

~~PUBLIC UTILITIES COMMISSION~~

~~505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298~~

~~October 25, 2021~~

~~Agenda ID #20007~~

~~Ratesetting~~

~~TO PARTIES OF RECORD IN RULEMAKING 15-02-012:~~

~~This is the proposed decision of Administrative Law Judge Jason Jungreis. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's December 2, 2021, Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.~~

~~Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.~~

~~The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).~~

~~/s/ ANNE E. SIMON~~

~~Anne E. Simon~~

~~Chief Administrative Law Judge~~

~~AES:jnf~~

~~Attachment~~

ALJ/JSJ/jnf

**PROPOSED DECISION**

Agenda ID #20007 [\(Rev. 1\)](#)

**Ratesetting**

[12/2/2021 Item #4](#)

Decision PROPOSED DECISION OF ALJ JUNGREIS (Mailed 10/25/2021)

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

Order Instituting Rulemaking to  
Consider the Annual Revenue  
Requirement Determination of the  
California Department of Water  
Resources and Related Issues.

Rulemaking 15-02-012

**DECISION ADOPTING THE TIMING AND METHODOLOGY FOR REFUND  
OF OVER-COLLECTED BOND CHARGES, AND TO ESTABLISH REFUND  
OF FUTURE ENERGY CRISIS LITIGATION RESOLUTION MONIES**

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[ATTACHMENT 1 - DWR Revised Memorandum of Accounts](#)

**DECISION ADOPTING THE TIMING AND METHODOLOGY FOR REFUND OF OVER-COLLECTED BOND CHARGES, AND TO ESTABLISH REFUND OF FUTURE ENERGY CRISIS LITIGATION RESOLUTION MONIES**

**Summary**

In accordance with the Rate Agreement between the California Department of Water Resources (DWR) and the California Public Utilities Commission, this decision adopts the timing and methodology for refund of excess Bond Charges drawn from the electricity customers in the service territories of Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (collectively, the investor-owned utilities (IOUs)), and determines how the IOUs will administer the refund of those excess Bond Charges. This decision also determines the establishment of the appropriate mechanisms concerning how DWR and the IOUs will administer the future refund of energy crisis litigation resolution monies.

This proceeding is closed.

**1. Background and Procedural History**

This decision addresses the scope of issues covered by this rulemaking, sets forth the procedures and schedule that will be followed pursuant to the California Department of Water Resources' (DWR) notice to the California Public Utilities Commission (Commission) regarding excess Bond Charge monies, and adopts a methodology for a Bond Charge negative revenue requirement -- said otherwise, a refund -- of the excess monies collected from the electricity customers in the service territories of Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) (collectively, the investor-owned utilities (IOUs)).<sup>1</sup> This

<sup>1</sup> Due to the complexities brought about by the changing means of selling, delivering, and billing electricity in California, for simplicity this decision will sometimes refer to electricity

decision also determines the establishment of the appropriate mechanisms concerning how DWR and the IOUs will administer the refund of future energy crisis litigation resolution monies, some of which are likely to be received in the near future, and some of which may be received in a more distant future.

Due to the 2000-2001 California energy crisis, DWR engaged in bond financing in order to purchase electrical power to supply the needs of retail customers in the state. Since 2001, pursuant Water Code §§ 80110 and 80134 and Decision (D.) 02-02-051, DWR has submitted its annual revenue requirement to pay both the Power Charges and the Bond Charges associated with these transactions to the Commission, all in accordance with the Rate Agreement between DWR and the Commission.<sup>2</sup> Since that time, the Commission's primary obligation has been to calculate, revise, and impose corresponding DWR Power Charges and Bond Charges that collect these costs from the IOUs' electricity customers.<sup>3</sup>

In 2015, DWR determined that all necessary Power Charges had been collected from the IOUs' electricity customers. DWR requested that the Commission terminate the imposition of the Power ~~Charges~~Charge costs upon the IOUs' electricity customers, and implement a negative revenue requirement

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billing electricity in California, for simplicity this decision will sometimes refer to electricity customers in the service territories of the IOUs as the IOUs' electricity customers: the net result should be that those electricity customers from whom the Bond Charges were drawn are the intended target of the Bond Charge refunds. It is also expected that this target is synonymous with those electricity customers from whom the Wildfire Fund Non-Bypassable Charge (WF NBC) is presently drawn.

<sup>2</sup> Among other subjects it addresses and controls, the terms "Power Charges" and "Bond Charges" are defined in the Rate Agreement that was adopted in D.02-02-051.

<sup>3</sup> The IOUs (PG&E, SCE, and SDG&E) are the primary parties to the proceeding. DWR is not a party to the proceeding.

to return excess Power Charges to the IOUs' electricity customers. The Commission directed the IOUs accordingly.<sup>4</sup>

In 2020, DWR determined that all necessary Bond Charges had been collected from the IOUs' electricity customers. DWR requested that the Commission terminate the imposition of the Bond Charge costs upon the IOUs' electricity customers. The Commission directed the IOUs accordingly.<sup>5</sup>

On August 5, 2021, DWR served upon the proceeding's Service List a Notice identifying an excess balance of \$170,700,000 in the Bond Charge account, and identified a remaining balance of \$12,800,000 in the Power Charge account for use to fund DWR's roles in on-going energy crisis litigation (the Bond Charge account statement was later corrected to reflect that there would also be a remaining balance of \$11,600,000 in the Bond Charge account after the proposed refund<sup>6</sup>). DWR proposed that the excess Bond Charge monies be refunded through the IOUs to their electricity customers. DWR also referenced on-going litigation ~~related to DWR's position~~ related to the energy crisis that might also result in additional monies to be refunded to the IOUs' electricity customers.

