

Decision 01-01-018 January 4, 2001

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

Application of Southern California Edison Company (E 3338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan. (U 39 E)	Application 00-11-056 (Filed November 22, 2000)
Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)

(See Appendix A for Appearances.)

**INTERIM OPINION REGARDING  
EMERGENCY REQUESTS FOR RATE INCREASES**

**I. Summary**

In this interim decision, we consider the emergency requests of Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison) that they be allowed to raise rates on an interim basis, subject to refund. We will implement an immediate, interim surcharge, subject to refund and adjustment. On this basis, we will allow PG&E and Edison each to raise their

revenues by increasing the electric bill of each customer by one cent per kilowatt-hour (kWh), applied on a usage basis.<sup>1</sup> The surcharge will be applied on an equal cents per kWh basis and will result in an increase of approximately 9% for residential customers, 7% for small business customers, 12% for medium commercial customers, and 15% for large commercial and industrial customers. We exempt those low-income customers of Edison and PG&E eligible for the California Alternative Rates for Energy (CARE) program from this rate increase. Other than CARE customers, this surcharge applies to all customers, including direct access customers.

The increase will be a temporary surcharge to improve the ability of the applicants to cover the costs of procuring future energy in wholesale markets that they cannot produce themselves to serve their loads. The temporary surcharge will be in effect and applied to recovery of the future electricity procurement costs for the next 90 days, during which time the Commission will conduct further proceedings and investigations to determine ratemaking issues affected by the interaction among provisions of Assembly Bill (AB) 1890 (Stats. 1996, Ch. 854), Commission orders issued both prior to and subsequent to the legislature's enactment of that law, and the provisions of the Public Utilities Act affecting the Commission's basic obligation to assure that utilities provide adequate reliable service at just and reasonable rates. Moreover, the 90 days will allow the independent auditors engaged by the Commission to perform a comprehensive review of the utilities' financial position, as well as that of their holding companies and affiliates.

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<sup>1</sup> We are not addressing natural gas prices in this decision.

We will track the surcharge revenues in a balancing account, subject to refund and applied to ongoing wholesale electricity procurement costs. We will consider whether and how rates should be further adjusted after additional hearings. We take this action after emergency hearings on December 27, 28, 29, 2000 and January 2, 2001, closing arguments in lieu of briefs on January 2 and final oral argument on January 3, 2001. In this short time frame, we have heard from the public, the utilities, consumer groups, and other parties. The arduous schedule, that saw Commission staff, contractors and the parties working continuously through the holiday weekends, demonstrates the high degree of importance we attach to responding to the conditions in electricity wholesale markets created by orders of the Federal Energy Regulatory Commission (FERC) that defy common sense, logic and law.

In an abundance of caution and in view of the actions of the FERC to remove any bounds on wholesale prices charged in the electricity market and the response by wholesale sellers pushing average prices to levels several times higher than what we saw in San Diego last June, we find that we must take interim action on an emergency basis, pursuant to our emergency authority.<sup>2</sup> PG&E and Edison have raised sufficient concerns in their prima facie cases that the applicants may not be able to procure power at just and reasonable rates and consequently may not be able to provide adequate service for their customers without some intervening action on our part.

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<sup>2</sup> We note that the D.C. Circuit Court of Appeals is expected to rule on January 5 on an emergency writ sought by applicant Edison to compel the FERC to fix just and reasonable rates in Western wholesale electric markets.

We have balanced the public interest in ensuring that PG&E and Edison remain able to procure and deliver power for their bundled customers and the public interest in avoiding exorbitant rate increases in order to take this interim step. In doing so, we recognize the utilities' claims of financial difficulties engendered by the steep and unanticipated increases in the cost of procuring wholesale electric energy. The problem occurs because PG&E and Edison are charging rates frozen at 1996 levels, pursuant to Pub. Util. Code § 368,<sup>3</sup> but must procure wholesale electric power at so-called market-based rates that are not just and reasonable, as found by FERC. The elimination of wholesale electricity price caps by FERC on December 8 as confirmed by its order on December 15 and the resulting five-fold increase in wholesale electricity prices has expanded the crisis to one that involves not only utility solvency but the very liquidity of the system.<sup>4</sup>

On December 21, 2000, we issued Decision (D.) 00-12-067 to address the financial difficulties facing PG&E and Edison. We intend to ensure the continued ability of PG&E and Edison to provide reliable service at just and reasonable rates. We are also committed to the continued welfare of all customers of PG&E and Edison. This decision begins to make good on those commitments.

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<sup>3</sup> All statutory references are to the Public Utilities Code, unless otherwise noted.

<sup>4</sup> Currently the applicants purchase their energy for resale from the Power Exchange and the Independent System Operator. These institutions are California not-for-profit corporations which have no financial assets or capabilities separate from the load serving entities (utilities). C.f., ISO Tariff rule 14; Tariff Sheet 245. Settlement and Billing Protocol 1.3.2; Tariff Sheet 872. The ISO's spot purchases of highest cost spinning reserves adds to the utilities' liquidity problems.

## II. Background

In D.00-12-067, we determined that expedited action is necessary to fulfill our statutory obligations to ensure that the utilities can provide adequate service at just and reasonable rates. We consolidated the Rate Stabilization Plan Applications (A.) 00-11-038 and A.00-11-056, which were filed by Edison and PG&E, on November 16 and 22, 2000, respectively, and A.00-10-028, the Petition to Modify Resolution E-3527 which was filed by The Utility Reform Network (TURN) on October 17. A.00-10-028 proposes a modification to our accounting mechanisms that should be considered as we move forward in addressing the Rate Stabilization Plan applications. We also ordered emergency hearings in this matter to begin on December 27 that would enable the Commission to issue orders at its January 4, 2001 business meeting.

In D.00-12-067, we stated that the hearings should be held to (1) determine when the rate freeze will end; (2) determine any necessary adjustments to current cost recovery plans<sup>5</sup> (filed pursuant to § 368); (3) if the rate freeze has ended, determine what adjustments to rates are appropriate to maintain the utilities' ability to provide adequate service under § 451; (4) address the notice required by § 454(a); (5) evaluate whether it is in the public interest for the utilities to divest remaining generation facilities; and (6) evaluate whether power produced from retained generation assets should serve native load and the ratemaking such actions entail.<sup>6</sup>

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<sup>5</sup> Consistent with § 368(a), what ends after the recovery of generation assets is the rate freeze, not necessarily the cost recovery plans themselves.

<sup>6</sup> By taking these actions, we do not assume that all of the utilities' incurred costs – or the way they managed those costs – were necessarily reasonable. This is an area we will be looking at closely in evaluating any necessary and reasonable rate increases.

As described in the Assigned Commissioner's Scoping Memo,<sup>7</sup> we planned to focus on the following issues in the initial hearings:

1. To what extent can the Commission find that the rate freeze has ended in order to ensure that safe and reliable service is provided at just and reasonable rates, as is required under Pub. Util. Code §§ 451 and 761?
2. If the current balances of PG&E's and Edison's generation memorandum accounts (GMA) are credited to their respective TCBAAs as of December 31, 2000, what is the effect on the rate freeze?
3. If the Commission finds that the rate freeze has ended, consistent with the law, at what level should rates be set, and under what conditions?
4. How can residential and small business consumers be protected? What issues need to be addressed to protect low-income consumers? For example, should the CARE discount be increased?
5. What is the most effective method to provide notice of rate increases, if any are adopted on January 4, 2001?
6. Is it in the public interest to allow PG&E and Edison to divest remaining generation assets? If not, should the power produced from retained assets serve native load? What ratemaking will this entail on an initial basis?

Evidentiary hearings have focused more narrowly on the applicants' prima facie cases that current rates do not yield revenues sufficient to meet current obligations, including power purchases, and that cash resources are being rapidly depleted. We commit to addressing the other issues before us expeditiously. We have directed the utilities to send out appropriate notices of potential rate increases as soon as possible, after conferring with and approval by the Public Advisor. The Commission engaged independent auditors to evaluate

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<sup>7</sup> The initial scoping memo was issued on December 22, 2000.

the liquidity and cash flow position of the utilities immediately. We have asked the independent auditors to evaluate the utilities' Transition Cost Balancing Account (TCBA) reports, balances in the Transition Revenue Accounts (TRA), and TURN's proposal, among other issues. The audit will also thoroughly assess the utilities' claims, the revenues and costs accrued by the utilities, their affiliates, and parent companies over the entire rate freeze period.

We incorporated the record developed in the post-transition ratemaking proceedings (Phase 3 of A.99-01-016 et al.) in our consideration of the Rate Stabilization Plan Applications.

### **III. What Must be Determined on an Immediate, Emergency Basis?**

There are no easy choices before us. Since mid-June, we have seen prices in the wholesale electricity market skyrocket to staggering levels as a result of the severe dysfunction of the California wholesale electricity market. Because the Commission determined that the rate freeze has ended in San Diego, ratepayers in San Diego Gas & Electric Company's (SDG&E) service territory saw their electric bills double and triple over the summer. Several investigations have been initiated at the state and federal level into the causes of California's dysfunctional electricity market.

We initiated I.00-08-002 in August to investigate the impact of the wholesale market dysfunction on retail electric rates. FERC began its own investigation and, despite finding that wholesale electric rates are not just and reasonable, chose to lift price caps, and to refrain from devising a remedy under

Section 206(a) of the Federal Power Act (16 USC Section 824e(a)),<sup>8</sup> while making a number of other changes that add to the complexity and uncertainty of the commercial relationships. These actions have left California's utilities and ratepayers prey to wholesale electricity sellers who immediately quadrupled and quintupled their prices above already unprecedented levels. As a result utilities state that they are facing insolvency; consumers' economic well-being is threatened by exorbitantly high bill and reliability concerns; and California's economy is jeopardized.

We recognize that we must take immediate action in this difficult and uncertain environment. While we must face economic realities, we must also ensure that any actions we take will protect California's consumers. Therefore, at this point, we will take action to enable the utilities' continuing ability to finance wholesale power purchases, but will do so in a manner that will have the least impact on consumers. We do not find that the rate freeze has ended, but we believe we can grant interim relief, subject to refund, without making such a finding.

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<sup>8</sup> This statute provides in pertinent part:

Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order.

#### **IV. We Have Ample Authority to Grant Interim Emergency Rate Relief**

We have a duty to assure that the utilities are able to continue to procure and deliver power for their customers. Our basic obligation under the Public Utilities Act is to assure the people of California adequate service at reasonable rates, as we stated in D.00-12-067. Section 451 provides, in relevant part:

All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful. Every public utility shall furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment and facilities as are necessary to promote the safety, health, comfort and convenience of its patrons, employees, and the public.

We therefore take interim action to ensure that reliable, safe, and adequate service is provided to all Californians at just and reasonable rates.<sup>9</sup> Our actions are consistent with the Legislature's intent, as stated in §§ 330(g) and 391(a), part of AB 1890, which provide in relevant part:

330(g): Reliable electric service of utmost importance to the safety, health, and welfare of the state's citizenry and economy.

391(a): Electricity is essential to the health, safety, and economic well-being of all California consumers.

Pursuant to §§ 451 and 728, the Commission has authority here to approve interim rate relief to address an emergency condition and to ensure that

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<sup>9</sup> See also § 761 addressing the reliability of utility service.

customers receive adequate service at just and reasonable rates. (See also California Constitution, Article XII, Section 6.)

Moreover, the Commission's authority to grant interim rate relief in an emergency situation is well established. The California Supreme Court has recognized this authority on several occasions, most recently and expansively in TURN v. CPUC, 44 Cal. 3d 870 (1988). There, the Court stated: "The Commission's power to grant interim rate increases was recognized by this court in City of Los Angeles v. Public Utilities Commission (1972) 7 Cal. 3d 331." TURN v. CPUC 44 Cal.3d at 878. In City of Los Angeles, the Court cited with approval this Commission's decision in Pacific Telephone and Telegraph Company (1949) 48 Cal.P.U.C. 487 where we noted the Commission's authority to grant rate relief on an interim basis where there is a prima facie showing of an emergency condition. (Pacific Telephone & Telegraph Company, 48 Cal.P.U.C. at p. 488, quoted in TURN, 44 Cal.3d at 878.) The nature of the emergency showing here includes cash flow problems that impair the utility's credit. Indeed, TURN, *supra*, recognized that cash flow impacts that might increase the utility's borrowing costs were also a relevant factor in authorizing an interim rate increase. (*Id.*, at 876, 879-880.) In the instant case, we are presented with a prima facie showing of an impending inability to pay current bills that could interfere with the utilities' ability to procure electricity. We do not need to apply the more expansive TURN standard to find that an emergency exists, justifying interim rate relief pending further regulatory action.

We emphasize the interim nature of the relief granted here. The surcharge authorized today is subject to refund and the rate design for collection of these amounts is subject to adjustment. As the California Supreme Court explained in City of Los Angeles, the purpose of granting an interim rate increase upon

appropriate findings is to allow the Commission to further consider the propriety of the application before it. (*Id.*, at 354.)<sup>10</sup> We intend to continue immediately our consideration of the applications before us, with additional hearings and the record development necessary to address ratemaking on a comprehensive basis.

#### **V. Certain Accounting Entries Should be Reversed Pending Further Determination**

Generally, until the utilities collect their uneconomic transition costs and the rate freeze ends, as the Commission has found for SDG&E, rates are fixed or frozen at the June 10, 1996 levels. The difference between frozen rates and the authorized costs of providing service (i.e., revenue requirements and Commission-approved costs and obligations such as those associated with the electric distribution system, public purpose programs, transmission costs, and the costs of procuring electricity for its customers) is referred to as headroom. The Commission has established two major accounting mechanisms to track the costs and revenues associated with transition cost recovery: the Transition Cost Balancing Account (TCBA) and the Transition Revenue Account (TRA).

We are considering modifying the accounting mechanisms by crediting the year-end excess revenues accrued in the generation memorandum accounts to the TRA rather than to the TCBA. We do not take action today, but wish to preserve our ability to take this action in the future after we consider additional

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<sup>10</sup> City of Los Angeles cites Saunby v. Railroad Commission (1923) 191 Cal.226. Under Saunby interim relief based on limited facts and a limited investigation is appropriate because the relief is temporary, pending full consideration of all questions involved in a final rate-making order. (191 Cal. at 232.) That is our intention here.

testimony and evidence on the implications of this approach. Therefore, to the extent the utilities have credited these accounts to the TCBA as of December 31, 2000 or earlier, this entry should be reversed and these funds should be separately identified and segregated within the generation memorandum accounts. We are interested in exploring this approach, because it may allow the proper matching of generation costs incurred by the utilities with the generation revenues accrued by the utilities. Indeed, PG&E assumes that this approach is in place on a going-forward basis, as explained by witness Campbell. We will consider these accounting issues more broadly as we address the accounting proposal proffered by TURN in A.00-10-028.

