

**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.

Rulemaking 01-05-047

**ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE RULING  
RE LEGAL ISSUES, CLIMATE ZONE ISSUE AND UPDATED SCHEDULE**

This ruling addresses three issues: whether there should be hearings on all issues outlined in the scoping memo for Phase 2 of this proceeding or whether certain proposed changes are legally barred and should not proceed to hearing; the utilities' submissions in response to Judge Thomas' questions about climate zones; and updated scheduling.

**Hearings/Legal Issues**

There will be hearings on all issues covered in the Phase 2 scoping memo. Judge Thomas asked the parties to submit briefs addressing whether certain issues in the scoping memo might lead to changes that would be legally barred by § 739.<sup>1</sup> The scoping memo contained the following issues:

1. Household characteristics (including household/home size and demographics).
2. Climate zones and geographic boundaries of each utility's baseline zones

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<sup>1</sup> All citations herein are to the Public Utilities Code.

3. Well water pumping for household use
4. Condominium and other multiple dwelling unit common areas
5. Seasonal residence effects on average use calculations (including the application of baseline to vacation homes)
6. Definition of seasons
7. Rate impacts of changes to baseline
8. Proposed legislative changes

Several parties filed briefs claiming that the Commission could not legally make changes to its baseline program related to issues 1, 3, 4 and 5 under § 739. We have determined that the arguments in favor of a legal bar are not strong enough to preclude evidentiary hearings altogether on each of the issues listed above. We cannot prejudge what the Commission ultimately will decide about its legal authority to change the baseline program, and it may decide that certain proposed changes are in fact legally barred. Nonetheless, we believe the parties proposing changes in each of the areas outlined above deserve a hearing on their proposals. We discuss the arguments the parties made in each area briefly below.

### **Demographic Characteristics**

The utilities argue that because the legislature at one time considered and rejected qualifications to § 739 based on household size and other demographic characteristics, the legislature intended to bar consideration of such characteristics in setting baseline. They also argue that statute does not on its face allow consideration of such characteristics.

In response, several parties claim that the legislative history of § 739 also provided for consideration in setting baseline quantities of financial need, and

that demographic characteristics can in some cases demonstrate such need. For example, TURN notes that the purpose behind the baseline statute is not only to encourage conservation. The statute also encourages energy affordability. Under § 739(c)(1), the Commission is directed to "avoid excessive rate increases for residential customers," and in § 739(c)(2) to observe "the principle that electricity and gas services are necessity, for which a low affordable rate is desirable." We are not achieving affordability for large low-income households under the current baseline scheme, TURN claims.

Aglet claims that the statute requires that baseline be based on the usage of the "average residential customer," but does not define that term. It states that while the utilities define it by calculating the average gas or electricity usage by all residential customers within a given geographic area, there is no legal requirement that "reasonable energy needs of the average customer" cannot be defined using average family size, average dwelling size or some other average.

Without prejudging the Commission's ultimate conclusion on this issue, we find that the parties advocating change raise enough of a question about the legal standard that we should allow them a hearing on their claims.

### **Well Water Pumping**

Once again, the utilities assert that the legislature considered and rejected additional baseline quantities for well water pumpers and therefore that any change is legally barred. They claim that well water pumpers are compensated for their higher electricity bills by not having to pay for their water, and already have a higher baseline by virtue of the fact that baseline is based on average residential consumption and that consumption in water pumping areas includes the extra use for pumping. Finally, they assert that water pumpers often use much of the water for agricultural/landscape irrigation, which does not fit the

paradigm of domestic water usage. These issues are all appropriate for consideration at hearings but do not, in our view, foreclose them.

In advocating hearings on this issue, Aglet and the Regional Council of Rural Counties (RCRC) argue that § 739.8(a) gives the Commission authority to increase baseline for well water pumpers. That section says "Access to an adequate supply of healthful water is a basic necessity of human life, and shall be made available to all residents of California at an affordable cost." They go on to argue that because the statute refers to "all residents" even though the Commission does not regulate water for all residents, the section must mean that the Commission has obligations in the area that it does regulate - the price of electricity for those California residents who pump their own water.

In reply, the utilities claim that § 739.8(a) was intended to regulate water rates and not electricity rates. Without deciding this issue one way or the other, once again we believe the proponents of change have raised enough of an issue to allow them the benefit of an evidentiary hearing. It will then be for the Commission to decide whether a change is legally allowed and factually warranted.

### **Multiple Dwelling Unit Common Areas**

While certain parties suggested that there might be legal problems with giving multiple dwelling units (*e.g.*, condominiums, mobile home parks) extra baseline quantities for common areas, none of these arguments was well fleshed out or persuasive.<sup>2</sup> We will allow evidentiary hearings on this issue. However,

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<sup>2</sup> For example, as pointed out by Greenlining and the Executive Council of Homeowners, PG&E proposes one change on this issue, but says that if other changes are proposed it "reserves the right to argue that they [such proposals] would be legally

*Footnote continued on next page*

we note that certain parties currently are proposing a settlement that would provide relief to certain condominium common areas in PG&E territory. We expect the Commission to decide the merits of that settlement proposal without evidentiary hearings. It may be that there is no additional proposal in this area, and thus no need for hearings, but we will allow such hearings if any party advocates change in the treatment of other residential common areas, such as in mobile home parks.

### **Seasonal Issues**

Only PG&E raises any claim related to the interaction of § 739 and seasonal residences. PG&E states that the Commission may only exempt seasonal residences from receiving baseline quantities if it finds that “PG&E’s baseline quantities for any one climate zone [are] skewed similarly to the ‘Palm Springs desert problem’ identified in the 1982 legislative history.” “At most this issue could proceed to hearings *solely* to review the narrow issue of whether the Baseline quantities are being significantly depressed by a large percentage of seasonal homes in the two mountain climate zones for PG&E, which appear to have more than two percent vacation homes in them.”<sup>3</sup> We do not find PG&E’s arguments persuasive and will allow hearings on all issues related to whether seasonal residences should be included in baseline calculations.

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barred” without any real explanation. PG&E Brief of Mar. 1, 2002 at 43-44, 46. Edison only asserts that “any differentials in energy needs resulting from . . . common use areas would need to be representative of the average consumer or run afoul of the Legislative standard” without saying more. Edison Mar. 1, 2002 Brief at 6.

<sup>3</sup> PG&E Mar. 1, 2002 Brief at 44-45.

## **Climate Zones**

On April 5, 2002, Judge Thomas issued an email request to the four large IOUs asking for their answers to several questions related to the appropriateness of the current IOU climate zones. Those questions were as follows:

1. You currently determine baseline allowances by climate zone within your service area. Please provide a description of these baseline climate zones, explain how they were developed, and indicate how they relate to the California Energy Commission's Title 24 climate zones. Please provide a map that shows the relationship between the CEC climate zones falling into your service area and the climate zones used to determine your baseline allowances.
2. To what extent do the normal weather conditions experienced by your customers vary significantly within your baseline climate zones (e.g., are there areas of significant population where a key indicator of weather conditions, such as heating and/or cooling degree days, varies by at least 20% from the value currently used to represent the baseline zone)? Please identify such areas.
3. Have there been significant population shifts within your baseline climate zones? If so, is the weather station used to represent each climate zone still representative of the current distribution of customers within the zone? Do these population shifts warrant changes in the number or configuration of climate zones used in setting baseline allowances?
4. If smaller and more homogeneous climate zones were established for the purposes of determining baseline allowances, would this create serious practical problems for billing? Is there a way to define such zones (say, by ZIP code) that could minimize any such difficulties?
5. How recently were your current baseline allowances determined? Please explain the process through which these allowances were developed.

On April 29, 2002, the IOUs served responses. On or before June 3, 2002, parties shall file and serve comments regarding whether the information furnished militates in favor of (or against) a climate zone change. Any party may

file reply comments of no more than 5 pages in length on or before June 14, 2002.

We also request that the IOUs supplement their responses as indicated below.

The 4 IOUs' responses indicated the following:

**Southern California Edison**

Edison's response to question 2 shows that significant numbers of customers experience heat or cold that deviates substantially from the norm in the relevant climate zone. For example, in its most populous baseline zones (10 and 17), Edison's data show the following:

- Zone 10 (coastal) has 5 weather stations with more than 20% positive deviation above the mean number of cooling degree days.<sup>4</sup> That is, of the 15 weather stations covered by Zone 10, at 5 weather stations the number of hot summer days exceeds the mean by more than 20 percent. Two of the 15 weather stations have more than a 20% negative deviation (fewer HDD, or milder winters) than the mean, and 2 have more than a 20% positive deviation (more HDD, or colder winters) than the mean.
- Zone 17 (inland Los Angeles Basin) has 3 (of 13) stations that are hotter by more than 20% of the mean. In winter, 3 have milder winters and 2 have colder winters (*i.e.*, a more than 20% deviation) than the mean.

Edison's data show deviations of 20% or more in zones 14 and 16.

In addition, Edison discussed population increases in response to question 3, but did not respond to the following portion of that question: "Do these population shifts warrant changes in the number or configuration of climate zones used in setting baseline allowances?" It shall respond to this question on or before the June 3, 2002 due date for comments.

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<sup>4</sup> A degree day is defined as [(Daily High Temperature - Daily Low Temperature)/2] minus 65. If the value is less than zero, then it is called a heating degree day amount. If the value is greater than zero, then it is called a cooling degree day amount.

### **SDG&E**

The responses of SDG&E were not clear. In response to question 2, which sought disclosure of degree day variations of at least 20%, SDG&E stated:

“Cuyamaca, which falls within zone 2, is the only location that exceeds its zonal range of 4,500 annual HDD by 11%.” It is unclear whether SDG&E used the same methodology as did Edison, which clearly indicates those weather stations that deviate from the norm in a particular climate zone. SDG&E shall clarify its response no later than 7 days after mailing of this ruling, using the same methodology as Edison. In addition, SDG&E listed very few city areas in comparison to its fellow IOUs. It may be that it listed each weather station, as Edison did, but it shall clarify this within 7 days of this ruling’s mailing.

In response to question 3, regarding population shifts, SDG&E stated it was “unable *at this time* to state whether there have been any population shifts in climate zone 1.” Because it did not respond regarding such shifts, it also did not state whether such shifts warrant changes in the number or configuration of climate zones. Within 7 days, SDG&E shall state when it will have such responses available.

### **SoCalGas**

SoCalGas stated that in its baseline climate zone 1, the Buttonwillow weather station has a 30-year HDD figure higher than adopted HDD criteria. SoCalGas goes on to state, however, that its data show that there are no cities in which the 30-year annual HDD varies widely from the baseline climate zone HDD. It is unclear whether SoCalGas also looked for CDD variances. Within 7 days of this ruling’s mailing, SoCalGas shall submit clarification.

As to population shifts (question 3) SoCalGas’ results appear to indicate that the significant shifts it acknowledges have occurred have been countered by

SoCalGas' practice of re-weighting weather station data across climate zones based on customer population changes. Within 7 days, SoCalGas shall clarify whether this re-weighting affects all areas of population shift called for by question 3. In addition, SoCalGas states its data do not warrant a change in climate zones. SoCalGas shall explain why in its comments due on June 3, 2002.

**PG&E**

PG&E compared current weather patterns to those of 30 years ago and found an overall warming trend. It is unclear why PG&E conducted its study in this manner, since question 2 asked whether there are locations within its existing climate zones that deviate at least 20% from the norm in the climate zone. If there were such outliers, they might be eligible to be included in a separate climate zone with different baseline quantities. PG&E's data do not appear to enable us to make this determination. Within 7 days of this ruling's mailing, PG&E shall either state when it can complete such a study, or explain why it is unable or unnecessary to do so.

Nonetheless, PG&E's data indicate that 5 of the 11 weather stations in its climate zone X (representing mainly the transition zone between the cool coast and hot Central Valley) show increases in CDD above 20% if one compares 1951-1980 data for those same weather stations to 1971-2000 data. PG&E reported similar changes in climate zone P and in Kentfield and San Luis Obispo. These reports indicate that there may be areas in PG&E's climate zones that deviate significantly from the norm.

PG&E also shows significant population growth in response to question 3, and summarily states that such growth does not warrant change in its climate zones. PG&E shall further explain its position in its comments due on June 3, 2002.

**Revised Schedule**

The following is a slightly revised schedule for this proceeding

<b>Event</b>	<b>Due Date</b>
IOUs' further responses on climate zones due	7 days from mailing of this ruling
Opening testimony due (from parties that propose change to any rules within scope above)	May 31, 2002
Comments on climate zone submissions due	June 3, 2002
Reply comments on climate zone submissions due	June 14, 2002
Responsive testimony due	June 21, 2002
Discovery and motion cut-off (all discovery responses due no later than this date, and motions heard no later than this date)	July 1, 2002
Hearings	July 8-9, 2002, 10 a.m. – 4 p.m. July 10, 2002, 9 a.m. – 1 p.m. July 15-19, 2002, 10 a.m. – 4 p.m.

Therefore, **IT IS RULED** that:

1. Hearing will occur on each issue contained in the scoping memo for Phase 2 of this proceeding.
2. The 4 largest IOUs shall supplement their climate zone submissions within 7 days of mailing of this ruling.
3. Comments on the IOUs' climate zone submissions are due on or before June 3, 2002. Reply comments shall be no longer than 5 pages and are due on or before June 14.

4. The schedule for this proceeding is revised as set forth herein.

Dated May 24, 2002, at San Francisco, California.

/s/ GEOFFREY BROWN  
Geoffrey Brown  
Assigned Commissioner

/s/ SARAH R. THOMAS  
Sarah R. Thomas  
Administrative Law Judge

## **Appendix A Hearing Room Ground Rules**

1. All prepared written testimony should be served on all appearances and state service on the service list, as well as on the Assigned Commissioner's office and on the Assigned ALJ. Prepared written testimony shall not be filed with the Commission's Docket Office.
2. Each party sponsoring an exhibit should, in the hearing room, provide two copies to the ALJ and one to the court reporter, and have copies available for distribution to parties present in the hearing room. (Present estimate: 5 copies.) The upper right hand corner of the exhibit cover sheet should be blank for the ALJ's exhibit stamp. If there is not sufficient room in the upper right hand corner for an exhibit stamp, please prepare a cover sheet for the exhibit.
3. As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction.
4. Generally, corrections to an exhibit should be made in advance and not orally from the witness stand. Corrections should be made in a timely manner by providing new exhibit pages on which corrections appear. The original text to be deleted should be lined out with the substitute or added text shown above or inserted. Each correction page should be marked with the word "revised" and the revision date.
5. Exhibit corrections will receive the same number as the original exhibit plus a letter to identify the correction. For example, Exhibit 5-A is the first correction to Exhibit 5.
6. Individual chapters of large, bound volumes of testimony may be marked with separate exhibit numbers, as convenient.
7. Partial documents or excerpts from documents must include a title page or first page from the source document; excerpts from lengthy documents should include a table of contents page covering the excerpted material.

8. Motions to strike prepared testimony must be made at least two working days before the witness appears, to allow the ALJ time for review of the arguments and relevant testimony.
9. Notices, compliance filings, or other documents may be marked as reference items. They need not be served on all parties. Items will be marked using letters, not numbers.
10. No food is allowed in the hearing room; drinks are allowed if you dispose of containers and napkins every morning and afternoon.

(End of Appendix A)

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner and Administrative Law Judge Ruling Re Legal Issues, Climate Zone Issue and Updated Schedule on all parties of record in this proceeding or their attorneys of record.

Dated May 24, 2002, at San Francisco, California.

/s/ ERLINDA PULMANO  
Erlinda Pulmano

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

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