

Decision 09-12-048 December 17, 2009

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

Application of Pacific Gas and Electric Company for Expedited Authorization to Change Residential Electric Rates Effective January 1, 2010, as Permitted by Newly Enacted Public Utilities Code Section 739.9. (U39E)

Application 09-10-013  
(Filed October 14, 2009)

And Related Matters.

Application 09-10-014  
Application 09-10-015

**DECISION REGARDING THE RESIDENTIAL ELECTRIC RATE  
ADJUSTMENTS PURSUANT TO PUBLIC UTILITIES CODE SECTION 739.9**

**1. Introduction**

This decision authorizes rate adjustments pursuant to Public Utilities Code Section 739.9 for Pacific Gas and Electric Company (PG&E), Southern California Edison Company, and San Diego Gas & Electric Company, as prescribed below. Each of the three utilities are authorized to implement residential rate changes effective on January 1, 2010 under provisions of Senate Bill (SB) 695 (Stats. 2009, Ch.337), by the amounts authorized in this decision. The utilities are authorized to propose future annual changes to residential rates pursuant to this statute by filing Tier 2 advice letters no later than November 15th of the year prior to when the rates are to change. Such future requests shall conform to the methodologies for measuring the applicable amounts of rate adjustments as prescribed in this decision. The authorized rate adjustments will have no effect on the overall level

of revenues collected by each of the utilities, but will result in either increases or decreases in the monthly bill to individual residential customers depending upon the amount of electricity they consume.

Residential electric rates are designed in a multi-tiered structure based on the customer's quantity of electricity usage. Within prescribed usage tiers, the amount of electricity consumed is priced at increasing per-unit rates. Under current rate structures, customers with the lowest consumption (defined as Tiers 1 and 2) pay the lowest per-unit rates. Customers consuming larger amounts of electricity pay correspondingly higher per-unit rates for the additional usage, as prescribed by the higher per-unit rates applicable to the higher tiers. This decision does not alter that fundamental relationship. It does, however, address an anomalous situation in which certain rates were constrained from adjustment irrespective of changes in costs of energy over time.

Since February 2001, retail electric residential rates for Tiers 1 and 2 (for usage up to 130% of baseline quantities) have, with one exception, remained capped under statutory restrictions.<sup>1</sup> These restrictions were imposed in response to the energy crisis of 2000-2001 which led to extraordinary wholesale power cost increases. On February 1, 2001, Assembly Bill (AB) 1 from the First Extraordinary Session (Ch. 4, First Extraordinary Session 2001) (AB1X) was signed into law, implementing various measures to address the energy crisis. Among other measures, AB1X required the California Department of Water

---

<sup>1</sup> SB 1, which established the California Solar Initiative (CSI) program, specifically allowed CSI costs to be allocated to non-California Alternate Rates for Energy (CARE) Residential customers' Tier 1 and Tier 2 usage. See Public Utilities Code Section 2851(d)(2).

Resources (DWR) to step in to procure electric power supplies for California residential ratepayers to ensure the continued reliability of electric retail service.

AB1X also imposed a rate cap on residential rates for usage less than 130% of baseline quantities (defined as Tiers 1 and 2). Tier 1 applies to usage up to a customer's "baseline," a quantity specified in § 739(d)(1). Tier 2 applies to usage between the baseline and 130% of that amount.

Pursuant to AB 1X, the rate cap for Tiers 1 and 2 was to continue until the DWR recovered its costs to procure power on behalf of the state's electricity consumers. Yet, during this period, the utilities' overall operating and capital costs have continued to increase, resulting in significant increases in their utility revenue requirements. Since the Tiers 1 and 2 rate cap has remained in effect since 2001 (nearly nine full years), all subsequent revenue requirement increases assigned to residential customers have applied only to usage in Rate Tiers 3, 4, and 5 (which account for only about 30% of total residential usage). Consequently, the Tiers 1 and 2 rate restrictions have resulted in an increasing disparity between rates paid by customers in Tiers 1 and 2 and rates paid by higher usage customers in Tiers 3, 4, and 5.

As an example, the table below shows how PG&E's rates applicable to bundled service customers on Schedule E-1, its predominant non-CARE residential rate schedule, have changed since February 2001.

Rates Applicable to PG&E Bundled Service Customers on Schedule E-1  
(cents per kilowatt-hour):

Tier	February 2001 <sup>2</sup>	June 2001 <sup>3</sup>	December 2009	Proposed by PG&E in A.09-10-013
1. (0-100% of baseline)	11.43	11.43	11.531	12.108
2. (101-130% of baseline)	12.989	12.989	13.109	13.764
3. (131-200% of baseline)	12.989	18.113	26.078	25.414
4. (201-300% of baseline)	12.989	22.506	38.066	36.182
5. (above 300% of baseline)	12.989	24.494	44.348	41.825

On October 11, 2009, SB 695 was signed into law as an urgency statute. SB 695, in pertinent part, removes the prior prohibition on Tier 1 and Tier 2 rate increases. SB 695 amends Public Utilities Code § 739.1, and adds § 739.9 to allow Tier 1 and Tier 2 rates to be increased within specific limits.

