STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

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

FILED
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February 20, 2007

TO PARTIES OF RECORD IN APPLICATION 02-11-017 ET AL.

Investigation 03-01-012 was filed on January 16, 2003 and consolidated with Application 02-11-017 et al. and is assigned to Commissioner Peevey and Administrative Law Judge (ALJ) Yacknin. This is the decision of the Presiding Officer, ALJ Yacknin. I remind parties that this is an adjudicatory matter. Therefore, ex parte contacts are prohibited, pursuant to Pub. Util. Code Sec. 1701.2.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (See, generally, Rule 14.4 of the Commission's Rules of Practice and Procedure at www.cpuc.ca.gov.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:tcg

Attachment

Decision **PRESIDING OFFICER'S DECISION** **(Mailed 2/20/2007)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority, Among Other Things, To Increase Revenue Requirements for Electric and Gas Service and to Increase Rates and Charges for Gas Service Effective on January 1, 2003. (U 39 M)	Application 02-11-017 (Filed November 8, 2002)
Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Pacific Gas and Electric Company.	Investigation 03-01-012 (Filed January 16, 2003)
Application of Pacific Gas and Electric Company Pursuant to Resolution E-3770 for Reimbursement of Costs Associated with Delay in Implementation of PG&E's New Customer Information System Caused by the 2002 20/20 Customer Rebate Program. (U 39 E)	Application 02-09-005 (Filed September 6, 2002)

(See Appendix A for List of Appearances.)

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PRESIDING OFFICER'S DECISION

I. Summary

This decision finds that Pacific Gas and Electric Company (PG&E) systematically violated its tariff Rule 17.1 by issuing backbills related to periods of no bills and to estimated bills, where the cause for the estimation was within PG&E's control, beyond the time limits permitted under the tariff. We order PG&E to refund, at shareholder expense, approximately $23 million for illegal backbill charges. We further order PG&E to refund reconnection fees (with interest) and pay credits to certain customers whose service was shutoff for nonpayment of illegal backbills.

II. Background

In 1986, the Commission issued *In re Retroactive Billing* (D.86-06-035, 21 CPUC2d 270 (*Retroactive Billing Decision*)), which established procedures for retroactive billing by gas and electric utilities to correct alleged under-billings. These rules form the basis for the utilities' tariff rules relating to rendering of bills, meter testing and adjustments for meter and billing error, and adjustment of bills for unauthorized use. Among other things, the *Retroactive Billing Decision* found that "a three month limitation period for backbilling residential customers [for undercharges due to meter error or billing error] is sufficient in view of the utilities' assertion that they have procedures to detect billing and meter errors promptly." (*Id.*, 278.)

PG&E's Rule 9 governs the rendering of bills.[1] It provides that bills will be rendered at regular intervals, typically once a month. Rule 9 also provides that,

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[1] Unless otherwise indicated, all references to "Rules" are to PG&E's tariff rules.

if for reasons beyond the meter reading entity's control, the meter cannot be read, PG&E will bill the customer for estimated consumption. Rule 17.1 defines billing error and allows PG&E to adjust residential bills for undercharges due to billing error for a period of three months; for nonresidential customers adjustments may be made for a period of three years.

In 2003 and 2004 the Commission's Consumer Affairs Branch received a significant number of complaints from PG&E customers claiming that PG&E failed to bill them for actual gas or electric usage on a regular monthly basis as specified in Rule 9. In some cases PG&E failed to issue a bill for several months, and subsequently issued a single bill covering all the previous months not billed ("backbill"). In other cases PG&E estimated a customer's bill (including for reasons within PG&E's control) for several months and later rendered a backbill for undercharges associated with the difference between estimated usage and the actual usage during the months usage was estimated. In either event, PG&E failed to treat estimated bills or months of no bills ("delayed bills") as billing errors for purposes of Rule 17.1 and its limits on backbilling.

By letter to PG&E dated October 12, 2004, the Commission's Executive Director noted the numerous customer complaints related to delayed and estimated bills. The Executive Director stated that if PG&E is experiencing circumstances requiring it to estimate so many bills each month, it should proactively address the situation. The Executive Director requested that PG&E stop collecting overdue amounts from residential customers that dated back more than 90 days and referred to Rule 17.1.

In response to the Executive Director's letter, PG&E filed Advice Letter 2581-G/2568-E on October 15, 2004, proposing revisions to its gas and electric tariff to indicate, among other things, that billing error includes failure to issue a bill, but does not include the issuance of an estimated bill.

By Resolution G-3372 dated January 13, 2005, the Commission granted PG&E's proposal in part and denied it in part, finding that failure to issue a bill, as well as issuing an estimated bill due to circumstances within the utility's control, constitutes billing error "consistent with existing CPUC policy, tariffs, and requirements, including the requirements of D.86-06-035." (Resolution G-3372, Finding of Fact 10.)

In the interim, by Assigned Commissioner's Ruling dated February 25, 2005, the Commission undertook this investigation into PG&E's billing and collection practices as a second phase of Investigation (I.) 03-01-012, the companion to PG&E's Test Year 2003 general rate case. The Assigned Commissioner's Ruling, as confirmed by the May 26, 2005, Assigned Commissioner's Scoping Memo and Ruling, provided that the investigation would determine whether, pursuant to Sections 701, 734, and 1702 of the Public Utilities Code,[2] PG&E should be required to refund any amounts collected in violation of Rules 9 and 17.1 and/or be fined pursuant to Sections 2107 and 2108 for violations of the Commission's orders and rules. I.03-01-012 is an adjudicatory matter and ex parte contacts are prohibited, pursuant to Pub. Util. Code Sec. 1701.2.

It is no longer in dispute that PG&E's systematic practice of backbilling due to delayed bills and estimated bills beyond the time limits in Rule 17.1 violated Commission policy and orders and PG&E's tariffs. As the Commission

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[2] Unless otherwise specified, all other references to "Sections" are to the Public Utilities Code.

determined in Resolution G-3372 and affirmed on rehearing (*In re Pacific Gas and Electric Co.* (D.05-09-046) 2005 Cal. PUC LEXIS 467), delayed bills and estimated bills where the estimation is for reasons within PG&E's control are billing error for purposes of Rule 17.1 and its limits on backbilling.

Section 734 provides that the Commission "may order that the public utility make due reparation" when the Commission has found, after investigation, that the utility has charged an unreasonable, excessive, or discriminatory amount for any product or commodity provided by the utility or service performed by it, so long as no discrimination will result from the reparation. By its plain language, Section 734 is discretionary. Although PG&E has charged amounts in violation of Rule 17.1, we are not required to order refunds. (*See*, *e.g.*, *In re United Parcel Serv., Inc.* (D.94-11-066) 57 CPUC2d 357, 359.)

Thus, the remaining dispute is whether, given the particular facts and circumstances of this case, the Commission should order refunds of backbilled amounts and any other reparation; to whom and in what amounts; and how should they be funded. We also consider, as directed by the Assigned Commissioner's Scoping Memo and Ruling, whether any revenue undercollection resulting from the collection limits imposed by Rule 17.1 should be recovered from PG&E's ratepayers, and whether penalties are warranted.

III. Refunds

A. Are Refunds Warranted?

PG&E's charges for backbilled amounts due to delayed bills and estimated bills beyond the time limits in Rule 17.1 are, by definition, excessive. Absent sufficient countervailing reasons, we find that refunds are warranted.[3]

PG&E contends that refunds are not warranted because its backbilling practices did not harm the great majority of customers.[4] According to PG&E, customers are only harmed if they were made worse off economically than they would have been had the same bills been issued timely. We categorically reject PG&E's contention. Customer harm for an excessive charge is properly measured against what the charge would have been had the utility complied with its tariff. Pursuant to PG&E's tariffs, PG&E is not entitled to, and customers do not owe, backbilled amounts beyond the three month period provided for in the tariff.[5] Paying amounts that are not owed is without question harmful to customers. Although some customers suffered additional harm such as service termination, reconnection fees, and increased security deposits, PG&E's backbilling practices harmed all improperly backbilled customers.

PG&E argues that customers who receive the benefit of utility service for which they were charged are not harmed, even if the charges were unauthorized;

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[3] No party contends that refunds will result in discrimination.

[4] PG&E does not oppose partial refunds to low-income customers, proportional to the harm they sustained.

[5] Rule 17.1 provides a three-month limit on the backbilling of residential customers and a three-year limit on backbilling non-residential customers in the case of billing error. For simplicity, this decision generally refers to the three-month limit only; however, references to the three-month period generally encompass both time limits.

PG&E cites to *In re Cal. Water Service Co.* (D.04-07-033, 2004 Cal. PUC LEXIS 329) as support for this proposition. PG&E misapplies *Cal. Water Service* to the present case. That decision denied refunds to customers who were charged unapproved rates for service following the utility's unauthorized acquisition of the customers' service territories. In that case, however, the customers benefited from the improper charges in the form of lower rates and higher-quality service than they would have otherwise received; under those unusual circumstances, the Commission concluded that refunds were not warranted. In contrast, in the present case, customers were made worse off by PG&E's unauthorized charges than they would have been had PG&E abided by the tariff restrictions on backbilling.

PG&E asks that we decline to order refunds on the basis that customers were simply charged for the energy they consumed and thus received the benefit of the service for which they were charged. The Commission addressed the question of whether customers should pay for energy use that is backbilled beyond Rule 17.1 time limits when it adopted the rule, after carefully balancing "matters of law, fairness, and customer relations, […] particularly true in the case of meter error, where the customer may be unaware of the meter's malfunction and may be suddenly confronted with a large backbill" (*Retroactive Billing Decision, supra,**5-6) against the utilities' assertion that they have procedures to detect billing and meter errors promptly (id., *21-22). Pursuant to Rule 17.1, the answer is "no." PG&E essentially asks that we revisit the question, and reverse our answer, for purposes of evaluating whether to order refunds. We decline to do so. The considerations that led to our determination that customers should not be charged for energy use beyond Rule 17.1 backbilling time limits apply equally to a determination of whether customers should be refunded for such charges. Denying refunds of amounts charged in violation of Rule 17.1 backbilling time limits, on the basis that customers should pay for energy use even if it is backbilled beyond those time limits, would effectively negate the rule.

B. Who is Responsible for Funding Refunds?

PG&E maintains that paying refunds would strike the wrong balance between the individual customers and the general body of ratepayers who, according to PG&E, are responsible for funding any such refunds. PG&E's argument rests on the premise that ratepayers are responsible for the cost of any refunds, which we reject. Shareholders are responsible for funding any refunds for improperly backbilled amounts in violation of Rule 17.1. PG&E's ability to comply with its tariffs is entirely within its control; it is not the ratepayers' responsibility. Were we to assign ratepayers the responsibility for funding refunds that result from PG&E's tariff violations, the utility would have no incentive to strive for compliance.

PG&E argues that responsibility for funding refunds should correlate to responsibility for funding the undercollections that would have resulted had PG&E complied with Rule 17.1's backbilling limits. As specified in the Preliminary Statements of PG&E's tariffs, bill adjustments – including undercollections -- are reflected in PG&E's various balancing accounts and, ultimately, passed through to PG&E's customers. PG&E contends that, consistent with this treatment of amounts that never were billed because of Rule 17.1 time limits, any refunds for amounts that should not have been collected should likewise be reflected in PG&E's balancing accounts and, ultimately, collected from PG&E's customers.

We disagree. First of all, "[t]he purpose [of reparations] is to return funds to the victim which were unlawfully collected by the public utility." (*Re Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates* (D.98-12-075) 84 CPUC2d 155, 188 (*Affiliate Rulemaking Decision)*.) Its purpose is not necessarily to place the *utility* in the position *it* would have been in had it not charged the unlawful rate in the first place. Consider, for example, a car accident in which one driver negligently damages another driver's car, and is ordered to pay to repair the car: The purpose of ordering the negligent driver to pay for repairs is to make the victim whole, without regard to the fact that the negligent driver is made worse off than if the accident had never occurred.

Secondly, credits for bill adjustments within Rule 17.1 time limits are not the equivalent of refunds of charges in violation of the time limits. By providing a defined period in which billing errors must be collected, Rule 17.1 sets out very specific parameters for what constitutes acceptable billing error, as opposed to unacceptable charges. PG&E may recover or refund, as the case may be, for billing error within the three-month time limit; the collection of charges beyond that time limit is not acceptable.

Finally, the purpose of revenue balancing accounts is to shield utilities from financial risks that are beyond the utility's control. Even assuming that balancing account treatment is appropriate for uncollected amounts due to Rule 17.1's time limits,[6] the existence of balancing account protection for lawfully collected revenues does not entitle PG&E to balancing account protection for unlawfully collected revenues.

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[6] We address this assumption later in this decision, with respect to the issue of prospective ratemaking.

PG&E points to prior Commission decisions as supporting its position that refunds should be afforded balancing account treatment (*i.e.*, ratepayer funded) if the underlying rates in question were balancing account protected. Three of the cited decisions adopt settlements and therefore, pursuant to Rule 12.5 of our Rules of Practice and Procedure, are without precedential effect regarding any principle or issue.[7] The other decision to which PG&E cites, *Salz Leathers, Inc.* v. *Pacific Gas and Electric Co.* (D.91-08-009, 1991 Cal. PUC LEXIS 420), is not on point. The Commission ordered PG&E to refund certain amounts to the complainant (*id*.), and, on rehearing, ultimately ordered that shareholders fund the refunds consistent with PG&E's tariff (*Salz Leathers, Inc.* v. *Pacific Gas and Electric Co.* (D.95-06-010) 60 CPUC2d 254, 257). However, the Commission explicitly declined to find PG&E in violation of any contract, Commission order, or statute. (*Salz Leathers, supra,* 1991 Cal. PUC LEXIS 420, *13-14.) In contrast, the question before us in this proceeding is who should fund refunds in reparation for a tariff violation. *Salz Leathers* is not determinative of this issue.

We likewise reject PG&E's argument that this issue was previously considered in PG&E's 1999 and resolved in PG&E's favor. In that proceeding, the Commission's Office of Ratepayer Advocates (ORA) initially recommended ratemaking treatment for revenues relating to Rules 17 and 17.1 that would have the effect of placing PG&E's shareholders at risk for variations in these revenues, but withdrew its recommendation after further investigation and reflection. More specifically, as discussed in our decision in that proceeding, "[ORA] agreed

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[7] *Simpson Paper Co.* v. *Pacific Gas and Electric Co.* (D.95-08-023) 61 CPUC2d 58, *Miller Brewing Co*. v. *Southern California Gas Co.* (D.91-09-075) 41 CPUC2d 409; *California Cogeneration Council* v. *Southern California Gas Co.* (D.94-09-036) 56 CPUC2d 30.

that revenue adjustments associated with unbilled streetlights and other unmetered facilities, Rule 17 adjustments, and adjustments for revenues collected through PG&E's revenue assurance program should be reflected in Operating Revenues and not in Other Operating Revenues," and the Commission adopted estimates of Other Operating Revenues consistent with that agreement. (*In re Pacific Gas and Electric Company* (D.00-02-046) 2000 Cal. PUC LEXIS 239, *mimeo.* at 235.) The decision did not address the question of who is responsible for funding refunds for violations of the tariff, and so does not inform us here.

PG&E asserts that requiring shareholders to fund refunds, on the basis that it will deter future violations, is punitive. PG&E posits that the question of refunds should therefore be analyzed under the *Affiliate Rulemaking Decision,* which sets forth the Commission's guidelines for determining whether to impose a fine. We do not endorse PG&E's proposition. Certainly, responsibility for funding refunds creates an incentive to guard against the need for refunds. This does not lead us to the conclusion that utilities should only be responsible for funding refunds if they would likewise be liable for fines. Returning to our earlier analogy of the car accident, although responsibility for negligently-caused damages certainly serves as a deterrent against negligent driving, that fact does not transform damage awards into punitive fines, which are allowable only under a higher standard of law.

PG&E asserts that the Commission's characterization of the reimbursement in *CTC Food International, Inc.* v. *Pac. Gas and Elec. Co.* (D.92-10-004, 45 CPUC2d 660) as a "financial penalty" intended to "increase PG&E's incentive" to follow its procedures confirms that shareholder-funded refunds constitute penalties and should be analyzed under the penalty guidelines articulated in the *Affiliate Rulemaking Decision.* This is not the case.

Our use of the term "penalty" in *CTC Food International* predated the *Affiliate Rulemaking Decision*, where we undertook to clarify and define the difference between refunds and reparations, on the one hand, and fines and penalties on the other hand. As we explained in the *Affiliate Rulemaking Decision*,

> D.2.a. Reparations
>
> Reparations are not fines and conceptually should not be included in setting the amount of a fine. Reparations are refunds of excessive or discriminatory amounts collected by a public utility. […]
>
> D.2.b. Fines
>
> The purpose of a fine is to go beyond restitution to the victim and to effectively deter further violations by this perpetrator or others. For this reason, fines are paid to the State of California, rather than to victims. […] (*Affiliate Rulemaking Decision, supra,* 84 CPUC2d at 188.)

Notwithstanding its vernacular use of the word "penalty," the payment ordered in *CTC Food International* was reimbursement, not a "fine" as we clarified that term in the *Affiliate Rulemaking Decision*.

PG&E further argues that shareholders should not be responsible for funding refunds as matters of policy (*e.g.*, the violation was inadvertent and in good faith; it would be ineffectual as a deterrent measure, it would inappropriately punish PG&E for undertaking important customer service improvements, and it may affect the stability of PG&E earnings and increase the cost of capital) and law (*e.g.*, shareholder funding of refunds before January 1, 2004 is barred by PG&E's bankruptcy settlement). We address these arguments in the context of what refund amounts should be ordered. They do not support reassigning responsibility for funding refunds for tariff violations from shareholders to ratepayers.

For all these reasons, we conclude that shareholders are responsible for funding the required refunds. In order to achieve this result, we direct that PG&E not remove equivalent amounts of revenue from its balancing accounts when it pays the required refunds.

C. What Time Period Should be Used to Determine Refunds?

1. Statute of Limitations

PG&E's violation of Rule 17.1 constitutes a violation of Section 532, which provides, "[…N]o public utility shall charge, or receive a different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals, and charges applicable thereto as specified in its schedules on file and in effect at the time…." Section 736 states that "[a]ll complaints for damages resulting from the violation of any of the provisions of Section 494 or 532 shall either be filed with the commission, or, where concurrent jurisdiction of the cause of action is vested in the courts of this state, in any court of competent jurisdiction within three years from the time the cause of action accrues, and not after…." Accordingly, the allowable refund period begins February 25, 2002, which is three years prior to the Assigned Commissioner's Ruling. Based on PG&E's calculations, this results in refunds totaling approximately $23 million.

Toward Utility Rate Normalization (TURN) and the Commission's Consumer Protection and Safety Division (CPSD) argue that statutes of limitations do not apply to this case as it is a Commission-initiated investigation; CPSD and TURN cite to *In re Hillview Water Co.* (D.03-09-072) and *In re Conlin-Strawberry Water Co., Inc.* (D.05-07-010, 2005 Cal. PUC LEXIS 294) for this proposition. We conclude otherwise. Although *Hillview* properly determined that the statute of limitations did not bar enforcement in that case, that determination did not rest on a legal conclusion that Commission-initiated investigations are categorically exempt from statutes of limitation. *Hillview* concerned a tariff rule requiring the utility to refund advances it received under its main extension contracts within 40 years from the date of the contract. The Commission noted that the cause of action in that case, namely, the failure to provide refunds under the tariff rule, was continuing because the utility had yet to provide the required refunds. (*Hillview, supra,* D.03-09-072, *mimeo.* at 27.) In contrast, the causes of action in this proceeding – PG&E's unlawful charges – were concluded in the past.

TURN points to *Conlin-Strawberry*, where the Commission echoed Hillview's categorical rejection of the applicability of statutes of limitations to Commission-initiated investigations by stating, "An important distinction should be drawn these decisions (involving non-Commission parties) and an enforcement action brought by the Commission itself to enforce compliance with its own previous order or decision which, arguably, should not be restricted by such short limitation periods." (*Conlin-Strawberry, supra,* 2005 Cal. PUC LEXIS 294, *82.) The Commission nevertheless concluded that, consistent with precedent equating Commission-initiated proceedings with ratepayer complaints, Section 736's three-year statute of limitations period applies to reparation orders issued for violations of Section 532. (*Id*., *83.) We adhere to this line of decisions.

PG&E argues that Section 735's two-year limitations period applies to this case, rather than Section 736. PG&E notes that Section 736 and its three-year limitations period apply only to claims resulting from Section 494 or 532, while Section 735 and its two-year limitations period applies to all other claims. PG&E

argues that, because the Assigned Commissioner's Ruling provides that any refunds, if ordered would be pursuant to Section 701 or Section 734, as distinct from Sections 494 or 532, Section 735's two-year limitations period governs.

This argument confuses remedies with causes of action. Section 734 provides Commission authority to order reparations as a remedy for statutory violations; it does not establish a cause of action. The statutes of limitations (Sections 735 and 736) govern the allowable period from the time the cause of action accrues in which a complaint for damages must be filed. The cause of action in this case is PG&E's violation of Section 532; the three-year limitations period in Section 736 therefore applies.

TURN and CPSD assert that, if a statute of limitations does apply, it was tolled until customers had the ability to discover the violations. Specifically, TURN posits that the statute is tolled until PG&E itself realized that it was violating its tariffs, arguing that, until that time, customers would have been misinformed by PG&E and by the Commission's Consumer Affairs Branch that they did not have a cause of action. TURN therefore argues that the statute should be tolled until October 12, 2004, the date of the Executive Director's letter, for backbills following delayed bills, and until January 13, 2005, the date of Resolution G-3372, for backbills following estimated bills.

TURN and CPSD overstate the rule for tolling statutes of limitations. Their interpretation would lead to the anomalous result of tolling statutes of limitations until plaintiffs prevail in actions on their claims, which is the point at which they have actual knowledge that they have a valid claim. The statute begins to run when a plaintiff is aware of his or her injury and its negligent cause, not when the respondent concedes liability.

The statute may be tolled where "a customer's reasonable investigation of the sources open to them could not enable customers to determine that they had been injured." Thus, in *TURN* v. *Pacific Bell* (D.94-04-057, 54 CPUC2d 122), the statute was tolled for a cause of action for improper late charges resulting from the utility's failure to credit payments on the date that they were received, because the customer had no reasonable means of ascertaining that fact:

> As we explain in D.93-05-062, although late charges may have appeared on a customer's bill, this fact did not provide a customer with actual knowledge of any injury. A late charge was improper only if a payment was not credited on the date it was received, and the date of receipt was a fact within the exclusive knowledge of the defendant. Moreover, even if a customer who received a bill showing a late payment charge knew that "something was wrong," the customer had no basis for knowing the cause of the injury and whether such cause was negligent. Simply put, the late payment charge could have been caused by many factors, including delays in postal delivery. (*Id.,* 126.)

Similarly, in *Conlin-Strawberry*, although customers of the water utility were aware that they were being charged a loan repayment surcharge, they did not have reasonable sources available to them to ascertain that the water utility was using the money collected for unauthorized purposes; consequently, the Commission tolled the statute of limitations. (*Conlin-Strawberry, supra,* 2005 Cal. PUC LEXIS 294, *84.) Here, in contrast, customers had access to their bills showing the suspect charges, and to Rule 17.1, which prohibits them. The statute of limitations is not tolled under these circumstances.[8]

2. Pre-CorDaptix Data Limitations

PG&E implemented its new customer information system, CorDaptix, in December 2002. PG&E asserts that, as a matter of policy, the Commission should limit the refund period to December 2002 forward because of limitations in the pre-CorDaptix data. We find that the pre-CorDaptix data is sufficiently reliable for purposes of ordering refunds related to delayed bills. The pre-CorDaptix data is unreliable for purposes of identifying illegal charges related to estimated bills. We order PG&E to refund customers for illegal charges related to estimated bills in the pre-CorDaptix period only upon customer documentation of eligibility. [9]

With respect to refunds related to delayed bills, PG&E asserts that data limitations in the pre-CorDaptix system result in an inaccurate database of eligible customers. As evidence, PG&E cites to a footnote in the prepared testimony of witness Sharp conceding that a customer, who was not included in the database, should have been (and is now) included. The possibility that not

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[8] TURN further argues that PG&E should be estopped from asserting the statute of limitations because, if customers had contacted the Commission's Consumer Affairs Branch, they would have been told that the charges were legal. As PG&E notes, even as PG&E cannot assert estoppel based on Commission staff statements, because staff advice does not bind the Commission, neither can PG&E's customers assert estoppel against the statute of limitations on that basis.

[9] PG&E is directed to alert customers to this opportunity in its notice to customers, discussed below.

all eligible customers are included in PG&E's database is not justification for denying refunds to identified eligible customers.

The only further evidence we find on this subject is witness Sharp's additional testimony, in the same footnote, that, "[b]ecause of limitations in the [pre-CorDaptix] data and the absence of certain data, the [pre-CorDaptix] database is both underinclusive and overinclusive," making it "extremely difficult to obtain an accurate list of customers who may have received [illegal] delayed bills for service periods [....]" This statement is vague and conclusory. It does not support our conclusion that it would be unreasonable to rely on it for purposes of ordering refunds.

With respect to refunds related to estimated bills, pre-CorDaptix data limitations make it impossible to determine if refunds are due. Rule 17.1 time limits on backbills for estimated bills only apply when the cause of estimation is within PG&E's control. The pre-CorDaptix data does not include the reason for the estimation or whether it was caused by factors within PG&E's control. Thus, although it is feasible to calculate the amount that PG&E backbilled for estimated bills, the available data does not allow a determination of whether the backbills were illegal and should be refunded.

Recognizing this data limitation, TURN recommends that the Commission find, based on TURN's data for 2003 and for February through April 2005, that roughly 50% of estimated bills are due to reasons within PG&E's control. TURN suggests that the Commission order PG&E to refund 50% of total amount backbilled for estimated bills in excess of the time limits, either by crediting each affected customer in equal parts or in the amount of 50% of their particular backbills. PG&E challenges the reliability of the 50% factor, an d contends that this is a further reason for the Commission to refrain from ordering refunds for the pre-CorDaptix period.

While TURN's proposed methodology has theoretical merit, the data does not allow a reasonable estimate of PG&E's illegal charges. For example, the 50% proxy is derived from data for February through April 2005, but omits the month of January; if January were included, more than 80% of the estimates would have been found to have been caused by factors outside of PG&E's control. TURN's witness excluded January based on speculation that PG&E was less rigorous in listing reason codes in January – when the Commission issued Resolution G-3372, and PG&E automated the cancel-and-rebill function in CorDaptix – than after those events. This is not a compelling reason for excluding January from the 2005 data. TURN's witness relied more heavily on the 2003 data as substantiating the 50% factor. However, that data is also flawed: The data for 2003 was negatively affected by the absence of missed meter code information, because TURN treated the absence of missed meter codes as though the cause for the estimate was within PG&E's control.

TURN maintains that PG&E's data limitations should not prevail as an excuse to deny refunds to harmed customers, and points to *Hillview* where, notwithstanding the absence of an accurate list of aggrieved customers and refunds owed, the Commission took steps to allow customers the opportunity to obtain refunds. TURN does not suggest, and we have no basis to conclude, that the refund claim procedure adopted in *Hillview* is either appropriate or feasible in this case.[10]

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[10] The refunds at issue in *Hillview* related to fees charged to developers pursuant to main extension agreements with the utility, which were ultimately passed on to

Footnote continued on next page

3. Time Allowance for CorDaptix Stabilization

PG&E asks that the Commission shorten the refund period to December 2003 forward to allow a one-year grace period following the implementation of CorDaptix. PG&E contends that, because it usually takes one year after implementation for a utility to return to its pre-conversion performance metrics, and in light of PG&E's exemplary performance in implementing CorDaptix, denying this one-year grace period would punish PG&E for its successful improvement of its customer information system. We deny PG&E's request.

In essence, PG&E seeks an after-the-fact exemption from Rule 17.1's implicit requirement that it remedy all estimated and delayed bill problems within three months. This policy and rule has been in effect since 1989. PG&E's practice of backbilling beyond the tariff time limits was in place and well-established pre-CorDaptix and continued during its implementation and beyond.

We recognize that, notwithstanding PG&E's undisputed exemplary performance during the CorDaptix implementation, this undertaking unavoidably caused an increase in the number of delayed and estimated bills. However, the identified causes for this increase did not require delayed bills or estimated bills to persist beyond the tariff time limits. For example, while

individual lot purchasers. *Hillview* provided for customers to submit written claims for refunds of these fees, supported by proof of evidence of payment of the owed amounts; in the absence of proof of evidence, the customer was still eligible for the refund if he or she appeared on a list, jointly prepared by the utility and Commission staff, of potentially eligible customers, or provided a statement under penalty of perjury. Furthermore, the utility was entitled to deny the claims, and disputes would be resolved by formal complaint to the Commission. (*Hillview, supra,* D.03-09-072, *mimeo.* at 24-26.)

programming errors caused the rejection of thousands of valid meter reads, and thus the issuance of estimated bills, in December 2002 and January 2003, there is no apparent reason that a timely backbill could not have issued in February or March 2003 after the programming error had been corrected. Even in the case of data errors that went undetected for nearly a year, PG&E could have looked into correcting the problem on a timelier basis; indeed, the purpose of the tariff's time limits on backbilling is to give PG&E an incentive to do just that.

In sum, the implementation of CorDaptix did not cause PG&E to backbill for delayed and estimated bills in excess of Rule 17.1 time limits, and does not excuse PG&E from the responsibility of refunding those illegal charges.

D. Should Refunds be Waived to Avoid Adverse Financial Consequences?

PG&E contends that refunds will lead to more variable earnings, higher risk and potentially a higher cost of capital to be borne by customers. PG&E explains that, because shareholder funding of refunds would represent a retroactive departure from the balancing account treatment specified in its tariffs, the company would have to reassess whether it can rely on the balancing accounts to provide the authorized revenue. If it determines that it cannot, PG&E explains that will be obliged to report actual revenues on its financial statements, which will lead to these adverse financial consequences.

As we discussed previously, refunds for tariff violations are not the equivalent of bill adjustments that were properly made pursuant to tariff and are not entitled to balancing account treatment. PG&E may correctly conclude that it cannot rely on balancing accounts to guarantee it illegal revenues. We expect that financial communities recognize this and make their determinations based on their evaluation of PG&E's ability to act lawfully.

E. Does the PG&E Bankruptcy Settlement Bar Refunds Pre-December 31, 2003?

PG&E contends that the settlement of PG&E's bankruptcy proceeding, adopted in *Re Pacific Gas and Electric Company* (D.03-12-035, 2002 Cal. PUC LEXIS 1051), is an absolute bar to the Commission ordering refunds of electric revenues accrued prior to December 31, 2003. Paragraph 8a of the settlement provides:

> The Commission acknowledges and agrees that the Headroom, surcharge, and base revenues accrued or collected by PG&E through and including December 31, 2003 are property of PG&E's Chapter 11 estate, have been or will be used for utility purposes, including to pay creditors in the Chapter 11 Case, have been included in PG&E's Retail Electric Rates consistent with state and federal, and are not subject to refund. (*Id*., *266, App. C, para 8(a) (emphasis added).)

We do not interpret this settlement provision as barring refunds of illegally collected revenues, as to do so would constitute a suspension of our police power to protect PG&E's ratepayers from unreasonable and unjust rates. As we explained in our decision adopting the bankruptcy settlement,

> In light of the constitutional requirement that the Commission actively supervise and regulate public utility rates (*Sale* v. *Railroad Commission* (1940) 15 Cal. 2d 607 at 617) and the statutory requirements under the §§451, 454, 728 that the Commission ensure that the public utilities' rates are just and reasonable (*Camp Meeker Water System, Inc.* v. *Public Utilities Com*. (1990) 51 Cal. 3d 850 at 861-862), the Commission must retain its authority to set just and reasonable rates during the nine-year term of the settlement and thereafter.
>
> The regulation of utilities is one of the most important of the functions traditionally associated with the police power of the states." (Arkansas Electric Coop. v. Arkansas Pub. Serv. Comm'n (1983) 461 U.S. 375, 377.) This Commission's authority to regulate public utilities in the State of California is pursuant to the State's police power. (See, Motor Transit Company v.

> Railroad Commission of the State of California (1922) 189 Cal. 573, 581.) The California Supreme Court has held that "it is settled that the government may not contract away its right to exercise the police power in the future." (Avco Community Developers, Inc. v. South Coast Regional Com. (1976) 17 Cal. 3d 785, 800.)
>
> The Commission cannot be powerless to protect PG&E's ratepayers from unjust and unreasonable rates or practices during the nine-year term of the proposed settlement. "The police power being in its nature a *continuous* one, must ever be reposed somewhere, and cannot be barred or *suspended* by contract or irrepealable law. It cannot be bartered away even by express contract." (*Mott* v. *Cline* (1927) 200 Cal. 434, 446 (emphasis added).)
>
> (*Id.,* *42.)

Given that we retain the authority and obligation to ensure that PG&E's rates are just and reasonable, a more reasonable interpretation of Paragraph 8a is that it bars refunds of headroom, surcharge, and base revenues amounts that were collected in compliance with Commission orders. The amounts charged to customers in violation of Rule 17.1 time limits, whether before or after December 31, 2003, are excessive, and PG&E collected them in violation of Commission orders. The bankruptcy settlement does not bar us from exercising our police power to protect ratepayers from the excessive charges by ordering PG&E to refund the illegal charges.

F. How Should Refunds be Calculated?

We find that the proper methodology for calculating refunds excludes the current month's bill from Rule 17.1's three-month backbilling limit, and is limited to the amount of the undercharges.

CPSD interprets the three-month limit as prohibiting backbilling for service before the three billing periods (or 95 days) preceding the date of the backbill. Thus, for example, assuming that PG&E had issued estimated bills (or no bills) for April, May and June, a bill issued on July 31 could properly charge for service only for July, June, and May. PG&E characterizes the July 31 bill as a "current" bill for purposes of July, and interprets the three-month limit as applying to the number of allowable "backbilled" periods which, in our example, include April, May and June. CPSD contends that the Commission has never previously decided which of these interpretations is correct, and suggests that its interpretation is more in line with *Skinner* v. *Pacific Gas & Electric Co.* (D.94-07-050, 55 CPUC2d 408), where the Commission limited backbilling to a three-month period. PG&E contends that *Skinner* decided this issue in its favor, as it did not include the current month of the bill within the three-month backbill period.

Skinner does not control our determination here, as the decision does not explicitly address the specific question of how to determine the allowable backbilling period. We address it now as a matter of first impression. The more reasonable interpretation of the tariff excludes the current month from the allowable backbill period. Using our previous example, we expect that the error that caused PG&E to issue estimated bills (or no bills) for April, May and June was corrected if it was able to issue an accurate current bill for July. Assuming that backbills generally issue with an accurate current bill, CPSD's interpretation would, for practical purposes, limit backbilling to a two-month period of estimated or no bills. Under PG&E's interpretation, the allowable backbill period is a three-month period of estimated (or no) bills. The latter interpretation better reflects the tariff language's reference to a three-month backbilling period.

In its testimony, CPSD suggests that refunds should include all estimated billings beyond three months, not just illegally backbilled amounts. The effect of

CPSD's suggested methodology is to provide the consumer with free utility service, even if PG&E cannot correct a 50 cent billing error within three months, but serves no purpose with respect to protecting consumers from untimely bills. This suggested methodology is unduly draconian.

G. Should Refunds be Paid with Interest?

We decline to order interest on the refund amounts. Interest payments are generally appropriate in order to compensate customers for the time value of money. (*See, e.g., TURN* v. *Pacific Bell* (D.93-05-062) 49 CPUC2d 299, 314.) In this case, although they were illegally charged for it, customers received utility service for the amount of the backbills. Customers who receive refunds will thus have received the benefit of varying amounts of utility service at no cost. This benefit provides adequate compensation, in lieu of interest, to compensate customers for the time value of the illegal charges.

TURN acknowledges Rule 17.1's provision against interest payments on undercharges or overcharges, but argues that it does not apply to refunds for backbilling beyond the rule's time limits. TURN and CPSD also argue that PG&E "clearly erred" in misinterpreting Rule 17.1, and that this constitutes special circumstances that warrant deviation from Rule 17.1's provision against interest pursuant to *Zacky Farms, Inc.* v. *Pacific Gas and Electric Co.* (D.93-11-064, 52 CPUC2d 128). Because we decline to order interest on other grounds, we do not address these arguments.

In its reply brief, CPSD asserts that the cases it cited in its opening brief establish that the standard for imposing interest is whether the utility "clearly erred" or was "derelict in its duty." To the contrary, this standard was established in *Zacky Farms* as a justification for deviating from Rule 17.1's prohibition against interest payments on refunds or undercharges. It does not establish an independent test for determining whether interest should be paid.

H. How Should Eligible Customers be Identified?

PG&E recommends that refunds be limited to customers of record, plus customers identified through the publication of a refund notice in newspapers of general circulation within its service territory in accordance with the procedures used for newspaper notices of PG&E ratemaking applications. PG&E contends that this limitation is consistent with prior Commission-ordered refund plans and straightforward to administer.

TURN recommends that the Commission further require PG&E to make reasonable attempts to locate customers no longer with PG&E, for example by writing to the forwarding address and researching post office records for follow-up addresses, and by issuing press releases to publicize the refunds.[11] PG&E does not raise any specific objections to TURN's recommendation in its briefs and, as it appears reasonable and not unduly burdensome, we adopt it.

In its reply brief, CPSD recommends that the Commission require PG&E to use "standard locator techniques (such as putting names through the National Change of Address database)" and that, if PG&E cannot locate a current address, it should then send refund checks to the last known address. In the absence of a record citation allowing us to determine whether CPSD presented this recommendation in the record of the proceeding, it appears that PG&E has not had an opportunity to respond to it. We therefore reject CPSD's

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[11] This recommendation also appears in TURN's prepared testimony, as cited in TURN's brief.

recommendation that we direct PG&E to mail refunds to last known addresses if it cannot locate current addresses. Consistent with our direction that PG&E research post office records for follow-up addresses, we direct PG&E to use standard locator techniques in this effort. However, as we cannot conclude from this record what the National Change of Address data base is, whether PG&E can reasonably access it, or whether it qualifies as a standard locator technique, we allow PG&E the discretion to determine whether to use it in its efforts.

I. Should Unclaimed Refunds Escheat to the State?

We direct that any unclaimed refunds for illegal backbilling charges escheat to the State.

PG&E recognizes that, pursuant to Section 1519.5 of the Code of Civil Procedure (C.C.P.), unclaimed reparations generally escheat to the state. However, it cites to the *Affiliate Rulemaking Decision* for the proposition that the Commission has the discretion to direct otherwise. Specifically, the Commission stated, "Unclaimed reparations generally escheat to the state, unless equitable or other authority directs otherwise, e.g., Public Utilities Code § 394.9." (*Supra,* 84 CPUC2d at 182.) PG&E asserts that, given the overwhelming evidence of its reasonableness and good faith, there is no reason to provide a windfall to the state's general fund in the event certain customers cannot be located.

The Commission does not have blanket discretion to deviate from C.C.P. § 1519.5. C.C.P. § 1519.5 provides:

> Subject to Section 1510, any sums held by a business association that have been ordered to be refunded by a court or an administrative agency including, but not limited to, the Public Utilities Commission, which have remained unclaimed by the owner for more than one year after becoming payable in accordance with the final determination or order providing for

> the refund, whether or not the final determination or order requires any person entitled to a refund to make a claim for it, escheats to this state.
>
> It is the intent of the Legislature that the provisions of this section shall apply retroactively to all funds held by business associations on or after January 1, 1977, and which remain undistributed by the business association as of the effective date of this act.
>
> Further, it is the intent of the Legislature that nothing in this section shall be construed to change the authority of a court or administrative agency to order equitable remedies.

The statute is mandatory and includes the Commission within its jurisdiction. Unless another statute (*e.g.*, Section 394.9, which allows the Commission to use unclaimed refunds related to electric service providers for consumer protection efforts) or equitable authority requires the Commission to use the unclaimed refunds for another equitable remedy, they escheat to the state. C.C.P. § 1519.5 does not authorize the Commission to excuse the utility from paying the unclaimed refunds. They shall escheat to the state.

IV. Other Restitution

A. Reconnection Fees and Payments

The parties generally agree that certain customers whose service was shutoff for nonpayment within 75 to 150 days following the receipt of delayed or estimated bills covering service in excess of three months should receive a refund of reconnection fees and a credit of $100 (following delayed bills) or $50 (following estimated bills).[12] The remaining difference concerns which customers should be eligible for these remedies.

With respect to delayed bills, PG&E proposes to limit refunds to residential customers whose service was shutoff within 75 to 150 days following receipt of a backbill bill in excess of the tariff time limits, and who PG&E identifies as not having been eligible for shutoff at the time of issuance of the illegal backbill. TURN recommends that the default assumption be that the receipt of the illegal backbill caused any shutoff that followed within 75 to 150 days, and that PG&E have the burden of showing on an individual basis which customers had been eligible for shutoff before receiving the illegal backbill. Try as we may, we cannot discern an actual difference between these recommendations. We adopt PG&E's approach as it is more straightforward in its description.

With respect to estimated bills, PG&E similarly proposes to limit refunds to residential customers whose service was shutoff within 75 to 150 days following receipt of an illegal backbill and who PG&E identifies as not having been eligible for shutoff at the time of issuance of the illegal backbill. PG&E proposes, as an additional limitation, that refunds be limited to situations where the amount of the illegal backbill exceeded the customer's average monthly bill over the time period between the accurate meter reads used to determine the backbill amount. PG&E suggests that, in situations where the estimates were extremely accurate and did not involve significant true-up bills, there is no basis

[12] CPSD objects to arbitrarily limiting the refunds to $100 if the customer in fact paid more than $100. It appears that CPSD misunderstands PG&E's proposal, which is to refund the entire reconnection fee, and, in addition, pay a credit of either $100 or $50.

to assume that the illegal backbill contributed to the service shutoff. We agree in theory with PG&E's suggestion. However, we cannot find on the basis of this record that backbill amounts up to and including a customer's average monthly bill are insignificant or that they could not have contributed to a service shutoff. In the absence of any reasonable standard for determining a dividing line between significant and insignificant backbill amounts for this purpose, we reject PG&E's proposed additional limitation.

CPSD recommends that PG&E pay interest on the refunded reconnection fees.[13] We agree that interest payments on reconnection refunds are appropriate to compensate customers for the time value of money. We direct that refunds of reconnection fees include interest at the short-term commercial paper rate.[14]

In addition, consistent with our previous discussion regarding refunds of illegal backbill charges, unclaimed refunds of reconnection fees shall escheat to the State pursuant to C.C.P. § 1519.5.

B. Deposits Following Delayed or Estimated Bills

CPSD recommends that PG&E return deposits collected from those customers who were required to pay credit re-establishment deposits within 90 days of receipt of a delayed or estimated bill. PG&E states that CPSD's recommendation is moot. Only the most recent 12 months of a customer's credit history affect whether a customer is required to have a deposit with PG&E, and

[13] Although PG&E acknowledges this recommendation in its briefs, it does not state an objection to it.

[14] TURN recommends this interest rate in its opening brief. No party disputes the appropriate rate.

PG&E's policy has been not to issue delayed and estimated bills in excess of the tariff limits since January 2005 (estimated bills) or October 2004 (delayed bills). PG&E states that any customer deposits that it now holds should be unrelated to delayed or estimated bills in excess of the Rule 17.1 time limits.

In its reply brief and without citation to the record, CPSD asserts that PG&E informed staff that it still holds customer deposits required after the presentation of an illegal backbill. CPSD recommends that we direct PG&E to either return the deposits or provide evidence that it has done so. Because there is no record evidence that PG&E continues to hold deposits previously required after presentation of an illegal backbill, we do not adopt CPSD's recommendation.

C. Credit Scores

TURN recommends that the Commission order PG&E to "recall" any notification to credit agencies of unpaid closing bills associated with shutoffs following delayed or estimated bills in excess of tariff time limits. Although PG&E does not have control over the records maintained by credit agencies, it does not state an objection to providing them with the relevant information and requesting that they remove any reference to the nonpayment of the customer's closing bill from their records. We direct PG&E to do so.

D. Contribution to REACH Program

TURN recommends that the Commission encourage PG&E to contribute an additional $1 million to REACH (Relief for Energy Assistance through Community Help),[15] as an appropriate and meaningful gesture of PG&E's commitment to improved customer service going forward. While we certainly encourage PG&E to give generously under all circumstances to all worthy causes, TURN does not offer grounds to either order or formally encourage PG&E to make an incremental $1 million contribution to REACH.

V. Penalties

Under Section 2107, any utility that violates any order of the Commission is "subject to a penalty" and the statutory range of Commission penalties is from $500 from $20,000 for each offense. Each day of violation is considered a separate violation. (Section 2108.) The Commission, however, has broad discretion in administering this section of the code and, even while we hold utilities "subject" to a penalty, we may elect to suspend the whole or portion of a penalty or decline to impose a penalty altogether. (*Affiliate Rulemaking Decision.*)

CPSD recommends that Commission impose a $6.75 million fine on PG&E. We evaluate CPSD's recommendation under the criteria for considering penalties set forth in the *Affiliate Rulemaking Decision.*

A. Severity of the Offense

Pursuant to the *Affiliate Rulemaking Decision*, we consider whether there was physical harm; economic harm, either through costs imposed upon victims of the violation or unlawful benefits gained by the utility; or harm to the integrity of the regulatory process. The number of violations is a factor in determining the severity.

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[15] REACH is a program for low-income customers who cannot pay their PG&E bill due to financial hardship, and is funded through donations from PG&E shareholders, employees and customers.

1. Physical Harm

We find that, to the extent that customers had their service terminated as the result of nonpayment of illegal backbills, PG&E's conduct caused physical harm. As the United States Supreme Court stated, "Utility service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health and safety." (*Memphis Light, Gas & Water Division* v. *Craft* (1978) 436 U.S. 1, 18.) TURN estimates that up to roughly 3400 customers were affected in the CorDaptix period,[16] and it is reasonable to assume that additional customers were similarly affected before that time.

2. Economic Harm

The economic harm to victims includes, not only the amount of the charges in violation of the tariff rule, but also the costs of service shutoffs, reconnection fees, increased deposits, and damage to credit ratings as the result of the illegal backbills. PG&E maintains that there is no evidence demonstrating that a meaningful percentage of victims were economically harmed by having to pay for their energy usage at a later time. As discussed earlier, we reject this position. All customers who paid illegal charges were economically harmed and are due refunds. However, in evaluating the severity of harm for purposes of determining whether to impose a fine, we recognize the fact that customers who were illegally backbilled received the economic benefit of energy service for the amount of the illegal backbill.

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[16] This estimate includes roughly 2900 customers whose service terminations were related to delayed bills, plus 17% of that number (493) whose service terminations were related to estimated bills. TURN qualifies this estimate as overstated as it is based on an overly inclusive database.

In terms of economic harm as measured by unlawful benefits gained by the utility, although PG&E unlawfully benefited from the illegal charges, the undisputed record shows that PG&E did not believe that it would benefit from its conduct. Rather, PG&E believed that the uncollected amounts would flow through balancing accounts and ultimately be paid (for the most part) by other ratepayers.

3. Harm to the Regulatory Process

Although tariff violations are harmful to the integrity of the regulatory process, the Commission has found no such harm where a utility was following guidance from Commission staff. (*In re Metromedia Fiber Network Serv.* (D.04-04-068) 2004 Cal. PUC LEXIS 168.) Throughout the period of this investigation, PG&E received copies of letters from the Consumer Affairs Branch to customers, who complained about PG&E's practice of backbilling in excess of Rule 17.1 time limits, affirming PG&E's practices. There is ample evidence that PG&E's continued violations were made in reliance upon the knowledge that Commission staff was aware of PG&E's practice and did not object to it.

CPSD contends that PG&E cannot claim reliance on Commission staff guidance because *Skinner* (*supra,* 55 CPUC2d 408), provided clear direction on the proper interpretation of Rule 17.1. *Skinner* is not on point, as it involved an incorrect bill containing incorrect charges; it was not a delayed or estimated bill, which is the subject of this case. CPSD correctly contends that PG&E's reliance on Commission staff does not make its behavior lawful or correct. However, it is a mitigating factor in the consideration of whether to impose a penalty.

CPSD attempts to distinguish *Metromedia* from this case. First, CPSD points out that *Metromedia* was an application proceeding, while this case is an enforcement proceeding. CPSD offers no explanation of why this difference is meaningful, and our decision not to impose a penalty in *Metromedia* did not rely on the fact that it was an application proceeding. CPSD notes that, in *Metromedia*, the utility disclosed the scope of the proposed project to the Commission, as opposed to the Commission initiating its own investigation. However, there is no evidence in this case that PG&E concealed its conduct from the Commission. To the contrary, Commission staff regularly reviewed customer complaints on the substance of this case and issued letters affirming PG&E's conduct. CPSD's argument that *Metromedia* is distinguishable because the utility affirmatively sought Commission staff guidance in advance of its illegal action is unpersuasive, as the illegal action in *Metromedia* was necessarily a one-time event (failing to obtain an environmental review in advance of construction of a specific project) in contrast to the on-going billing practices of the utility and the corresponding on-going opportunities for Commission staff to review and advise against the illegal practices. CPSD argues that *Metromedia* is distinguishable because in that case the Commission itself, in issuing an order granting a Certificate of Public Necessity and Convenience for the project, had not directed the utility to obtain environmental review as a condition to the certification. This is a factual distinction, but it has no legal significance for purposes of determining whether PG&E received guidance from Commission staff affirming its practice.

4. Number and Scope of Violations

Under D.98-12-075, a single violation is less severe than multiple offenses. A widespread violation that affects a large number of customers is a more severe offense than one that is limited in scope. The violations in this case affected a very large number of customers. Over 157,000 residential customers received illegal backbills related to delayed bills in the period from January 2000 to April 2005, and roughly 73,000 residential customers received illegal backbills related to estimated bills for reasons within PG&E's control in the period from October 2001 through April 2005.[17]

B. Conduct of the Utility

The conduct of the utility is a factor in determining whether a penalty should be imposed. According to the *Affiliate Rulemaking Decision*, this factor recognizes the important role of the utility's conduct in preventing the violation, detecting the violation, and disclosing and rectifying the violation. It also takes into consideration the deterrent effect of a fine with respect to the financial resources of the utility and the unique facts of the case.

1. Preventing, Detecting and Rectifying the Violation

There is no evidence that PG&E knew that its billing violations were in fact violations or that it acted with the intent to violate the law. As discussed above, there is no evidence that PG&E concealed its conduct from the Commission.

The record demonstrates that PG&E was reasonably prompt in rectifying the violation. After Consumer Affairs Branch staff first expressed disagreement with PG&E's backbilling practices in May 2004, PG&E initiated a series of discussions with Commission staff to resolve the issue. Consumer

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[17] The data for the number of backbills in excess of three months related to estimated bills does not consistently identify whether the cause for estimation was within PG&E's control. Based on data for the period 2003, it appears that roughly 50% of estimated bills are for reasons within PG&E's control. Applying this 50% factor to the number of backbills in excess of three months related to estimated bills yields approximately 73,000.

Affairs Branch meanwhile continued to issue letters to customers affirming PG&E's interpretation of Rule 17.1. When the Commission's Executive Director sent PG&E a letter on October 12, 2004, identifying delayed bills as billing error, within days PG&E filed an advice letter proposing to modify Rule 17.1's language on this issue, changed its billing practices with respect to illegal backbilling related to delayed bills, and began to identify and issue refunds to customers who received illegal backbills related to delayed bills. When the Commission issued Resolution G-3372, stating that estimated bills are billing error where the cause for estimation was within PG&E's control, PG&E implemented measures to prevent backbilling related to estimated bills, and to identify and issue refunds to customers who received illegal backbills related to estimated bills.

2. Deterrent Effect

Under the *Affiliate Rulemaking Decision*, the Commission will adjust the amount of fines to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources. The refunds, chargeable to shareholders, that we order in this case provide an incentive for PG&E to strive for compliance with its tariffs. We consider if a fine is necessary to also deter PG&E from knowingly violating its tariffs. Here as in *Metromedia,* we recognize that, since PG&E did not know that it was violating its tariff, a fine would have no reasonable deterrent effect.

PG&E challenges, and CPSD defends, the amount of CPSD's recommended fine. Because we find mitigating circumstances that warrant elimination of any penalty, we do not reach the issue of the appropriate fine amount.

C. Precedent

Pursuant to the *Affiliate Rulemaking Decision*, we explicitly address previous decisions that involve reasonably comparable factual circumstances, and explain any substantial differences in outcome.

TURN v. *Pacific Bell* (*supra*, 49 CPUC2d 299), in which the Commission ordered a $15 million penalty in addition to $34 million in refunds of illegal late charges, shares some factual circumstances with the current case. *TURN* v. *Pacific Bell* involved the improper imposition of late payment fees and reconnection charges resulting from the utility's systematic delays in processing customer payments over a five-year period. Beyond these facts, the similarities end: Pacific Bell became aware very early on that it was improperly charging its customers, yet failed to correct the problem because it did not want to incur the associated costs. Even when it belatedly took steps to notify the public of its mistakes, Pacific Bell neglected to use ordinary diligence to correct statements which it knew to be misleading and incomplete. In addition, Pacific Bell's recent history included two cases of customer abuse in its marketing practices which resulted in Commission-ordered refunds of inappropriate charges and fines. These circumstances stand in stark contrast to the current case, where PG&E did not knowingly persist in an illegal practice, relied on Commission staff endorsement of its illegal practice, took timely and reasonable steps to correct and make reparations for it, and does not have a current history of customer abuse and illegal customer charges.

D. No Penalty Warranted

We have reviewed the exacerbating and mitigating facts and conclude that no penalty is warranted in this case. To summarize, the facts that exacerbate the wrongdoing are:

- Physical harm to roughly 3,400 customers due to termination of service;
- Economic harm of payment of illegal charges and related financial stress, offset by the value of energy service received; and
- Significant number of violations affecting between 200,000 and 250,000 residential households.

The facts that mitigate the wrongdoing are:

- Customers received the economic benefit of energy usage for which they were illegally charged;
- Commission staff affirmed PG&E's illegal practice in letters to customers closing customer complaints;
- Lack of intentional misconduct;
- Reasonable efforts to cease the violations and refund past illegal charges;
- No prior record of similar violations; and
- A penalty would produce no deterrence against knowing violations.

Due to the number of significant factors that contravene the imposition of a penalty, we exercise our discretion to decline to impose a penalty, and conclude that a fine is not warranted in this case.

VI. Prospective Remedies

A. Changes to Rule 9

Rule 9 provides that estimated usage, for the purpose of issuing an estimated bill, will be calculated considering the customer's prior usage and the general characteristics of the customer's operations. PG&E's estimation methodology is as follows: If it is available, PG&E uses the customer's average daily usage (ADU) from the prior year, same month multiplied by the number of days in the current billing period. If the prior year's ADU is not available, and the customer's current year, prior month's ADU is based on an actual read, PG&E uses the prior month's ADU at the same service point multiplied by a trend factor for the customer's area and the number of days in the current billing period. If no historical information is available, PG&E uses a trend table to calculate an estimate based on a number of factors including rate schedule, baseline territory, and billing month.

CPSD recommends that we amend Rule 9 to require calculation of estimated usage based on the customer's ADU from the same time in the prior year, multiplied by the number of days in the current billing period, even if the prior year's ADU was an estimated read. CPSD notes that using the prior year, same month's ADU shown on the customer's bill as the estimated usage, even if the ADU is itself an estimate, is straightforward and easy for the customer to understand. CPSD also notes that PG&E's alternative methodologies can result in a higher estimate than using the estimated prior year, same month ADU.[18]

We do not adopt CPSD's proposal. The record does not demonstrate that using a prior year's ADU that was based on an estimated read results in a better estimate than PG&E's alternative methodologies in the absence of historical information. To the contrary, the record suggests that PG&E's methodologies result in more accurate estimates. We are mindful that, as this case highlights, PG&E cannot collect undercharges on estimated bills beyond Rule 17.1 backbilling time limits. Under these circumstances, on balance we conclude that accuracy is more important than simplicity.

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[18] CPSD does not suggest, and the record does not demonstrate, that these higher estimates result in overcharges.

B. Ratemaking Treatment of Uncollectible Amounts

Pursuant to its tariffs, PG&E records amounts never billed because of Rule 17.1 time limits in its balancing accounts. Its balancing accounts serve to ensure that PG&E reaches, but does not exceed, its costs or authorized revenue requirements. Thus, the marginal decrease in the billed revenues for uncollectible amounts is passed on to other ratepayer at the next rate change.

TURN recommends prospective ratemaking treatment to place the financial risk of billing errors on the utility, as it is has the opportunity to detect and correct them. Specifically, TURN recommends that uncollectible amounts arising from the Rule 17.1 backbilling time limits be recorded simultaneously in PG&E's balancing accounts and as uncollectible by tariff, above and apart from a $250,000 threshold for uncollectible amounts associated with residential estimated bills; this threshold allowance recognizes that some small threshold level of estimated bills is unavoidable, even if within PG&E's control.

We reject TURN's recommended ratemaking treatment, without prejudice to the opportunity to reconsider it in PG&E's future general rate cases or, if PG&E's performance in minimizing billing error falters, in a complaint or investigation. We will require PG&E to report on its performance in this regard in its future general rate cases.

The record is insufficient to determine the cost of implementing TURN's recommendation. PG&E asserts that modifying the system to allow it to track undercollections from estimated bills into each of these accounts so that the $250,000 annual threshold could be recognized would be complicated and expensive and increase the potential for error. Although TURN counters, in its reply brief, that its proposal can be implemented with a simple one-time programming change to the company's billing and accounting systems to treat the $250,000 as an uncollectible adder, TURN does not cite to any record evidence for this suggestion.

In addition, the record suggests no pressing need to adopt ratemaking changes in order to encourage the utility to minimize billing error. PG&E's misinterpretation of billing error as excluding delayed and estimated bills presumably contributed to its failure to minimize those billing errors. Since our reaffirmation in Resolution G-3372 that delayed bills and estimated bills within the utility's control are billing error, PG&E has made significant progress in reducing these bills. Indeed, TURN bases its recommended $250,000 threshold for uncollectible amounts associated with residential estimated bills on PG&E's performance since we disabused it of its misinterpretation of Rule 17.1.

In weighing our interest in providing an incentive for PG&E to minimize billing error (*Retroactive Billing Decision, supra*, 21 CPUC2d at 274-275) against the absence of evidence that PG&E's performance has been unacceptable since the issuance of Resolution G-3372 and the inconclusiveness of evidence on the cost of implementing TURN's proposal, we conclude that TURN's proposal is not supported by the record. Nevertheless, in order to monitor PG&E's performance and progress in minimizing billing error, we direct PG&E to regularly report on its performance in this regard in its future general rate cases. Specifically, we require PG&E to report in its general rate cases on the number and amount of delayed bills and estimated bills, over time, that are uncollectible pursuant to Rule 17.1 time limits.

VII. South San Joaquin Irrigation District

The South San Joaquin Irrigation District (SSJID) asserts that PG&E violated Rule 9 by failing to regularly read meters at several of SSJID's wells in 2000 and 2001, issuing estimated bills associated with these wells without cause, issuing inaccurate estimated bills associated with these wells, issuing estimated bills from May 2005 through May 2006 for power usage at a new meter without cause, and issuing an inaccurate April 2006 true-up bill for usage at the new meter.[19] SSJID asserts that the evidence of these billing problems is further support for the Commission to issue the fines recommended by CPSD in this proceeding, and recommends that the Commission order PG&E to demonstrate the accuracy of the 2000 and 2001 estimated bills.

SSJID's assertions do not support the imposition of the fine recommended by CPSD in this proceeding. First of all, CPSD's recommended fine is in regard to PG&E's systematic violations of Rule 17.1 time limits on backbilling, not PG&E's alleged violations of Rules 9(a) and 9(c). Second, SSJID's bare assertions are not sufficient evidence to prove that PG&E's actions violated the tariff rules. Third, even if SSJID's assertions were supported by evidence, there is no showing that the circumstances meet the criteria for considering penalties set forth in D.98-12-075, which we discussed previously.

SSJID has not met its burden of proving that the estimated bills for 2000 and 2001 were inaccurate. SSJID testifies that "SSJID could not determine how PG&E arrived at the estimated numbers," but there is no evidence that PG&E did not use its standard estimation methodology. SSJID testifies that it "does not believe these estimates accurately reflected actual usage at the wells," but estimated bills are, by definition, based on estimated usage, and are subject to true-up based on actual meter reads. We do not require PG&E to "demonstrate the accuracy" of the estimated bills. However, we order PG&E to provide SSJID

[19] SSJID states that PG&E has recalculated this true-up amount and the issue has been resolved.

with the estimation calculations underlying the disputed 2000 and 2001 bills. Providing the underlying calculations for a bill is a reasonable response to a reasonable customer inquiry.

VIII. Assignment of Proceeding, Hearings and Submission

Michael R. Peevey is the Assigned Commissioner and Hallie Yacknin is the assigned ALJ and the presiding officer in this proceeding.[20]

Hearings were held from May 24 through 31, 2006. Opening briefs were filed on July 7, 2006; reply briefs were filed on July 28, 2006; and the proceeding was submitted upon the conclusion of oral argument on December 19, 2006.

Findings of Fact

1. PG&E systematically backbilled customers due to delayed bills and estimated bills where the cause for estimation was within PG&E's control for time periods beyond the time limits in Rule 17.1.

2. All customers who were improperly backbilled beyond the Rule 17.1 time limits were harmed by being charged and paying amounts that they did not owe.

3. Some customers suffered additional harm such as service termination, reconnection fees, and increased security deposits.

4. PG&E's ability to comply with its tariffs is within its control.

5. Absent shareholder responsibility for funding refunds due to tariff violations, the utility would have no incentive to strive for compliance.

[20] This proceeding was originally assigned to ALJ Julie Halligan. By notice of reassignment dated October 31, 2006, it was reassigned to ALJ Hallie Yacknin.

6. PG&E's tariffs provide for bill adjustments, including undercollections, to be reflected in balancing accounts and, ultimately, passed through to PG&E's customers.

7. Rule 17.1 defines what constitutes acceptable billing error, as opposed to unacceptable charges, by providing that PG&E may recover or refund, as the case may be, for billing error within the three-month time limit; the collection of charges beyond that time limit is not acceptable.

8. PG&E implemented its new customer information system, CorDaptix, in December 2002.

9. The pre-CorDaptix data is sufficiently reliable for purposes of ordering refunds related to delayed bills.

10. The pre-CorDaptix data does not permit the identification of estimated bills that were caused by factors within PG&E's control or, therefore, which backbills related to estimated bills were allowable under the tariff.

11. The available data does not permit a reliable estimate of the number of estimated bills that are due to reasons within PG&E's control, for purposes of providing refunds related to estimated bills in the pre-CorDaptix period.

12. The implementation of CorDaptix caused an increase in the number of delayed and estimated bills.

13. The errors resulting from the implementation of CorDaptix did not cause delayed bills or estimated bills to persist beyond the Rule 17.1 time limits.

14. Customers received utility service for the amount of the illegal backbill charges. Customers who receive refunds will thus have received the benefit of varying amounts of utility service at no cost.

15. Reasonable attempts to identify eligible customers who are no longer with PG&E include the publication of a refund notice in newspapers of general

circulation within its service territory in accordance with the procedures used for newspaper notices of PG&E ratemaking applications, writing to the forwarding address and researching post office records for follow-up addresses, and issuing press releases to publicize the refunds.

16. PG&E's proposal to limit refunds for reconnection fees and credits to residential customers whose service was shutoff within 75 to 150 days following receipt of an illegal backbill and who were not eligible for shutoff at the time of issuance of the illegal backbill is straightforward and reasonable.

17. There is no record basis for finding that illegal backbill amounts up to and including a customer's average monthly bill are insignificant or that they could not have contributed to a service shutoff.

18. Because only the most recent 12 months of a customer's credit history affect whether a customer is required to have a deposit with PG&E, and PG&E has ceased to issue delayed and estimated bills in excess of the tariff limits since January 2005 (estimated bills) or October 2004 (delayed bills), PG&E no longer holds any customer deposits related to its Rule 17.1 violations.

19. PG&E does not have control over the records maintained by credit agencies.

20. Up to roughly 3,400 customers after the implementation of CorDaptix, and an additional but unquantified number of customers before the implementation of CorDaptix, were physically harmed by having their service terminated as the result of nonpayment of illegal backbills.

21. Customers who paid illegal backbill charges were economically harmed by having to pay amounts that were not owed, but received the economic benefit of energy service for the amount of the illegal backbill.

22. Although PG&E unlawfully benefited from the illegal charges, PG&E did not believe that it would benefit from its conduct. Rather, PG&E believed that it would receive the same revenues regardless of its conduct because the uncollected amounts would flow through balancing accounts and ultimately be paid (for the most part) by other ratepayers.

23. PG&E's continued violations were made in reliance upon the knowledge that Commission staff was aware of PG&E's practice and did not object to it.

24. The violations in this case were widespread, affecting over 157,000 residential customers who received illegal backbills related to delayed bills in the period from January 2000 to April 2005, and roughly 73,000 residential customers received illegal backbills related to estimated bills in the period from October 2001 through April 2005.

25. There is no evidence that PG&E knew that its billing violations were violations or that it acted with the intent to violate the law.

26. There is no evidence that PG&E concealed its conduct from the Commission.

27. PG&E was reasonably prompt in rectifying the violation.

28. Since PG&E did not know that it was violating its tariff, a fine would have no reasonable deterrent effect against knowingly violating the tariff in the future.

29. PG&E's methodology for estimating energy usage is reasonable and results in relatively more accurate estimates than CPSD's proposed estimation methodology.

30. Pursuant to its tariffs, PG&E records amounts never billed because of Rule 17.1 time limits in its balancing accounts. Thus, the marginal decrease in the billed revenues for uncollectible amounts is passed on to other ratepayers in the next rate case decision.

31. Since the Commission reaffirmed in Resolution G-3372 that delayed bills and estimated bills within the utility's control are billing error, PG&E has made significant progress in reducing these bills.

32. TURN's recommended $250,000 threshold for uncollectible amounts associated with residential estimated bills reflects PG&E's actual performance since it corrected its illegal backbilling practices.

33. The record is inconclusive with respect to the cost of implementing TURN's proposal.

34. SSJID's assertions that PG&E violated Rule 9 by failing to take regular actual meter reads, issuing inaccurate estimated bills, and issuing an inaccurate true-up bill are unrelated to the Rule 17.1 violations which are the basis for CPSD's recommended penalty against PG&E.

35. SSJID does not meet its burden of showing that PG&E violated Rule 9.

36. SSJID makes no showing that the circumstances of PG&E's alleged violations of Rule 9 meet the criteria for considering penalties set forth in D.98-12-075.

37. It is reasonable for PG&E to provide the underlying calculations for the disputed SSJID estimated bills in 2000 and 2001.

Conclusions of Law

1. PG&E's charges for backbilled amounts due to estimated and delayed bills in excess of the time limits in Rule 17.1 are excessive.

2. Refunds are warranted.

3. Shareholders should be responsible for funding refunds.

4. The three-year statute of limitations in Section 736 of the Pub. Util. Code prevents refunds for periods before February 25, 2002, which is three years prior to the Assigned Commissioner's Ruling.

5. Refunds related to delayed bills should not be limited to the CorDaptix period.

6. Refunds related to estimated bills should be limited to the CorDaptix period.

7. The refund period should not be shortened to allow PG&E a one-year grace period following the implementation of CorDaptix.

8. Refunds should not be waived to avoid speculative adverse financial consequences that may result from informing the financial community that PG&E is liable for the consequences of its unlawful actions.

9. The PG&E bankruptcy settlement does not bar or suspend the Commission's power and authority to order refunds of illegally collected revenues.

10. Refunds of illegal backbill charges should be calculated by treating the current month, or month of the allowable backbill, as in addition to the allowable backbill period.

11. Refunds of illegal backbill charges related to estimated bills should be limited to the amount of the illegal backbills, and should not include the amounts of the estimated charges themselves.

12. Refunds of illegal backbill charges should not be paid with interest.

13. Refunds should be made to customers of record, customers identified through the publication of a refund notice in newspapers of general circulation within its service territory in accordance with the procedures used for newspaper notices of PG&E ratemaking applications, and customers no longer with PG&E who can be located through reasonable attempts, for example by writing to the forwarding address and researching post office records for follow-up addresses, and by issuing press releases to publicize the refunds.

14. Unclaimed refunds of illegal backbill charges should escheat to the State.

15. Residential customers whose service was shutoff for nonpayment within 75 to 150 days following the receipt of illegal backbills should receive a refund of reconnection fees and a credit of $100 (following delayed bills) or $50 (following estimated bills), if the customer was not eligible for shutoff at the time of issuance of the illegal backbill.

16. Refunds of reconnection fees should be paid with interest at the short term commercial paper rate.

17. Unclaimed refunds of reconnection fees should escheat to the State.

18. PG&E should inform credit agencies, to which it provided notice of nonpayment of a customer's closing bill related to illegal backbills, of its error in issuing the illegal backbill, and request that they remove any reference to the nonpayment of the customers closing bill from their records.

19. There is no legal basis for requiring or encouraging PG&E to make an incremental $1 million contribution to REACH (Relief for Energy Assistance through Community Help).

20. No penalty is warranted for PG&E's violations of Rule 17.1.

21. TURN's recommended prospective ratemaking treatment should be rejected, without prejudice to the opportunity to reconsider it in PG&E's future general rate cases or in a complaint or investigation if PG&E's performance in minimizing billing error falters.

22. PG&E should be required to report on its performance with respect to uncollectible amounts resulting from Rule 17.1 time limits in this regard in its general rate cases.

23. Rule 9 should not be changed to specify CPSD's recommended estimation methodology.

24. TURN's recommended prospective ratemaking treatment to place the financial risk of billing errors on the utility should be rejected without prejudice to the opportunity to reconsider it in PG&E's future general rate cases or in a complaint or investigation if PG&E's performance in minimizing billing error falters.

25. PG&E should report on its performance with respect to minimizing uncollectible amounts due to Rule 17.1 time limits in its general rate cases.

26. PG&E should provide SSJID with the estimation calculations underlying the disputed 2000 and 2001 estimated bills.

27. An order in this proceeding should be effective immediately.

28. These consolidated proceedings should be closed.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) shall refund customers for illegally backbilled amounts, for the period beginning February 25, 2002, related to delayed bills.

2. PG&E shall refund customers for illegally backbilled amounts, for the period beginning February 25, 2002, related to estimated bills, provided that, for refunds related to the period from February 25, 2002, through November 2002, the customer provides documentation of eligibility.

3. In order to ensure that refunds are not paid by other ratepayers, PG&E shall not remove equivalent amounts of revenue from its balancing accounts when it pays the required refunds.

4. PG&E shall calculate refunds of illegal backbill amounts by treating the current month, or month of the allowable backbill, as in addition to the allowable backbill period.

5. PG&E shall calculate refunds of illegal backbill amounts related to estimated bills by limiting them to the amount of the illegal backbills, and shall not include the estimated charges themselves.

6. PG&E shall refund reconnection fees with interest at the short term commercial paper rate, and pay a credit of $100 (following delayed bills) or $50 (following estimated bills), to residential customers whose service was shutoff for nonpayment within 75 to 150 days following the receipt of illegal backbills), if the customer was not eligible for shutoff at the time of issuance of the illegal backbill.

7. PG&E shall refund all eligible customers of record and all eligible customers identified through reasonable attempts to locate customers no longer with PG&E.

8. PG&E shall make reasonable attempts to locate customers no longer with PG&E by (1) publishing a refund notice in newspapers of general circulation within its service territory in accordance with the procedures used for newspaper notices of PG&E ratemaking applications; (2) writing to the forwarding address and researching post office records for follow-up addresses, and (3) issuing press releases to publicize the refunds.

9. All unclaimed refunds shall escheat to the State.

10. PG&E shall inform credit agencies, to which it provided notice of nonpayment of a customer's closing bill related to illegal backbills, of its error in issuing the illegal backbill, and request that they remove any reference to the nonpayment of the customer's closing bill from their records.

11. PG&E shall report on its performance with respect to minimizing uncollectible amounts due to Rule 17.1 time limits in its general rate cases.

12. PG&E shall provide SSJID with the estimation calculations underlying the disputed 2000 and 2001 estimated bills.

13. Application (A.) 02-11-017, Investigation 03-01-012 and A.02-09-005 are closed.

This order is effective today.

Dated ________________________, at San Francisco, California.

APPENDIX A

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Last Update on 20-DEC-2006 by: CPL
A0211017 LIST
A0209005/I0301012

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(END OF APPENDIX A)

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document, attached as Appendix A, is current as of today's date.

Dated February 20, 2007, at San Francisco, California.

/s/ TERESITA C. GALLARDO

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