#### **VI. Interim Relief Should be Granted, Subject to Refund**

PG&E and Edison contend that the rate freeze is over, that their respective TCBAAs were overcollected as of the end of December at a minimum, and that ratepayers are responsible for undercollections that have accrued in the TRA since that time. In other words, the utilities insist that shareholders have achieved full recovery of transition costs and are therefore not at any risk. At the same time, the utilities demand that ratepayers now be required to reimburse the utilities for energy procurement costs, even while recognizing that rates were frozen in 1996 at an artificially high level to ensure that transition cost recovery.

In other proceedings at this Commission and before FERC, PG&E and Edison have specifically recognized the risk that the variable energy costs may create. For example, in early 1997, PG&E and Edison asserted that market-based rates were appropriate because they had no incentive to exercise market power. The utilities recognized that any increase in revenues obtained as a seller of

energy in the PX would be offset by a greater loss in headroom revenues.<sup>11</sup> In its order conditionally approving the ISO and PX, FERC adopted market-based wholesale rates and confirmed that the existence of the rate freeze, the fixed transition cost recovery period, and the mandatory sale of energy by the utilities into the PX helped to mitigate market power concerns:

This finding is based in part on the existence of the retail rate freeze under the Restructuring Legislation during the transition period and the mandatory sale of energy by the companies into the PX. . . During the transition period while the retail rate freeze is in effect, the retail rate freeze in conjunction with the CTC will reduce the incentive to raise prices when the companies are net buyers. (Order Conditionally Authorizing Limited Operation of an Independent System Operator and Power Exchange, Pacific Gas and Electric Company, et al., Docket No. EC96-19-001, et al; 81 FERC ¶ 61,546, October 30, 1997.)

In D.99-06-057, the Commission discussed the risk of the utilities in this regard:

Edison believes that the UDC bears a significant energy procurement risk. During the transition period, utility rates are frozen at the June 10, 1996 level. Within the frozen rate level, the utility must recover its operating costs, the costs of procuring sufficient energy and capacity to meet its load, pay for mandated public purpose programs, and recover its transition costs. If its operating or energy procurement costs rise, the UDC's shareholders may not be able to fully recover transition costs. The energy procurement cost is the most highly variable component of the utility's frozen rate and is

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<sup>11</sup> Phase II Market Power Filing of Pacific Gas and Electric Company, Docket No. ER96-1663-000, March 31, 1997, pp. 8-9 and Southern California Edison Company's Proposed Market Power Mitigation Strategies, Docket ER 96-1663-001, March 31, 1997, p. 13.

completely outside the control of the utility. Customers are shielded from the risk of price increase during the transition period; utility shareholders bear the entire risk. (D.99-06-057, mimeo. at Sec. III.C.)

It is apparent that the utilities understood the risks AB 1890 and electric restructuring imposed. Nevertheless, in an abundance of caution, we take emergency action today because we believe that PG&E and Edison have raised sufficient concerns in their prima facie cases that each utility may be facing serious financial distress, at least in terms of cash flow and short-term access to capital markets, and that system reliability may suffer as a consequence.

PG&E witness Campbell (PG&E's Director of Business and Financial Planning) testified that PG&E expects to utilize all of its cash reserves within the next three to seven weeks. Moreover, Campbell testified that PG&E cannot raise additional cash through bank and capital market borrowings without action by this Commission. Edison witness Scilacci (Edison's Chief Financial Officer) testified that Edison will also run out of cash in the next three to seven weeks and that it cannot in the short-term raise equity or debt funds on reasonable terms.

We take this action recognizing that we have asked parties to participate in this proceeding under severe time constraints. As the Coalition of California Utility Employees points out, the world of utility electric restructuring has turned upside down in ways that no one anticipated. We have taken official notice of several documents that address the dysfunctional wholesale market. (See Appendix B.) We do not yet have the facts to evaluate the utilities' claims of their dire circumstances. We have called for an audit and must await the independent auditors' report. We have only part of the puzzle before us. Moreover, we do not have all of the facts related to the parent companies, the

utilities, the affiliates, and the flow of funds among these entities. The independent auditors will also consider these questions in their reports. We must consider the overall financial position of the utilities and will do so expeditiously.