On August 30, 2021, pursuant to a Ruling of the assigned Administrative Law Judge (ALJ), the parties, after conferring with DWR, filed a Joint prehearing conference (PHC) Statement providing information concerning the Bond Charge monies, the on-going energy crisis litigation, and the closure of the proceeding. On September 2, 2021, the PHC was held, with the parties and with DWR

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<sup>4</sup> D.15-12-003.

<sup>5</sup> D.20-09-005.

<sup>6</sup> On September 3, 2021, DWR revised the August 5, 2021, Memorandum that accompanied the Notice to reflect a correction as to the remaining balance amount in the Bond Charge account after the putative refund (that corrective Memorandum retained the original Memorandum's date of August 5, 2021): the corrective Memorandum is included here as Attachment 1.

appearing. On September 14, 2021, the parties, after conferring with DWR, filed a further Joint Statement with additional information regarding the allocated refund amounts to be distributed by the IOUs, exploring how those refunds could be administered, and providing input regarding the proceeding's ongoing status.

On October 4, 2021, the Scoping Memo was issued by the assigned Commissioner. It identified the issues to be addressed in this proceeding. It also set forth the schedule for the proceeding.

## **2. Issues**

Based upon the totality of all factors to be considered in this year's iteration of this proceeding, as identified in the Commissioner's Scoping Ruling issued on October 4, 2021, the following issues shall be addressed:

1. What is the appropriate methodology and timing for a Bond Charge over-collection refund to ratepayers?
2. Are there any other issues that need to be addressed regarding appropriate disposition of funds in the Bond Charge account and/or the Power Charge account?
3. When should the Commission close this proceeding?
4. Are any safety considerations raised by the proceeding that affect the ability of PG&E, SCE, and SDG&E to comply with the safety requirements of Pub. Util. Code § 451 in their administration, management, and dispatch of fuel and purchased power related to this proceeding?

### 3. Discussion

#### 3.1 Excess Bond Charges Should be Refunded Through a ~~6~~12-Month Volumetric Methodology

##### 3.1.1 The IOU Bond Charge Refund Allocation Should Be In Accordance With IOU Bond Charge Remittances

An initial issue to address regarding refunding excess Bond Charges to IOU electricity customers is the allocation of the \$170.7 million refund amount to each of the IOUs. SDG&E contends that D.05-06-060 expressly set out the respective Bond Charge allocation for the IOUs, and that the decision's specified respective allocation rates should be employed for the IOUs' respective refund allocation rates. PG&E and SCE contend that the IOU allocation rate for the refund of excess Bond Charges should follow the actual respective IOU remittance rates for the Bond Charges.

As set forth in D.05-06-060, the IOUs' respective allocation rates for collection of charges is as follows: PG&E 42.2%, SCE 47.5%, and SDG&E 10.3%. In discussion of the subject at the PHC, it was stated by SCE, and confirmed by DWR, that the actual Bond Charge remittance rates from the IOUs to DWR was as follows: PG&E 44.767%, SCE 45.305%, and SDG&E 9.928%.<sup>7</sup> Importantly, at the PHC, DWR reported that the IOU rate allocation figures found in D.05-06-060, as cited by SDG&E, were specifically for Power Charges, as distinct from Bond Charges.<sup>8</sup>

Because the issue here is the actual over-collection of Bond Charges and not Power Charges, and because the issue here is not collection but refund, and because we are informed of the actual remittance figures (which we note are not

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<sup>7</sup> PHC Transcript at 186, 188.

<sup>8</sup> PHC Transcript at 187.



significantly different from the rates set forth in D.05-06-060 regarding the collection of Power Charges), we find it appropriate to allocate the Bond Charge refund to the IOUs at the same rates as those funds were collected by the IOUs and remitted to DWR. DWR tracked those IOU remittance percentages, and is able to report them with accuracy. We direct those IOU remittance percentages to be employed in the service of the Bond Charge refund.

However, we make clear here that the respective allocation rates set forth in D.05-06-060 are the appropriate allocation rates for the refund of monies related to Power Charges and DWR's involvement in energy crisis litigation.

**3.1.2 The Bond Charge Refund Methodology is  
Best Handled Volumetrically over a ~~6~~  
12-Month Period**

The history of the Bond Charge over-collection demonstrates the difficulty of foreseeing all eventualities. D.20-09-005 -- the decision resulting from the 2020 iteration of this proceeding -- approved DWR's request to have the IOUs shut off collection of the Bond Charge. And, as stated in D.20-09-005, "Moreover, Public Utilities (Pub. Util.) Code § 3298(a)(2) clearly contemplates that there will be a final imposition of charges for DWR bonds, and Wildfire Fund Charges will be imposed going forward."<sup>9</sup>

D.20-09-005 went on to state that "Based upon the request of DWR, and noting the assertions of the Utilities, it is deemed appropriate to cease the imposition the Bond Charges to satisfy DWR's revenue requirement on September 30, 2020."<sup>10</sup> However, as reported by DWR to the Commission in its

<sup>9</sup> D.20-09-005 at 5.

