



BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA

FILED

07-18-11
04:59 PM

Application of Pacific Gas and Electric Company to
Revise Its Electric Marginal Costs, Revenue
Allocation, and Rate Design Including Real Time
Pricing, to Revise its Customer Energy Statements,
and to Seek Recovery of Incremental Expenditures.
(U 39 M)

Application No. 10-03-014
(Filed March 22, 2010)

**RESPONSE OF THE UTILITY REFORM NETWORK
TO THE APPLICATION FOR REHEARING OF DECISION 11-05-047
BY PACIFIC GAS & ELECTRIC COMPANY, SOUTHERN CALIFORNIA EDISON
COMPANY, AND KERN COUNTY TAXPAYERS ASSOCIATION**



The Utility Reform Network
115 Sansome Street, 9th floor
San Francisco, CA 94104
415-929-8876 x304
matthew@turn.org
July 18, 2011

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Pursuant to Rule 16.1(d) of the Commission Rules of Practice and Procedure, The Utility Reform Network (TURN) hereby submits this response to the application for rehearing of Decision 11-05-047 (hereafter “the Decision”) filed by Pacific Gas & Electric (PG&E), Southern California Edison (SCE) and Kern County Taxpayers Association (*hereafter* “Joint Parties”). The Commission should deny this application because there is no showing of legal error in the adopted Decision.

I. THE COMMISSION PROPERLY INTERPRETED THE PLAIN MEANING OF §739.9(A) AND §739.1(B)(2)

The Joint Parties argue that the Decision fails to give effect to the ordinary meaning of the statutory language by ignoring the phrase “electricity usage”. According to the Joint Parties, there is no credible interpretation of this phrase that includes fixed customer charges.¹ The Joint Parties instead claim that limits on customer charges reside exclusively in §739.9(b) and cannot be understood to be included in any other reference to “rates” found in other provisions of SB 695.

The Joint Parties are wrong. In enacting SB 695, the legislature removed the absolute freeze on any increases to residential rates for usage up to 130 percent of baseline (enacted as part of ABx1) and replaced Water Code §80110(e) with the formulas in §739.9(a), §739.9(b), and §739.1(b)(2) in order to allow limited increases to non-CARE and CARE rates. The evidence demonstrates that the legislature believed that the enactment of SB 695 would limit total rate increases to no more than 5% per year for any customer using up to 130 percent of baseline.

¹ Joint Parties Application, pages 3-4.

The outcome sought by the Joint Parties is contrary to law because it would essentially nullify the impact of §739.9(a) by allowing the Commission to immediately approve a new or increased customer charge at the maximum level permitted under §739.9(b) and thereby provides no meaningful constraint on total rate increases for residential customers using up to 130 percent of baseline. The Joint Parties fail to explain why the Legislature would find it necessary to impose specific annual limitations on rate increases if those limits could be easily circumvented through the creation or expansion of fixed customer charges.

Moreover, the Joint Parties ignore the fact that the Legislature enacted SB 695 with full knowledge that the Commission has long held fixed charges to be part of the baseline rate. It is a “settled principle of statutory construction that a Legislature in legislating with regard to an industry or an activity must be regarded as having had in mind the actual conditions to which the act will apply; that is, the customs and usages of such industry or activity.”² Nothing in the language of §739.9(a) or (b) suggests any legislative intent to alter the long-standing Commission holding that a fixed customer charge is a component of the baseline rates charged for residential electricity usage.

This recognition can be found as early as 1979, when Decision 91107 stated that “[a]s the customer charge is an integral component of the lifeline charge, an increase in the customer charge is a disguised form of an increase in the lifeline rates.”³ In 1980, the Commission stated, that it “fail[ed] to see how doubling the customer charge produces an inexpensive lifeline rate – since the customer charge is part of the lifeline.”⁴ Decision 85-04-110, modifying Decision 84-12-066 in a Southern California

² *Wolski v. Fremont Investment & Loan*, 127 Cal.App.4th 347, 505 (Cal.Ct.App. 2005), quoting *Irvine Co. v. California Emp. Com.*, 27 Cal.2d 570, 165 P.2d 908 (Cal. 1946).

