

Decision 06-05-019 May 11, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company to Revise its Gas Rates and Tariffs to be Effective July 1, 2005. (U 39 G)

Application 04-07-044  
(Filed July 30, 2004)

**ORDER MODIFYING DECISION (D.) 05-06-029 FOR CLARIFICATION AND DENYING REHEARING OF D.05-06-029 AS MODIFIED**

**I. INTRODUCTION**

In this Order we dispose of the applications for rehearing of Decision (D.) 05-06-029 (“Decision”) filed by the City of Palo Alto (“Palo Alto”), and the Indicated Producers jointly with the California Manufacturers and Technology Association (“IP/CMTA.”)

Pacific Gas and Electric Company (“PG&E”) filed its Biennial Cost Allocation Proceeding (“BCAP”) application on July 30, 2004 seeking changes in rates, revenue allocations, and rate design for natural gas sales and services. The issues addressed in the proceeding were described generally in PG&E’s application as addressing and resolving: (1) gas throughput forecasts for core and noncore customers; (2) marginal distribution and customer’s costs; (3) revenue requirement for gas costs, including special programs; and (4) revenue allocation and rate design. (See D.05-06-029, pp. 2-3.)

In D. 05-06-029, we resolved all outstanding issues in PG&E’s BCAP. We affirmed the equal cents per therm (“ECPT”) allocation of California Alternate Rates for Energy (“CARE”) costs. We also adopted PG&E’s proposal to recover the allocation of

Self-Generation Incentive Program (“SGIP”) costs on an ECPT basis.<sup>1</sup> The Decision included PG&E’s wholesale customers as well as retail customers in the allocation of SGIP costs.<sup>2</sup> The SGIP program is an incentive program to promote the development of self generation facilities, such as microturbines, wind turbines, photovoltaic, and fuel cells installed on the customer’s side of the meter and that provide a portion or all of the customer’s electric load. (See D.05-06-029, p. 17.) The CARE program provides discounted rates to low-income energy customers. The number of subscribers to the program has increased substantially as a result of the energy crisis, more aggressive marketing and easier enrollment procedures. (See D.05-06-029, p. 14.) Proposals to change the allocation to equal-percent-of-transportation-revenue (“EPTR”) would allocate more costs to residential customers and reduce industrial customer bills. (See D.05-06-029, pp. 14-15.)

Timely applications for rehearing were filed by Palo Alto and IP/CMTA.<sup>3</sup> The rehearing issues center on the Commission’s determination that wholesale customers should pay a portion of SGIP costs, and the Commission’s conclusion not to change the existing cost allocation methodology for CARE costs. Specifically, Palo Alto contends that the Decision errs in requiring wholesale customers, such as Palo Alto, to be responsible for a portion of the costs of PG&E’s SGIP. Palo Alto challenges the Decision on the grounds that: (1) the Decision violates Public Utilities Code section 379.5 by requiring PG&E to recover SGIP costs through transmission level charges; (2) the allocation of SGIP costs is not supported by substantial evidence; (3) the Decision mischaracterizes SGIP as an environmental program; (4) the Decision contravenes the

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<sup>1</sup> PG&E’s proposed that the balance in the gas Self-Generation Program Memorandum Account be allocated to core and noncore customers (retail gas customers) on an equal-cents-per-therm basis, excluding wholesale customers. (See Exhibit 1, p. 4-13:22-25.)

<sup>2</sup> California Cogeneration Council (CCC) and California Manufacturers and Technology Association’s (CMTA) allocation proposal would exclude EGs from the allocation of SGIP costs. In the Decision, the Commission included EGs in the allocation of SGIP costs. (See D.05-06-029, p.18.)

<sup>3</sup> IP/CMTA request that the Commission reopen this proceeding to receive supplemental testimony, conduct a brief evidentiary hearing and issue a decision fully supported by the findings and conclusions of law as required by Public Utilities Code section 1705. In the alternative, they ask the Commission to initiate a generic proceeding to reconsider the allocation of CARE costs. (See Rehearing App. p. 2.)

SGIP decision by requiring Palo Alto to pay for the SGIP when the SGIP decision prohibits it from participating in or benefiting from the program; (5) the Decision misinterprets Public Utilities Code section 379.5, and other precedent without analysis or evidentiary support; and (6) the Decision wrongfully allocates SGIP costs to other wholesale customers.

IP/CMTA requests rehearing of the CARE cost allocation issue.

Specifically, IP/CMTA challenges the Decision's holding not to change the ECPT allocation of CARE costs. IP/CMTA argues that: (1) the ECPT allocation violates Public Utilities Code section 1705 concerning findings; (2) the ECPT allocation violates Public Utilities Code section 451 concerning just and reasonable rates; and (3) the Decision is devoid of evidentiary support. (See Rehearing App., pp.1-5.)

Responses to Palo Alto's application were filed by PG&E and The Utility Reform Network ("TURN".) Responses to IP/CMTA's application were filed by PG&E, TURN and the Office of Ratepayer Advocates ("ORA".)

We have carefully considered each and every argument raised in the applications for rehearing and are of the opinion that the Decision should be modified as we set forth today. We adopt PG&E's proposal to allocate SGIP costs to all retail gas customers on an ECPT basis, specifically excluding wholesale customers from the SGIP cost allocation. This Order maintains the ECPT allocation for CARE costs. We further modify page 16 of the Decision, and Finding of Fact No. 12 for clarification purposes only. Rehearing of the Decision, as modified, is denied.

## **II. DISCUSSION**

### **A. City of Palo Alto**

Palo Alto makes numerous contentions in support of its application for rehearing as set forth above. Palo Alto requests the Commission grant rehearing of the Decision and exclude wholesale customers like Palo Alto from any cost allocation relating to the SGIP program. (See Rehearing App., p. 2.)

On reconsideration of the Decision, we find merit in Palo Alto's claim; that is we do not see justification for the inclusion of wholesale customers in the allocation of SGIP costs. Palo Alto is correct in its contention that both ORA and TURN supported PG&E's proposal that SGIP costs be allocated to all retail gas customers on an ECPT basis, specifically excluding wholesale customers.<sup>4</sup> It also appears that no party specifically argued for the imposition of SGIP costs on wholesale customers.<sup>5</sup> The debate on SGIP cost allocation was limited to the allocation of such costs among PG&E's retail customers, and therefore Palo Alto did not offer testimony or brief the issue of allocating SGIP costs to its wholesale customers.

We therefore modify the Decision to exclude wholesale customers from the allocation of SGIP costs, and adopt PG&E's proposal to allocate SGIP costs to all retail gas customers on an ECPT basis.<sup>6</sup> Given that we modify D.05-06-029, Palo Alto's remaining issues are moot and will not be discussed.<sup>7</sup> We deny rehearing of the Decision as modified.

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<sup>4</sup> In prepared testimony, PG&E proposed to "allocate the balance of self-generation program memorandum account to gas customers on an equal-cents-per-therm basis, excluding wholesale customers," and stated, "wholesale customers are not eligible for incentives under the program, and therefore can be reasonably exempt from paying these program costs." (See PG&E BCAP Prepared Testimony, Ex.1, p. 4-13:22 to 4:15, 4-16:15-25.) ORA's Report on PG&E's 2004 BCAP states, "ORA concurs with PG&E's proposal to recover [\$12.8 million in the Self-Generation-Incentive Payment Memorandum Account] via equal-cents-per-therm charges to all retail classes of customers." (See ORA's Report, Ex. 11, p. 6-2.) TURN also supported PG&E's proposal. (See also Florio Testimony, Ex.13, p. 6:17-22, p. 6:22-7.2.)

<sup>5</sup> In its response to Palo Alto's application for rehearing, PG&E concedes that although no party specifically argued that wholesale customers be responsible for paying a portion of SGIP, the California Cogeneration Council ("CCC") and California Manufacturers and Technology Association's ("CMTA") Opening brief notes that SGIP costs should not be allocated to electric generators; that wholesale customers and electric generators are similarly situated in whether they should be required to pay SGIP costs, and should be similarly treated. (See PG&E's Response, p. 2.) However, while CCC did note that wholesale customers are excluded from paying SGIP (because they are excluded from participating in SGIP), so are other gas customers, and as such "both wholesale and EG's should be excluded from paying." CCC and CMTA did not propose that wholesale customers should be responsible for such costs. (See Opening Brief, pp.17-18.)

<sup>6</sup> This Order does not bar the possibility that PG&E's wholesale customers may be allocated SGIP costs in a future BCAP.

<sup>7</sup> Specifically, we do not reach the issue of whether D.05-06-029 violates Public Utilities Code section 379.5 by requiring PG&E to allocate costs to wholesale customers that only take transmission-level service, nor do we reach the issue of whether municipal utilities should be subject to direct or indirect allocation of investor-owned utility's common distribution costs, in violation of Commission precedent. We also do not reach the issue of whether the Decision imposes SGIP costs on wholesale customers based on the Decision's characterization of SGIP as an "environmental program." However, the Commission has found that all utility customers (both gas and electric) derive environmental benefits from the SGIP program. (See D.01-03-073, Finding of Fact Nos. 1 and 3.) We note that while the Decision refers to the environmental benefits of the program in its discussion of cost allocation, for clarification purposes, we modify Finding of Fact No. 13. Specifically, we delete and replace the Finding with the following: "PG&E's proposal to allocate SGIP costs to all retail customers on an equal cents per therm basis is

## B. IP/CMTA

### 1. Section 451

IP/CMTA contends that the Commission's failure to consider the CARE cost allocation pushes rates for non-industrial customers outside the bounds of "just and reasonable" rates, and violates Public Utilities Code section 451. (See Rehearing App., p. 5.) Specifically, IP/CMTA claims that the CARE costs are such a high percentage of CPUC jurisdictional rates of certain noncore customers as to be unreasonable. (See Rehearing App., p. 5.) This claim lacks merit.

First, IP/CMTA simply re-litigates the CARE cost allocation issue previously raised, considered, and rejected by the Commission during this proceeding. IP/CMTA acknowledges this fact.<sup>8</sup> Second, the Commission's decision on the CARE costs allocation has not made transportation rates for industrial customers unjust or unreasonable in violation of section 451.

Specifically, under Public Utilities Code section 890, utilities are directed to collect a natural gas surcharge to fund public purpose programs including CARE. Section 890(e) states in part, "the Commission shall establish a surcharge rate for each class of customer for the service territory of each public utility gas corporation." The section does not, however, explicitly provide any relief for a customer class that feels it is shouldering an unfair burden of the public purpose program costs.<sup>2</sup> Essentially, all customers pay the same per therm rate for the CARE program. The fact that the CARE

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reasonable because the SGIP program provides gas customers with environmental benefits." Moreover, while we do not reach the contention of whether the Decision contravenes the SGIP Decision by requiring Palo Alto to pay for SGIP when Palo Alto is prohibited from participating or benefiting from the program, we note the inaccuracy of Palo Alto's claim given the fact that D.01-03-073 specifically deferred specific cost allocation issues to the next BCAP. (See D.01-03-073, pp.7-8.) Lastly, since the attached proposed order excludes wholesale customers from the SGIP cost allocation, Palo Alto's claim that other wholesale natural gas customers (Alpine Gas, City of Coalinga, Island Energy, West Cost Gas (Castle) and West Coast Gas (Mather) are also erroneously included in the allocation of SGIP costs because they are similarly situated is also moot.

<sup>8</sup> From the very beginning of this proceeding, IP/CMTA urged the consideration of this matter based on the Commission's authority to consider whether or not rates are just and reasonable. IP/CMTA admits it is relitigating previously raised issues, stating "it was arbitrary for the Commission to decline to address and modify CARE surcharge allocation at this time...several proposals were offered on the record to address the cost allocation problem." (See Rehearing App., p. 3.)

<sup>2</sup> See Pub. Util. Code § 890(e).

rate is a high percentage of noncore industrial transmission customer rates merely reflects the fact that the transportation rate for those customers is low.

Moreover, the fact that large industrial customers, who consume larger amounts of gas, pay a greater proportion of CARE costs reflects any cost component allocated on an equal cents per therm basis. The Commission adequately reviewed these facts and decided to maintain the existing allocation of CARE costs. The fact we did not agree with IP/CMTA's proposal does not render the rates unjust or unreasonable under section 451, and thus there is no basis for granting rehearing on this issue.

## **2. Section 1705**

Next, IP/CMTA contends that the Decision does not address CARE surcharges, and is unsupported by the record, in violation of Section 1705. (See Rehearing App., p. 6.) Specifically, IP/CMTA challenges three determinations made in the Decision: (1) "that no party has made a convincing case that current CARE allocation represents poor public policy"; (2) "that all businesses and individuals benefit from the economic welfare of the greater community"; and (3) "no party has presented any evidence to suggest that the CARE rate component has caused businesses to fail or relocate." IP/CMTA argue these findings violate section 1705. (See Rehearing App., p. 4.)

Findings of fact and conclusions of law must be based on the evidence in the proceeding. Contrary to IP/CMTA's contentions, the record contains sufficient evidence for our findings and conclusions of law consistent with Public Utilities Code section 1705. (See also Public Utilities Code, §1757, subd. (a)(3).) Section 1705 does not require us to make express legal and factual findings for each and every issue or sub-issue raised by a party. Rather, section 1705 only requires sufficient findings and conclusions in order to assist the Court in ascertaining the principles relied upon by the Commission, and assist the parties in preparing for rehearing or court review. D.05-06-029 amply complies with these requirements.

First, our conclusion that no party has made a convincing case that the current CARE allocation represents poor public policy is consistent with Commission practice and is supported by the record evidence. We have traditionally allocated the CARE costs to all customers on an equal cents per therm basis. (See *Application of Southern California Edison*, D.96-04-050, p. 179, (1996) Cal. P.U.C. 2d 362; see also D.05-06-010, p. 15.) An equal cents per therm allocator has been considered a fair means of recovering costs. (See *Application of Southern California Gas Company*, D.00-04-060, (2000) Cal. PUC LEXIS 396.) D.05-06-029 acknowledges this and states:

This Decision generally follows past Commission decisions in these areas except where a party or parties have made a compelling showing in favor of changing existing policies or analytical methods. We see no reason to depart from past policy in this implementation proceeding unless circumstances have changed substantially ... or a party can demonstrate a past order misstates or misapplies facts, policy, or analysis.

(See D.05-06-029, p.4.)

Moreover, Public Utilities Code sections 890-900, which establish the gas public purpose program surcharge (i.e., CARE, energy efficiency) require that the Commission establish a surcharge rate, "...for each class of customer" of every utility and lists exemptions. These sections do not, however, explicitly provide any relief for a customer class that feels it is shouldering an unfair burden.<sup>10</sup>

Basically, IP/CMTA did not meet its burden in support of the alternative equal-percent-of-transportation-revenue ("EPTR") allocation. Specifically, IP/CMTA's claims that the ECPT allocation has a disproportionate impact on large users, and that it makes no more sense to calculate CARE as a percentage of gas commodity costs than it does to calculate CARE as a percentage of the customer's total cost of doing business, was unconvincing. (See Rehearing App., pp. 7-9.) In fact, we found applicants' analysis misleading, in that the use of transmission rates alone overstates the impact of CARE

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<sup>10</sup> See Pub. Util. Code § 890(e).

rates on large customers. (See D.05-06-029, p. 16.) The Decision addresses this and states:

CMA improperly compares large customer transmission billings with total bills of residential customers. The CARE rate component is not 55% of a transmission customer's total bill, only the transmission portion, which is a small part of most industrial customer bills. Assuming a gas price of \$0.60 cents per therm, the average CARE rate component of a transmission-level industrial customer is 3.5% of the delivered cost of gas, while it is 2.2% of the delivered cost of gas for a residential customer.

(See D.05-06-029, pp. 16-17).<sup>11</sup>

Given the lack of convincing evidence presented by IP/CMTA supporting a deviation from the existing cost allocation to IP/CMTA's EPTR proposal, IP/CMTA fail to demonstrate legal error.

In addition, the Decision is based on a reasoned evaluation of the parties' proposals and the evidence presented in the record. We expressly considered yet rejected the proposals in support of changing the existing allocation.<sup>12</sup> Specifically, we found ORA's position that, "when the commodity of gas is included in the industrial customer equation – as it is for residential customers – the burden of the CARE program is not disproportionate," more persuasive. (See D. 05-06-029, p. 16.) Moreover, the evidence also shows that under the ECPT methodology, the industrial class' share of those costs has not increased substantially. For example, industrial customers pay 36% of CARE expenses, whereas 1995-1996 CARE data for state large utilities showed PG&E's industrial customers paying 37.4% of gas CARE costs. (See Ex.1, p. 5-25 and 5-27; see

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<sup>11</sup> Further, TURN points out that IP/CMTA's claim is exaggerated, since one adds the cost of backbone service to determine the "true cost" of PG&E's transportation service, one finds that CARE comprises about 33% of the transportation rate for industrial transmission customers, and a smaller percentages for all other noncore customers. (See TURN's Response, p. 2.)

<sup>12</sup> IP/CMTA supported PG&E's EPTR proposal, which would allocate a much greater share of costs to residential customers increasing the average residential gas bill. Industrial and commercial customer bills would fall proportionately. (See D.05-06-029, p. 15.) The Decision notes this, stating "PG&E proposes to change the allocation according to "equal-percent-of-transportation-revenue...CMA supports PG&E's proposal." (See D.05-06-029, p. 15.)

also ORA Reply Brief, pp. 2-3); see also *Re Southern California Gas Company*, D.97-04-082 (1997) 72 Cal. P.U.C. 2d 151, 218.)

Contrary to IP/CMTA'S claim, we did not solely rely on TURN's argument that non-eligible, residential customers are no more responsible for the costs or enjoy the benefits of the CARE program than noncore customers to dismiss IP/CMTA's proposal. As set forth above, various factors support the determination, including the fact that the Commission has traditionally used an ECPT methodology, IP/CMTA did not meet its burden, and instead it presented misleading information overstating the impact of CARE rates on large customers. These facts taken together support our conclusion. The fact that we did not agree with IP/CMTA's cost allocation proposal does not constitute legal error.

Second, IP/CMTA contends the Commission's conclusion that all businesses benefit from CARE is unsupported and violates section 1705. (See Rehearing App., p. 10.) Specifically, IP/CMTA claims no evidence was presented on the record to support the claim that economic benefits accrue to PG&E's non-eligible customers in the form of greater economic welfare for the community. (See Rehearing App., p. 10.) This claim also lacks merit.

The conclusion is supported by the fact that we have consistently allocated the costs associated with such programs equally to all ratepayers because of equity considerations. The Commission has a previously established cost allocation on this issue, which we maintain in D.05-06-029. (See *Application for Pacific Gas and Electric Company For Authority to Decrease its Rates*, D.98-07-101, (1998) 81 Cal. P.U.C. 2d 468.)

Moreover, the Commission has previously rejected proposals to set an annual cap on the dollar amount of CARE surcharges that could be collected from any one customer, a proposal that would have reduced the CARE payments of the largest

industrial customers, using the same reasoning set forth in D.05-06-029.<sup>13</sup> As discussed above, IP/CMTA failed to present any compelling reasons which would support the Commission changing its existing method. Thus, there is no basis for granting rehearing on this issue.

Third, IP/CMTA's contention that the Commission's conclusion that no party has presented any evidence to suggest that the CARE rate component has caused businesses to fail, is without merit.<sup>14</sup>

For example, PG&E's witness admitted that no evidence exists to support this contention, stating they didn't know "exactly why all of the customers closed their doors." (See PG&E/Blatter, 3 RT 183:11-14.) Also, PG&E could not prove that increased CARE expenses played any part in the closure of some of its industrial customers, stating "I couldn't say it [was] specifically because they had to pay a CARE surcharge." (See PG&E/Blatter, 3 RT 183:24-28.) PG&E further acknowledged that the loss of some industrial load could not be attributed to CARE costs alone. (See PG&E Prepared Testimony, Ex. 2, p. 4-9.) A witness for TURN supports this contention, stating "to suggest that CARE costs have caused this loss of [72 industrial] customers is just silly." (See TURN/Florio, Ex. 13, p. 4.)

In fact, the record evidence thoroughly disputes IP/CMTA's claim, and shows that California businesses failed prior to the increase in CARE rates, when gas rates spiked and the economy slid into recession in 2001. (See D.05-06-029, p. 16.) TURN's evidence showed a nationwide decline in the number of industrial gas transmission customers over the 1999-2002 period, and a lost of noncore industrial customers on the P&GE system before the increase in CARE costs. (See TURN

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<sup>13</sup> Specifically, the Commission reasoned "Ultramar has not convinced us that the eight largest users on SoCalGas' system should pay proportionately less than everyone to meet the costs of a social program, its' request is denied, we adopt ORA's recommendation." See *Re Southern California Gas Co. for Authority to Revise its Rates Effective August 1, 1999, in its Biennial Cost Allocation Proceeding* (D.00-04-060) 2000 Cal. PUC LEXIS 396, at \*151-152); See also *Investigation on the Commission's Own Motion to Comply with Senate Bill 987 and realign Residential Rates, Including Baseline rates of California Energy Utilities* (D.89-09-044) (1989) 32 Cal. P.U.C. 2d. 406, 417.

<sup>14</sup> IP/CMTA acknowledges this fact, stating "no party can reasonably demonstrate that the CARE surcharge alone has caused a company to go out of business or move out of state..." (See Rehearing App., p. 13.)

Prepared Direct Testimony, Ex. 13, p. 5; see also Direct Testimony of Shoenbeck, Ex. 10, p. 8.; see also Ex. 13, p. 5 and Ex. 6, p. 5.)

Moreover, the evidence showed that PG&E transportation rates – including or excluding CARE – were not a factor affecting business decisions of noncore industrial customers, and the migration of PG&E noncore to core customers in 2001-2002 was due to increases and volatility in the price of gas, not CARE costs. (See TURN Opening Brief, p. 12.)<sup>15</sup> Further, PG&E agreed that CARE costs alone have not resulted in the loss of industrial gas customers in California and reiterated that “increased gas commodity prices and national decline in the number of industrial gas transmission customers, also played a role.” (See PG&E/Blatter, Ex. 2, p. 4-9 & 4-10.) Thus, the evidence provided by PG&E specifically rebuts the contention that CARE costs are any factor influencing industrial or noncore customers.

Clearly, the Decision does not “discount the evidence without sufficient support.” The fact of the matter is that no party presented convincing evidence that CARE rates made businesses fail. The evidence in the record fully supports the determinations and is consistent with section 1705, and there is no basis for granting rehearing.

Notwithstanding the fact that there is no legal error, and for clarification purposes only, we modify the Decision to insert the word “convincing” on page 16 and Finding of Fact No. 12. This will further clarify that we were not persuaded to change the cost allocation based on the evidence presented.

### **III. CONCLUSION**

For the reasons stated above, we modify page 18 and Finding of Fact No. 13 to exclude wholesale customers from the SGIP cost allocation. We further modify page

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<sup>15</sup> Customers switched to core service due to the relative stability of core commodity prices, even though core large commercial transportation rates were two to five times the noncore industrial transportation rates, and were willing to pay almost 10 cents more for transportation service in order to obtain security of more stable commodity prices under core procurement service. (See Ex. 1, p. 5-26; see also TURN Opening Brief, p. 9-16.)

16 and Finding of Fact No. 12 for clarification purposes only. Rehearing of D.05-06-029, as modified, is denied.

**THEREFORE IT IS ORDERED** that:

1. On page 16, paragraph 2, sentence 3, should read as follows:  
No party has presented any convincing evidence to suggest that the CARE rate component has caused businesses to fail or relocate.
2. Finding of Fact No. 12 is deleted and replaced with the following:  
CARE program benefits are not limited to residential customers and there is no convincing evidence to support the contention that CARE surcharges have caused businesses to fail.
3. On page 18, paragraph 2, the sentence beginning with “consistent with our view that all customers should pay for programs that provide environmental benefits, we include wholesale ...” is deleted, and is replaced with the following:  
Consistent with our view that all utility customers (both gas and electric) derive environmental benefits from the SGIP program, we include EG customers in the allocation of SGIP costs.<sup>16</sup> No party proposed assigning any SGIP costs to PG&E’s wholesale customers. We therefore adopt PG&E’s proposal to allocate the SGIP costs to all retail gas customers on an equal cents per therm basis.
4. Finding of Fact No. 13 is deleted and replaced with the following:  
PG&E’s proposal to allocate SGIP costs to all retail gas customers on an equal cents per therm basis is reasonable because the SGIP program provides gas customers with environmental benefits.
5. PG&E shall file an advice letter or letters revising its tariffs no later than 30 days from the effective date of this Order to remove its SGIP costs from the rates of its wholesale customers and allocate its SGIP costs to its retail gas customers on an equal cents per therm basis, as adopted herein.

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<sup>16</sup> (See D.01-03-073, Finding of Fact Nos. 1 and 3.)

6. Rehearing of D.05-06-029 as modified, herein, is denied.
7. This proceeding is closed.

Dated May 11, 2006, at San Francisco, California.

This order is effective today.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
DIAN M. GRUENEICH  
RACHELLE B. CHONG  
Commissioners

Commissioner John A. Bohn, being necessarily absent, did not participate.