<sup>10</sup> [This footnote verbatim from D.20-09-005:] It is understood by the Commission that there are various steps that must be functionally undertaken to square the accounting of the collection of the DWR Bond Charge by each Utility from their electric customers, taking into consideration the nature of billing cycles, collection cycles, and reconciliation of monies

Memorandum (as attached here), “Consistent with Decision 20-09-005 the IOUs ceased to impose new [Bond] charges on customers after September 30, 2020, but [DWR] continued to receive previously-imposed [Bond] charges as they are collected by the IOUs and submitted to DWR.”<sup>11</sup> In net effect, as explained in Table 2 of DWR’s Memorandum, the excess collections totaled \$170.7 million, and DWR therefore requests the Commission to direct these monies to be refunded to electricity customers.

The issue now before the Commission is the determination of how to fairly, efficiently, timely, and transparently return the excess Bond Charge collections to electricity customers who contributed to those excess collections. The IOUs offered various thoughts in this regard, and DWR contributed its thoughts. These thoughts were made known in the Joint PHC Statement, in the PHC, and in the September 14, 2021, further Joint Statement.

The IOUs estimated that the \$170.7 million refund in 2022 would average about \$6.60 total for the average residential electricity customer and average

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remitted by the Utilities to DWR. The Utilities and DWR have, in this long process, thus far worked in admirable cooperation to ensure the sufficiency of such steps. For purposes of the completion of the tasks set forth herein, the Utilities and DWR, along with such engagement as may be appropriate by Commission staff, are encouraged to maintain their cooperation in ensuring the completion of all steps to fulfill this decision.

<sup>11</sup> DWR Memorandum at 2 (*see also* PHC Transcript at 204). The net result of the effective delay in shutting off the Bond Charge, when seen in coupling with the Commission’s direction to essentially use that IOU billing line space to collect monies for the WF NBC (*see* Rulemaking (R.) 19-07-017, followed by R.21-03-001), which by statute is intended to collect a virtually identical amount of customer monies as did the Bond Charge, was the over-collection of the Bond Charge in 2020 by approximately the same amount that the WF NBC was under-collected in 2020. The result is that in the present iteration of this R.15-02-012 proceeding, we are directing the refund of over-collection of monies, while in the present iteration of R.21-03-001 proceeding, we are directing an increase in collection of the WF NBC, yet those refunded monies and those increased collection of monies approximately offset each other.

about \$13.20 total for the average small commercial electricity customer.<sup>12</sup> The Commission and the IOUs explored the possibility of a lump-sum Bond Charge refund, the possibility of adding a new billing line for the refund, and the possibility of executing the Bond Charge refund through employment of the Wildfire Fund Non-Bypassable Charge (WF NBC) billing line that now exists on the electricity bills of those customer who are subject to that charge. (The Bond Charge billing line itself no longer exists on the bills of IOU electricity customers who were subject to that Bond Charge: instead, that billing line space has effectively been supplanted by the WF NBC billing line.)

The IOUs do not want to implement a lump sum refund, for a series of reasons. First, they assert that they cannot create a sufficient calculation of historic electricity customer usage to act as a basis for calculating a lump sum refund.<sup>13</sup> As an example of the consequence of not implementing a lump sum refund based upon some sufficient calculation of historic electricity customer usage, and essentially having to use a usage snapshot instead, DWR pointed out that if an electricity customer was “out of town... [the customer] would miss out on the return if it was a lump sum.” For that reason, DWR joins the IOUs in recognizing that if a refund “was spread out over multiple months, then it would be more likely to be spread out more equitably across the ratepayers.”<sup>14</sup> [DWR additionally pointed out it would risk causing customer confusion: “If it were to be a lump sum in one month, it potentially could be a much larger credit. And](#)

<sup>12</sup> September 14, 2021, Joint Statement at 2.

<sup>13</sup> September 14, 2021, Joint Statement at 3.

<sup>14</sup> PHC Transcript at 236.

for stability of the line item, that charge, if it was a larger credit, it would appear that the Wildfire Charge would near zero.”<sup>15</sup>

Also playing into the decision regarding the best effective refund mechanism is a recognition of the need to efficiently deploy resources so as to ensure that ratepayers receive the whole of the monies that were over-collected. PG&E and SCE stated that, due to the nature of their respective billing systems, the only way they could enable ~~such a lump sum refund would be through~~ a new billing line for the refund would be to incur additional costs: PG&E stated that it would cost approximately \$750,000, and take 4 - 6 months, to implement such a billing line.<sup>15,16</sup> SCE stated that it would cost approximately \$1 million, and take approximately 9 months, to implement such a billing line.<sup>16,17,18</sup> ~~DWR pointed out~~In contrast, SDG&E indicated that it would ~~risk causing customer confusion:~~ “If it were to be a lump sum in one month, it potentially could be a much larger credit. And for stability of the line item, that charge, if it was a larger credit, it would appear that the Wildfire Charge would near zero.”<sup>18</sup> be able to readily create a new billing line expressly for the Bond Charge refund, without incurring any new administrative costs.<sup>19</sup>

By contrast, all of the IOUs report that, if the refund were to be administered volumetrically through the existing WF NBC billing line over a

<sup>15</sup> PHC Transcript at 234.

<sup>15,16</sup> September 14, 2021, Joint Statement at 3-4.

<sup>16</sup> ~~September 14, 2021, Joint Statement at 4.~~

<sup>17</sup> September 14, 2021, Joint Statement at 4.

<sup>17,18</sup> Both SCE and PG&E are currently undergoing major billing system upgrade implementation projects, adding to their cost, time, and complexity of introducing new billing lines.

<sup>18</sup> ~~PHC Transcript at 234.~~<sup>19</sup> September 14, 2021, Joint Statement at 4-5.

period of months, then the refund could be accomplished through administration of an annual estimated volumetric rate of \$0.00110/kilowatt-hour (kWh).<sup>19,20,21</sup> The IOUs also report that there would be no reduction in the refund monies to administer that scheme, and no cost to ratepayers for that scheme, and that it could be implemented without undue delay.<sup>21,22</sup> DWR is in agreement with this volumetric scheme to effect the refund, and recognizes implementation of this scheme through the use of the WF NBC billing line.<sup>22,23</sup>

Volumetric refunds have previously been employed by the Commission, and in very similar circumstances as we find here.<sup>23,24</sup> Volumetric refunds, especially as intended here, are beneficial in efficiently returning monies to those electricity customers from whom monies were over-collected; in doing so over a period of time and thereby capturing both the targeted electricity customers and enabling the fair proportion of the refund to reach such electricity customers;

~~<sup>19</sup> A volumetric billing line typically displays a cents-per-kWh amount multiplied by the number of kWh usage. For example, the 2021 WF NBC billing line appears on customer bills as \$0.00580 per kWh, such that monthly usage of 500 kWh would result in \$2.90 (500 kWh \* \$0.00580) for that billing line.~~

<sup>20</sup> A volumetric billing line typically displays a cents-per-kWh amount multiplied by the number of kWh usage. For example, the 2021 WF NBC billing line appears on customer bills as \$0.00580 per kWh, such that monthly usage of 500 kWh would result in \$2.90 (500 kWh \* \$0.00580) for that billing line.

~~<sup>20,21</sup> September 14, 2021, Joint Statement at 3-4. The actual rate may vary very slightly for each IOU. We reasonably presume that a refund at a 1-year volumetric rate of approximately \$0.00110/kWh would also result in a refund at a 6-month rate of approximately \$0.00220/kWh.~~

<sup>21,22</sup> PHC Transcript at 205-206; PHC Transcript at 194, 198; September 14, 2021, Joint Statement at 4.

<sup>22,23</sup> PHC Transcript at 234, 238.

<sup>23,24</sup> In past decisions (including D.10-12-006, D.11-12-005, D.12-11-040, and D.15-12-003), we authorized methods for allocating and returning a Power Charge negative revenue requirement to the IOUs' electricity customers in accordance with volumetric formulas as identified in those decisions.

and, doing so without requiring additional costly work and time. Such a refund mechanism is tracked by the Commission to ensure accurate and complete disbursement of the refund monies.

Implementing the refund methodology through a separate refund line provided specifically for that purpose is optimal, as long as incremental costs are minimal. To the extent that SDG&E reports that it is presently capable of doing so, SDG&E should exercise that capability. To the extent that at a later point either PG&E or SCE's billing system is improved and can allow for a specific billing line for the refund, that form of refund methodology should be implemented.

The mechanics of implementing a volumetric refund ~~through the WF NBC billing line~~ will be addressed through a Tier 2 Advice Letter submitted within 45 days from the date of this decision to the Commission and to this proceeding's Service List by each IOU, after IOU consultation with DWR. The Tier 2 Advice Letter will identify the source of the refund, the amount of the refund, the projected interest to be accrued on the refund amount until the refund is fully disbursed, the projected volumetric rate per kWh of electricity customer use for the refund, the refund methodology, the projected dates that the refund will be in customer rates, the proposed billing statement to their electricity customers regarding the refund, and a review of the IOU's consultation with DWR regarding the refund. Each IOU will create an "AB 1X Balancing Account" into which will be deposited each IOU's excess Bond Charge allocation (based upon the appropriate respective IOU allocation in proportion to the respective IOU Bond Charge remittances to DWR), and these Balancing Accounts will be used by each IOU to enable the refunds to the same electricity customer classes who paid into the DWR Bond Charge Account (largely the same electricity customers

who now pay into DWR's WF NBC Account). The IOUs, through their AB 1X Balancing Accounts, and using a volumetric rate per kWh of electricity customer use as presented in their respective Tier 2 Advice Letters, will endeavor to refund the \$170.7 million in excess Bond Charge monies over a ~~six~~12-month period, and will employ conventional IOU strategies vis-à-vis the Balancing Accounts to work to refund all such monies to complete the process in approximately ~~six~~12 months, based upon their ability to predict the Balancing Account depletion rates for such electricity customers over that time frame. Lastly, the IOUs are to provide clear statements to their electricity customers to explain the nature of the refund and a reference to this decision, all subject to the satisfaction of the Commission based upon the inclusion of this information in the Tier 2 Advice Letters.

### **3.2 Issues To Be Addressed To Enable Closure Of This Proceeding**

It is the intention of the Commission to close this proceeding. This is because all monies required to be collected pursuant to the DWR Power Charges and Bond Charges have been fully collected by the IOUs and remitted to DWR. What now remains to be determined is the best means to close this proceeding, given the continued litigation concerning the 2000-2001 California energy crisis, and given DWR's necessary continued involvement in that litigation.