³ D.91107 at mimeo pages 143-144.

⁴ D.924974, CPUC 2d 725, 824 (1980).

Gas Company rate application, ordered that customer charge revenues be included in calculating the baseline rate (at 85% of the system average rate). That decision noted that despite the absence of any mention of a “customer charge” in Section 739 (or its predecessor), there had been a “long-standing practice” by the Commission to “include revenues from customer charges in calculation of lifeline rates.”⁵ Moreover, in a 1988 Order Modifying a Decision on realignment of the residential rate structure, the Commission stated that under Section 739, “revenues from any customer charge must, as a matter of law, be included in the baseline rate.”⁶ Applying this precept, the Commission found that the proposed customer charge would have violated the Section 739(c) mandate that residential rates be inverted.⁷

II. THE REFERENCE TO “CUSTOMER CHARGE REVENUES” IN §739.9(B) DOES NOT REPEAL THE OBVIOUS MEANING OF “RATES” IN §739.9(A), §739.1(B)(2), OR §739.1(B)(4)

The Joint Parties assert that the words “including customer charge revenues” in §739.9(b) should be understood as controlling for purposes of interpreting the remaining provisions of SB 695.⁸ In short, they claim that the Commission cannot reasonably conclude that the “rates charged residential customers for electricity usage” in §739.9(a) includes fixed charges in light of the inclusion of “customer charge revenues” in §739.9(b).

The Joint Parties’ strained interpretation is contrary to the general principle of statutory construction that “[i]t is fundamental that ‘the language of a particular code section must be construed in light of and with reference to the language of other sections accompanying it and related to it with a view to harmonizing the several

⁵ D.85-04-110 (April 17, 1985, as amended May 1985) at *2.

⁶ D.89-01-055 at p. 1 (mimeo).

⁷ *Id.*

⁸ Application for rehearing, pages 8-9.

provisions and giving effect to all of them.”⁹ Under a reasonable application of this principle, §739.9(a) and (b) are assumed to work together to allow annual capped percentage increases for total charges associated with the first 130 percent of baseline usage (including any fixed charges) until the system average rate cap in §739.9(b) is reached, with subsequent increases tied to changes in the system average rate. This construction ensures that the Commission approves measured, but not dramatic, increases to the sum total of charges for this portion of residential use.

The Joint Parties seek to neuter the protections of §739.9(a) by claiming that there are no restrictions on increased or new customer charges that could immediately bring the composite Tier 1 rate up to the maximum level allowed by §739.9(b). This interpretation would completely negate the limitation on the magnitude of *annual* increases included in Section 739.9(a) and render that provision meaningless.

The Legislative Counsel Bureau issued an opinion that confirms the legal conclusions adopted in the Decision.¹⁰ Legislative Counsel explained that under traditional rules of statutory interpretation, the term “include” or “including” are “words of enlargement and not of limitation.”¹¹ Furthermore, Legislative Counsel explains that the phrase in dispute “including customer charge revenues” in §739.9(b) modifies the term “baseline quantities” and not the term “rates.” Legislative Counsel observes that the Legislature intended to include “customer charge revenues” as part of baseline rates for “purposes of computing the ratio between baseline rates and the

⁹ *Walker v. Superior Court* (1988) 47 Cal.3d 112, 131 (quoted by *California Correctional Peace Officers’ Ass’n v. State of California* (Ct. App. Oct. 29, 2010, Case No. A126080, certified for publication) (internal quotation marks omitted)); see also *Smith v. Rhea* (1977) 72 Cal.App.3d 361, 366 (“a specific provision should be construed with reference to the entire statutory system of which it is a part”)

¹⁰ See Ex. 13, Attachment A. The Legislative Counsel Bureau serves as the attorneys for the California Legislature.

¹¹ Ex. 13, Attachment A, page 9 (citing *Hassan v. Mercy American River Hosp.* (2003) 31 Cal.4th 709, 717; *People v. Arnold* (2006) 145 Cal.App.4th 1408, 1414; *In re marriage of Angoco & San Nicholas* (1994) 27 Cal.App.4th 1527, 1534).

system average rate.”¹² After a comprehensive review of these provisions, Legislative Counsel concludes that

We have found nothing to indicate that incorporation of the phrase “including customer charge revenues” in subdivision (b) of Section 739.9 demonstrates a legislative intent that a fixed customer charge would be excluded from the rate increase limitations of subdivision (b) of Section 739.1 or subdivision (a) of Section 739.9. Rather, a review of the legislative history of SB 695 indicates a legislative intent to restrict rate increase limitations to an annual narrow range, thus controlling the increase within relatively small parameters in order to minimize spikes in electricity rates and provide relative stability and predictability.¹³

The phrase “including any customer charge revenues” in §739.9(b) should not be read to change the obvious meaning of “rates” in §739.9(a), §739.1(b)(2) or §739.1(b)(4). As explained by Legislative Counsel,

In construing a statute, the ordinary rules of grammar must be applied unless they lead to an absurd result (*Busching v. Superior Court* (1974) 12 Cal.3d 44, 52). Here, the construction given to subdivision (b) of Section 739.9 by PG&E is contrary to the ordinary rules of grammar and, in our view, would lead to an absurd result. First, even if the phrase “including customer charge revenue” could be read as modifying the term “rates” in subdivision (b) of Section 739.9, the construction given to the statute by PG&E would be contrary to the well-established rule of statutory construction that the terms “includes” and “including” in statutes are words of enlargement and not limitation (*Hassan v. Mercy American River Hosp.* (2003) 31 Cal.4th 709, 717; *People v. Arnold* (2006) 145 Cal.App.4th 1408, 1414; *In re marriage of Angoco & San Nicolas* (1994) 27 Cal.App.4th 1527, 1534). Therefore, that subdivision (b) of Section 739.9 incorporates the phrase “including customer charge revenue” does not imply that the term “rates” does not include customer charge revenue in subdivision (b) of Section 739.1 or subdivision (a) of Section 739.9...We have found nothing to indicate that incorporation of the phrase “including customer charge revenue” in subdivision (b) of Section 739.9 demonstrates a legislative intent that a fixed customer charge would be

¹² Ex. 13, Attachment A, page 10.

¹³ Ex. 13, Attachment A, page 10.

excluded from the rate increase limitations of subdivision (b) of Section 739.1 or subdivision (a) of Section 739.9.¹⁴

Both TURN and the Decision agree with this analysis. It would be illogical for the Commission to conclude that the Legislature intended to redefine the historic meaning of “rates” throughout the Public Utilities Code merely by referencing customer charge revenues in §739.9(b). The Commission should rely on its traditional understanding of “rates” and the obvious legislative intent in considering the protections afforded by §739.9(a), §739.1(b)(2) and §739.1(b)(4).

III. THE COMMISSION HAS REPEATEDLY INTERPRETED A VIRTUALLY IDENTICAL LIMITATION RESULTING FROM ABX1

The issue presented in this application is not new. The Commission has previously addressed the meaning of a virtually identical statutory limitation on residential customer rates. The Commission cannot reasonably grant the Application in light of a string of past decisions concluding that these virtually identical statutory limitations prohibited any increase in total rates charged to any residential customer using up to 130% of the baseline quantity.

There is no dispute that the structure of the residential rate limitations in SB 695 parallels the restrictions in ABx1. Reviewing the key language in both sections reveals the fundamental similarity in construction and phrasing:¹⁵

Water Code §80110(e) In no case shall the commission increase the electricity charges....for residential customers for existing baseline quantities or usage by those customers of up to 130 percent of existing baseline quantities...

¹⁴ Ex. 13, Legislative Counsel Memo regarding the rate increase limitations of Sections 739.1 and 739.9, pages 9-10.

¹⁵ Emphasis added by TURN

Public Utilities Code §739.9(a) The commission may, subject to the limitation in subdivision (b), increase the rates charged residential customers for electricity usage up to 130 percent of the baseline quantities...

