

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Determine Whether Baseline Allowances for Residential Usage of Gas and Electricity Should Be Revised.

FILED
PUBLIC UTILITIES COMMISSION
MAY 24, 2001
SAN FRANCISCO OFFICE
RULEMAKING 01-05-047

ORDER INSTITUTING RULEMAKING

Summary

By this order the Commission initiates a proceeding to determine whether current baseline allowances for residential gas and electricity users in California should be revised, and if so, to what new levels.

Discussion

For the past twelve months this Commission and all Californians have been struggling with an energy crisis brought on by runaway wholesale power prices in a dysfunctional energy market. In the face of federal indifference, the governor, the legislature, and this Commission have been doing and continue to do everything humanly possible to mitigate the potentially disastrous effects the energy cartel's conduct is having on California's economy and all Californians. We have been forced to issue this year two decisions¹ increasing rates for customers of California's two largest electric utilities, Southern California Edison Company (Edison) and Pacific Gas and Electric Company (PG&E), to provide

¹ Decision (D.) 01-01-018 (January 4, 2001) and D.01-03-082 (March 27, 2001) in Application (A.) 00-11-038 et al.

sufficient revenues for wholesale power purchases and to promote conservation. We currently have in addition a number of other proceedings underway to address various other aspects of the state's energy crisis.

In D.01-05-054 issued May 15, 2001, we set forth rate design schedules for Edison and PG&E to implement the increases approved in the March 27, 2001, order. A major consideration in that rate design, and certainly in the public's eye the most visible and controversial issue other than the overall increase ordered, was the methodology used to spread the increased revenue requirement to residential customers who use more than 130% of their allowed baseline quantities. Baseline quantities assume a great significance because they define the lowest priced block of energy usage for residential service, and it is upon them that all of the remaining blocks are founded. And because energy tariffs use an increasing-block rate structure, baseline also provides a valuable conservation incentive. Two state statutes were most important in guiding us in our recent rate design effort: Public Utilities Code Section 739,^{2 3} and California Water Code Section 80110.

In AB1X,⁴ the Legislature added Section 80110 to the Water Code, effective February 1, 2001:

In no case shall the commission increase the electricity charges in effect on the date that the act that adds this section becomes

² See Attachment A to this order for the text of Public Utilities Code Section 739.

³ All subsequent statutory references are to the Public Utilities Code unless otherwise noted.

⁴ On February 1, 2001, the California Legislature enacted and the Governor signed Assembly Bill No. 1 from the First Extraordinary Session (Ch. 4, First Extraordinary Session 2001, hereafter referred to as AB1X). AB1X adds Division 27 to the Water Code, Sections 80000 et seq.

effective for residential customers for existing baseline quantities or usage by those customers of up to 130 percent of existing baseline quantities, until such time as the department has recovered the costs of power it has procured for the electrical corporation's retail end use customers as provided in this division.

This statute exempts from additional rate increases all residential electricity usage falling within 130% of baseline usage. Baseline usage is defined in Section 739(a), which requires the Commission to establish a quantity of natural gas and electricity that is necessary to supply a "significant portion of the reasonable energy needs of the average residential customer." The "baseline quantity" is defined to be between 50 and 60 percent of average residential consumption, with allowances for seasonal and climatic variations.⁵ The Commission is further directed to require the utilities to file residential rate schedules that provide for the baseline quantity to be the first or lowest block in an increasing block rate structure.⁶ In addition, the Commission is directed to "establish an appropriate gradual difference between the rates for the respective blocks of usage."⁷ In 1976, the Commission determined the initial baseline quantities in D.86087, 80 CPUC 182. Subsequent revisions and updates to the baseline quantities and applicable rates have been made in the utilities' general rate cases.

Taken together, new Water Code Section 80110 and Public Utilities Code Section 739 allowed us to provide at least some measure of relief from the most

⁵ Section 739(d)(1).

⁶ Section 739(c)(1).

⁷ Section 739(c)(1).

immediate effects of the dysfunctional electric market to a significant portion of PG&E's and Edison's residential customers, those who use less than 130% of baseline. In addition, we were able to adopt a proposal that specifically shelters low-income households eligible for the California Alternative Rates for Energy (CARE) program for the electric customers of PG&E and Edison by expanding the eligibility criteria from 150% to 175% of federal poverty guidelines.⁸

In developing the record supporting D.01-05-054, we held evidentiary hearings and Public Participation Hearings (PPHs) throughout Edison's and PG&E's service territories so customers could state their concerns to the Commission directly. In the PPH notices, customers who would not be able to attend were invited to write to the Commission to share their views. The public response was nearly overwhelming: some 450 concerned citizens made statements at the PPHs, and many thousands more contacted us by telephone, letters or e-mail. After their concern for rising energy bills and their ability to cope with rising rates generally, the topic members of the public raised perhaps more often than any other in both the PPHs and public correspondence was their difficulty in keeping their usage within the baseline allowances. In Appendix D of D.01-05-054, the presiding Administrative Law Judges (ALJ) summarized the major issues they heard about at the PPHs:

[Public speakers] pointed out the difficulty of achieving usage within baseline levels. Many questioned how baseline levels were set, indicating that they were never able to get close to baseline usage, irrespective of how much they felt they conserved. They also felt that the baseline levels were

⁸ Families eligible for CARE are also severely effected by today's high gas bills. Accordingly, in D.01-05-054 we also indicated we would move quickly to address the applicability of the changes we made there to all jurisdictional utilities.

outdated and should not be used as a benchmark for spreading the surcharge. Some also believed that the CARE discount should be increased.

Baseline was also a topic of concern at the Commission's Final Oral Argument in the proceeding. There, the Commissioners heard from counsel for one of the major consumer groups:

Commissioner Wood: Mr. Finkelstein, the public participation hearings, at some of them I've been hearing a lot about baselines not being set appropriately; that they haven't been revised recently and reanalyzed according to the statute. Does TURN have any opinions or position on this?

Mr. Finkelstein: We have recently been hearing more from our members and from other interested members of the public on that subject. And it's causing us to realize that there does need to be some sort of a reevaluation of how the baseline allowances are established; whether or not the seasonal and climate-zone differences that were adopted in years past are still appropriate; whether or not they need to be somehow modified to be more precise. So, yeah, I think it's a very important issue that the Commission needs to turn its attention to, just as soon as you've got a spare moment.

* * *

Commissioner Wood: Do you think that might be taken up in this or another docket in the near future that might be helpful?

* * *

Mr. Finkelstein: In all seriousness, whether it's this docket, I expect a separate investigation initiated in the near future now, one that the Commission tries to conduct on an expedited basis.

In summary, it has become clear that baseline is an important topic that merits attention at a time when so many Californians are being affected by the largest energy rate increase this Commission has ever had to impose. Section

739, the baseline statute, was added to the Public Utilities Code by the legislature through passage of Assembly Bill 167, the Warren-Miller Energy Lifeline Act, in the 1975-1976 legislative session. After the Commission determined the initial baseline quantities in 1976, it made subsequent revisions and updates in the utilities' general rate cases over the years. Section 739(d)(1) requires, "The commission shall review and revise baseline quantities as average consumption patterns change in order to maintain these [50% to 60%, and 60% to 70% of average residential consumption] ratios." With our recent rate design relying so heavily on baseline quantities to determine which residential customers are affected and to what degree, it becomes more important than ever to ensure the baseline program is up to date. Now is an appropriate time to do such a review.

Having decided to review the baseline topic, the question becomes one of scope and schedule. There are many facets of baseline that we could examine to ensure that customers' baseline quantities are appropriately set. Are the geographic boundaries of each utility's baseline zones optimally configured? Are baseline quantities within each zone correctly set, reflecting changing household characteristics over the 25 years since the baseline program was first established? Have the seasons for each utility's baseline program been correctly defined? Are today's baseline criteria consistent across the utilities, or should they be? Are the standard limited allowances required under Section 739(b) for those with special medical needs sufficient today? At this point, we are not sufficiently informed to determine which of the many aspects of baseline, or all of them, we should key on, how much data in what form is available to analyze the program, or what the proceeding schedule should be. We do know that no aspect of electric or gas baseline should be exempted from examination at the outset. We do know that baseline and today's excessive energy prices affect the customers of all of California's regulated electric and gas utilities, so all energy

utilities under our jurisdiction should be included as respondents. And we do know that time is of the essence; customers of California's largest energy utilities are today incurring the higher charges that we have been coerced into granting to meet the demands of the dysfunctional energy marketplace, and those charges for electric service will shortly be reaching their billing envelopes. Customers have already been hit by greatly increased rates during the past year for their gas service.

While we will do our best to adjust baseline quantities to more accurately reflect current consumption levels and significant differentials between customers, we are limited in our review by the statutes setting baseline quantities well below average usage of customers. Because of this, even with revised and updated baseline quantities, the average customer may still find it difficult to reduce usage to baseline levels.

Because we cannot confidently define the scope and schedule for the proceeding at this time, we will reserve as much flexibility as possible in beginning this rulemaking investigation. The issues to be addressed can be stated simply: (1) Should the Commission revise the utilities' current baseline programs for residential gas and electricity users in California? And (2), If so, what should be the new baseline criteria and levels?

To begin the proceeding, the assigned Commissioner and assigned ALJ will set a prehearing conference at the earliest possible date. The preliminary schedule we establish below will be discussed at the prehearing conference and may be changed by the assigned Commissioner or ALJ as a result. To the extent it is possible to do so, the early stages of the proceeding should focus on areas where any needed changes will have the greatest and earliest impact on ameliorating customers' energy bills. If it is possible and advisable to do so, we would expect to implement the first of any improvements, those with the

greatest impact, on at least an interim basis as soon as possible, with the remaining improvements to follow as quickly as possible thereafter.

The results of this rulemaking proceeding may have important effects on some or all of California's energy ratepayers. Accordingly, we desire that this order be distributed to a wide range of potentially interested parties including the respondent utilities and those on the service lists of two other major current proceedings: A.00-11-038 et al, and A.00-10-045 et al. In addition, it will be sent to parties on the service lists of R.94-04-031/I.94-04-032 (the electric restructuring proceeding) and I.99-07-003 (the gas strategy investigation). After initial service of this order, a new service list for the proceeding will be formed following procedures to be established by the assigned Commissioner or ALJ. The assigned Commissioner, and the assigned ALJ acting with the assigned Commissioner's concurrence, will have ongoing oversight of the service list and may institute changes to the list or the procedures governing it as necessary.

Commissioner Geoffrey Brown is designated as the assigned Commissioner for this proceeding.⁹

Preliminary Scoping Memo

This rulemaking will be conducted in accordance with Article 2.5 of the Commission's Rules of Practice and Procedure. As required by Rule 6(c)(2), this order includes a preliminary scoping memo as set forth below.

The issues to be considered in this proceeding are:

⁹ Pursuant to Rule 5(k)(2), the principal hearing officer is the presiding officer in a ratesetting proceeding, except that where the assigned Commissioner is acting as the principal hearing officer, the assigned Administrative Law Judge shall act as the presiding officer in the assigned Commissioner's absence.

- (1) Should the Commission revise the energy utilities' current baseline programs for residential gas and electricity users in California?
- (2) If so, what should be the new baseline criteria and levels?

Pursuant to Rule 6(c)(2), we preliminarily determine the category of this rulemaking proceeding to be ratesetting as the term is defined in Rule 5(c).

We anticipate that evidentiary hearings will be required. We intend to hold public participation hearings in various locations to gather input from the general public.

The timetable for this proceeding will be determined by the assigned Commissioner through his ruling on the scoping memo after receiving input from the parties at the prehearing conference. For purposes of meeting the scoping memo requirements and getting the proceeding underway as quickly as possible, we establish the following schedule:

May 24, 2001	Order Instituting Rulemaking
June, 2001	Prehearing conference; assigned Commissioner's Scoping Ruling
July, 2001	Evidentiary hearings
June, July, August, 2001	Public participation hearings
August, 2001	Presiding officer's proposed interim decision on issues of high customer impact
September, 2001	Comments and reply comments on proposed interim decision
September, 2001	Interim decision on Commission agenda

The assigned Commissioner through his ruling on the scoping memo and subsequent rulings, and the assigned Administrative Law Judge by ruling with the assigned Commissioner's concurrence, may adjust the timetable as necessary

during the course of the proceeding. In no event do we anticipate this proceeding to require longer than 18 months to complete.

Following the prehearing conference, the assigned Commissioner will issue a ruling which determines the category, need for hearing, and schedule for this rulemaking, and designates the principal hearing officer (Rules 6(c)(2) and 6.3). The ruling, only as to category, may be appealed under the procedures in Rule 6.4.

IT IS ORDERED that:

1. A rulemaking is instituted on the Commission's own motion determine whether baseline allowances for residential usage of gas and electricity should be revised, and if so, to what new levels.
2. The issues to be considered are those set forth in the body of this order.
3. All Commission-regulated gas utilities and electric utilities are made respondents in this proceeding.
4. This rulemaking is preliminarily determined to be a ratesetting proceeding as that term is defined in the Commission's Rules of Practice and Procedure, Rule 5(c).
5. This proceeding is preliminarily determined to require evidentiary hearings.
6. The expected timetable for this proceeding is as set forth in the body of this order. The assigned Commissioner through his scoping memo and subsequent rulings, and the assigned Administrative Law Judge (ALJ) by ruling with the assigned Commissioner's concurrence, may adjust the timetable as necessary during the course of the proceeding, provided that we do not anticipate this proceeding to require longer than 18 months to complete.

7. The Executive Director shall cause copies of this order to be served on respondents to the proceeding, and on those on the service lists for the following dockets: A.00-11-038 et al; A.00-10-045 et al; R.94-04-031/I.94-04-032, and I.99-07-003.

8. After initial service of this order, a new service list for the proceeding shall be formed following procedures to be established by the assigned Commissioner or ALJ. The assigned Commissioner, and the assigned ALJ acting with the assigned Commissioner's concurrence, shall have ongoing oversight of the service list and may institute changes to the list or the procedures governing it as necessary.

This order is effective today.

Dated May 24, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

Attachment A

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Public Utilities Code, Section 739

739. (a) The commission shall designate a baseline quantity of gas and electricity which is necessary to supply a significant portion of the reasonable energy needs of the average residential customer. In estimating those quantities, the commission shall take into account differentials in energy needs between customers whose residential energy needs are currently supplied by electricity alone or by both electricity and gas. The commission shall develop a separate baseline quantity for all-electric residential customers. For these purposes, "all-electric residential customers" are residential customers having electrical service only or whose space heating is provided by electricity, or both. The commission shall also take into account differentials in energy use by climatic zone and season.

(b) (1) The commission shall establish a standard limited allowance which shall be in addition to the baseline quantity of gas and electricity for residential customers dependent on life-support equipment, including, but not limited to, emphysema and pulmonary patients. A residential customer dependent on life-support equipment shall be given a higher energy allocation than the average residential customer.

(2) "Life-support equipment" means that equipment which utilizes mechanical or artificial means to sustain, restore, or supplant a vital function, or mechanical equipment which is relied upon for mobility both within and outside of buildings. "Life-support equipment," as used in this subdivision, includes all of the following: all types of respirators, iron lungs, hemodialysis machines, suction machines, electric nerve stimulators, pressure pads and pumps, aerosol tents, electrostatic and ultrasonic nebulizers, compressors, IPPB machines, and motorized wheelchairs.

(3) The limited additional allowance shall also be made available to paraplegic and quadriplegic persons in consideration of the increased heating and cooling needs of those persons.

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Public Utilities Code, Section 739

(4) The limited additional allowance shall also be made available to multiple sclerosis patients in consideration of the increased heating and cooling needs of those persons.

(5) The limited additional allowance shall also be made available to scleroderma patients in consideration of the increased heating needs of those persons.

(6) The limited allowance shall also be made available to persons who are being treated for a life-threatening illness or have a compromised immune system, provided that a licensed physician and surgeon or a person licensed pursuant to the Osteopathic Initiative Act certifies in writing to the utility that the additional heating or cooling allowance, or both, made available pursuant to this subdivision is medically necessary to sustain the life of the person or prevent deterioration of the person's medical condition.

(c) (1) The commission shall require that every electrical and gas corporation file a schedule of rates and charges providing baseline rates. The baseline rates shall apply to the first or lowest block of an increasing block rate structure which shall be the baseline quantity. In establishing these rates, the commission shall avoid excessive rate increases for residential customers, and shall establish an appropriate gradual differential between the rates for the respective blocks of usage.

(2) In establishing residential electric and gas rates, including baseline rates, the commission shall assure that the rates are sufficient to enable the electrical corporation or gas corporation to recover a just and reasonable amount of revenue from residential customers as a class, while observing the principle that electricity and gas services are necessities, for which a low affordable rate is desirable and while observing the principle that conservation is desirable in order to maintain an affordable bill.

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Public Utilities Code, Section 739

(3) At least until December 31, 2003, the commission shall require that all charges for residential electric customers are volumetric, and shall prohibit any electrical corporation from imposing any charges on residential consumption that are independent of consumption, unless those charges are in place prior to the effective date of the act that added this paragraph.

(d) As used in this section:

(1) "Baseline quantity" means a quantity of electricity or gas for residential customers to be established by the commission based on from 50 to 60 percent of average residential consumption of these commodities, except that, for residential gas customers and for all-electric residential customers, the baseline quantity shall be established at from 60 to 70 percent of average residential consumption during the winter heating season. In establishing the baseline quantities, the commission shall take into account climatic and seasonal variations in consumption and the availability of gas service. The commission shall review and revise baseline quantities as average consumption patterns change in order to maintain these ratios.

(2) "Residential customer" means those customers receiving electrical or gas service pursuant to a domestic rate schedule and excludes industrial, commercial, and every other category of customer.

(e) Wholesale electrical or gas purchases, and the rates charged therefor, are exempt from this section.

(f) Nothing contained in this section shall be construed to prohibit experimentation with alternative gas or electrical rate schedules for the purpose of achieving energy conservation.

(End of Attachment A)