#### **3.2.1 Litigation Concerning DWR and this Proceeding**

DWR's necessary continued involvement, directly or indirectly, in the on-going litigation concerning the 2000-2001 California energy crisis, which is addressed through this proceeding, has been identified as follows:

- a. *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services.*  
FERC Docket No. EL00-95.

This litigation began many years ago, and is expected to be resolved soon. This litigation concerns the possible refund of excess charges for power purchased in California. DWR is a party to the action. At some point in the relative near future, it is anticipated that DWR will receive approximately \$92 million in refunds and approximately \$48 million from litigation escrow accounts, and DWR is expected to allocate these monies to the IOUs, to be refunded to their electricity customers, who were overcharged for such power.

- b. *Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy*.  
FERC Docket No. EL01-10.

This litigation began many years ago, and is continuing. This litigation concerns the possible refund of excess charges for power purchased in California. DWR is a party to the action, and DWR would be expected to allocate any such refund monies to the IOUs, so as to enable such monies to be refunded to their electricity customers who were overcharged for such power.

- c. *Public Utilities Commission of the State of California v. Sellers of Long-Term Contracts to the California Department of Water Resources*.

FERC Docket Nos. EL02-60 et al.

This litigation began many years ago, and is continuing. This litigation concerns the possible refund of excess charges for power purchased in California. While DWR is not a party to this action, it would apparently be a refunding agent for the state of California, such that DWR would be expected to allocate any such refund monies to the IOUs, so as to enable such monies to be refunded to their electricity customers who were overcharged for such power.

- d. *State of California, ex rel. Bill Lockyer v. British Columbia Power Exchange Corp. et al.*  
FERC Docket No. EL02-71.



This litigation began many years ago, and is continuing. This litigation concerns the possible refund of excess charges for power purchased in California. While DWR is not a party to this action, it would apparently be a refunding agent for the state of California, such that DWR would be expected to allocate any such refund monies to the IOUs, so as to enable such monies to be refunded to their electricity customers who were overcharged for such power.

### **3.2.2 Steps Upon Litigation Conclusion**

This decision directs the parties, with the agreement of DWR, regarding steps to take upon the conclusion of the litigation identified above. Some litigation has been on-going for many years, and it may take more years for all litigation to resolve. It would be inefficient to keep this proceeding open solely for the possible beneficial resolution of the several on-going litigation matters at some indeterminate points in the future. Similarly, it would be inefficient to require a new proceeding in order to address each possible disbursement of settlement monies in the event of a beneficial resolution regarding each of the litigation matters. Therefore, here we set forth steps to be applied whenever there is a resolution of these identified litigation matters involving the possible disbursement of settlement monies to be distributed to California ratepayers.

As noted above, each of the litigation matters concerns the possible refund of excess charges for power purchased in California. In each, whether as a party or in a capacity as a refunding agent for the state of California, DWR may receive monies to be refunded to California electricity customers, and DWR would be expected to allocate these monies to the IOUs, so as to enable such monies to be refunded to electricity customers. There are no known dates by which any of these litigation matters are certain to be resolved.

Earlier in this decision, we identified and discussed D.05-06-060. That decision determined the relative IOU allocation percentages regarding the remittance and refunding of monies regarding ~~power charges~~ Power Charges (i.e., PG&E 42.2%, SCE 47.5%, and SDG&E 10.3%). As each of these identified litigation matters concern the possible refund of excess charges for power purchased in California as ultimately paid for by IOU electricity customers, consequently DWR's allocation of litigation award, settlement, or recovery monies to the IOUs will be based on the IOU percentages identified in D.05-06-060.

In addition to employment of the respective IOU allocation percentages identified in D.05-06-060, the entirety of the refund mechanism regarding possible refunds deriving from these litigation matters will be the same as generally described above in Section 3.1.2. Because volumetric refunds have previously been employed by the Commission, and in very similar circumstances as we find here, we direct a use of a volumetric refund process to be followed regarding refunds derived from these litigation matters. We also direct the remainder of the refund process described above to be employed here, for the same identified reasons of fairness, efficiency, timeliness, and transparency.

We direct that the mechanics of implementing a litigation matter volumetric refund be ~~exercised through the WF-NBC billing line~~, addressed through a Tier 2 Advice Letter submitted to the Commission and to this proceeding's Service List by each IOU, after IOU consultation with DWR and within 45 days of receiving such funds. The Tier 2 Advice Letter will identify the source of the refund, the amount of the refund, the projected interest to be accrued on the refund amount until the refund is fully disbursed, the projected volumetric rate per kWh of electricity customer use for the refund, the refund

methodology, the projected dates that the refund will be in customer rates, the proposed billing statement to their electricity customers regarding the refund, and a review of the IOU's consultation with DWR regarding the refund.<sup>25</sup> Each IOU will use its AB 1X Balancing Account, into which will be deposited each IOU's allocation of all litigation matter monies obtained or received by DWR -- DWR is expected to allocate such monies to the IOUs on a prompt basis upon DWR's receipt of such monies (*i.e.*, DWR is expected to act as a prompt pass-through of such monies as they are received pursuant to each litigation matter). These Balancing Accounts will be used by each IOU to enable the refunds to those electricity customers who then pay into DWR's WF NBC Account.

