) Residential customers living in areas with hot summer weather, as a result of seasonal bill volatility, assuming no change in summertime usage or in usage during peak periods.

**(END OF APPENDIX A)**

Document comparison by Workshare Compare on Monday, September 12, 2016  
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