---

<sup>2</sup> Rates shown for February 2001 include the 10%-legislated rate reduction pursuant to AB 1890 and the 1 c/kWh emergency procurement surcharge applicable to all non-CARE usage of PG&E and SCE customers assessed pursuant to D.01-01-018.

<sup>3</sup> D.01-03-082 added a 3 c/kWh surcharge for non-CARE, non-medical baseline usage above 130% of baseline of PG&E and SCE customers. Tiered rate to implement this surcharge were developed in D.01-05-064 and became effective in June 2001 for usage above 130% of baseline. Rates shown for June 2001 include the 1 and 3 c/kWh surcharges.

Pursuant to § 739.9, the Commission has the authority to grant increases in rates charged to non-CARE residential customers for electricity usage up to 130% of baseline quantities (Tiers 1 and 2) by the annual percentage change in the Consumer Price Index (CPI) from the prior year plus 1%, but not less than 3% or more than 5% per year. The annual percentage change in the CPI is to be calculated using the same formula used to determine the annual Social Security cost of living adjustment (COLA) on January 1, 2008.<sup>4</sup> This process for setting rates applies until January 1, 2019, unless extended by a subsequent statutory change.

Accordingly, applicants seek authority to increase Tiers 1 and 2 rates by 5% pursuant to § 739.1 and § 739.9. Applicants concurrently seek to offset the increase to Tiers 1 and 2 with corresponding reductions to Tiers 3, 4, and 5 rates, so that the overall level of revenue collected from residential customers as a whole remains unchanged.

The utilities are further proposing procedures to implement similar subsequent yearly rate changes pursuant to SB 695 through advice letter filings.

The scope of these consolidated applications is thus to address the relevant issues relating to the applicable residential rate changes. As discussed below, in view of the applicable statutory provisions concerning the allowable magnitude of the maximum rate changes, we authorize for a rate increase for Tiers 1 and 2 of only 3% effective January 1, 2010, with a corresponding reduction to the higher-usage tiers, to result in no change in the overall amount of revenues collected from residential customers. We shall also require that the utilities'

---

<sup>4</sup> The formula to determine the Social Security COLA is based on the CPI for Urban Wage Earners and Clerical Workers.

subsequent annual requests for rate adjustments pursuant to SB 695 utilize the most recently published figures for the prior year preceding the effective date of requested rate changes in accordance with the formula prescribed under the statute.

## **2. Procedural Background**

By Chief Administrative Law Judge's Ruling dated October 19, 2009, the applications for rate adjustments pursuant to SB 695 filed by PG&E, Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E), respectively, were consolidated. Protests were filed by the Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN), and by Utility Consumer Action Network (UCAN). A joint reply to the protests was filed by applicants on November 13, 2009.

Applicants each published notice of their proposed rate changes in newspapers of general circulation, included notice in customers' bills, and mailed notices of the applications to state and county officials pursuant to Rule 3.2 and Pub. Util. Code § 454. The Commission has also received letters from customers of the applicant utilities. These letters generally express opposition to granting the requested rate changes, and in particular, express the belief that increasing Tiers 1 and 2 rates would be contradictory to the Commission's goal of encouraging conservation, and would penalize customers for saving energy. The customers' letters were circulated for review by the Assigned Commissioner, the Assigned Administrative Law Judge (ALJ), and the other Commissioners.

The Assigned Commissioner issued a scoping memo and ruling on November 20, 2009, setting the schedule, designating the scope of the proceeding, and receiving into evidence the written testimony offered by

applicants. This matter can be decided based upon the written pleadings, and thus no evidentiary hearings were conducted.

### **3. Applicants' Proposal**

The utilities each propose to implement a 5% increase effective January 1, 2010, in Tiers 1 and 2 rates (excluding the residential CARE program). The utilities propose to concurrently offset the resulting increase in revenues by decreasing Tiers 3, 4, and 5 rates pursuant to the provisions of § 739.9.<sup>5</sup> These rate changes are proposed pursuant to the provisions of SB 695, and are designed to begin to rectify the disparities that have accumulated between rates charged in Tiers 1 and 2 versus rates charged in Tiers 3, 4, and 5. The result of these offsetting rate impacts are revenue-neutral as to the overall residential customer class, and are designed to keep overall utility revenues unchanged.

For the residential CARE program, pursuant to § 739.1 the Commission may increase rates (but not to exceed 3% per year) for electricity usage up to 130% of baseline quantities subject to conditions.<sup>6</sup> The increase is to correspond to the annual increase in benefits provided under the CalWORK's program for the fiscal year in which the rate increase would take effect. The benefits under the CalWORK's program are subject to an annual COLA, effective July 1st of each year, as provided under the Welfare and Institutions (W&I) Code

---

<sup>5</sup> In the case of SDG&E, there are only four tiers. References to Tier 5 throughout this decision thus apply only to the PG&E and SCE proposals.

<sup>6</sup> Section 739.1(b)(4) requires that CARE rates for Tiers 1, 2, and 3 shall not exceed 80% of the corresponding non-CARE rates for those tiers excluding DWR bond charges, the CARE surcharge portion of the public goods charge, any charge imposed pursuant to the CA Solar Initiative, and any charge imposed to fund any other program that exempts CARE participants from paying that charge.