The IOUs, through their AB 1X Balancing Accounts and using a volumetric rate per kWh of electricity customer use as presented in their respective Tier 2 Advice Letters, will endeavor to refund all litigation matter monies obtained or received by DWR. The IOUs will employ conventional IOU strategies vis-à-vis the Balancing Accounts to work to refund all such monies to complete the process in approximately ~~six~~12 months, based upon their ability to predict the Balancing Account depletion rates for such electricity customers over that time frame. Lastly, the IOUs are to provide clear statements to electricity customers to explain the nature of the refund, and a reference to this decision, all subject to the satisfaction of the Commission based upon the inclusion of this information in the Tier 2 Advice Letters.

### **3.2.3 Steps Upon the Conclusion of DWR's Participation**

<sup>25</sup> To the extent that at this point either PG&E or SCE's billing system is improved and can allow for a specific billing line for the refund with minimal costs, that form of refund methodology should be implemented.

When, in the course of all events directly and indirectly concerning DWR's participation in any aspect of its responsibilities, roles, and activities related to the provisions of AB 1X or DWR's participation in any aspect of its responsibilities, roles, and activities related to the 2000-2001 California energy crisis and its aftermath, including the litigation matters identified here, it becomes clear that DWR has no further such responsibilities, roles, and activities, it should allocate to the IOUs all monies still in its possession related to its administration of the Power Charges, Bond Charges, and litigation matters identified here, and all other monies related to the DWR's activities regarding AB 1X and regarding the 2000-2001 California energy crisis and its aftermath. That allocation should be in accord with the respective IOU allocation percentages identified in D.05-06-060 and this decision. At that time, all such monies should be refunded to electricity customers, implemented through a volumetric refund to be ~~exercised through the WF NBC billing line~~, addressed through a Tier 2 Advice Letter submitted to the Commission and to this proceeding's Service List by each IOU, after IOU consultation with DWR and within 45 days of receiving such funds. The Tier 2 Advice Letter will identify the source of the refund, the amount of the refund, the projected interest to be accrued on the refund amount until the refund is fully disbursed, the projected volumetric rate per kWh of electricity customer use for the refund, the refund methodology, the projected dates that the refund will be in customer rates, the proposed billing statement to their electricity customers regarding the refund, and a review of the IOU's consultation with DWR regarding the refund.<sup>26</sup> Each IOU will deposit all such

<sup>26</sup> To the extent that at this point either PG&E or SCE's billing system is improved and can allow for a specific billing line for the refund with minimal costs, that form of refund methodology should be implemented.

DWR monies as are identified here into their respective AB 1X Balancing Accounts, and these Balancing Accounts will be used by each IOU to enable the refunds to those electricity customers who then pay into DWR's WF NBC Account. The IOUs, through their AB 1X Balancing Accounts and using a volumetric rate per kWh of electricity customer use as presented in their respective Tier 2 Advice Letters, will endeavor to refund all such monies. The IOUs will employ conventional IOU strategies vis-à-vis the Balancing Accounts to work to refund all such monies to complete the process in approximately ~~six~~<sup>12</sup> months, based upon their ability to predict the Balancing Account depletion rates for such electricity customers over that time frame. Lastly, the IOUs are to provide clear statements to electricity customers to explain the nature of the refund, and a reference to this decision, all subject to the satisfaction of the Commission based upon the inclusion of this information in the Tier 2 Advice Letters.

### **3.3 Safety Matters**

We examine whether there are any safety considerations raised in this proceeding that affect the ability of either PG&E, SCE, or SDG&E to comply with the safety requirements of Pub. Util. Code § 451 in their administration, management, and dispatch of fuel and purchased power.<sup>2427</sup> DWR ceased purchasing power for sale to electricity customers in the IOUs' service areas in 2015 (D.14-12-012). Therefore, there is no relief requested or directed in this proceeding that raises any safety considerations that must be addressed.

<sup>2427</sup> Pub. Util. Code § 451 provides in relevant part that "Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities ... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

#### 4. Rehearing and Judicial Review

This decision construes, applies, implements, and interprets the provisions of Assembly Bill (AB) 1X (Chapter 4 of the Statutes of 2001-2002 First Extraordinary Session), and relates to the implementation of DWR's revenue requirement and the establishment and implementation of the Power Charges and Bond Charges necessary to recover that revenue requirement. Therefore, pursuant to Pub. Util. Code § 1731(c), any application for rehearing of this decision is due within 10 days after the date of issuance of this decision. The procedures contained in Pub. Util. Code § 1768 apply to the judicial review of a Commission order or decision that interprets, implements, or applies the provisions of AB 1X.

#### 5. Comments on Proposed Decision

The proposed decision 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 \_\_\_\_\_ by \_\_\_\_\_~~ On November 15, 2021, comments were timely received from parties PG&E, SCE, and SDG&E. No reply comments were ~~filed on \_\_\_\_\_ by \_\_\_\_\_~~ received.

PG&E's comments expressed a preference that refunds be made on a 12-month basis, instead of a 6-month basis. It argues that doing so would result in fairer customer allocation over the longer period. Also, PG&E expressed general support for alternative customer refund methodologies that might be offered by the other IOUs, if those refund methodologies would lead to lower costs, less inaccuracy, and less delay.