As in D.00-12-067, we note the utilities claims of an "extraordinary and unforeseen crisis in the wholesale and retail electric power markets in California" prompting urgent Commission action in this matter. We believe these extraordinary circumstances provide the justification for the Commission to pursue expeditious contracting for independent auditors provided for under Pub. Util. Code § 632.<sup>12</sup>

We are very troubled by the utilities' assumption that ratepayers must bear the burden of significant rate increases without the shareholders sharing in the pain. The utilities and their shareholders have received significant financial benefit from restructuring thus far. For example, PG&E and Edison have each received the benefit of over \$2 billion in cash proceeds from rate reduction bonds. As reported in the monthly TCBA reports, PG&E has received over \$9 billion in headroom and other transition cost revenues and Edison has received over \$7 billion in such revenues. As revealed in cross-examination of PG&E witness Campbell, disbursements from PG&E to the parent company, PG&E Corporation (PG&E Corp.) during the transition period were

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<sup>12</sup> Pub. Util. Code § 632 allows the Commission to deviate from contracting procedures required by the Government Code and Public Contract Code for purposes of entering into contracts for consultant or advisory contracts, where the Commission makes a finding that "extraordinary circumstances" justify expedited contracting for such services.

approximately \$9.6 billion. Out of this total, PG&E Corp. issued dividends (both common and preferred stock) of approximately \$1.5 billion. PG&E also repurchased stock in the amount of approximately \$2.8 billion and retired approximately \$2.8 billion of debt. PG&E recognized that market problems were beginning to occur in June of this year, but decided to declare a third-quarter dividend. PG&E did not consider establishing a contingency fund or retaining cash to cushion its risk, because it believed that “its generally conservative financial profile and financing practices would adequately provide cushion against . . . a reasonable range of contingencies.” (TR: 409.)

Now that such contingencies are outside the reasonable range, the utilities turn to the ratepayers for relief. It is decidedly not business as usual and the utilities need to realize that ratepayers are not the only answer to their dilemma. For example, parties have only just begun to explore the ability of the utilities’ holding companies to participate in the solution. While the cash on hand in the holding companies may be insufficient when compared with the going-forward costs of procuring power, we are convinced that other potential solutions should be explored.

The interim relief granted here is on an emergency basis and is subject to refund. It is reasonable for this Commission to use its emergency authority to act to enable the utilities to provide reliable service as we explore other options for financing their future procurement costs.

**VII. Our Approach to Interim Rate Design Must be Simple, Straightforward, and Subject to Adjustment**

We will track the amounts provided by ratepayers in a balancing account with customer class-specific sub-accounts. Rate design is a complicated endeavor and will be addressed more comprehensively in the next phases of

these proceedings, in which all parties will have a full opportunity to examine and analyze relevant facts and financial claims. In the immediate term, we will simply increase rates by applying a surcharge of one cent per kWh on an equal-cents-per-kWh basis. This is a straightforward approach that is often implemented and we will adopt it here. We direct PG&E and Edison to establish the Emergency Procurement Surcharge (EPS) to be in place for the next 90 days. We will exempt those customers on the CARE program from this increase. We are convinced that those consumers at or near poverty level should not bear the burden of this interim rate relief. The rate relief granted is subject to further adjustments as we gather facts and obtain more evidence in additional hearings.

Several commenters urged the Commission to develop a conservation incentive in ratemaking. In order to reinforce this critical concept, we will also explore other approaches in the next 90 days, such as exempting the baseline amounts from this equal cents per kWh approach, or adjusting residential and small commercial energy rate components by one cent per kWh and adjusting large commercial and industrial customers' energy components by two cents per kWh.

### **VIII. Next Steps**

In D.00-12-067, we promised action at the Commission's regular business meeting on January 4, 2001. We believe that the public interest is served by allowing temporary electricity rate relief. We therefore adopt an interim electric surcharge subject to refund, on an emergency basis. We recognize that these proceedings must necessarily include further hearings and a thorough assessment of the utilities' claims, the revenues and costs accrued by the utilities, their affiliates, and parent companies over the entire rate freeze period. We also note the need for action by the California Legislature.

The 90-day interim period will allow the independent auditors sufficient time to perform a comprehensive review of the overall financial position of the utilities. We expect the auditors to review and analyze the positions of the utilities, the holding companies, and the affiliates, as well as the flow of funds among these entities, among other work performed. The independent auditors will present their reports, subject to cross-examination.

The critical ratemaking issues facing this Commission will require significant discovery and additional evidentiary hearings. TURN's proposal to adjust the TRA and TCBA accounting mechanisms must be addressed. Parties have raised numerous related issues and have proposed additional creative solutions that should be explored. In the next phases of these proceedings, we will consider the accounting issues and such issues as: (1) the necessary ratemaking to ensure that power produced from retained assets is dedicated to serve native load; (2) the utilities' cost-cutting efforts; (3) the utilities' efforts to pursue remedies at FERC or Courts reviewing FERC, and lawsuits against generators or marketers of electricity and natural gas; (4) whether and how holding company assets or guarantees should be applied to utility power procurement requirements; (5) conservation and rate design issues; (6) additional CARE discounts and program improvements; (7) how to approach consumer education; (8) condemnation efforts to ensure generation availability; (9) whether the utilities should issue additional rate reduction bonds; and (10) mechanisms and options to securitize existing liabilities, in order to report to the Governor and the Legislature regarding those options during the interim period.

#### **IX. Comments on Proposed Decision**

Section 311(d) generally requires proposed decisions (issued after hearing) to be circulated 30 days before the Commission vote. This delay allows for

comment on the proposed decision. See Rules 77.1–77.6 of the Commission’s Rules of Practice and Procedure. However, “the 30-day period may be reduced or waived by the commission in an unforeseen emergency situation” Section 311(d). Here, in order to ensure that PG&E and Edison can continue to procure and deliver electricity to their customers, we believe the utilities have raised sufficient concerns in their utilities’ prima facie cases that allow us to determine that an unforeseen emergency situation exists. PG&E and Edison witnesses testified under oath that they have cash available to meet only three to seven weeks of obligations and that their ability to access commercial paper is impaired. We proceed in an abundance of caution to act expeditiously on January 4, accepting, subject to further hearings, that the utilities may not be able to meet their procurement obligations to bundled customers without such action.

Accordingly, in order to permit action on January 4, while still allowing for comment, the Commission is releasing this proposed decision on the morning of January 3, and will have oral argument on the proposed decision on the afternoon of January 3. While this is a very expedited schedule, it is in keeping with the generally expedited schedule of the past several weeks, and allows a meaningful opportunity for parties to comment on the proposed decision.

### **Findings of Fact**

1. FERC’s actions on December 8 and December 15, 2000 removed upper bounds on wholesale electricity prices and have caused average wholesale electricity prices to rise precipitously.
2. PG&E and Edison are charging rates for electricity frozen at 1996 levels, consistent with § 368, but must procure power at market-based rates that are not just and reasonable.

3. In testifying under oath, and subject to cross-examination regarding the utilities' claims of financial difficulties engendered by the steep and unanticipated increase in procuring wholesale electric energy, PG&E and Edison have raised sufficient concerns in their prima facie cases that the applicants may not be able to procure power at just and reasonable rates and consequently may not provide adequate electric service for their customers without some intervening action by this Commission.

4. Initial evidentiary hearings have focused narrowly on the applicants' prima facie cases that current rates do not yield revenues sufficient to meet current obligations, including power purchases, and that cash resources are being rapidly depleted.

5. The interim relief is on emergency basis.

6. The interim surcharge authorized today is subject to refund and the rate design for collection of these amounts is subject to adjustment.

7. The difference between frozen rates and the authorized costs of providing service (i.e., revenue requirements and Commission-approved costs and obligations) is referred to as headroom.

8. The Commission has established two major accounting mechanisms to track the costs and revenues associated with transition cost recovery: the Transition Cost Balancing Account (TCBA) and the Transition Revenue Account (TRA).

9. The utilities understood the risks AB 1890 and electric restructuring imposed. Nevertheless, in an abundance of caution, we take emergency action today because we believe that PG&E and Edison have raised sufficient concerns in their prima facie cases that each utility is in serious financial distress, at least in terms of cash flow and short-term access to capital markets.

10. While the cash on hand in the holding companies may be insufficient when compared with the going-forward costs of procuring power, we are convinced that other potential solutions should be explored. It is decidedly not business as usual and the utilities need to realize that ratepayers are not the only answer to their dilemma.

11. Rate design is a complicated endeavor and must be further considered in the next phases of these proceedings.

12. In the immediate term, we will simply increase rates by applying a surcharge of one cent per kWh, applied on an equal-cents-per-kWh basis. This surcharge applies to all customers other than those customers eligible for the CARE program.

13. In the next phases of these proceedings, we will consider such issues as: (1) TURN's proposal to net the TRA and the TCBA; (2) the necessary ratemaking to ensure that power produced from retained assets is dedicated to serve native load; (3) the utilities' cost-cutting efforts; (4) the utilities' efforts to pursue remedies at FERC or Courts reviewing FERC, and lawsuits against generators or marketers of electricity and natural gas; (5) whether and how holding company assets or guarantees should be applied to utility power procurement requirements; (6) conservation and rate design issues; (7) additional CARE discounts and program improvements; (8) how to approach consumer education; (9) condemnation efforts to ensure generation availability; and (10) whether the utilities should issue additional rate reduction bonds.

14. The facts and events surrounding D.00-12-067 and this proceeding constitute extraordinary circumstances requiring urgent Commission action.

### **Conclusions of Law**

1. We have a duty to ensure that the utilities are able to continue to procure and deliver power for their customers. Our basic obligation under the Public Utilities Act is to assure the people of California adequate electric service at reasonable rates.

2. It is reasonable to take interim action to establish a temporary surcharge, subject to refund and adjustment, to ensure that reliable, safe, and adequate service is provided to all Californians at just and reasonable rates, consistent with §§ 451, 728, 761, 330(g), and 391(a).

3. The Commission's authority to grant interim rate relief in an emergency situation is well established. In the instant case, we are presented with a prima facie showing of an impending inability to pay current bills that could interfere with the utilities' ability to procure electricity.

4. The purpose of granting an interim rate increase upon appropriate findings is to allow the Commission to further consider the propriety of the application before it.

5. The Commission has the authority to implement any necessary changes to the electric restructuring accounting provisions and cost recovery consistent with statutory requirements.

6. Because we are considering modifying the transition cost accounting mechanisms by crediting the year-end excess revenues accrued in the generation memorandum accounts to the TRA rather than to the TCBA, it is reasonable to require the utilities to adjust those entries so that these funds are separately identified and segregated in the generation memorandum accounts.

7. It is reasonable to direct PG&E and Edison to establish a balancing account with customer class-specific sub-accounts to track the amounts provided by

ratepayers. The balancing account will track the revenues accruing from the interim Emergency Procurement Surcharge and will apply these revenues to ongoing wholesale procurement costs.

8. It is reasonable to exempt those customers on the CARE program from this surcharge. Consumers at or near poverty level should not bear the burden of this interim rate relief. It is reasonable to require all other customers to be subject to this interim surcharge.

9. The rate relief granted is subject to further adjustments as we gather facts and obtain more evidence in additional hearings.

10. These proceedings must necessarily include further hearings and a thorough assessment, of the utilities' claims, the revenues and costs accrued by the utilities, their affiliates, and parent companies over the entire rate freeze period.

11. Section 311(d) generally requires proposed decisions (issued after hearing) to be circulated 30 days before the Commission vote, but the 30-day period may be reduced or waived by the Commission in an unforeseen emergency situation.

12. In order to ensure that PG&E and Edison can continue to procure and deliver electricity to their customers, we believe the utilities have raised sufficient concerns in their utilities' prima facie cases that allow us to determine that an unforeseen emergency situation exists.

13. In making these findings, we have determined that these are extraordinary circumstances that justify expedited contracting for consultant or advisory services, consistent with § 632.

14. It is reasonable to take official notice of the items listed in Appendix B as evidence that the wholesale electricity market is not workably competitive and is dysfunctional.

15. This order should be effective today, so that the interim rate increase may be implemented expeditiously.

### **INTERIM ORDER**

#### **IT IS ORDERED** that:

1. Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison) shall establish an interim surcharge, subject to refund and adjustment. The interim surcharge shall be established as the Emergency Procurement Surcharge (EPS) and shall be in place for 90 days from the effective date of this decision. The EPS shall be applied to electricity rates and shall be applied on an equal-cents-per-kWh basis of one cent per kWh. PG&E and Edison shall file compliance advice letters to implement this surcharge. The Energy Division has five working days to review filings for compliance. Once accepted by the Energy Division, the advice letters shall be effective on the date filed.

2. PG&E and Edison shall establish a balancing account with customer class-specific sub-accounts to track the revenues and to apply these revenues to ongoing procurement costs.

3. Customers eligible for the California Alternative Rates for Energy (CARE) program are exempt from this surcharge. All other customers, including direct access customers, are subject to this surcharge.

4. To the extent that PG&E and Edison have credited the net amounts in the generation memorandum accounts as of December 31, 2000 to the Transition

Cost Balancing Account (TCBA), PG&E and Edison shall reverse and adjust all necessary accounting entries. These funds shall be separately identified and segregated within the generation memorandum accounts for potential later action by the Commission.

5. A prehearing conference shall be held on January 10, 2001, to begin to consider the issues outlined herein and to establish a timetable to consider the reports of the independent auditors.

This order is effective today.

Dated January 4, 2001, at San Francisco, California.

LORETTA M. LYNCH  
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HENRY M. DUQUE  
RICHARD A. BILAS  
CARL W. WOOD  
JOHN R. STEVENS  
Commissioners

I will file a concurring opinion with partial dissent.

/s/ HENRY M. DUQUE  
Commissioner

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**APPENDIX B**  
**Page 1**

**LIST OF ITEMS FOR OFFICIAL NOTICE**

1. Orders of the FEDERAL ENERGY REGULATORY COMMISSION and materials, including Complaints, Comments, Attachments, Reports and Declarations filed in the respective dockets:

*San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary services into Markets Operated by the California Independent System Operator and the California Power Exchange*, Federal Energy Regulatory Commission Docket EL00-95-000;

*Investigation of Practices of the California Independent System Operator and the California Power Exchange*, Federal Energy Regulatory Commission Docket EL00-98-000

- *Order Directing Remedies for California Wholesale Electric Markets*, dated December 15, 2000. 2000 FERC LEXIS 2491
- *Order Proposing Remedies for California Wholesale Electric Markets*, dated November 1, 2000. 2000 FERC LEXIS 2168

*California Electricity Oversight Board*, FERC Docket EL00-104-000

*Public Meeting in San Diego*, California, FERC Docket EL00-107-000

*California Power Exchange Corporation*, FERC Docket ER00-3461-000,

*California Municipal Utilities Association*, FERC Docket EL01-001-000

*California Independent System Operator Corporation*, FERC Docket ER00-3673-000,

*California Independent System Operator Corporation*, FERC Docket ER01-607-000,

- Order Approving Independent System Operator Tariff Amendment 33, dated December 8, 2000

**APPENDIX B**

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2. *California Independent System Operator (CAISO)*, Market Operations Report, Forecast and Actual Loads for January 1, 1999 through December 31, 2000, published on its web site at <http://caiso.com/marketops/OASIS/moload>
3. Edison International Inc. and its subsidiary Southern California Edison Company: filings with the Securities and Exchange Commission (SEC), including 8-K, 10-Q and 10-K reports, annual reports, proxy statements and securities prospectuses published on its web site at <http://www.edisoninvestor.com/financialexc/index.htm>
4. PG&E Corporation and its subsidiary Pacific Gas and Electric Company: filings with the Securities and Exchange Commission (SEC), including 8-K, 10-Q, 10-K reports, annual reports, proxy statements and securities prospectuses published on its web site at <http://www.pgecorp.com/financial/reports/index.html>

**(END OF APPENDIX B)**

A.00-11-038 et al.

D.01-01-018

Commissioner Duque, concurring in part and dissenting in part:

I am supporting the proposed decision because a rate increase is clearly needed if SCE and PG&E are to avoid bankruptcy. I file this concurrence and partial dissent because my analysis indicates that today's decision does not go far enough.

Clearly, there is much uncertainty that this Commission faces in the request of SCE and PG&E for rate increases. The hearings that I have attended over the last several days have presented a complex picture of asset transfers between the utilities and their holding companies. Moreover, there has been scant evidence that the utilities have taken steps to confront the revenue shortfalls and the potential for bankruptcy that they clearly face.

Although it is clear that the utilities do not bear responsibility for the high wholesale rates, PG&E and SCE bear full responsibility for the rate freeze pact that they made with the Legislature, for it is this ironclad pact of AB 1890 that, combined with dramatic price increases, has led to the current predicament. On the other hand, it is very clear that ratepayers have absolutely no responsibility for the high rates in wholesale markets. A complete bailout of SCE and PG&E by the ratepayers for all their costs – the current position of PG&E and SCE – is not a just outcome. Thus, the issues before the Commission are complex, uncertain, and full of consequences for all Californians.

In the last several days, my staff has investigated utility failures throughout the United States. In the past, utilities faced trouble from overbuilding – building unneeded capacity, and particularly nuclear generation facilities. From our review of these matters, it is clear that we are in uncharted territory – our current problems arise not from overcapacity, but from a lack of capacity. It is particularly difficult to predict from past experiences what are the consequences of a financial failure.

One point, however, stands out – in the most difficult situations of industrial trouble – Chrysler Corporation, Long Island Lighting Company – the involvement of either federal or state legislature was essential. To my mind, it is critical that the Legislature take action to correct the following problems that our current regulation has failed to address:

1. Move to permit utilities to enter into bilateral contracts that avoid the volatile short-term markets for power. We need some certainty of where prices are headed, in order to determine a reasonable rate structure going forward. Yesterday, PX prices averaged 28 cents. Despite the Commission's decisions to encourage bilateral contracts, we have failed to adopt any implementing advice letters, and have only just opened a rulemaking, with guidance months away. Thus, we have failed to take this simple step to permit the utilities to avoid such high prices. Despite all our votes and stated intentions, we have made insufficient progress on this matter.
2. Ensure that the utilities' native generation is used to serve its native load. Although the FERC has given this Commission full authority to take this step and an item has appeared on our agenda several times, it has been held. Thus, it disturbs me that we have failed to take any steps to alleviate the crisis, despite our stated intentions.

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3. Ensure that the generation needs of California are met. In my view, we currently trust that the market will provide the power that we need, with no single company or state agency responsible for ensuring the adequacy of supply. Moreover, California Energy Commission findings and legal arguments that there is adequate power and that high prices result from market manipulation are unconvincing. Any businessman knows that a tight market facilitates manipulation and no one can plausibly argue that California is awash in power. In my view, only the Legislature can assign the responsibility of ensuring adequate electric supply. Unless this step is taken rapidly, California will remain subject to the vicissitudes of volatile and fluctuating prices.
4. Order an infrastructure investment program to install time of use meters. Californians cannot and will not cut back on electric usage unless Californians know what their power costs. Clear price signals will empower Californians to avoid exorbitant electric rates. This, in addition, will provide the basis for making energy efficiency and conservation programs work.

On another point, today's order wisely defers resolution of accounting issues until such time as the Commission we can evaluate the effects of these changes. Reviewing power costs, net of revenues, is critical for evaluating financial hardship. On the other hand, adopting measures, accounting or otherwise, that could be misused to unnecessarily extend the rate freeze. On this matter, today's decision will permit the Commission act judiciously to determine the date of the end of the rate freeze.

In summary, I concur with today's order because it is clear to me that today's action is a first step towards addressing California's energy problems. I fully expect that our decision today will be made more forceful by our actions within the next 90 days. I also look forward to working with legislators who are currently crafting additional measures for solving the problems of revenue shortfalls and capacity shortages.

However, I dissent in part because today's order takes only timid steps towards resolving the electricity crisis now before this Commission. Simple steps such as facilitating the purchase of power on bilateral markets and ensuring that each utility's power plants are dedicated to serving their own load are long overdue.

/s/ HENRY M DUQUE

Henry M. Duque

January 4, 2001

San Francisco, California