Section 11453 (a). Since the COLA for the CalWORK's program has been suspended for the 2009-2010 fiscal year, however, the utilities do not propose any increase to CARE Tiers 1 and 2 rates.

The utilities provided illustrative calculations of the potential impact of the rate proposals on customers' retail bills, assuming varying usage levels. Some customers will see an increase in their bill, while other customers will see a decrease, depending on the customer's usage level. Overall the utilities' proposals are revenue neutral with increased revenues collected from customers with relatively low usage being offset by decreased revenues from customers with higher usage.

PG&E estimates that a typical residential customer using 550 kWh would see a monthly PG&E bill change from \$74.13 to \$76.63, an increase of \$2.50, or 3.4%. A residential customer using 850 kWh per month (i.e., about twice the baseline allowance) would see a monthly PG&E bill change from \$164.15 to \$163.46, a decrease of \$0.69 per month, or a 0.4% decrease. A residential customer using 1500 kWh per month would see a monthly PG&E bill change from \$434.98 to \$419.66, a decrease of \$15.32, or 3.5%.

SCE provided an illustrative example of the residential customer bill impacts of its rate change proposal.<sup>7</sup> Based on the assumptions in its illustrative examples, a customer with consumption roughly equal to the baseline allowance of 300 kWh would see a bill increase of 4.9% (or \$1.77 per month). A typical customer using 600 kWh (or about two times the baseline allowance) would see virtually no change in the monthly bill. A higher-usage residential

---

<sup>7</sup> See Table III-2 of SCE Testimony of Russell Garwacki.

customer (using 1500 kWh, or five times the baseline allowance) would see about a 2.8% bill decrease (or \$10 per month).

SCE's proposed rate decrease for non-CARE Tier 3 will result in a lower Tier 3 rate for CARE customers, due to the relationship between CARE and non-CARE Tier 3 rates.<sup>8</sup>

SDG&E also provided illustrative bill impacts of its proposed rate changes for its Schedule DR for specific kWh usage levels, based on rates in effect as of October 1, 2009, as set forth in Attachment of its sponsored testimony. A typical SDG&E customer using 500 kWh would see a 3.7% increase in its summer monthly bill and a 3.2% increase in its winter monthly bill. A typical SDG&E customer using 1,000 kWh would see a 1.7% decrease in its summer monthly bill and a 2% decrease in its winter monthly bill. A typical SDG&E customer using 1500 kWh would see a 2.7% decrease in the summer monthly bill and a 3% decrease in the winter bill.

#### **4. Position of Protesting Parties**

The protests filed by TURN and DRA deal with the advice letter process used to implement future residential rate changes pursuant to §§ 739.9 and 739.1.<sup>9</sup> In their joint reply, applicants agree with the conditions proposed by

---

<sup>8</sup> SCE's current CARE Tier 3 rate is based on a 20% discount from the non-CARE Tier 3 rate less the DWR Bond Charge and CARE program charges and any CSI-related charges not suspended in 2009 by D. 08-12-004.

<sup>9</sup> The rules applicable to advice letter filings are set forth in Commission General Order 96-B, in the General Rules, and the Energy Industry Rules. Advice letters are categorized as either Tier 1, 2, or 3. Tier 1 advice letters are effective upon filing pending Energy Division disposition. Tier 2 advice letters are effective after Energy Division approval or may become effective at the end of the initial 30-day review period if there is no timely protest and the Energy Division has not notified the utility that the

*Footnote continued on next page*

TURN with respect to timing of the annual advice letters. UCAN specifically protested the SDG&E application, but the issues raised by UCAN are also relevant to the PG&E and SCE applications, as well. UCAN raises the issues of (1) whether rates for Tier 3 and above should be reduced when Tiers 1 and 2 rates increase; (2) what Tiers 1 and 2 rate increase percentage should be granted; and (3) whether future Tier 1 and 2 rate increase requests should be allowed by advice letter.

## **5. Discussion**

### **5.1. Is Any Increase in Tiers 1 and 2 Rates Justified?**

In response to the notices mailed by the utilities, informing customers of the pending applications for retail rate adjustments, various customers sent letters to the Commission expressing objections to any increase in Tiers 1 and 2 rates.

Particularly in view of the difficulties experienced by retail customers, particularly residential customers, in paying their utility bills in the current economic recession, we are sensitive to concerns expressed over any rate changes. In this particular instance, however, we conclude that the rate adjustments that we authorize are appropriate and consistent with the intent of the recently enacted legislation. Moreover, we do not authorize any increases to Tiers 1 and 2 rates for CARE.