SCE's comments contained four points. First, it proposed an alternative refund methodology, preferring to do so through its distribution rates rather

than through the WF NBC billing line. Second, SCE alleged that the 45-day Tier 2 Advice Letter requirement to be unnecessary in light of the directed use of designated balancing accounts. Third, SCE expressed its preference that refunds be made on a 12-month basis, instead of a 6-month basis. Fourth, SCE stated that the IOUs should be enabled to implement any future litigation refunds through one of their respective annual rate change filings.

Concerning SCE's proposed alternative refund methodology, it reported a concern with its use of the WF NBC billing line, stating that "upon further investigation with SCE's Information Technology and billing departments, such a [WF NBC] netting mechanism would require substantial rework of [its] WF NBC payment system."<sup>28</sup> SCE also requested \$1,000,000 be set aside for the recovery of its projected costs for implementing its proposed distribution rates refund mechanism, with those costs to be reported and approved through an Advice Letter. In explanation of its alleged inability to use the WF NBC bill line, it asserted the following:

SCE's only no-cost means of refunding amounts through the existing WF NBC line item is to lower the Commission authorized WF NBC by the amount of the Bond Charge refund allocation... [which] would require the DWR to effectuate this offset by requesting the Commission authorize a lower WF NBC revenue requirement to SCE's customers, similar to what the Commission authorized [in four prior decisions] for DWR-related "negative revenue requirements."<sup>29</sup>

<sup>28</sup> During the PHC, SCE stated that it would not incur any additional administrative costs related to the Bond Charge refund (PHC Transcript at 205-206). While new Party information may sometimes arise that controverts existing testimony, it is necessary to report that new information immediately upon discovery. Here, unfortunately, the new information was not disclosed until PD Comments.

<sup>29</sup> SCE seems to misapprehend the role of its responsibilities and internal processes and the distinct role of DWR under this proceeding's Rate Agreement and under the Wildfire Fund Rate Agreement. SCE must simply ensure that DWR is noticed regarding, and receives, the

SDG&E's comments proposed its own alternative refund methodology, stating that rather than using the WF NBC billing line, it could add a billing line specifically for the Bond Charge refund. As with the other two IOUs, it also proposed that the refund period be one year, arguing that removing the charge after 6 months will effectively increase rates in the summer months. Lastly, as with SCE, it also proposed removing the Advice Letter requirement in favor of using the AB 1X Balancing Account, which would then roll the refund into its annual balancing account update.<sup>30</sup>

For good reason asserted by each of the IOUs, this PD revises its approximate 6-month refund period to an approximate 12-month period. For good reason argued by SDG&E that each IOU should use the refund methodology that most fairly, efficiently, timely, and transparently enables refunded monies to be returned to the electricity customers who contributed to those excess collections, SDG&E may do so through its addition of a new billing line specifically for such refund purposes, both for the Bond Charge refund, and for such later refunds as are referred to in the discussion in this decision.

Similarly, as PG&E and SCE's updated billing programs become operational and enable the addition of a new billing line specifically for such

monies due to it under those Rate Agreements, as appropriately calculated pursuant to those Agreements and the Commission decisions applying them, such as this decision. SCE's transparent accomplishment of those fundamental obligations require it to coordinate with DWR regarding its collection, accounting, and remittance duties. SCE's operational execution of its obligations, through its own internal processes, is for SCE to consider and complete.

<sup>30</sup> SDG&E also sought to bolster its comment brief by attaching as an Appendix a set of informational inquiries from the Commission's Energy Division and SDG&E's responses. The Appendix content was not part of the proceeding's evidentiary record and cannot be introduced in this manner (see Commission Rules of Practice and Procedure Rule 13.7), and therefore the Appendix was struck from SDG&E's comment filing.



refund purposes as are referred to in the discussion in this decision, they may modify their refund methodologies accordingly. Given the use of the Tier 2 Advice Letters both for refund reporting purposes and for refund methodology reporting purposes (as such methodologies may be modified pursuant to updated IOU billing systems), these Tier 2 Advice Letters will be maintained for all reporting purposes. Further, given the use of balancing accounts to essentially hold refund monies until the respective IOUs' ensuing rate change, the Tier 2 Advice Letters must also be clear concerning the accrual of interest on those held monies in the interim.

## **6. Assignment of Proceeding**

Clifford Rechtschaffen is the assigned Commissioner and Jason Jungreis is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. This decision construes, applies, implements, and interprets the provisions of AB 1X (Chapter 4 of the Statutes of 2001-2002 First Extraordinary Session), and relates to the implementation of DWR's revenue requirement and the establishment and implementation of the Power Charges and Bond Charges necessary to recover that revenue requirement, and DWR's roles in the 2000-2001 California energy crisis.

2. Water Code §§ 80110 and 80134 empower DWR to submit an annual revenue requirement to the Commission to pay for specifically identified items such as the Power Charges for electricity costs and Bond Charges for bonds DWR has issued pursuant to statutorily-authorized procurement of electric power, and implied in those statutes is the Commission's authority to direct negative revenue requirements or refunds concerning those DWR Power

Charges and Bond Charges and all aspects of DWR's relationship to AB 1X and the 2000-2001 California energy crisis and its aftermath.

3. Part of the Commission's obligations under the Rate Agreement is to calculate, revise, and impose the DWR Power Charges and Bond Charges through revenue requirement collection of such costs from the electricity customers of the IOUs, and implied in the Commission's Rate Agreement obligation is the authority to direct negative revenue requirements or refunds concerning those DWR Power Charges and Bond Charges and all aspects of DWR's relationship to AB 1X and the 2000-2001 California energy crisis and its aftermath.

4. On August 5, 2021, DWR served upon the proceeding's Service List a Notice identifying an excess \$170,700,000 in the Bond Charge account and proposing that the excess Bond Charge monies be refunded through the IOUs to their electricity customers, and referring to on-going 2000-2001 California energy crisis litigation and DWR's role as an administrator regarding AB 1X and the 2000-2001 California energy crisis and its aftermath.

5. The IOUs agree that excess Bond Charges should be refunded to electricity customers, that all other aspects of this proceeding requiring refund of monies to electricity customers should be completed efficiently, timely, and in a practicable manner, and that all other aspects of this proceeding should be closed as soon as practicable.

6. Just as the DWR Bond Charges were designed to recover DWR's costs associated with its bond financing activities related to DWR's purchase of electric power on behalf of the IOUs' electricity customers, a Bond Charge negative revenue requirement (*i.e.*, a Bond Charge refund) should be designed to return monies to the electricity customers, both through employing the IOU allocation

as the IOUs remitted those monies to DWR, and through the refund mechanism that can be most fairly, efficiently, and timely employed to return such monies to ~~the~~ electricity customers.

7. Concerning DWR's role as a refunding agent to return 2000-2001 California energy crisis litigation-related monies to electricity customers, such refunds should be designed to return monies to electricity customers, both through employing the IOU allocation rates determined in D.05-06-060, and through the refund mechanism that can be most fairly, efficiently, and timely employed to return such monies to electricity customers.

8. Concerning DWR's roles as the administrator of activities regarding the 2000-2001 California energy crisis and all of DWR's related functions, when DWR has concluded its activities it should enable the refund of all of its remaining monies held for its administrative functions for the benefit of electricity customers, both through employing the IOU allocation rates determined in D.05-06-060, and through the refund mechanism that can be most fairly, efficiently, and timely employed to return such monies to electricity customers.

9. Pursuant to Findings of Fact 5, 6, 7, and 8, the mechanism described in the discussion section of this decision for refunding monies to electricity customers is the most, fair, efficient, and timely method that can be reasonably and practicably employed.

10. None of the steps directed in this decision raise any safety considerations.

11. The issues identified in the discussion section of this decision account for all the remaining issues in this proceeding, and therefore their final dispositions, as considered and determined in the discussion section of this decision, enable the Commission to close this proceeding.

**Conclusions of Law**

1. The IOUs should each be directed to facilitate DWR's proposed Bond Charge negative revenue requirement and establish an AB 1X Balancing Account by filing a Tier 2 Advice Letter within 45 days of the effective date of this decision and as considered and determined in the discussion section of this decision.

2. The IOUs should each be directed to facilitate the refund to electricity customers of such monies related to AB 1X and the 2000-2001 California energy crisis litigation and its aftermath, [and all interest accrued on such funds](#), by filing a Tier 2 Advice Letter within 45 days of receiving such funds and as considered and determined in the discussion section of this decision.

3. The IOUs should each be directed to facilitate the refund to electricity customers of such monies remaining related to DWR's administration of duties concerning AB 1X and the 2000-2001 California energy crisis, if and when such is determined by DWR, [and all interest accrued on such funds](#), by filing a Tier 2 Advice Letter within 45 days of receiving such funds and as considered and determined in the discussion section of this decision.

4. Pub. Util. Code § 1731(c) (applications for rehearing are due within 10 days after the date of issuance of this order) and Pub. Util. Code § 1768 (procedures applicable to judicial review) are applicable to this decision.

**O R D E R****IT IS ORDERED** that:

1. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company are directed to facilitate the refund of excess Bond Charge monies as identified by the California Department of Water Resources, [and all interest accrued on such funds](#), to those electricity customers

who are paying the Wildfire Fund Non-Bypassable Charge as considered and determined in the discussion section of this decision.

2. Within 45 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall each submit an Advice Letter to establish an “AB 1X Balancing Account” for each investor-owned utility’s excess Bond Charge allocation, and to implement the volumetric refund to customers over approximately a ~~six~~12-month period through the ~~Wildfire Fund Non-Bypassable Charge billing line item~~refund methodologies as considered and determined in the discussion section of this decision.

3. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company are directed to facilitate the return of 2000-2001 California energy crisis litigation-related monies, and all interest accrued on such funds, to those electricity customers who are paying the Wildfire Fund Non-Bypassable Charge by filing a Tier 2 Advice Letter within 45 days of receiving such funds that reflects what is considered and determined in the discussion section of this decision.

4. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company are directed to facilitate the refund of monies related to the California Department of Water Resources’ (DWR) role as the administrator of activities regarding the 2000-2001 California energy crisis, when DWR has concluded its activities, and all interest accrued on such funds, to those electricity customers who are paying the Wildfire Fund Non-Bypassable Charge by filing a Tier 2 Advice Letter within 45 days of receiving such funds that reflects what is considered and determined in the discussion section of this decision.

5. Public Utilities Code Section 1731(c) (applications for rehearing are due within 10 days after the date of issuance of the order or decision) and Public Utilities Code Section 1768 (procedures applicable to judicial review) are applicable to this decision.

6. Rulemaking 15-02-012 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

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