The Joint Parties claim that these two limitations cannot be compared to each other because Water Code §80110(e) refers to limits on “existing baseline quantities or usage” rather than simply “usage”.¹⁶ The Joint Parties suggest that the limits on “existing baseline quantities” therefore “must mean something different” than the limits on “usage”.¹⁷ Despite this novel theory, the Joint Parties fail to provide a single Commission decision in which “existing baseline quantities” and “usage up to 130 percent of the baseline quantities” are treated as distinct limitations under §80110(e). Furthermore, the Joint Parties never even offer a theory as to what the restriction on “existing baseline quantities” actually means other than “something different”.

More importantly, the Joint Parties do not address the fact that repeated Commission decisions found that the rate limitations on “usage up to 130 percent of the baseline quantities” included all charges. Had there been a difference between the restrictions on “existing baseline quantities” and “usage up to 130 percent of the baseline quantities”, the Commission would have adopted different restrictions on rate increases associated with “existing baseline quantities” and “usage up to 130 percent of the baseline quantities”.

No such distinction can be found in a series of decisions adopted between 2001 and 2004 in which the Commission concluded that §80110(e) prohibited any bill increase for residential customers using up to 130 percent of baseline.¹⁸ The following quotes demonstrate the consistent approach to this issue:

¹⁶ Application for rehearing, page 4.

¹⁷ Application for rehearing, page 4.

¹⁸ See D.04-04-020 (denial of SDG&E application for rehearing of D.04-02-057), page 15 (“in every decision addressing the interpretation of Water Code section 80110, the Commission has asserted that

“We have consistently interpreted this AB1X restriction to provide protection for total charges for residential usage up to 130% of baseline for utilities subject to the provisions of Water Code section 80110....in every decision addressing the interpretation of Water Code section 80110, the Commission has asserted that total rates should not increase for residential use of up to 130% of baseline, even if subcomponents of rates increase.”
(Decision 04-04-020, pages 11-12, 15)

“What the Legislature has determined is that residential customers, to the extent that they do not use above 130% of baseline, should not experience a rate increase.”
(Decision 03-02-036, page 6)

“We find this statement to be unequivocal: the Legislature, for the life of the legislation, does not want residential customers to pay more money than they were paying on February 1, 2001 for the baseline quantity of electricity they were receiving on that date. Likewise, residential customers should not pay more than they were paying on February 1, 2001 for their usage of electricity of up to 130% of the baseline quantity they were receiving on that date.”
(Decision 02-04-026, pages 12-13)

“Residential customers whose usage is below 130% of baseline are now statutorily exempt from rate increases not in effect as of January 5, 2001.”
(Decision 01-03-082, Conclusion of Law #16)

This understanding has been explicitly acknowledged by PG&E in previous filings before this Commission. In R.01-05-047, PG&E noted that the bill protections in Water Code §80110(e) prevented the exclusion of seasonal residences from receiving a baseline allowance because:

total rates should not increase for residential use of up to 130% of baseline, even if subcomponents of rates increase); See also D.02-04-026, pages 12-13 (“We find this statement to be unequivocal: the Legislature, for the life of the legislation, does not want residential customers to pay more money than they were paying on February 1, 2001 for the baseline quantity of electricity they were receiving on that date. Likewise, residential customers should not pay more than they were paying on February 1, 2001 for their usage of electricity of up to 130% of the baseline quantity they were receiving on that date.”)

Notwithstanding all of the above, the most important point remains the incontrovertible fact that A.B. 1x-1, based on the Commission's interpretation of that provision in D.02-04-026 in Phase 1 of this Baseline OIR, prohibits any and all bill increases on usage below 130 percent of baseline. Absent new legislation, or a Commission reinterpretation, TURN's proposal, (as well as either of PG&E's alternate rate designs) would therefore be illegal, because they would increase bills to seasonal residences on their usage below 130 percent of baseline.¹⁹

In admitting that the ABx1 limits on "electricity charges...[for] usage" prohibit any increase in bills, PG&E explicitly acknowledged that the Commission interpreted the statutory scheme to prohibit any increase in rates whether volumetric or fixed.

There is no material difference between the §80110(e) restrictions on "electricity charges...for usage by those customers of up to 130 percent of existing quantities" and the §739.9(a) limits on "rates charged residential customers for electricity usage up to 130 percent of the baseline quantities". Since the Commission repeatedly held that §80110(e) prevents any rate increases for customers using up to 130 percent of baseline, it would be illogical for the Commission to reach an opposite conclusion with respect to the limits in §739.9(a).

IV. THE DECISION PROPERLY INTERPRETS THE INTENT OF THE LEGISLATURE IN ENACTING SB 695

The Joint Parties assert that there is nothing in the legislative history that demonstrates any intent to restrict fixed charges beyond the limitations contained in §739.9(b). In the absence of an "express statement" demonstrating such intent, the Joint Parties claim that the Commission may not reasonably conclude that the Legislature intended for the limitations in §739.9(a), §739.1(b) to place any

¹⁹ PG&E opening brief on Phase 2 issues, R.01-05-047, October 16, 2002, page 59. [emphasis added]

restrictions on fixed charges.²⁰

Once again, the Joint Parties are wrong. There is abundant evidence that the legislature expected SB 695 to replace the absolute freeze in ABx1 with a limitation that capped total residential rate increases at no more than 5% per year for any non-CARE customer using up to 130 percent of the baseline quantity. The Legislature made no distinction between the application of these limits to “fixed” and “variable” charges as suggested by the Joint Parties.

The analyses prepared by the Legislative Committees described SB 695 as limiting total rate increases for any customer using up to 130 percent of baseline.²¹ There is not a single instance of an analysis suggesting that fixed charges would be exempt from the limits of §739.9(a) and §739.1(b)(2). The following examples should illuminate this point:

“[SB 695] restricts rate increases charged to residential customers for electricity usage of up to 130% of the baseline quantities, by the annual percentage change in the Consumer Price Index plus 1%, but not less than 3% and not more than 5% per year....By restricting rate increases to an annual narrow range and controlling the increase within relatively small parameters, SB 695 is intended to minimize spikes in electricity rates and provide relative stability and predictability.”
(Assembly Committee on Appropriations Analysis, August 19, 2009, pages 2-4)

“This bill replaces the existing freeze on electricity rates with one index for most residential customers and a second index for low-income residential customers.”
(Senate Appropriate Committee Analysis, May 28, 2009, page 1)

²⁰ Application for rehearing, pages 5-7.

²¹ Ex. 13, Legislative Counsel Memo regarding the rate increase limitations of Sections 739.1 and 739.9, page 10. (“It is appropriate to review the analyses or reports of a bill prepared by legislative committees to which the bill is assigned in determining the intent of the Legislature (*Preston v. State Bd. of Equalization* (2001) 25 Cal.4th 197, 216-218; *Calvillo-Silva v. Home Grocery* (1998) 19 Cal.4th 714, 722-723; *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th, 26, 45).”)

“Current law freezes the rates for investor-owned utility (IOU) residential electric usage up to 130% of baseline quantities until the California Department of Water Resources (CDWR) has recovered all its cost of supplying power. This bill replaces the freeze with two rate indexes, one for residential customers and a different index for low-income residential customers.”

(Senate Energy, Utilities and Communications Committee Analysis, April 21, 2009, page 1)

“This bill replaces the rate freeze with rate caps and indexes. For CARE (e.g. low-income) customers, the CPUC is authorized to raise rates for usage up to 130% of baseline quantities by the same percentage increase as the CalWORKs grant, but not more than 3% per year. These provision sunsets in 2019. In no event may the CARE rate exceed 80% of the non-CARE residential rate. For non-CARE residential customers, the bill authorizes the CPUC to raise rates for usage up to 130% of baseline by the rate of inflation, as measured by the CPI, plus 1%, but in no event less than 3% or more than 5%. These provision sunsets in 2019. A second limitation is that baseline rates may not exceed 90% of the system average rate until 2019, and then 92.5% thereafter. This section puts the CPUC in a bit of a bind in that it can choose to raise rates by 3% or to not raise rates at all, but it cannot raise rates any amount between 0% - 3%.”

(Senate Energy, Utilities and Communications Committee Analysis, April 21, 2009)

These analyses never contemplated the possibility that a utility could circumvent the percentage limits on non-CARE and CARE Tier 1 and 2 rates through the creation of new or increased fixed charges. A review of this history reveals the obvious fact that the legislature assumed it was enacting a statutory scheme with similar applicability to the provisions being replaced from ABx1. There is no indication that the Legislature intended to exclude fixed charges from the limits or to differentiate them from the tiered rates at issue in SB 695.

V. THE INTERPRETATION SOUGHT BY THE JOINT PARTIES WOULD ALLOW FAR HIGHER CUSTOMER CHARGES ON CARE CUSTOMERS, CONTRARY TO THE CLEAR INTENT OF SB 695

The interpretation of §739.9(a) sought by the Joint Parties would necessarily require the exclusion of fixed customer charges from the protections for CARE customers in both §739.1(b)(2) and §739.1(b)(4). These sections of SB 695 constrain CARE tier 1 and 2 increases as follows:

§739.1(b)(2) The commission may, subject to the limitation in paragraph (4), increase the rates in effect for CARE program participants for electricity usage up to 130 percent of baseline quantities by the annual percentage increase in benefits under the CalWORKs program as authorized by the Legislature for the fiscal year in which the rate increase would take effect, but not to exceed 3 percent per year.

§739.1(b)(4) Tier 1, tier 2, and tier 3 CARE rates shall not exceed 80 percent of the corresponding tier 1, tier 2, and tier 3 rates charged to residential customers not participating in the CARE program, excluding any Department of Water Resources bond charge imposed pursuant to Division 27 (commencing with Section 80000) of the Water Code, the CARE surcharge portion of the public goods charge, any charge imposed pursuant to the California Solar Initiative, and any charge imposed to fund any other program that exempts CARE participants from paying the charge.

If the Commission grants the Application for Rehearing and adopts the legal interpretation sought by the Joint Parties, §739.1(b)(2) would allow new and increased fixed charges for CARE customers so long as the combination of fixed and tiered CARE rates for electricity usage up to the baseline quantity do not exceed 90 percent of the overall utility system average rate. The only remaining constraint on CARE rates would be the §739.1(b)(4) requirement that CARE tier 1, 2 and 3 “usage” rates not exceed 80 percent of the corresponding non-CARE tier rates.

This outcome would effectively erase the SB 695 protections for CARE rates because there would be no requirement that fixed charges for CARE customers be limited to 80 percent of the fixed charges for non-CARE customers. The only limit on fixed charges for CARE customers would be the §739.9(b) requirement that the combination of the CARE Tier 1 rate and the fixed charge could not exceed 90% of

the PG&E system average rate. As TURN pointed out in briefs, this means that SB 695 would be held to allow far higher customer charges for CARE customers than non-CARE customers. Under PG&E's current rates, this reading would allow a customer charge of up to \$13.10 for PG&E CARE customers or an effective rate increase of 63% for usage up to the baseline quantity.²²

Neither the Legislature nor the supporters of SB 695 believed that the revisions to these statutory provisions would permit hugely disparate customer charges for CARE and non-CARE customers or could allow such dramatic increases to total CARE rates charged to customers using up to 130 percent of baseline. The fact that such an outcome is permissible under the legal interpretation offered by the Joint Parties demonstrates the absurdity of the analysis. There is no way for the Commission to adopt their preferred interpretation without also embracing the conclusion that the Legislature did not intend for the provisions of §739.1(b)(2) to provide meaningful rate protections to CARE customers.

VI. THE DECISION DOES NOT CONSTITUTE AN IMPLIED REPEAL OF §739(D)(3)

The Joint Parties suggest that the Decision “implicitly repealed Section 739(d)(3)” by concluding that fixed customer charges are included in rate limitations within §739.9(a) and §739.1(b)(2).²³ This claim was previously raised in briefs by PG&E and SCE asserting that §739(d)(3) authorizes customer charges and that any subsequently-enacted restrictions must explicitly refer to a “customer charge”.²⁴

These assertions are incorrect. The Decision does not impair or repeal §739(d)(3)

²² TURN explains this estimate and provides more information in its January 10, 2011 reply brief, pages 10-11.

²³ Application for rehearing, page 4, footnote 7.

²⁴ PG&E Opening Brief, page 24; SCE Brief, page 19.

because this section was intended to restrict, rather than enlarge, the Commission's authority. Originally enacted in April 2001, §739(d)(3) prevented a utility from adopting any new or increased customer charges prior to January 1, 2004. Despite this provision, the provisions of Water Code §80110 (enacted in January 2001 as part of ABx1) effectively prohibited any increase in fixed or variable charges for usage up to 130 percent of the baseline quantity from 2001 through 2009. The conflict between §739(d)(3) and Water Code §80110(e) is obvious – the Commission repeatedly concluded that §80110(e) prohibited any increase in electricity charges for usage up to 130% of baseline. As a consequence, any new or increased customer charge would have violated §80110(e) since the increase would cause some customers to receive higher charges for usage up to 130% of baseline. The Joint Parties fail to explain how the later-enacted §739(d)(3) authorized new or increased customer charges between 2001 and 2009 in light of the §80110(e) restrictions.

The limitation in §80110(e) was removed in SB 695 and replaced with similar restrictions in §739.9(a), §739.9(b), and §739.1(b)(2). As has been the case since 2001, the Commission's authority to adopt fixed customer charges is constrained by these sections. Contrary to the position taken by the Joint Parties, §739(d)(3) does not authorize customer charges that are inconsistent with the restrictions of SB 695. To reach such a conclusion, the Commission would have to effectively rewrite the newly enacted §739.9(a) and §739.1(b)(2) based on the assumption that the legislature intended §739(d)(3) to trump these sections. Were such an outcome reasonable, the Commission would have reached a different conclusion in its many decisions interpreting the restrictions required by Water Code §80110(e).

VII. NOTHING IN DECISION 09-12-048 IS CONTRARY TO THE LEGAL CONCLUSIONS REACHED IN D.11-05-047

The Joint Parties assert that the Commission has already interpreted the meaning of §739.9(a) in D.09-12-048 which permitted SCE, PG&E and SDG&E to increase non-CARE Tier 1 and 2 rates. Because no explicit limitations on fixed customer charges were articulated in that decision, the Joint Parties argue that there is no “long-standing precedent” being upheld in D.11-05-047.²⁵ Moreover, the Joint Parties assert that the Commission should have placed SCE on notice that it could have increased its existing customer charge by 3% rather than remaining silent on the issue.

The Commission should reject this argument. The Commission adopted no conclusions of law in D.09-12-048 contrary to the conclusions in D.11-05-047. The fact that SCE failed to request an increase to its customer charge at that time is of no consequence. Since none of the utilities sought a new or increased customer charge, the issue was not properly before the Commission. If an applicant does not make a request, it is hardly remarkable that the Commission fails to grant it.

Moreover, the Commission was not obligated to increase an existing customer charge under §739.9(a), which states that the Commission “may” increase such rates. There is no identified principle of law that would have required the Commission to identify, in approving the applications of the three major IOUs, the potential for another rate increase that had not occurred to the applicants. TURN was an active party in that proceeding and did not raise arguments about the customer charge because, since SCE failed to seek any increase, TURN assumed that there was no dispute that the limits of §739.9(a) obviously applied to a customer charge.

VIII. CONCLUSION

For the reasons outlined in this response, the Commission should deny the Application for Rehearing of D.11-05-047.

²⁵ Application for rehearing, page 14.

Respectfully submitted,

/s/ Matthew Freedman

MATTHEW FREEDMAN
The Utility Reform Network
115 Sansome Street, Suite 900
San Francisco, CA 94104
Phone: 415-929-8876 x304
matthew@turn.org

Dated: July 18, 2011