As a further limitation on the Tiers 1 and 2 rates, under 739.9(b), the rates charged to non-CARE residential customers for usage up to the baseline

---

advice letter is being suspended. Tier 3 advice letters are effective only upon the issuance of a resolution by the Commission approving them.

quantity, including any customer charge revenues, may not exceed 90% of the system-average rate. The utilities demonstrate that the rates they propose meet this requirement.<sup>10</sup>

While the increases in Tiers 1 and 2 rates that we authorize will result in higher rates for certain customers, such rate increases will be limited as provided in 739.9. Moreover, the intent behind the limited increases that are permitted is to bring the overall disparities among the various rate tiers into a more equitable relationship. These disparities have grown increasingly larger as a result of the cap that was placed on Tiers 1 and 2 rates beginning in 2001. Consequently, because of this cap, all rate increases applied to the residential customer class since 2001 have been borne exclusively by customers with usage in Tiers 3, 4, and 5. The cumulative effect of these rate increases applied exclusively to Tiers 3, 4, and 5 has produced a growing disparity in relation to Tiers 1 and 2.

**5.2. Should residential rates for electric usage in excess of 130% of base line decrease when Tiers 1 and 2 rates increase?**

PG&E, SCE, and SDG&E each propose to reduce their non-CARE Tiers 3, 4, and 5 rates by an annual amount that offsets the revenue increase from the Tiers 1 and 2 rate increases. Consistent with the Settlement Agreement on residential rate design in Phase 2 of its 2007 General Rate Case (GRC) (D.07-09-004), PG&E proposes that Tiers 3, 4, and 5 generation surcharges be reduced proportionately to ensure that residential revenue calculated at

---

<sup>10</sup> See the testimony of PG&E witness Breckenridge at p. 5; testimony of SCE witness Garwacki at p. 7; and testimony of SDG&E witness Davidson at pp. 4 and 5.

present rates is collected from the residential class with the rates being proposed. PG&E forecasts a net change of just \$877 (or 0.03%) in revenues from direct access customers as a result of the rate changes proposed in its application, with some customers experiencing increases and others, decreases, as a result of the Commission-approved rate design methodology which includes revisions to distribution and generation component rates.

As required by the Settlement Agreement approved in D.09-08-028, SCE proposes to maintain a 3.5 cent/kWh differential between the rates applicable to SCE Tiers 3, 4, and 5.

SDG&E's proposed offsetting reduction to Tiers 3 and 4, is likewise consistent with the currently authorized rate design methodology adopted in D.08-02-034 (SDG&E's GRC Phase 2) and D.09-09-036 (SDG&E's Rate Design Window).

UCAN protests SDG&E's intent to decrease Tiers 3 and 4 rates,<sup>11</sup> arguing that such a decrease contravenes the statutory requirements that rates be determined with observance of the principle that conservation is desirable. A similar issue applies to the proposals of PG&E and SCE. The joint applicants argue that UCAN's argument is misplaced and at odds with statutory requirements and Commission policies. The joint applicants argue that the cumulative effects of the rate cap since 2001 have resulted in very high electric retail bills for customers whose usage places them in the upper tiers. The proposed decreases in Tiers 3 and 4 rates would allow some movement toward rates that reflect the cost of providing service to residential customers. The joint

---

<sup>11</sup> SDG&E has a 4 tier rate structure, while PG&E and SCE have a 5 tier system.

applicants argue, however, that the proposed Tiers 3, 4, and 5 rate decreases would only begin to mitigate the inequities between lower and higher-usage rate tiers that have developed since 2001.

We conclude that offsetting the Tiers 1 and 2 increase with corresponding decreases to Tiers 3, 4, and 5 is reasonable and consistent with the statutory provisions of § 739.9. Accordingly, we find UCAN's protest is unjustified in objecting to such treatment. As stated in § 739(d)(1), although the Commission is required to provide for baseline rates that apply to the lowest usage block of an increasing block rate structure, the Commission "shall avoid excessive rate increases for residential customers, and shall establish an *appropriate gradual differential* between the rates for the respective blocks of usage" (emphasis added).

We conclude that rate adjustments made pursuant to § 739.7 and § 739.9 do not contravene any Commission policy or statute in favor of encouraging energy conservation. Customers who consume electricity in Tiers 3, 4, and 5 currently pay a higher per-unit rate for usage in those tiers in comparison to Tiers 1 and 2. After the approved rate increases in Tiers 1 and 2 are implemented, those rate tiers will still be significantly lower than Tiers 3, 4, and 5. Accordingly, customers with electricity usage limited to Tiers 1 and 2 will continue to pay a lower per-unit rate relative to the Tiers 3, 4, and 5 per -unit rates after the proposed rate adjustments are implemented.

If the increase in revenues resulting from raising the Tiers 1 and 2 rates were not used to reduce Tiers 3, 4, and 5, those revenue increases would otherwise flow through to other, *nonresidential* customers. Moreover, according to § 739.7, the most equitable allocation of the revenue increase is to

reduce Tiers 3, 4, and 5 tiers. In this manner, any revenue adjustments from the Tiers 1 and 2 rate change will be retained within the residential classes.

**5.3. Should the amount of authorized increase in Tiers 1 and 2 rates be 3% or 5%?**

UCAN argues that the increase proposed to be implemented on January 1, 2010, be limited to 3%, rather than the 5% proposed by the utilities. DRA and TURN do not contest the proposed 5% increase.

UCAN argues that § 739.9 calls for the annual CPI percentage change to be calculated using the same formula as was used to determine the annual Social Security COLA on January 1, 2008. SDG&E uses the December 2008 COLA as the basis for its calculations of the applicable Tiers 1 and 2 rate increase. This COLA measures changes from the third quarter of 2007 to the third quarter of 2008. UCAN argues that the COLA used by SDG&E is not the most recent figures available. UCAN believes that the COLA released on October 15, 2009, reflecting a 0% figure, provides a more accurate measure for determining the rate increase, and is more reflective of the current state of the economy. The COLA figure of 0% released by the Social Security Administration on October 15, 2009, measures changes covering the period from the third quarter of 2008 to the third quarter of 2009.

Based on the use of this revised COLA figure of 0%, UCAN argues that the applicable Tiers 1 and 2 rate increases should be at the low end of the applicable range (i.e., 3%), rather than at the high end (i.e., 5%). The applicants argue that UCAN's position is contrary to the intent of SB 695, and would create an unfair result for residential customers.

According to § 739.9, the annual percentage change in the CPI shall be calculated using "the same formula that was used to determine the annual Social

Security Cost of Living Adjustment on January 1, 2008.” That formula is based on the CPI for Urban Wage Earners and Clerical Workers (CPI-W). Furthermore, the allowable change in Tiers 1 and 2 rates is linked to “the annual percentage change in the CPI from the *prior year* plus 1% (emphasis added).

The applicants each use the Social Security COLA of 5.8% effective on January 1, 2009, as the base CPI measure for its proposed 2009 rate adjustment. This 5.8% COLA represents the change in the average CPI-W from the third quarter of 2007 to the third quarter of 2008. Applicants assert that it thus satisfies the requirement in § 739.9(a) that annual non-CARE Tiers 1 and 2 rate increases be based on the change in CPI for the previous year.

Based on a 5.8% COLA, the “CPI-plus-1%” formula in § 739.9 equals a 6.8% increase in Tiers 1 and 2 rates. Since this amount exceeds the 5% cap under § 739.9, each of the utilities proposes to increase Tiers 1 and 2 rates by exactly 5% effective January 1, 2010, the maximum adjustment permitted under § 739.9(a).

Applicants state in their joint reply to protests that by accepting TURN’s proposed condition on the timing of advice letters for future rate changes pursuant to SB 695, the utilities waived the opportunity to request any increase in the COLA for 2010. Applicants contend that if the Commission approves the utilities’ proposed advice letter process, as modified by TURN, the next proposed residential rate changes would be effective January 1, 2011, and would reflect the 2011 COLA, not the 2010 COLA.

Applicants argue that the legislative intent of SB 695 was for a 2009 increase in Tiers 1 and 2 rates, as evidenced by the legislature’s designation of the statute as “urgency,” and as immediately effective. By requesting to defer the implementation of the 2009 rate increase until January 1, 2010 due to

procedural and scheduling considerations, applicants assert that such deferral does not negate the legislative intent for a rate increase for 2009. Applicants thus contend that the use of the 2010 COLA, as proposed by UCAN, instead of the 2009 COLA, would nullify the legislative intent to implement immediate, sequential annual rate changes to mitigate the unfair rate differentials that currently exist.

Parties' dispute over the size of the CPI adjustment turns on the interpretation of what time period represents "the prior year" for measuring the CPI under the statute. Public Utilities Code Section 739.9 allows the Commission to increase Tiers 1 and 2 rates by the annual percentage change in the CPI from the "prior year" plus 1 percent, but not less than 3% and not more than 5%.

The utilities interpret the "prior year" to refer to the CPI change from the "from the third quarter of 2007 to the third quarter of 2008," even though the effective date of the proposed rate change is in January 2010. Since the resulting CPI change exceeds the 5% cap, the utilities derive a Tiers 1 and 2 rate increase of 5%.

The utilities' interpretation of the "prior year" is not consistent with the statute since it applies CPI figures reaching backward as early as part of 2007. Since the effective date of the rate adjustments is January 1, 2010, we conclude that the applicable CPI for the "prior year" is the percentage change from the third quarter of 2008 to the third quarter of 2009. This period correctly reflects the CPI change for the "prior year" preceding the effective date of the rate change on January 1, 2010. The use of any earlier measurement periods to derive the increase would conflict with the statutory formula for computing the allowed change in Tiers 1 and 2 rates based on the "prior-year" CPI change.

The utilities also argue that the Tiers 1 and 2 increase was supposed to go into effect immediately, because the statute was an urgency statute. Because the statute only authorizes, but does not require, an increase in rates for Tiers 1 and 2, even the urgency clause does not make any rate change effective immediately. It only happens when the Commission decides to grant a rate change. Thus, the urgency clause of the legislation does not justify using an earlier period for computing the “prior-year” CPI change based on figures dating back to the third quarter of 2007.

Since the CPI change from the third quarter of 2008 to the third quarter of 2009 was 0%, the applicable Tiers 1 and 2 increase under the statutory formula is the 3% floor. Accordingly, we approve a 3% increase for Tiers 1 and 2 rates, with a corresponding decrease to the remaining tiers by the same amount to achieve revenue neutrality.

A 3% increase in Tiers 1 and 2 rates is minor especially considering the difference in rates customers currently pay for usage below 130% of baseline and those rates for usage in Tiers 3 through 5. Further, as shown in table in the introduction to this decision, even the rates for Tiers 1 and 2 that PG&E proposes in this proceeding are only slightly higher than the comparable rates charged in 2001. The applicants have demonstrated that the rates they propose for electricity usage up to baseline quantities (i.e., Tier 1) do not exceed 90% of the system average rate, and thus comply with § 739.9(b). The 3% Tiers 1 and 2 increases that we authorize are thus compliant with §739.9(b). We therefore grant the applicants’ request to increase Tiers 1 and 2 rates effective on or after January 1, 2010 for non-CARE residential customers, but we limit the Tiers 1 and 2 increase to only 3%, instead of the 5% proposed by the applicants. We concurrently

authorize offsetting decreases to the higher-usage tiers by 3% in order to yield a revenue-neutral result for the overall residential class.

#### **5.4. No Change in CARE Residential Rates**

The utilities propose no increases to CARE residential Tiers 1 and 2 rates. We agree with this result. The Commission has authority under 739.1(b)(2) to increase CARE rate schedules for electricity usage up to 130% of baseline quantities by the annual increase in benefits provided under the CalWORKs program for the fiscal year in which the rate increase would take effect, but not to exceed 3% per year. The benefit amounts provided under the CalWORKs program are subject to an annual cost of living adjustment, effective July 1st of each year, as provided under Section 11453(a) of the Welfare and Institutions (W&I) Code. The cost-of-living adjustment for the CalWORKs program has been suspended for the 2009-2010 fiscal year as a result of the state's financial problems. (See Section 11453(c)(5) of the W&I Code).

As required by § 739.1(b)(4), the CARE Tier 3 rate will continue to receive a 20% discount from the non-CARE Tier 3 rate, excluding the DWR Bond Charge, CARE Surcharge, and any applicable California Solar Initiative charges or other exempt charges.

#### **5.5. Category and timing of advice letter for requesting future Tiers 1 and 2 rate changes.**

The utilities proposes to use Tier 1 advice letters as the vehicle to request future rate adjustments under the provisions of §§ 739.1 and 739.9. Advice letters are categorized as either Tiers 1, 2, or 3. Tier 1 advice letters are effective pending Energy Division disposition. Tier 2 advice letters are effective only after Energy Division approval. Tier 3 advice letters are effective only upon the issuance of a resolution by the Commission approving them.

General Order (GO) 96-B, Energy Industry Rule 5.1(3) states that a “change in rate....pursuant to an index or formula that the Commission has approved for use in an advice letter by the utility submitting the advice letter...” is a matter appropriate for a Tier 1 advice letter. The applicants argue that Tier 1 advice letters are an appropriate means of making future rate adjustments pursuant to SB 695, and consistent with the methodology presented in the applications.<sup>12</sup>

The Applicants argue that Energy Division would only need to determine as a technical matter whether the proposed future rate changes are within the scope of what the Commission has authorized, pursuant to GO 96-B, General Rule 3.5. Applicants argue that the Energy Division could extend the review period, or prepare a draft resolution for the Commission’s consideration in response to the advice letter filing, if deemed necessary.

DRA’s protest focuses on the future yearly advice letter filings proposed to be used for making subsequent rate adjustments pursuant to SB 695. DRA states that the utilities have separately described “modified tier 1” advice letters in discussions with DRA and TURN. DRA recommends that this issue be given serious consideration in this proceeding. DRA recommends that sufficient time be allowed for advice letter filings to be reviewed before rate changes are adopted by the Commission. At the same time, DRA also understands the utilities’ concerns that rate changes are not delayed unnecessarily. DRA thus recommends that the issue of which type of advice letter is used in future filings be fully examined in this proceeding.

---

<sup>12</sup> See Joint Reply to Protests at 4-5.

TURN does not oppose the use of advice letters for making annual rate changes under SB 695 provided that (a) the Commission retains discretion to deny requests for such increases, and (b) the utilities file such advice letters at least 45 days in advance of the intended implementation date.

The utilities agree to the conditions proposed by TURN with respect to the timing of the annual advice letters. They believe that this will provide sufficient opportunity for review of the advice letters before rate changes are implemented. The utilities argue that Tier 1 advice letters are an appropriate means of making future changes consistent with SB 695 so that the changes can be implemented without undue delay.

The Tier 1 advice letter designation is meant for routine or compliance-type filings where rates or changes have already been approved by a resolution or decision, and the utility is merely notifying the Commission that it is implementing the change. The change automatically goes into effect on the effective date, usually within 30 days of filing.

We conclude that for rate adjustments in compliance with SB 695, it is more appropriate for Tier 2 advice letter filings to be used. Energy Division would need to perform a careful review to ensure that the appropriate CPI increase is used to determine the rate increases for residential Tiers 1 and 2, and that decreases in the upper tiers offset the increases for the lower tiers so that the changes are revenue neutral for residential customers as whole. Energy Division review is also needed to ensure consistency among the three utilities. With a Tier 2 advice letter, the requested rate changes would take effect only after Energy Division indicates its approval. A formal resolution would not necessarily be required, however, to implement a Tier 2 advice letter.

An advice letter with improperly developed rates should not become effective pending disposition by the Energy Division, as would be the case with a Tier 1 advice letter. We note that § 739.9 establishes that the Commission may increase rates for Tiers 1 and 2 based on the CPI. The law does not require the Commission to do so. If protests on an advice letter proposing increased Tiers 1 and 2 rates are filed, the controversy should be resolved by the Energy Division or by Commission order if necessary before new rates take effect.

Given that the utilities agree to submit their advice letters by November 15th of each year, 45 days prior to an expected effective date of January 1, there should be sufficient time to address any protests, data requests, or issues that might arise during review of the advice letters. For automatic rate adjustments to go into effect, as would be true under a Tier 1 designation, the Commission should first have approved each year's specific rate changes. However, the rate changes will be different each year depending on the CPI. Additionally, it would set an improper precedent if Tier 1 advice letter filings were to be allowed for this type of rate adjustment filing. Therefore, we shall require a Tier 2 advice letter filing for future rate adjustments to implement provisions of SB 695.

## **6. Comments on the Proposed Decision**

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. In accordance with the schedule adopted in the Assigned Commissioner's Ruling dated November 18, 2009, one round of comments on the Proposed Decision was filed on December 14, 2009. No reply comments were scheduled.

The shortening of the review and comment period on the proposed decision was requested by each of the utilities, by motions dated October 14, 2009, in order to enable revised rates to take effect on an expedited basis on January 1, 2010. Pursuant to Rule 14.6(c)(9) the Commission may shorten the period for public review and comment on proposed decisions where the public interest in adopting a decision an earlier decision outweighs the public interest in having a full 30-day review and comment. Given the nature of SB 695 as urgency legislation, we find that such a shortening of the review and comment period for the proposed decision is warranted here. In accordance with the urgency clause of SB 695, the resulting rate changes can be implemented expeditiously on January 1, 2010, thereby beginning to rectify the rate disparities that have developed since the Tiers 1 and 2 rate cap was imposed in 2001. The review and comment period for the proposed decision was accordingly shortened, with only one concurrent round of opening comments, as incorporated in the schedule adopted in Assigned Commissioner's Ruling dated November 18, 2009.

## **7. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Thomas R. Pulsifer is the assigned ALJ for these consolidated applications.

### **Findings of Fact**

1. Residential electric rates are designed in a five tiered structure (four for SDG&E) based on customers electricity usage levels.
2. Among the tiers, the amount of electricity consumed is priced at increasing unit rates.

3. Since February 2001, retail utility electric residential rates for usage up to 130% of baseline quantities (Tiers 1 and 2) have, with one exception, remained capped under statutory restrictions.

4. Since the Tiers 1 and 2 rate cap began, all revenue increases assigned to the residential group have applied to usage in Rate Tiers 3, 4, and 5 (which account for only about 30% of total residential usage).

5. The Tiers 1 and 2 rate restrictions have resulted in an increasing disparity between rates paid by low-usage customers that fall only in Tiers 1 and 2 and rates paid by higher usage customers in Tiers 3, 4, and 5.

6. SB 695 amends Pub. Util. Code § 739.1, and adds § 739.9 to allow Tier 1 and Tier 2 rates to increase by specific percentages based on specific indices.

7. SB 695 was passed as an urgency measure immediately effective.

8. Pursuant to § 739.9, the Commission has the authority to grant increases in rates charged to non-CARE residential customers for electricity usage up to 130% of baseline quantities (Tiers 1 and 2) by the annual percentage change in the CPI from the prior year plus 1%, but not less than 3% or more than 5% per year.

9. Increases in Tiers 1 and 2 rates for the residential CARE program are authorized by SB 695 but linked to annual cost of living adjustments for the CalWORK's program; the increase in the COLA for the CalWORK's program is suspended for the 2009-2010 fiscal year.

10. This process for adjusting rates remains in effect until January 1, 2019, absent further legislative changes.

11. The utilities calculated the cost of living adjustment for purposes of the Tiers 1 and 2 rate increases by using the cost of living index effective on January 1, 2009, which amounts to 5.8%, and represents the index change from the third quarter of 2007 to the third quarter of 2008. Since the 5.8 index change

exceeds the maximum annual percentage rate increase under the statute, the utilities proposed a 5% increase to Tiers 1 and 2 rates.

12. The utilities' use of a 5.8% increase as the basis for the "prior-year" change in the CPI is based on a wrong interpretation of the "prior year" that is inconsistent with the statute since it applies CPI figures reaching backward as early as part of 2007.

13. Since the effective date of the proposed Tiers 1 and 2 rate adjustments is January 1, 2010, the applicable CPI for the "prior year" is the percentage change from the third quarter of 2008 to the third quarter of 2009. The use of any earlier measurement periods to derive the increase would conflict with the statutory formula for computing the change in Tiers 1 and 2 rates based on the "prior-year" CPI change.

14. The authorized rate adjustments will have no effect on the overall level of revenues collected by each of the utilities, although individual customers' bills will vary depending on the amount of electricity they use.

15. The three applicant utilities concur with TURN's proposal that future advice letters implementing Tiers 1 and 2 rate adjustments be filed at least 45 days before their proposed effective date.

16. Since SB 695 was enacted as urgency legislation, a shortening of the 30-day review and comment period for the proposed decision as set forth in the Assigned Commissioner's Ruling of November 18, 2009, is in the public interest. Pursuant to Rule 14.6(c)(9), this shortening of time is warranted to enable the approved rate changes to be implemented more expeditiously, thus beginning to rectify the rate disparities that have developed since the Tiers 1 and 2 rate cap was imposed in 2001.

### **Conclusions of Law**

1. This decision does not alter the fundamental relationship among residential usage tiers in which tiers reflecting higher usage incur higher unit rates.
2. This decision does not alter the presently adopted revenue requirement for the residential class of customers for each of the three applicant utilities.
3. The rate adjustments authorized are appropriate and consistent with the intent of SB 695.
4. The COLA appropriately used to calculate the rate adjustment for Tiers 1 and 2 within the range authorized by SB 695 supports only a 3% increase effective January 1, 2010. The applicants' 5% proposed increase is based on a wrong interpretation of the prior-year CPI change that applies and thus the 5% increase should not be adopted.
5. The rate adjustments authorized herein pursuant to § 739.7 or 739.9 do not contravene any statute or Commission policy in favor of encouraging energy conservation.
6. Offsetting Tiers 1 and 2 increases with commensurate decreases in Tiers 3, 4, and 5 is reasonable and consistent with the statutory provisions of § 739.9.
7. The adjustments adopted for PG&E, SCE, and SDG&E are consistent with the Tiers 3, 4, and 5 (except for SDG&E, which does not have a Tier 5) relationships established in their most recent rate design proceedings.
8. No increase should be authorized for Tiers 1 and 2 rates for CARE customers.
9. Advice letters to implement Tiers 1 and 2 rate adjustments should be filed as GO 96-B Tier 2 advice letters, to allow for careful review by the Energy

Division and to ensure that rates that become effective have been appropriately developed in accordance with the directives of this decision.

10. There is no need for evidentiary hearings.

11. Due to legislative intent manifested by SB 695 being an urgency measure and the public interest in having the proposed rate adjustments implemented as expeditiously as possible, it is reasonable to have a shortened comment period on this decision in accordance with Rule 14.6(c)(9).

12. SB 695 was adopted as an urgency measure.

## **O R D E R**

**IT IS ORDERED** that:

1. Pacific Gas and Electric Company is hereby authorized to increase its Tier 1 and Tier 2 rates by 3 % on all non-California Alternate Rates for Energy residential schedules, and to decrease the non-California Alternate Rates for Energy Tiers 3, 4, and 5 rates commensurately, and consistent with the Settlement Agreement on residential rate design adopted in D.07-09-004, to result in revenue-neutrality.

2. Pacific Gas and Electric Company is hereby authorized to incorporate the approved rate changes adopted in this decision into its late December 2009 update of the Annual Electric True-Up advice filing (Advice 3518-E) for rates effective January 1, 2010.

3. Southern California Edison Company is hereby authorized to increase its Tier 1 and Tier 2 rates by 3% on all non-California Alternate Rates for Energy residential schedules, and to decrease non-California Alternate Rates for Energy Tiers 3, 4, and 5 rates commensurately, to result in revenue neutrality. These rate changes shall occur in the first rate change that takes place in 2010. As required by the Settlement Agreement approved in D.09-08-028, SCE shall

maintain a 3.5 cent/kWh differential between the rates applicable to SCE Tiers 3, 4, and 5.

4. San Diego Gas & Electric Company is hereby authorized to increase its Tier 1 and Tier 2 rates by 3% on all non-California Alternate Rates for Energy residential schedules, and to decrease non-California Alternate Rates for Energy Tiers 3, 4, and 5 rates commensurately. These decreases shall be consistent with the currently authorized rate design methodology adopted in D.08-02-034 (San Diego Gas & Electric Company's General Rate Case Phase 2) and D.09-09-036 (San Diego Gas & Electric Company's Rate Design Window). San Diego Gas & Electric Company is authorized to include these rate changes in its annual consolidated advice letter filing to implement electric rates effective January 1, 2010.

5. Future annual filing to implement proposed changes in residential rates as authorized by Senate Bill 695 (Ch. 337, Stats. 2009) shall be by Tier 2 advice letter as set forth in General Order 96-B, filed no later than 45 days before the proposed effective date.

6. All future requests for residential rate changes pursuant to this decision shall apply the change in Consumer Price Index from the immediately prior year measured on a consistent basis with the approach applied in this decision for the rate changes to take effect on January 1, 2010.

7. The consolidated Applications (A.) 09-10-013, A.09-10-014, and A.09-10-015, respectively, are closed.

This order is effective immediately.

Dated December 17, 2009, in San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners