

Decision 11-12-037 December 15, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Expedited Authorization to Change Residential Electric Rates Effective January 1, 2010, as Permitted by Newly Enacted Public Utilities Code Section 739.9 (U39E)

Application 09-10-013
(Filed October 14, 2009)

And Related Matters.

Application 09-10-014
Application 09-10-015

DECISION GRANTING PETITION FOR MODIFICATION**1. Summary**

This decision grants the Petition of Southern California Edison Company (SCE) to modify Decision (D.) 09-12-048, as specified below. In D.09-12-048, the Commission authorized SCE, Pacific Gas and Electric Company and San Diego Gas and Electric Company to implement residential rate changes effective January 1, 2010 under provisions of Senate Bill 695 (Stats. 2009, Ch.337). SCE's proposed modifications to D.09-12-048 are intended to resolve two issues that were not addressed in D.09-12-048 that impact SCE's ability to adjust its rates.

As explained below, we adopt modifications to allow SCE (a) on a prospective basis, to increase its existing residential customer charges for California Alternate Rates for Energy (CARE) and non-CARE customers by the same percentage increases as authorized for Tier 1 volumetric rates, and (b) to adjust its composite baseline rate (i.e., its Tier 1 volumetric rate and its fixed

customer charge) more than once per year by means of an advice letter based on changes in its system average rate under certain specified circumstances.

2. Background

As background to frame our consideration of the changes that Southern California Edison Company (SCE) seeks, we briefly review the relevant statutory provisions that led to the adoption of Decision (D.) 09-12-048. On February 1, 2001, Assembly Bill (AB) 1 from the First Extraordinary Session (Ch. 4, First Extraordinary Session 2001) (AB1X) was signed into law, implementing a rate cap on residential rates for usage less than 130 percent of baseline quantities (defined as Tiers 1 and 2) with one exception.¹ Tier 1 applies to usage up to a customer's "baseline," quantity as specified in § 739(d)(1). Tier 2 applies to usage between the baseline and 130 percent of that amount.

SB 695 amended Public Utilities Code § 739.1, and added § 739.9 to allow Tier 1 and Tier 2 residential electric utility rates to be increased within specific limits, thereby removing previous prohibitions on such increases. Pursuant to § 739.9, the Commission has authority to grant increases in rates charged to non-CARE residential customers for electricity usage up to 130 percent as limited by specified indices. Increases to non-CARE rates for Tiers 1 and 2 are limited by § 739.9(a) and § 739.9(b). The authorized increases are limited to the annual percentage change in the Consumer Price Index from the prior year plus one percent, but not less than three percent and not more than five percent per year.

¹ Senate Bill (SB) 1, which established the California Solar Initiative (CSI) program, specifically allowed CSI costs to be allocated to no-California Alternative Rates for Energy (CARE) Residential customers' Tier 1 and Tier 2 usage. *See* Public Utilities Code Section 2851(d)(2).

Subdivision (b) limits the sum of the Tier 1 volumetric rate and the customer charge to no more than 90 percent of the utility's system average rate (SAR).

D.09-12-048 was adopted to implement these provisions of SB 695.

D.09-12-048 authorized the utilities to file annual advice letters to increase residential CARE and non-CARE volumetric rates for usage up to 130 percent of baseline quantities, i.e., Tier 1 and Tier 2 volumetric rates, with commensurate reductions in rates for usage above 130 percent of baseline, i.e., Tiers 3 and above.

D.09-12-048 was adopted on December 17, 2009. On September 20, 2011, SCE filed a Petition to Modify D.09-12-048. Responses to the Petition were filed on October 18, 2011, by Pacific Gas and Electric Company (PG&E) and The Utility Reform Network (TURN). On October 28, 2011, SCE sent a letter to Chief Administrative Law Judge (ALJ) Clopton and assigned ALJ Pulsifer, stating that SCE accepted the conditions recommended by TURN. The Petition to Modify is hereby decided based upon the pleadings submitted. The SCE filing complied with applicable procedural requirements. No hearings are necessary to resolve the Petition for Modification.

3. SCE's Requested Modifications to D.09-12-048

SCE specifically requests the following modifications to D.09-12-048:

1. Based on D.11-05-047, which pertained to residential rate design for PG&E, modify D.09-12-048 to authorize SCE to increase its existing residential customer charges for California Alternate Rates for Energy (CARE) and non-CARE customers by the same annual percentage increases authorized for Tier 1 volumetric rates under California Public Utilities Code Section (§) 739.9(a) and § 739.1(b)(2); and
2. Based on D.11-05-047 and Resolution E-4391, modify D.09-12-048 to permit SCE to adjust its composite baseline rate, i.e., its Tier 1 volumetric rate and fixed customer charge, more than once per year

by means of an advice letter based on changes in SCE's system average rate (SAR) under the two following circumstances:

- a. If a subsequent reduction to the SAR requires a reduction to the composite baseline rate in order to maintain compliance with § 739.9(b); or
- b. If a subsequent increase to the SAR allows an increase to the composite baseline rate, and the composite baseline rate was previously limited by § 739.9(b) to less than the increase permitted by § 739.9(a) in that same year.

SCE explains that at the time it filed Application (A.) 09-10-014, SCE understood that the increases permitted under § 739.9(a) applied only to non-CARE Tier 1 and Tier 2 volumetric rates and the increases permitted under § 739.1(b)(2) applied only to CARE Tier 1 and Tier 2 volumetric rates. Because of this understanding, SCE did not request any increase in its then-existing fixed residential customer charges in A.09-10-014. No party in those proceedings contended that § 739.9(a) or § 739.1(b)(2) applied to both the Tier 1 volumetric rate as well as SCE's customer charge.

In D.09-12-048, we did not consider whether to authorize the same percentage increase to SCE's customer charge as it authorizes to SCE's Tier 1 and Tier 2 volumetric rates. Subsequently, in D.11-05-047, we denied a request by PG&E to implement a fixed residential customer charge, finding that a fixed customer charge is included in baseline rate limitations for usage up to 130 percent of baseline quantities as prescribed in §§ 739.1(b)(2) and 739.9(a).

The effect of D.11-05-047 is to include any customer charge together with the Tier 1 volumetric rate in what is known as the composite baseline rate. Because in D.11-05-047, we concluded that a customer charge must be inferred to be part of the baseline rate percentage increase limits of § 739.9(a), SCE now argues that it should be allowed to request increases to both its existing

non-CARE customer charge and its non-CARE Tier 1 volumetric rate annually by the same percentage, with the composite baseline rate remaining subject to the further limit imposed by § 739.9(b).

SCE similarly believes that it should be authorized to increase its CARE customer charge by the same percentage increase permitted under § 739.1(b)(2) for CARE customers. SCE argues that in order to consistently apply the interpretation adopted by D.11-05-047, D.09-12-048 should thus be modified to explicitly permit such annual increases through January 1, 2019, for a utility that has a customer charge.

SCE also seeks permission to request by Tier 1 advice letter to make additional adjustments to composite baseline rates (i.e., beyond those authorized in the annual filing prescribed by D.09-12-048) when: (1) a subsequent reduction to the SAR requires a reduction to the composite baseline rate in order to maintain compliance with Section 739.9(b); or (2) an otherwise allowable rate increase under Section 739.9(a) was constrained by the secondary cap and the SAR subsequently increases.

4. Responses to SCE Petition

PG&E supports Commission approval of SCE's requested modifications, as long as the approved changes to D.09-12-048 are limited to SCE. PG&E believes that the modifications requested by SCE should be limited to SCE's residential customer charge, because SCE is the only electric utility subject to §§ 739.1(b)(2) and 739.9(a) with a customer charge in effect now. The proposal is presented in light of SCE's specific circumstances, and PG&E has not had sufficient opportunity to identify and evaluate any other possible facts.

TURN agrees that utilities should make additional rate adjustments if composite baseline rates are constrained by the secondary cap and the SAR

decreases. By directing that composite baseline rates “shall not” exceed 90 percent of the SAR, Section 739.9(b) requires that composite baseline rates be reduced in this situation. On this matter, the Commission has no discretion and, in fact, must direct utilities to reduce their composite baseline rates in these circumstances.

TURN does not object to SCE’s first request provided that SCE is not allowed to apply customer charge increases retroactively. TURN agrees with part “a” of SCE’s second request (#2.a., above) and does not oppose part “b” of SCE’s second request (#2.b., above) provided that SCE is limited to only one more increase each year (under the conditions described in SCE’s Petition to Modify [PTM]) due to implementation of rate increases due to General Rate Case (GRC) decisions or Energy Resource Recovery Account (ERRA) applications in addition to the expected January 1 rate changes to SCE’s composite baseline rate.

As acknowledged in the Petition (p. 3), SCE did not seek any increases to customer charges in its two prior annual Section 739.9 rate increase requests and, accordingly, is barred by the rule against retroactive ratemaking from attempting to recoup those foregone rate increase requests in its future rates.

In order to resolve any objections to the Petition to Modify, SCE indicated that it accepts the conditions recommended by TURN in its October 5, 2011 response.

5. Discussion

We conclude that SCE’s requested modifications to D.09-12-048 are reasonable, and hereby adopt them, subject to the qualifications proposed by PG&E and TURN. We agree that based on the import of D.11-05-047, as explained above, SCE should be authorized to increase its residential customer charge by the same percentage increase permitted for the Tier 1 volumetric rate.

Among the utilities whose applications were considered by the Commission in D.09-12-048, SCE was the only one with an existing residential customer charge. In D.11-05-047, we observed in this regard:

Since SCE already has a residential customer charge, TURN's composite "baseline rate" interpretation of Sec. 739.9(a) *would allow an increase both in SCE's Tier 1 rate and to the existing customer charge (or some combination of the two)* because both components exist as part of the composite "baseline rates" that may be increased by 3-to-5 percent pursuant to Sec. 739.9(a). (Emphasis added.)²

SCE filed its first annual advice letter (AL 2526-E) on November 16, 2010, under the D.09-12-048 authority, proposing to increase non-CARE residential rates for Tiers 1 and 2 effective January 1, 2011. SCE used the Social Security cost of living adjustment, effective on January 1, 2011, which represents the change in the consumer price index from the third quarter of 2009 to the third quarter of 2010, which was 1.5 percent. Standing alone, this would allow the Tier 1 and Tier 2 rates to increase by the minimum of three percent under § 739.9(a). However, an increase of three percent to the Tier 1 rate -- including the effective rate for customer charge revenues -- would have exceeded the 90 percent of SAR limit established by § 739.9(b). SCE therefore requested authority for a Tier 1 rate increase of two percent rather than three percent since that Tier 1 rate added to the effective rate for customer charge revenues would then equal 90 percent of SCE's SAR.

SCE also requested authority in its advice letter to adjust its Tier 1 volumetric rate later in 2011 if SCE's SAR increased or decreased. While no protests were filed, Energy Division suspended SCE's advice letter to consider

² D.11-05-047 at 23.

whether the Commission could authorize a Tier 1 volumetric rate increase of less than three percent, an issue that had not been addressed by D.09-12-048. Thus, no rate changes were authorized effective on January 1, 2011.

D.09-12-048 adopted an annual advice letter process for future annual residential rate changes on the default residential tariffs. D.09-12-048 contemplated one annual rate change per utility to implement the increases authorized by SB 695. Resolution E-4391 relied on Ordering Paragraph 5 of D.09-12-048 to conclude that Tier 1 and Tier 2 rate changes should be allowed no more than once in 2011. The resolution directed that after making the rate changes authorized by the resolution, SCE shall not make any further changes to residential rates for Tiers 1 or 2 in 2011, unless a separate Commission order or a statute specifically authorizes further changes.

Ordering Paragraph 5 of D.09-12-048 states:

Future annual filing to implement proposed changes in residential rates as authorized by Senate Bill 695 (Ch. 337, Stats. 2009) shall be by Tier 2 advice letter as set forth in General Order 96-B, filed no later than 45 days before the proposed effective date.

Section 739.9(b) only establishes a mandatory rate cap (and not a floor). Therefore, the Commission is not obligated to increase rates that are constrained by the secondary cap whenever the SAR might increase during the course of a year. The Commission has discretion to grant or deny this aspect of SCE's request subject to any appropriate restrictions or qualifications.

As noted by SCE, Resolution E-4391 concluded that the three percent minimum rate increase permitted by § 739.9(a) could be reduced, if necessary, to less than three percent in order to comply with § 739.9(b). However, the increase to SCE's Tier 1 volumetric rate effective June 1, 2011, was limited by § 739.9(b) to one percent instead of two percent because SCE's SAR had decreased compared

to SCE's January 1, 2011 SAR. If a two percent Tier 1 rate increase had been authorized for January 1, 2011, as SCE initially requested, that Tier 1 rate would have had to decrease on June 1, 2011 to comply with § 739.9(b).

SCE states that its composite baseline rate increase will once again likely be limited to less than three percent by § 739.9(b) based on an effective date of January 1, 2012. However, increases to SCE's SAR will likely occur after January 1, 2012 due to the effective date of decisions in Phase 1 of SCE's 2012 GRC and SCE's ERRA proceedings. Thus, within a relatively short period after January 1, 2012, the composite baseline rate increase for 2012 will probably no longer be limited by § 739.9(b), and should be adjusted accordingly.

Accordingly, we grant SCE's Petition to Modify D.09-12-048 to clarify that more than one composite baseline rate (Tier 1 rate plus customer charge) change per year is allowed for SCE. SCE explains that there is no need for more than one Tier 2 rate change, as only the composite baseline rate is subject to the further restriction provided by § 739.9(b). Any subsequent adjustment to the composite baseline rate will only require a mathematical calculation of the appropriate Tier 1 rate and customer charge based on a revised SAR and should be requested by means of a Tier 1 advice letter. Because authorized revenue changes affecting the SAR are generally consolidated, we do not expect these adjustments to be frequent.

6. Comments on the Proposed Decision

The proposed decision of ALJ Pulsifer in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on December 5, 2011, by TURN. We have considered the comments in finalizing this decision.

7. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Thomas R. Pulsifer is the assigned ALJ for these consolidated applications.

Findings of Fact

1. Beginning in February 2001, retail utility electric residential rates for usage up to 130 percent of baseline quantities (Tiers 1 and 2), with one exception, were previously capped under statutory restrictions.

2. D.09-12-048 implemented SB 695 (Stats. 2009, Ch.337), which amended Public Utilities Code Section 739.1, and added Section 739.9 to allow Tier 1 and Tier 2 residential rate increases by specific percentages based on specified indices applicable to California electric utilities.

3. The Commission has the authority to grant increases in rates charged to non-CARE residential customers for electricity usage up to 130 percent of baseline quantities (Tiers 1 and 2) by the annual percentage change in the CPI from the prior year plus 1 percent, but not less than 3percent or more than 5 percent per year.

4. Increases in Tiers 1 and 2 rates for the residential CARE program are authorized by SB 695 but linked to annual indexed cost of living adjustments.

5. SCE filed its first annual advice letter (AL 2526-E) on November 16, 2010, proposing to increase non-CARE residential rates for Tiers 1 and 2 effective January 1, 2011.

6. Because an increase of 3 percent to the Tier 1 rate -- including the effective rate for customer charge revenues -- would have exceeded the 90 percent of SAR limit established by § 739.9(b), SCE sought a Tier 1 rate increase of only two percent rather than three percent. The Tier 1 rate added to the effective rate for customer charge revenues would then equal 90 percent of SCE's SAR.

7. The Energy Division suspended SCE's advice letter to consider whether the Commission could authorize a Tier 1 volumetric rate increase of less than three percent, an issue that had not been addressed by D.09-12-048. Thus, no rate changes were authorized for SCE effective on January 1, 2011.

8. TURN does not object to SCE's request for authority to increase its customer charges by the same annual percentage increases authorized for Tier 1 volumetric rates under Public Utilities Code Sections 739.9(a) and 739.1(b)(2) provided that SCE is not allowed to apply customer charge increases retroactively. TURN recommends that SCE be allowed to increase its composite baseline rate more than once in a given year only if a subsequent increase to its SAR resulting from a post-January 1 decision on a GRC or ERRA application allows an increase to the composite baseline rate and the composite baseline rate was previously limited by Section 739.9(b) to less than the increase permitted by Section 739.9(a) in that same year. In other respects, no party opposes SCE's requested modifications, provided that they are limited to SCE.

9. By letter to the Chief ALJ and assigned ALJ dated October 28, 2011, SCE affirmed that it accepted the conditions recommended by TURN in its response to the Petition filed on October 5, 2011.

Conclusions of Law

1. SCE's instant petition has complied with the procedural requirements applicable to the filing of petitions for modifications of decisions.

2. SCE has shown that the requested modifications are consistent with the statutory requirements, and are reasonable, provided that no increases applicable to existing residential customer charges are applied retroactively and provided that a second increase in a given year to baseline composite tier rates that are constrained by the 90 percent of SAR limitation in Section 739.9(b)

should only be allowed if the SAR increases because of decisions in a GRC or ERRA docket issued after January 1 of that year.

3. The SCE Petition to Modify D.09-12-048 should be granted to the extent authorized in the ordering paragraphs below.

O R D E R

IT IS ORDERED that

1. The Petition for Modification of Decision 09-12-048 filed by Southern California Edison is hereby granted to the extent authorized in Ordering Paragraph 2 below.

2. Decision 09-12-048 is hereby modified to provide the following additional authorizations applicable only for Southern California Edison Company:

(a) to increase its existing residential customer charges for California Alternate Rates for Energy (CARE) and non-CARE customers by the same annual percentage increases authorized for Tier 1 volumetric rates under Public Utilities Code Section (§) 739.9(a) and § 739.1(b)(2), respectively, provided that any such increases to residential customer charges shall not apply retroactively; and

(b) to adjust its composite baseline rate, *i.e.*, its Tier 1 volumetric rate and fixed customer charge, more than once per year by means of an advice letter based on changes in its system average rate (SAR) under the two following circumstances:

(1) If a subsequent reduction to the SAR requires a reduction to the composite baseline rate in order to maintain compliance with § 739.9(b), or

(2) If a subsequent increase to the SAR resulting from a decision issued after January 1 in a general rate case or Energy Resource Recovery Account allows an increase to the composite baseline rate, and the composite baseline rate was previously limited by § 739.9(b) to less than the increase permitted by § 739.9(a) in that same year.

3. This modification to Decision 09-12-048 is effective immediately.

4. Application 09-10-013 et al. is closed.

This order is effective today.

Dated December 15, 2011, in San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners