Decision **DECISION DIFFERENT OF COMMISSIONERS BOHN AND CHONG**

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)

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MODIFIED PRESIDING OFFICER'S DECISION

I. Summary

This decision finds that Pacific Gas and Electric Company (PG&E) systematically violated its tariff Rule 9A by failing to issue bills at regular intervals based on actual metering data. The decision also finds that PG&E violated its tariff Rule 17.1 by issuing backbills related to: 1) periods of no bills ("delayed bills) and 2) periods of 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 $35 million for these unauthorized 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. Factual Background

The essential chronology of facts is undisputed. Increases in PG&E's delayed and estimated bills beginning in 2000 have been associated with PG&E's customer information systems (CIS). The CIS is the primary computer system for creating customer accounts, tracking and managing customer data, calculating and printing bills, and performing hundreds of other core business functions.[1]

The increase in delayed bills in 2000 was attributable to an upgrade to PG&E's legacy CIS system (LCIS) in late 1999. Then in early December 2002 PG&E replaced the nearly 40-year old LCIS because it was outdated, inefficient, and no longer able to keep up with the complexity of the tasks required of it. PG&E's new system is called CorDaptix. As part of the initial CorDaptix roll-out

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[1] PG&E Opening Brief, pp. 19-20.

and as stabilization period, PG&E imposed a moratorium on certain credit and collection activities. Nonetheless customers began complaining about delayed bills in early 2002. And when this moratorium was lifted in May 2003 complaint levels increased. Initially the Commission's Consumer Affairs Branch (CAB) staff acquiesced in PG&E's interpretation that such delayed bills did not violate PG&E's tariffs,[2] but in early 2004 it began to question the correctness of these billing practices.[3] The Consumer Protection and Safety Division and our Executive Director then began to take the corrective steps that led to this investigation.

III. Procedural Background

In 1986, the Commission issued *In re Retroactive Billing* (D.86-06-035, 21 CPUC2d 270 (*Retroactive Billing Decision*)), a 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.[4] It provides that bills will be rendered at regular intervals, typically once a month. Rule 9 also provides that,

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[2] *See* Exh.34, pp. 4-3 to 4-6.

[3] *See* Exh 18, pp. 8 – 9.

[4] 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.

As noted above, 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 longer than a three-month period 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,[5] 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 Public Utilities Code section 1701.2. The period of the investigation is January 2000 to May 2005.

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

IV. Tariff Violations

In this investigation we have reviewed PG&E's billing obligations and activities under both Tariff Rule 9A and Tariff Rule 17.1.

Tariff Rule 9A provides:

> Bills for electric service will be rendered at regular intervals. All bills will be based on meter registration or actual usage data, except as provided in C and G below, or as may otherwise be provided in PG&E's tariffs.

PG&E's actions, outlined in the chronology of facts, violated Rule 9A's requirement to issue bills at regular intervals based on actual metering data. In Resolution G-3372, as modified by D.05-09-046, we determined that estimated or missing bills due to problems with PG&E's billing system constitutes "billing error" under Rules 9 and 17.1 and are not excused by Rule 9C.[6] We stated:

> In these instances the policy underlying Rule 17.1 would apply. Problems with the implementation of PG&E's new billing system should be treated as billing errors. These examples also are not circumstances in which PG&E may issue estimated bills indefinitely. . . . (Res. G-3372, p. 11.)

It is also undisputed that PG&E issued backbills to these customers that exceeded the limits imposed by Rule 17.1.

There is also substantial evidence that many of PG&E's billing problems were not a result of the change in the billing system, as PG&E contends. The

[6] Rule 9C provides, in relevant part: "Unless estimated bills result from inability to access and change the existing meter to the SmartMeterTM system, inaccessible roads, the customer, the customer's agent, other occupant, animal or physical condition of the property preventing access to PG&E's facilities on the customer's premises, other causes within control of the customer, or a natural or man-made disaster such as a fire,

Footnote continued on next page

testimony of South San Joaquin Irrigation District (SSJID) in this case documents a long-standing pattern of mismanagement and poor customer service relative to accurate billing and in response to related inquiries. For example, PG&E failed to read SSJID meters for months at a time, erroneously calculated the true-ups bills, and billed SSJID for pumps that had been shut down for the season. (Ex. 1, Testimony of Jeffery K. Shields). In one instance, PG&E failed to read a SSJID meter from May 2005 through March 2006, three years after the new billing system was installed. PG&E variously explained that it did not have a key to the meter (which was accessible via a master key in PG&E's possession), that it had an incorrect address for the meter (which PG&E itself had installed), and that PG&E was using contract or temporary meter readers. (Ex. 2, Rebuttal Testimony of Jeffery K. Shields, pp. 2-3.) These explanations are inadequate. In this decision, we will order PG&E to provide SSJID with the estimation calculations underlying disputed 2000 and 2001 bills. Providing the underlying calculations for a bill is the expected response to a reasonable customer inquiry. We limit the time period to 2000 and 2001 because PG&E and SSJID have resolved the billing dispute for 2005-2006.

CPSD also submitted evidence that showed that the billing errors were not solely caused by technical problems with the billing system. For example, PG&E billed a customer for the wrong meter from June 2003 through January 2004, even though the customer had made repeated calls to PG&E to correct the error, and had even given the correct meter number to the customer service representative over the telephone. PG&E backbilled the customer for the entire

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earthquake, flood, or severe storms, the issuance of estimated bills shall be considered "billing error" for the purposes of applying Rule 17.1."

period then erroneously disconnected service even though the customer had made payment arrangements for the illegal backbill. (CPSD Opening Brief, p. 26.)

Rule 17.A was instituted precisely to prevent this type of problem. In Decision 05-09-046, we held that Resolution G-3372 is "consistent with long-standing Commission policy" on backbilling as set forth in Decision 86-06-035 ((1986) 21 Cal P.U.C.2d, 270). Decision 86-06-035 established the three-month limit on backbills and in doing so, put the onus for issuing timely and accurate bills squarely on the utilities, stating, "*[w]e believe a three-month limitation period for backbilling residential customers is sufficient in view of the utilities' assertion that they have procedures to detect billing and meter errors promptly*." (Emphasis in original.) We noted that "[t]he meter after all, is owned, maintained, and, in most cases, read by the utility and the utility accordingly bears the responsibility for promptly detecting and repairing faulty meters." (pp. 2-3.)

The purpose of Rules 9 and 17.1 is two-fold. First, receiving accurate bills issued at regular intervals is a basic consumer right. Customers, particularly those with low or fixed monthly incomes, must have accurate monthly bills in order to properly budget their expenses. As explained by one customer who had not received a bill for twenty months,

> I live paycheck-to-paycheck, and I therefore carefully plan how I use my money. I explained that my electricity usage was based on what I was paying for in the next month's bill. In other words, if I knew that my bills were to be much higher, then I would have been especially determined to find ways to lower the bills, i.e., use less electricity. However, since PG&E had not billed me for almost two years, I had no way of knowing that the electricity bills were to be much higher.
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> (CPSD Opening Brief, p. 25.)

These concerns apply equally to estimated bills. Unless customers are given bills that are based on actual usage, their ability to budget and/or adjust their electricity usage in response to accurate price signals is hampered. In D.86-06-035 we found that, as a matter of "law, fairness, and customer relations" the utility must be responsible for properly functioning meters and accurate bills, stating "[t]his is particularly true in the case of meter error, where the customer may be unaware of the meter's malfunction and may suddenly be confronted with a large backbill." (pp. 2-3.)

The second goal of the three month backbilling limitation is to provide a strong incentive to PG&E to establish and maintain accurate billing systems. The timely collection of money actually owed is the cornerstone of a sound business, whether that business is a large chain store or a front porch lemonade stand. Undercollection, late collection and overcollection are costly and inefficient and neither the individual customer nor ratepayers as a whole should pay a penalty for the failure of a basic business function that is uniquely within the control of the utility.

This is not a situation where PG&E is charting a course in new territory with unproven technologies. In such a situation, it may be appropriate to spread the risks of such a venture if it would further an important policy goal. Here, PG&E has been providing meter reading and billing functions for over 100 years. This is not a new venture; it is the bread and butter of its business. While the replacement of its outdated Legacy system was an extremely complex and multifaceted undertaking, the fact that these billing problems persisted for as long as they did (including before and after the installation of the Cor-Daptix system) and affected so many customers, as well PG&E's failure to notify this Commission of the problems so that a more pro-active solution to implementation difficulties could be devised, is regrettable.

We cannot condone this pattern of mismanagement and disregard for Commission rules protecting consumer rights. Not only did PG&E cause substantial harm to thousands of customers over a period of five years, it did so notwithstanding the existence of tariff protections that were designed to prevent such harm. PG&E waited until *after* this Commission issued an order instituting investigation (OII) into its billing practices to file an advice letter seeking clarification of the applicability of Rule 17.1 to its repeated billing errors.

It is beyond 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 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. These tariff violations, which resulted in unauthorized customer charges of approximately $35 million over the period of this investigation, also implicate Public Utilities Code section 532 which provides:

> no 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.

Thus, the remaining issue to determine is the appropriate remedy to rectify these violations, consistent with this Commission's regulatory authority. The Assigned Commissioner's Ruling commencing this investigation specified that the Commission's review would consider a range of remedies pursuant to Public Utilities Code sections 701, 734, and 1702, including refunds and/or fines.[7] Under Public Utilities Code section 701, our regulatory authority is broad and wide-ranging. We may "supervise and regulate every public utility in the State and may do all things which are necessary and convenient in the exercise of such power and jurisdiction." In this instance, we act to right a wrong that has adversely affected many thousands of PG&E's customers over a prolonged period of time. Using section 701 as our guide, we will balance the need to find an adequate remedy for all affected customers against the evidence and argument PG&E presents seeking to limit or contain that remedy.

V. 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.[8]

PG&E contends that refunds are not warranted because its backbilling practices did not harm the great majority of customers.[9] 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

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[7] Assigned Commissioner's Ruling dated February 25, 2005, Ruling Paragraph 6.

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

[9] PG&E does not oppose partial refunds to CARE customers of 25% of the amounts billed in excess of three months, asserting that those customers were more likely to have been harmed. This percentage represents roughly the CARE discount on rates (20%) and would amount to roughly $50 for the average affected customer. 46 R.T. 4940.

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.[10] 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; 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

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[10] 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.

Footnote continued on next page

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

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For simplicity, this decision generally refers to the three-month limit only; however, references to the three-month period generally encompass both time limits.

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 management 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,[11] the existence of balancing account protection for lawfully collected revenues does not entitle PG&E to balancing account protection for unlawfully collected revenues.

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.[12] 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

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

[12] *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.

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 General Rate Case 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 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
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> 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. […]
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> D.2.b. Fines
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> 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

In determining the statute of limitations period, if any, applicable here, we must first understand the nature of the relief being considered. The Commission has determined that PG&E over-billed its customers when it backbilled them for more than the three month period allowed by its tariffs.

Rule 17.1 requires adjusted bills for undercharges to be "computed" by billing the customer for the amount of the undercharge for a period of three months. That Rule also defines "billing error" to include "an incorrect billing calculation." Nevertheless, PG&E repeatedly submitted adjusted bills covering a period of more than three months. Backbilling for more than three months amounts to "billing error," as it constitutes an "incorrect billing calculation" of the adjusted bill. (PG&E Tariff Rule 17.1.) These billing errors resulted in overcharges, in that PG&E customers were being charged amounts they did not owe. In assessing charges contrary to its tariff, PG&E also violated Public Utilities Code section 532.[13]

Some parties argue that the three year statute of limitations contained in Public Utilities Code section 736 applies here, while others contend that because this was a Commission-initiated investigation, no statute of limitations applies. Section 736 provides, in relevant part: "[a]ll complaints for damages resulting from the violation of any of the provisions of Sections 494 or 532 shall . . . be filed with the commission . . . within three years from the time the cause of action accrues, and not after." On its face, section 736 does not appear to be germane to the PG&E backbilling OII because section 736 only applies to complaints for damages filed with the Commission. Here, we initiated a broad investigation to determine if PG&E violated any rules and regulations regarding its billing and collection practices from 2000-2005.

[13] […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…"

There are two seemingly divergent lines of cases regarding whether Section 736 applies to a Commission-initiated investigation. *In re Hillview Water Co.*, D.03-09-072, p. 28 (*Hillview*), holds that Section 736 does not apply to Commission-initiated investigations. *In re Conlin-Strawberry*, D.05-07-010, pp. 53-54 (*Conlin-Strawberry)*, and *Ridgecrest Heights Water Co.*, 1978 Cal. PUC LEXIS 1459, *11-12 (1978) (*Ridgecrest)*, however, both state that it does.

In *Ridgecrest Heights Water Co.*, the Commission issued an OII to look into whether Ridgecrest had collected connection fees in violation of its tariff and whether it had violated prior Commission decisions. (D.89961, 84 CPUC 612 (1978), p. 613.) This Commission determined that section 736 and its three-year statute of limitations were applicable in this case. (*Id.*, pp. 616-617.) We disagree with the conclusion of *Ridgecrest*. We look to the plain language of section 736 and find that it is clearly not applicable to Commission investigations.

The Commission followed *Ridgecrest* in *Conlin-Strawberry*, although by tolling the statute of limitations, the Commission reached the same result as if it had determined that section 736 was inapplicable. In *Conlin-Strawberry*, the Commission issued an OII after years of reported customer service problems with the utility and allegations of financial irregularities and mismanagement. (*Conlin-Strawberry*, 2005 Cal. PUC LEXIS 294, pp. *5-13.)[14] In addressing whether section 736 applied,[15] the Commission recognized that "[a]n important

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[14] The Commission issued its OII after it had adjudicated a 1995 complaint (C.95-01-038) filed by Strawberry Property Owner's Association (Association) and after the Association had prepared, but not filed, a second complaint against the company in 2001.

[15] Although the Commission determined that Conlin-Strawberry had waived any statute of limitations defenses by failing to plead them soon after the Commission

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distinction should be drawn between these [complaint] 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 a short limitations period." (*Id.*, pp. *82-83.) Nevertheless, relying on *Ridgecrest*, and with little justification, the Commission held that section 736 applied to *Conlin-Strawberry*. However, *Conlin-Strawberry* also determined, in reliance on *Toward Utility Rate Normalization v. Pacific Bell*(1994) 54 CPUC 2d 122 (*Turn v. PacBell),*[16] that "the cause of action for reparations for illegally collected surcharges from 1983 forward did not accrue until October 16, 2003." (*Id.*, pp. *83-85.) Therefore, the applicability of section 736 and a three-year statute of limitations in *Conlin-Strawberry* did not limit the time period for affected ratepayers to obtain refunds for illegal charges.[17]

The Commission reached a different result in *Hillview* regarding section 736. In *Hillview*, the Commission initiated an investigation into a water

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issued the OII (it waited until its appeal of the Presiding Officer's decision) the Commission nevertheless addressed the substantive matter of whether section 736 and its three year statute of limitation applied to the case. (*Conlin-Strawberry*, 2005 Cal. PUC LEXIS 294, pp. *79-82.)

[16] In *TURN* v. *PacBell*, Turn filed a complaint against Pacific Bell alleging that Pacific Bell had unlawfully imposed late payment charges and disconnected customers between 1986 and 1991. In this case, the Commission found that section 736 applied, and that although "the cause of action accrued when consumers were improperly billed . . . the cause of action was delayed (or tolled) until ratepayers became aware of their injury and its negligent cause." (54 CPUC 2d 122, 1994 Cal. PUC LEXIS 313. p. *13.) *Turn* v. *PacBell* is inapplicable to the case at hand because *Turn* v. *PacBell was a complaint case*, while the case at hand is a Commission-initiated investigation.

[17] Practically-speaking, in *Conlin-Strawberry*, the scope of the investigation is what limited the time period for ratepayer refunds, not the statute of limitations.

company to determine whether it had violated the California Public Utilities Code and/or the Commission's Rules of Practice and Procedure. (*Hillview*, p. 4.)[18] In discussing whether section 736's three year statute of limitations applies to Commission-initiated investigation, the Commission determined that section 736 did not apply to this case because "[t]his proceeding is about a tariff violation committed by Hillview, not a claim for damages." (*Hillview*, p. 27.) The Commission further elaborated:

> we . . . conclude that Section 736 does not apply to this proceeding because this proceeding is not a complaint case filed by an aggrieved customer seeking damages from the company, but is an investigatory proceeding instituted by the Commission to determine whether or not the company has violated our rules and/or statutes. The Commission has separate rules and procedures for handling and processing complaint cases and OIIs."

(*Hillview*, p. 28.) We believe that our interpretation of section 736 in *Hillview* is more consistent with the clear language of the statute, state law and the purpose of a statute of limitations than *Ridgecrest* and *Conlin-Strawberry*.

Under California law, there is an assumption that statutes of limitations do not apply to administrative actions, such as this decision here, unless a law specifically imposes a statute of limitations. (3 Witkin Cal. Proc. Actions, § 405 (4th ed. 2006) (*citing Bold v. Board of Med. Examiners* (1933) 133 C.A. 23, 25, 23 P.2d 826; and see *Lam v. Bureau of Sec. & Investigative Services* (1995) 34

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[18] Customer complaints alerted the Commission's Water Division to irregularities with Hillview's regulatory compliance, and the Water Division requested the Commission's Consumer Services Division (since renamed CPSD) to pursue a formal enforcement action. (*Id.*)

C.A.4th 29, 37, 40 C.R.2d 137 [criminal statute of limitations not applicable to administrative proceedings]).) A determination that a statute of limitations does not apply to Commission investigations is also consistent with settled law regarding the purpose of a statute of limitations:

> "Statutes of limitations are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them."

(3 Witkin Cal. Proc. Actions, § 408 (4th ed. 2006) (*quoting* *Order of Railroad Telegraphers v. Railway Express Agency* (1944) 321 U.S. 342, 64 S.Ct. 582, 586, 88 L.Ed. 788, 792.) Thus, a finding that the statute of limitations does not apply to the case at hand is consistent with the rationale for a statute of limitations. A decision issued in this Commission investigation is designed to ensure that PG&E's rates, practices and service are reasonable and that violations of law that undermine that goal are properly remedied. Clearly the public interest is not served if the Commission, in a fact-finding investigation of a regulated public utility, must limit the relief it fashions to address violations of state law, as if it were an adversarial litigant.

In conclusion, we decline to apply a statute of limitations to contain the relief awarded in this investigation, and to the extent certain Commission decisions are inconsistent with our approach, we overrule them.[19] The reason is simple: this is not an individual adversarial dispute; rather it is a fact-finding proceeding to ascertain whether PG&E's billing and collection activities were consistent with state law and Commission orders and regulations.[20] We commenced this investigation in PG&E's General Rate Case because our Consumer Affairs Branch (CAB) staff and TURN, an intervenor in that proceeding, alerted us to the serious billing problems PG&E's customers were encountering. Emphatically, this exercise does not involve an adversarial litigation of individual rights. Rather, it is a broad review focused on whether PG&E's billing and collection activities, on a system-wide basis, were in compliance with the law and applicable Commission's requirements. As stated in the Order Instituting Investigation: "[t]he Commission exercises, in connection with general rate cases and other forums, its constitutionally and legislatively derived jurisdiction to regulate PG&E's rates, practices, service, and the reliability, safety, and adequacy of its facilities."[21] Invoking our broad authority under Public Utilities Code section 701, we will order refunds for the entire period of this investigation, an amount approximating $35 million.[22] Not

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[19] The facts and holding of this decision are consistent with the facts and holding of *Peoples Natural Gas Division of Northern Natural Gas Company* v. *Public Utilities Commission of the State of Colorado* (1985) 698 P.2d 255.

[20] Assigned Commissioner's Ruling Ruling Granting TURN's Motion for an Investigation into PG&E's Billing and Collection Practices, Feb. 25, 2005, p. 2.

[21] Order Instituting Investigation, I.03-01-012, Jan. 21, 2003, p. 1.

[22] The February 25, 2005 Assigned Commissioner's Ruling put PG&E on notice that we may issue refunds pursuant to section 701. (Assigned Commissioner's Ruling Granting TURN's Motion for an Investigation into PG&E's Billing and Collection Practices, Feb. 25, 2005, p. 12.)

only is this the right result legally, it is also the right outcome from a fairness standpoint because it provides a remedy to all customers who were adversely impacted by PG&E's backbilling and collection practices during the investigation period.

2. Pre-CorDaptix Data Limitations

There is an issue whether customer refunds for violations of Tariff Rules 9A and 17.1 associated with both estimated bills and delayed bills are due for the period prior to installation of CorDaptix in December 2002. This is the so-called pre-Cordaptix period that runs from January 2000 to 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. 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 all eligible customers are included in PG&E's old 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 the conclusion that it would be unreasonable to rely on the data for purposes of ordering refunds, as the database is all PG&E has in its possession. We find that the pre-CorDaptix data is sufficiently reliable for purposes of ordering refunds related to delayed bills.

With respect to refunds related to estimated bills, pre-CorDaptix data limitations make it difficult 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 provide definitive information that could be used to calculate a precise refund.

Recognizing this data limitation, TURN recommends that the Commission find that roughly 50% of estimated bills are due to reasons within PG&E's control. TURN's 50% proxy is based on data for February to April 2005 for estimated bills beyond tariff limits where roughly 50% were estimated due to factors within PG&E's control and thus constitute billing error.[23] 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, and contends that this is a further reason for the Commission to refrain from ordering refunds for the pre-CorDaptix period.

While we find TURN's proposed methodology preferable to CPSD's suggestion that we should assume 100% of the estimates were PG&E's fault,

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[23] TURN Opening Brief, p. 13.

TURN's proxy does have some flaws. For example, the 50% proxy is derived from data for February through April 2005, but omits the month of January 2005; 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. We agree. The pre-CorDaptix data may well be unreliable for purposes of identifying illegal charges related to estimated bills; however, this is a PG&E problem that should not be shifted to the innocent affected customers. PG&E maintains that the cost of developing a method to accurately calculate the refund amount is approximately $600,000, while the amount of the refund should be in the range of $300,000. TURN agrees that this $300,000 figure is a reasonable estimate of the refund amount.[24] Therefore we will order PG&E to refund this amount for illegal charges related to estimated bills in the pre-CorDaptix period. In making these refunds, the burden

[24] *See* 48 R.T., 5258 – 5303.

of proof is on PG&E, not on the customer who was charged in violation of Rule 9A.

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 outdated customer information system. While we do not wish this action to discourage a utility from undertaking an upgrade to an outdated billing system, we deny PG&E's request for reasons set forth below.

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 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.

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).)
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> (*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. We find 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 CPSD 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.[25] 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 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

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

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.

VI. 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).[26] The remaining difference concerns which customers should be eligible for these remedies.

[26] 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.

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 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.[27] 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.[28]

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 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.

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

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

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),[29] as an appropriate and meaningful gesture of PG&E's commitment to improved customer service going forward. While we certainly encourage PG&E to voluntarily to assist worthy causes in all

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[29] 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.

communities in which it operates, the Commission declines to order particular charitable contributions to be made.

VII. 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. SSJID supports this recommendation due to PG&E's failure to read meters regularly in violation of Rule 9. We evaluate these recommendations 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.

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 3,400 customers were affected in the CorDaptix period,[30] 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.

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.

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[30] 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.

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 for a multi-year period 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.[31]

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[31] 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

Footnote continued on next page

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 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

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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.

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. 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 acquiescence in 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.

VIII. 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.[32]

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.

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 ratepayers 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

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

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 expect 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 addressed 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 routinely 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.

IX. 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.[33]

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.

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

X. Appeals and Motion to Set Aside Submission

The Presiding Officer's Decision (POD) in this case was mailed on February 20, 2007. On March 22, 2007, PG&E, CPSD and SSJID each filed an appeal. On April 6, 2007, PG&E, CPSD and TURN each filed a response to the various appeals.

PG&E asserts that the POD legally errs by holding PG&E's shareholders responsible for the costs of the refunds without citing a Commission precedent, tariff rule, or Code section as legal foundation for doing so. To the contrary, the POD identifies Section 734 as the legal authority, discusses the policy rationale supporting its implementation of that authority, and explains why PG&E's proffered authority to the contrary is not on point.

PG&E argues that, because shareholder funding of refunds creates an incentive for PG&E to comply with its tariffs, shareholder funding is therefore a fine that must be analyzed under applicable Commission precedent. The POD already considers and appropriately rejects PG&E's argument that, if they provide an incentive for the utility to comply with the law, utility refunds must be considered and analyzed as penalties or fines.

PG&E and CPSD both argue that the POD errs by finding, on the one hand, that shareholder funding of refunds is necessary in order to create an incentive for utilities to comply with their tariffs, while finding, on the other hand, that a penalty is not necessary to deter future violations of Rule 17.1. (CPSD makes the argument in support of the imposition of a penalty, while PG&E makes the argument in support of excusing shareholders from funding refunds.) Both CPSD and PG&E confuse refunds with penalties. The POD appropriately distinguishes between the two and applies the appropriate legal analysis to each.

PG&E argues the POD is inequitable because it punishes PG&E for implementing CorDaptix which, as the POD acknowledges, unavoidably caused an increase in the number of delayed and estimated bills. Both the POD and the Commission reject PG&E's argument.

CPSD argues that the POD legally errs in applying a statute of limitations to this enforcement action. The POD considers and rejects CPSD's legal arguments, but the Commission's resolution of the issue differs, as discussed in Section XI.

CPSD argues that the POD legally errs by giving insufficient weight to the facts that exacerbate the wrongdoing, thereby concluding that no penalty is warranted. CPSD's argument does not identify any legal error. The Commission has broad discretion in administering penalties, and the POD does not abuse this discretion.

CPSD argues that the POD legally errs by holding that the lack of intentional conduct "completely mitigates" the need for penalties. CPSD misconstrues the POD, which identifies PG&E's lack of intentional conduct as one of several facts that mitigate the wrongdoing and are weighed in assessing whether or not penalties are appropriate in this case.

CPSD argues that the POD incorrectly states that PG&E has made reasonable efforts to cease the violations because PG&E did not cease the violations until the Executive Director ordered it to do so. These facts are not contradictory. CPSD argues that there is no record support for the POD's statement that PG&E has made reasonable efforts to refund past illegal charges, but muses that the POD may be referring to refunds issued after the Executive Director's October 12, 2004 letter (which facts are contained in the record).

Indeed, the POD explicitly refers to these refunds and their context as the basis for this statement.

CPSD argues that the POD errs by finding that the advice given by a Commission decision has no greater legal significance than the advice given by a CAB representative. The POD does not make this suggestion, and CPSD's argument rests on its unwarranted misconstruction of the POD.

CPSD acknowledges that the Commission has discretion in determining whether to order interest payments on refunds, but argues that PG&E should pay interest and that the POD legally errs in misapplying *Zacky Farms* and *TURN* v. *Pacific Bell*. The POD already considers and appropriately rejects CPSD's arguments.

SSJID argues that the POD errs by failing to find that the undisputed record shows that PG&E did not violate Rule 9 by failing to regularly read SSJID's meters. The POD determines that, although the undisputed record shows that PG&E did not regularly read SSJID's meters, it is inconclusive with respect to whether the missed meter reads were due to factors within PG&E's control and, therefore, in violation of Rule 9. The Commission reaches a different result, as noted in Section XI.

SSJID moves to set aside submission of the record to take evidence that PG&E disconnected electric service to one of SSJID's flood gates because PG&E's billing system erroneously did not show a customer of record for the meter. SSJID argues that evidence of this incident is material to the Commission's decision in this proceeding because it demonstrates that PG&E's meter reading and billing practices continue to be deficient and warrant a penalty. The POD would deny SSJID's motion, on the grounds that the evidence that SSJID proposes to offer is irrelevant to PG&E's practice of backbilling beyond Rule 17.1

time limits, which is the focus of this decision. Furthermore, the POD determines that even assuming that this incident is proved to be a violation of Rule 9, it does not prove PG&E's prior missed reads of SSJID's meters, or any other missed meter reads, to be Rule 9 violations. The POD determines that reopening the record is not warranted under these circumstances. The Commission reverses the POD's treatment of these issues

XI. Explanation of Changes Made to the POD Pursuant to Pub. Util. Code § 1701.2(a)

In reaching our decision, we have deviated from the administrative law judge's POD in two key respects. First, we explicitly find that PG&E's activities violated Tariff Rule 9 as well as Rule 17.1, whereas the POD relied only on a violation of Rule 17.1. Second, we decline to apply a statute of limitations to contain the refund amount to a three year period prior to issuance of the Assigned Commissioner's Ruling on February 25, 2005; this results in a refund figure approximating $35 million, in contrast to the $23 million to be refunded under the POD. By law we are required to explain each of these changes made to the POD. (Pub. Util. Code § 1701.2(a).)

In finding a violation of Rule 9A we rely upon the underlying record, and arguments made by SSJID which demonstrate a pattern of failure to bill consistent with the tariff provision.

In reviewing the parties' arguments related to Public Utilities Code section 736, we are convinced that the plain language of the statute clearly indicates that it does not apply to Commission investigations. Furthermore, in evaluating parties' analysis of prior Commission decisions, we are persuaded that the better outcome from a public interest standpoint is to follow *Hillview* and decline to apply a statute of limitations to restrict refunds to customers who have been harmed by a utility's violation of law, when such order emanates from a

Commission investigation, as opposed to a complaint proceeding. This outcome is also consistent with evidence and argument presented by CPSD and TURN in this proceeding. This is also the right result from a fairness standpoint because it provides a remedy to all customers who were adversely impacted by PG&E's backbilling and collection practices during the entire investigation period.

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. PG&E regularly estimated bills and/or failed to bill its customers during the period 2000 to 2005, allegedly due to problems with its new billing system, and notwithstanding the fact that Rule 9A requires the utility to issue bills at regular intervals based upon actual metering data.

3. 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.

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

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

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

7. 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.

8. 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.

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

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

11. The pre-CorDaptix data may well be unreliable for purposes of identifying illegal charges related to estimated bills; however it would be inequitable to shift this data problem to the affected customers, and it is possible to ascertain a reasonable refund estimate.

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

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

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

19. 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.

20. 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.

21. 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.

22. 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 initially object to it.

23. 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.

24. 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.

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

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

27. 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.

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

29. 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.

30. 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.

31. 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.

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

33. It is reasonable for PG&E to provide the underlying calculations for the disputed SSJID estimated bills related to its Rule 9 violations 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. PG&E committed "billing error" because, in violation of Rule 17.1, it repeatedly submitted adjusted bills covering a period of more than three months, which constitutes an "incorrect billing calculation."

5. PG&E regularly estimated bills and/or failed to bill its customers during the period 2000 to 2005, allegedly due to problems with its new billing system, in violation of Rule 9A, which requires the utility to issue bills at regular intervals based upon actual metering data.

6. This investigation of PG&E's practices is not an adversarial litigation of individual rights, but rather a regulatory review of PG&E' system-wide billing and collection activities, reviewing PG&E's compliance with law and applicable Commission's requirements, and the consequences of its noncompliance.

7. A statute of limitations does not apply to refunds the Commission orders herein to remedy the harm suffered by PG&E customers due to the utility's failure to comply with Tariff Rules 9A and 17.1, as well as Public Utilities Code section 532, during the period of this investigation.

8. In this investigation the Commission exercises, in connection with general rate cases and other forums, its constitutionally and legislatively derived

jurisdiction to regulate PG&E's rates, practices, service, and the reliability, safety, and adequacy of its facilities.

9. Consistent with its authority under Public Utilities Code section 701, the Commission may do all things necessary to further its regulation of PG&E's practices and service, including making appropriate remedial orders to address violations of law and tariff that have harmed customers; in this instance refunds to customers who were harmed during the 2000 – 2005 investigation period, in the approximate amount of $35 million, are appropriate.

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

11. Refunds related to estimated bills should not be limited to the CorDaptix period; rather PG&E should also refund to customers illegal charges related to estimated bills in the pre-CorDaptix period, and these refunds are approximately $300,000. The burden of proof is on PG&E, not on the customer who was charged.

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

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

14. 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.

15. 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.

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

17. 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.

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

19. 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.

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

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

22. 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.

23. 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).

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

25. 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.

26. 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.

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

28. 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.

29. 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.

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

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

32. 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 January 1, 2000, the beginning of this investigation period through the end of the investigation

period, related to delayed bills. PG&E shall begin the refund process immediately.

2. PG&E shall refund customers for illegally backbilled amounts, for the period beginning January 1, 2000 through the end of the investigation period, related to estimated bills, in accordance with the preceding Findings of Fact and Conclusions of Law. PG&E, not the affected customer, bears the burden of proof on this issue.

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. No later than thirty days from today's decision, 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. At the same time, PG&E shall inform the affected customer that it has informed credit agencies as required by this order.

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. The appeals of the Presiding Officer's Decision are dismissed, except to the extent addressed in Section X of this decision.

14. 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
************** SERVICE LIST *************
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************ **APPEARANCES** ************

William P. Adams
ADAMS ELECTRICAL SAFETY CONSULTING
716 BRETT AVENUE
ROHNERT PARK CA 94928-4012
(707) 795-7549
For: FAX (707) 795-8196

Marc D. Joseph
Attorney At Law
ADAMS, BROADWELL, JOSEPH & CARDOZO
601 GATEWAY BLVD., STE. 1000
SOUTH SAN FRANCISCO CA 94080
(650) 589-1660
mdjoseph@adamsbroadwell.com
For: Coalition of California Utility Employees

James Weil
Director
AGLET CONSUMER ALLIANCE
PO BOX 37
COOL CA 95614
(530) 885-5252
jweil@aglet.org
For: AGLET CONSUMER ALLIANCE

Evelyn Kahl
NORA SHERIFF
Attorney At Law
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO CA 94104
(415) 421-4143
ek@a-klaw.com
For: ENERGY PRODUCERS AND USERS COALITION

Michael Alcantar
Attorney At Law
ALCANTAR & KAHL, LLP
1300 SW FIFTH AVENUE, SUITE 1750
PORTLAND OR 97201
(503) 402-9900
mpa@a-klaw.com
For: COGENERATION ASSOCIATION OF CALIFORNIA

Rob Neenan
CALIFORNIA LEAGUE OF FOOD PROCESSORS
1755 CREEKSIDE OAKS DRIVE, SUITE 250
SACRAMENTO CA 95833
(916) 640-8150
rob@clfp.com
For: CALIFORNIA LEAGUE OF FOOD PROCESSORS

Stephen A.S. Morrison
Attorney At Law
CITY AND COUNTY OF SAN FRANCISCO
1 DR. CARLTON B. GOODLETT PLACE, RM 234
SAN FRANCISCO CA 94102
(415) 554-4637
stephen.morrison@sfgov.org
For: San Francisco

Martin S. Schenker
JEFF GUTKIN
Attorney At Law
COOLEY GODWARD, LLP
101 CALIFORNIA STREET, 5TH FLOOR
SAN FRANCISCO CA 94111-5800
(415) 693-2154
mschenker@cooley.com
For: Pacific Gas and Electric Company

Jeffrey P. Gray
EDWARD W. O'NEILL
Attorney At Law
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO CA 94111-6533
(415) 276-6500
jeffgray@dwt.com
For: South San Joaquin Irrigation District

Gregory S.G. Klatt
Attorney At Law
DOUGLASS & LIDDELL
411 E. HUNTINGTON DRIVE, SUITE 107-356
ARCADIA CA 91006
(818) 961-3002
klatt@energyattorney.com
For: ALLIANCE FOR RETAIL ENERGY MARKETS

APPENDIX A
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A0211017 LIST
A0209005/I0301012

Karen Norene Mills
Attorney At Law
CALIFORNIA FARM BUREAU FEDERATION
2300 RIVER PLAZA DRIVE
SACRAMENTO CA 95833
(916) 561-5655
kmills@cfbf.com
For: CALIFORNIA FARM BUREAU FEDERATION

Diane I. Fellman
Attorney At Law
FPL ENERGY, LLC
234 VAN NESS AVENUE
SAN FRANCISCO CA 94102
(415) 703-6000
diane_fellman@fpl.com
For: DIABLO CANYON INDEPENDENT SAFETY COMMITTEE

Travis Foss
Legal Division
RM. 5027
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1998
ttf@cpuc.ca.gov
For: Consumer Protection & Safety Division

Enrique Gallardo
ENRIQUE GALLARDO
LATINO ISSUES FORUM
160 PINE STREET, SUITE 700
SAN FRANCISCO CA 94111
(415) 547-7550
enriqueg@lif.org
For: LATINO ISSUES FORUM

William H. Booth
Attorney At Law
LAW OFFICES OF WILLIAM H. BOOTH
1500 NEWELL AVENUE, 5TH FLOOR
WALNUT CREEK CA 94596
(925) 296-2460
wbooth@booth-law.com
For: CA LARGE ENERGY CONSUMERS ASSOCIATION

Paul Fenn
LOCAL POWER

Norman J. Furuta
Attorney At Law
FEDERAL EXECUTIVE AGENCIES
1455 MARKET ST., SUITE 1744
SAN FRANCISCO CA 94103-1399
(415) 503-6994
norman.furuta@navy.mil
For: FEDERAL EXECUTIVE AGENCIES

David J. Byers, Esq.
Attorney At Law
MCCRACKEN, BYERS & HAESLOOP, LLP
1920 LESLIE STREET
SAN MATEO CA 94403
(650) 377-4890
dbyers@landuselaw.com
For: MCCRACKEN, BYERS & HAESLOOP

Joy A. Warren
CHRISTOPHER MAYER
Attorney At Law
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO CA 95354
(209) 526-7389
joyw@mid.org
For: Modesto Irrigation District

Peter W. Hanschen
Attorney At Law
MORRISON & FOERSTER LLP
101 YGNACIO VALLEY ROAD, SUITE 450
WALNUT CREEK CA 94596
(925) 295-3450
phanschen@mofo.com
For: AGRICULTURAL ENERGY CONSUMERS ASSOCIATION

Sheryl Carter
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO CA 94104
(415) 875-6100
scarter@nrdc.org
For: NATURAL RESOURCES DEFENSE COUNCIL

Les Guliasi
Regulatory Relations Manager
PACIFIC GAS AND ELECTRIC COMPANY

APPENDIX A
************** SERVICE LIST *************
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A0211017 LIST
A0209005/I0301012

4281 PIEDMONT AVE.
OAKLAND CA 94611
(510) 451-1727
paulfenn@local.org
For: Residential Ratepayers

David L. Huard
Attorney At Law
MANATT, PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BOULEVARD
LOS ANGELES CA 90064
(310) 312-4247
dhuard@manatt.com
For: ENRG

Patrick G. Golden
LISE JORDAN
Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442, MAIL CODE B30A
SAN FRANCISCO CA 94120-7442
(415) 973-6642
pgg4@pge.com
For: PACIFIC GAS AND ELECTRIC COMPANY

Rashid A. Rashid
Legal Division
RM. 4107
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2705
rhd@cpuc.ca.gov

Petrina Burnham
SAN DIEGO GAS & ELECTRIC COMPANY
CP32D
8330 CENTURY PARK COURT
SAN DIEGO CA 92123-1530
(858) 654-1712
pburnham@semprautilities.com

Steven Moss
SAN FRANCISCO COMMUNITY POWER COOP
2325 3RD STREET, SUITE 344
SAN FRANCISCO CA 94120
(415) 643-9578
steven@moss.net
For: SAN FRANCISCO COMMUNITY POWER COOPERATIVE

PO BOX 770000, MAIL CODE B10A
SAN FRANCISCO CA 94177
For: Pacific Gas and Electric Company

Michael Reidenbach
Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET
SAN FRANCISCO CA 94105
(415) 973-2491
jmrb@pge.com
For: Pacific Gas & Electric Company

Thalia N.C. Gonzalez
Legal Counsel
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVE., 2ND FLOOR
BERKELEY CA 94704
(510) 926-4002
thaliag@greenlining.org
For: THE GREENLINING INSTITUTE

Hayley Goodson
GAYATRI SCHILBERG
Attorney At Law
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO CA 94102
(415) 929-8876
hayley@turn.org
For: TURN

Matthew Freedman
ROBERT FINKELSTEIN
Attorney At Law
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO CA 94102
(415) 929-8876
freedman@turn.org
For: The Utility Reform Network

Robert Finkelstein
Attorney At Law
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO CA 94102

APPENDIX A
**************** SERVICE LIST ***************
Last Update on 31-MAY-2007 by: LIL
A0211017 LIST
A0209005/I0301012

(415) 929-8876 X 307
bfinkelstein@turn.org
For: The Utility Reform Network

Rochelle Becker
SAN LUIS OBISPO MOTHERS FOR PEACE
PO BOX 164
PISMO BEACH CA 93448
(805) 773-3881
rochelle489@charter.net
For: SAN LUIS OBISPO MOTHERS FOR PEACE,

Keith Mccrea
Attorney At Law
SUTHERLAND, ASBILL & BRENNAN
1275 PENNSYLVANIA AVENUE, NW
WASHINGTON DC 20004-2415
(202) 383-0705
kmccrea@sablaw.com
For: CALIFORNIA MANUFACTURERS & TECHNOLOGY ASSOCIATION

Andrew Ulmer
Staff Counsel
CALIFORNIA DEPARTMENT OF WATER RESOURCES
3310 EL CAMINO AVENUE, SUITE 120
SACRAMENTO CA 95821
(916) 574-2226
aulmer@water.ca.gov
For: CALIFORNIA DEPT. WATER RESOURCES

Laura J. Tudisco
Legal Division
RM. 5032
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2164
ljt@cpuc.ca.gov
For: ORA

************* **STATE EMPLOYEE** **************

Truman L. Burns
Division of Ratepayer Advocates
RM. 4102
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2932
txb@cpuc.ca.gov
For: Office of Ratepayer Advocates

Julie Halligan
Consumer Protection & Safety Division
RM. 2203
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1587
jmh@cpuc.ca.gov

Mariana C. Campbell
Division of Ratepayer Advocates
RM. 4101
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2731
mcl@cpuc.ca.gov
For: ORA

Paul Douglas
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 355-5579
psd@cpuc.ca.gov

Donald J. Lafrenz
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1063
dlf@cpuc.ca.gov
For: Energy Division

Laura A. Martin
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2149
lra@cpuc.ca.gov

APPENDIX A
************** SERVICE LIST *************
Last Update on 31-MAY-2007 by: LIL
A0211017 LIST
A0209005/I0301012

Phillip Enis
Consumer Service & Information Division
RM. 2101
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-4112
pje@cpuc.ca.gov
For: Office of Ratepayer Advocates

Julie A. Fitch
Division of Strategic Planning
RM. 5119
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 355-5552
jf2@cpuc.ca.gov

Jack Fulcher
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1711
jef@cpuc.ca.gov

Terrie D. Prosper
Executive Division
RM. 5301
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2160
tdp@cpuc.ca.gov

Linda J. Woods
Consumer Protection & Safety Division
AREA 2-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1177
ljw@cpuc.ca.gov

Hallie Yacknin
Administrative Law Judge Division
RM. 5003
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1675
hsy@cpuc.ca.gov

Burton Mattson
Administrative Law Judge Division
RM. 5104
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2504
bwm@cpuc.ca.gov

Kevin S. Nakamura
Water Division
770 L STREET, SUITE 1050
Sacramento CA 95814
(916) 324-8687
kev@cpuc.ca.gov
For: CPSD

Marion Peleo
Legal Division
RM. 4107
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2130
map@cpuc.ca.gov

Robert M. Pocta
Division of Ratepayer Advocates
RM. 4205
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2871
rmp@cpuc.ca.gov

Reed V. Schmidt
BARTLE WELLS ASSOCIATES
1889 ALCATRAZ AVENUE
BERKELEY CA 94703-2714
(510) 653-3399
rschmidt@bartlewells.com

Greg Chang
BLOOMBERG NEWS
345 CALIFORNIA ST., STE 3500
SAN FRANCISCO CA 94104
(415) 743-3526
gchang1@bloomberg.net

Bruce Mclaughlin

APPENDIX A
************** SERVICE LIST *************
Last Update on 31-MAY-2007 by: LIL
A0211017 LIST
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********* **INFORMATION ONLY** **********

Karen Terranova
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, STE 2200
SAN FRANCISCO CA 94104
(415) 421-4143
filings@a-klaw.com

Nora Sheriff
Attorney At Law
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO CA 94104
(415) 421-4143
nes@a-klaw.com

Edward G. Poole
Attorney At Law
ANDERSON & POOLE
601 CALIFORNIA STREET, SUITE 1300
SAN FRANCISCO CA 94108-2818
(415) 956-6413
epoole@adplaw.com

Barbara R. Barkovich
BARKOVICH & YAP, INC.
44810 ROSEWOOD TERRACE
MENDOCINO CA 95460
(707) 937-6203
brbarkovich@earthlink.net

Ronald Liebert
Attorney At Law
CALIFORNIA FARM BUREAU FEDERATION
2300 RIVER PLAZA DRIVE
SACRAMENTO CA 95833
(916) 561-5657
rliebert@cfbf.com

Glen Perez
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM CA 95630
gperez@caiso.com

Jacqueline P. Minor
Attorney At Law

BRAUN & BLAISING P.C.
915 L STREET, SUITE 1420
SACRAMENTO CA 95814
(916) 682-9702
blaising@braunlegal.com

Scott Blaising
Attorney At Law
BRAUN & BLAISING, P.C.
8980 MOONEY ROAD
ELK GROVE CA 95624
(916) 682-9702
blaising@braunlegal.com

Maurice Brubaker
BRUBAKER & ASSOCIATES, INC.
1215 FERN RIDGE PARKWAY, SUITE 208
ST. LOUIS MO 63141
(314) 275-7007
mbrubaker@consultbai.com

Irene M. Stillings
Executive Director
CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
8690 BALBOA AVE., STE. 100
SAN DIEGO CA 92123
(858) 244-1192
irene.stillings@energycenter.org

CALIFORNIA ENERGY MARKETS
517-B POTRERO AVE.
SAN FRANCISCO CA 94110-1431
(415) 552-1764
cem@newsdata.com

David Beyer
EAST BAY MUNICIPAL UTILITY DISTRICT
375 11TH STREET
OAKLAND CA 94607
(510) 287-1144
dbeyer@ebmud.com
For: EAST BAY MUNICIPAL UTILITY DISTRICT

Diane Running
Research Analyst

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A0211017 LIST
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CITY AND COUNTY OF SAN FRANCISCO
CITY HALL, ROOM 375
SAN FRANCISCO CA 94102
(415) 554-4703
jacqueline.minor@sfgov.org

Theresa L. Mueller
Deputy City Attorney
CITY ATTORNEY'S OFFICE
CITY HALL, ROOM 234
SAN FRANCISCO CA 94102
(415) 554-4640
theresa.mueller@sfgov.org

Judy Pau
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO CA 94111-6533
(415) 276-6587
judypau@dwt.com

Edward W. O'Neill
Attorney At Law
DAVIS WRIGHT TREMAINE, LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO CA 94111-6533
(415) 276-6582
edwardoneill@dwt.com

Melanie Gillette
DUKE ENERGY NORTH AMERICA
980 NINTH STREET, SUITE 1420
SACRAMENTO CA 95814
(916) 441-6233
mlgillette@duke-energy.com
For: DUKE ENERGY NORTH AMERICA

Gayatri Schilberg
JBS ENERGY
311 D STREET, SUITE A
WEST SACRAMENTO CA 95605
(916) 372-0534
gayatri@jbsenergy.com

Karen Lindh
LINDH & ASSOCIATES
7909 WALERGA ROAD, NO. 112, PMB 119
ANTELOPE CA 95843
(916) 729-1562

EES CONSULTING, INC.
570 KIRKLAND WAY, SUITE 200
KIRKLAND WA 98033-2471
(425) 889-2700
running@eesconsulting.com

Douglas K. Kerner
Attorney At Law
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO CA 95814
(916) 447-2166
dkk@eslawfirm.com

Lynn Haug
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO CA 95816
(916) 447-2166
lmh@eslawfirm.com
For: DEPT OF GENERAL SERVICES

Chris King
Chief Strategy Officer
EMETER CORPORATION
1 TWIN DOLPHIN DRIVE
REDWOOD CITY CA 94065
(650) 631-7230
chris@emeter.com

Angela Kim
FTI CONSULTING
353 SACRAMENTO STREET, SUITE 1800
SAN FRANCISCO CA 94111
(415) 283-4200
angela.kim@fticonsulting.com
For: FTI CONSULTING

Rocky Ho
FTI CONSULTING
353 SACRAMENTO STREET, SUITE 1800
SAN FRANCISCO CA 94111
(415) 283-4200
rocky.ho@fticonsulting.com
For: FTI CONSULTING

Devra Wang
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR

APPENDIX A
************** SERVICE LIST *************
Last Update on 31-MAY-2007 by: LIL
A0211017 LIST
A0209005/I0301012

karen@klindh.com

SAN FRANCISCO CA 94104
(415) 875-6100
dwang@nrdc.org

Richard Mccann
M.CUBED
2655 PORTAGE BAY ROAD, SUITE 3
DAVIS CA 95616
(530) 757-6363
rmccann@umich.edu

Randall W. Keen
Attorney At Law
MANATT PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BLVD.
LOS ANGELES CA 90064
(310) 312-4000
rkeen@manatt.com
For: ENRG

David Marcus
PO BOX 1287
BERKELEY CA 94701
(510) 528-0728
dmarcus2@sbcglobal.net

Christopher J. Mayer
MODESTO IRRIGATION DISTRICT
PO BOX 4060
MODESTO CA 95352-4060
(209) 526-7430
chrism@mid.org

MRW & ASSOCIATES
1814 FRANKLIN STREET, SUITE 720
OAKLAND CA 94612
mrw@mrwassoc.com

Terry D. Nagel
2337 POPPY DRIVE
BURLINGAME CA 94105
(650) 347-3576
TerryDNagel@aol.com

Larry Nixon
PACIFIC GAS AND ELECTRIC COMPANY

Kay Davoodi
NAVY UTILITY RATES AND STUDIES OFFICE
1322 PATTERSON AVE., SE - BLDG. 33
WASHINGTON NAVY YARD DC 20374-5018
(202) 685-3319
khojasteh.davoodi@navy.mil

Martin A. Mattes
Attorney At Law
NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
50 CALIFORNIA STREET, 34TH FLOOR
SAN FRANCISCO CA 94111-4799
(415) 398-3600
mmattes@nossaman.com
For: NOSSAMAN GUTHNER KNOX & ELLIOTT LLP

Don Wood
PACIFIC ENERGY POLICY CENTER
4539 LEE AVENUE
LA MESA CA 91941
(619) 463-9035
dwood8@cox.net

Bruce T. Smith
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, ROOM 965, B9A
SAN FRANCISCO CA 94177
(415) 973-2616
bts1@pge.com

Gail L. Slocum
Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET
SAN FRANCISCO CA 94105
(415) 973-6583
glsg@pge.com

Karen Forsgard
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B10A
SAN FRANCISCO CA 94105

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************** SERVICE LIST *************
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A0211017 LIST
A0209005/I0301012

77 BEALE STREET, MC B10A
SAN FRANCISCO CA 94105
(415) 973-5450
lrn3@pge.com

(415) 973-6069
kaf4@pge.com

Law Department File Room
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO CA 94120-7442
cpuccases@pge.com

Leslie Danielson
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B10A
SAN FRANCISCO CA 94105
lad1@pge.com

Mark R. Huffman
CHRISTOPHER J. WARNER
Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET
SAN FRANCISCO CA 94105
(415) 973-3842
mrh2@pge.com
For: Pacific Gas and Electric Company

Sandy Lamboy
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO CA 94105
MSL7@pge.com

Stephen L. Garber
Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET
SAN FRANCISCO CA 94105
(415) 973-8003
slg0@pge.com

Anupama Bandi
PREFERRED ENERGY SERVICES
167 ALICE AVE
CAMPBELL CA 95008-2903

Central Files
SAN DIEGO GAS & ELECTRIC
8330 CENTURY PARK COURT, CP31E
SAN DIEGO CA 92123
(858) 654-1766
centralfiles@semprautilities.com
For: SAN DIEGO GAS & ELECTRIC

Lisa Browy
Regulatory Case Administrator
SAN DIEGO GAS & ELECTRIC COMPANY
101 ASH STREET, CP32D
SAN DIEGO CA 92123
(858) 654-1566
lbrowy@semprautilities.com

Sean Casey
SAN FRANCISCO PUBLIC UTILITIES COMMISSIO
1155 MARKET STREET, 4TH FLOOR
SAN FRANCISCO CA 94103
(415) 554-1551
scasey@sfwater.org

Steven C. Nelson
SEMPRA ENERGY
101 ASH STREET HQ-12
SAN DIEGO CA 92101-3017
(619) 699-5136
snelson@sempra.com
For: SEMPRA ENERGY

Bruce Foster
Vice President
SOUTHERN CALIFORNIA EDISON COMPANY
601 VAN NESS AVENUE, STE. 2040
SAN FRANCISCO CA 94102
(415) 775-1856
bruce.foster@sce.com

Case Administration
SOUTHERN CALIFORNIA EDISON COMPANY

APPENDIX A
************** SERVICE LIST *************
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James Ross
Thums
REGULATORY & COGENERATION SERVICES, INC.
500 CHESTERFIELD CENTER, SUITE 320
CHESTERFIELD MO 63017
(636) 530-9544
jimross@r-c-s-inc.com

Russell G. Worden
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-4177
russell.worden@sce.com

Dan Geis
THE DOLPHIN GROUP
925 L STREET, SUITE 800
SACRAMENTO CA 95814
(916) 441-4383
dgeis@dolphingroup.org
For: AGRICULTURAL ENERGY CONSUMERS ASSO.

Michael Boccadoro
THE DOLPHIN GROUP
925 L STREET, SUITE 800
SACRAMENTO CA 95814
(916) 441-4383
mboccadoro@dolphingroup.org

Regina Costa
Research Director
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO CA 94102
(415) 929-8876 X312
rcosta@turn.org

Kelly Allen
Regulatory Analyst
TRANSWESTERN PIPELINE COMPANY
RM. WT 608, PANHANDLE ENERGY TOWER
5444 WESTHEIMER RD.
HOUSTON TX 77056
(713) 989-2023
kelly.allen@panhandleenergy.com

2244 WALNUT GROVE AVENUE, ROOM321
ROSEMEAD CA 91770
(626) 302-1711
case.admin@sce.com

Michael Shames
Attorney At Law
UTILITY CONSUMERS' ACTION NETWORK
3100 FIFTH AVENUE, SUITE B
SAN DIEGO CA 92103
(619) 696-6966
mshames@ucan.org

David R. Garcia
Attorney At Law
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE, RM. 370
ROSEMEAD CA 91770
(626) 302-2336
david.garcia@sce.com

Paul Kerkorian
UTILITY COST MANAGEMENT, LLC
6475 N PALM AVE., STE. 105
FRESNO CA 93704
(559) 261-9230
pk@utilitycostmanagement.com

Robert R. Wellington
WELLINGTON LAW OFFICES
857 CASS STREET, SUITE D
MONTEREY CA 93940
(831) 373-8733
attys@wellingtonlaw.com

Kevin Woodruff
WOODRUFF EXPERT SERVICES
1100 K STREET, SUITE 204
SACRAMENTO CA 95814
(916) 442-4877
kdw@woodruff-expert-services.com

Michael Kerkorian
UTILITY COST MANAGEMENT LLC
6475 N. PALM AVE., SUITE 105

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A0211017 LIST
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FRESNO CA 93704
(559) 261-9230
mk@utilitycostmanagement.com

(END OF APPENDIX A)

EXPLANATION OF THE CHANGES MADE TO THE PRESIDING OFFICER'S DECISION

A.02-11-017 et al.: Investigation Into Pacific Gas and Electric Company's Billing and Collection Practices

Pursuant to Public Utilities Code § 1701.2(a), this is the explanation of the changes made to the presiding officer's decision of Administrative Law Judge (ALJ) Hallie Yacknin mailed on February 20, 2007 by the Decision Different of Commissioners John Bohn and Rachelle Chong.

In A.01-11-017 et al., the Commission set out to address the issues surrounding PG&E's backbilling practices. Those issues are: (1) whether refunds are warranted for backbills beyond the limits allowed under Rule 17.1; (2) who should finance the refunds; (3) the time period that should be used to determine the refunds; (4) whether that limitations period should be tolled; (5) whether a one year CorDaptix stabilization period should be granted; (6) whether PG&E should be penalized for the violation of its tariff; possible prospective remedies regarding (7) changes to Rule 9 of PG&E's tariffs and (8) the ratemaking treatment of uncollectible amounts; and (9) whether PG&E violated Rule 9 by failing to regularly read the South San Joaquin Irrigation District's (SSJID) meters and issuing inappropriate bills.

The Modified Presiding Officer's Decision holds that (1) refunds are warranted; (2) the refunds should be financed by shareholders; (3) Section 736's three year statute of limitations applies; (4) there should be no tolling; (5) no stabilization period should be allowed; (6) no penalties are necessary; (7) Rule 9 should not be amended; (8) no change to ratemaking treatment of uncollectible amounts is necessary but PG&E must report on the number and amount of delayed and estimated bills in its general rate cases; and (9) the SSJID failed to meet the burden of proof necessary to sustain its assertions.

This Decision Different reaches most of the same conclusions as the Mod-POD, but does so via a different legal analysis with respect to (3) the statute of limitations, (4) tolling, and (9) the SSJID's showing. The Decision Different also explicitly finds that PG&E's activites violated Tariff Rule 9 as well as Rule 17.1, whereas the Mod-POD found only a violation of Rule 17.1. Regarding (3) and (4), the Decision Different does not apply a statute of limitations to contain the refund amount to a three year period and does not address tolling issues; this results in a refund figure higher than the Mod-POD imposes. There is also a slight increase in the refund figure because the Decision Different does not limit refunds in the pre-CorDaptix period to delayed bills, but also allows refunds for estimated bills during that period. Finally, with regard to (9), because it finds that

PG&E violated Rule 9A, the Decision Different eliminates findings that SSJID failed to meet its burden of proof on that issue.