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Decision 02-04-026 April 9, 2002

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 (Filed May 24, 2001)

INTERIM OPINION REGARDING PHASE 1 ISSUES

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I. Summary

In this first phase of our rulemaking on electric and gas baseline allowances, we increase the baseline allowances for many residential customers and begin the process of improving the medical baseline program. Specifically, we require the utilities to update the data used for calculating baseline allowances to reflect current usage of both gas and electricity, to increase baseline allowances to the maximum percentage levels allowed by state law for those customers not already receiving those maximum allowances, and to take steps to simplify and improve the process by which customers may obtain additional baseline allowances for medical reasons.

In the Order Instituting Rulemaking (OIR) dated May 24, 2001 opening this proceeding, we stated:

> In summary, it has become clear that baseline is an important topic that merits attention at a time when so many Californians are being affected by the largest energy rate increase this Commission has ever had to impose. Section 739, the baseline statute, was added to the Public Utilities Code by the legislature through passage of Assembly Bill 167, the Warren-Miller Energy Lifeline Act, in the 1975-1976 legislative session. After the Commission determined the initial baseline quantities in 1976, it made subsequent revisions and updates in the utilities' general rate cases over the years. Section 739(d)(1) requires, "The commission shall review and revise baseline quantities as average consumption patterns change in order to maintain these [50% to 60%, and 60% to 70% of average residential consumption] ratios." With our recent rate design relying so heavily on baseline quantities to determine which residential customers are affected and to what degree, it becomes more important than ever to ensure the baseline program is up to date. Now is an appropriate time to do such a review. (OIR pp. 5-6)

This decision is the first step in bringing the baseline program up to date. This first step, while significant in expanding the benefits of the baseline

program, still provides only limited relief to California's ratepayers. Our actions in Phase 2 of this proceeding may provide additional relief, but as we noted in the OIR:

> While we will do our best to adjust baseline quantities to more accurately reflect current consumption levels and significant differentials between customers, we are limited in our review by the statutes setting baseline quantities well below average usage of customers. Because of this, even with revised and updated baseline quantities, the average customer may still find it difficult to reduce usage to baseline levels. (OIR pp. 5-6)

We do, however, begin to make the baseline program more consistent among utilities, which should make it more understandable than it has been in the recent past. In addition, our changes will have the effect of increasing the baseline quantities for most Californians.

Our actions today apply to all Commission-regulated gas and electric utilities, except where otherwise indicated. All changes we require these utilities to make shall be in place, at the utilities' option, by June 1, 2002, or when the utilities change from winter to summer baseline quantities. The single exception relates to updating consumption data, which should be done as follows: For the natural gas baseline allowance, the deadline for updating baseline consumption data shall be the beginning of the 2003-04 winter heating season (generally October 2003). For new electric baseline allowances, the deadline shall be the summer cooling season of 2003 (generally May-June 2003). If the Commission has not issued a decision updating utility data regarding baseline allowances at least 30 days prior to these season changes, the utilities shall file an advice letter implementing such baseline allowance changes.

This latter deadline only pertains to the requirement that utilities update energy usage data contained in Section III(A) and Ordering Paragraph 8 of this

decision. In that section, the Commission orders utilities to use this proceeding (or others in certain cases) to update their consumption data. It is understandable that this process will take time. In some cases, the utilities will present new consumption data in this proceeding, but have not yet done so. In other cases, the utilities have already presented the data in other proceedings, but there has not yet been a Commission decision approving such data.

All other changes ordered in this decision – those discussed in Sections III(B) (raising baseline quantities to statutory maximums) and (E) (changing medical baseline program) – shall be implemented, at the utilities' option, either by June 1, 2002 or when the utilities switch to summer 2002 baseline quantities as set forth in Ordering Paragraph 12.

II. Scope Of This Proceeding

In the *Ruling of Assigned Commissioner and Administrative Law Judge Setting Prehearing Conference*, dated June 11, 2001, this proceeding was split into two phases. That ruling preliminarily identified the issues to be addressed in Phase 1 of this proceeding as:

1) Updating the energy usage data used by the Commission in calculating baseline quantities;
2) Determining the appropriate percentage of energy usage to use in calculating baseline quantities within the range specified by Public Utilities Code Section 739(d)(1);
3) Constructing possible changes to the medical baseline allowance; and
4) Devising suggestions for legislative changes.

These issues were confirmed in the *Assigned Commissioner's Ruling and Scoping Memo* (Scoping Memo) issued July 6, 2001.[1] The Scoping Memo also stated that cost allocation issues would be addressed in Phase 2 of this proceeding.

III. Discussion

A. Updating Energy Usage Data

Energy usage data must be updated consistent with the provision in Pub. Util. Code § 739(d)(1) that provides, in relevant part:

> The Commission shall review and revise baseline quantities as average consumption patterns change in order to maintain . . . ratios [at 50 to 60 percent of average residential consumption and 60 to 70 percent of such consumption during the winter heating season for residential gas customers and all-electric residential customers].

The data used to set the current baseline rates of the utilities varies widely in its age. For example, baseline allowances for Southern California Gas Company (SoCalGas) were changed in June 2000, but San Diego Gas & Electric Company (SDG&E) has not revised its gas baseline allowances and certain electric allowances since its 1989 General Rate Case (GRC). Southern California Edison Company's (Edison or SCE) current allowances were set in its 1995 GRC. It is in the public interest to ensure that baseline allowances are based upon current energy usage. In addition, we see no good reason why customers of some utilities should have their baselines set on the basis of old data, while

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[1] Several parties raised issues in Phase 1 testimony that fell outside the scope of Phase 1, and those issues will be addressed in Phase 2, including consideration of factors such as family size and water pumping in calculating baseline allowances, how to address issues relating to seasonal residences and common areas of multi-unit dwellings, and possible additional climate zones. In addition, while Phase 1 requested suggestions for legislative changes, this decision does not deal with those suggestions. Therefore, parties may make suggestions for legislative changes in Phase 2.

Footnote continued on next page

others are set on the basis of new data. Furthermore, Pub. Util. Code § 739(d)(1) requires the Commission to review and revise baseline quantities to reflect changes in consumption.

At the same time, we note that some utilities have very recently updated the data used for calculating baseline allowances, or they have a pending proceeding in which that data will be updated.[2] While we would achieve the greatest consistency by requiring all utilities to update their data in this proceeding, using identical time periods, it is not clear to us that the gains in consistency outweigh the costs of duplicative proceedings. We do note that energy usage has been changing significantly in recent years, and as a result, variations in the age of the data used could have significant effects on the calculation of baseline quantities. Accordingly, we will create a narrow window around this proceeding for those utilities that have recently updated their data, or are about to update their data.

Any respondent energy utility that has its current baseline rates calculated based on calendar year 1999 or 2000 data, or has an open application[3] before this Commission in which its baseline rates will be updated using 1999 or later data, is not required to update its data in this proceeding, although it may choose to do so. Any respondent energy utility currently using data no older than calendar year 1996 that files an application prior to the date that falls 30

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[2] For example, SoCalGas states that baseline allowances will be addressed in its next Biennial Cost Allocation Proceeding, Application (A.) 01-09-024.

[3] *See also* Section 5(C) below. An "open" application must actually evaluate baseline quantities based on updated consumption data, and not merely present the promise of doing so at some point in the future.

days after the effective date of this decision to update its baseline data using calendar year 2000 or 2001 data is not required to update its data in this proceeding, but again may choose to do so. All other respondent utilities must update their data and their corresponding baseline amounts in this proceeding. Any utility intending to update its data and baseline in any other proceeding must notify the Commission of its intent to do so via compliance advice letter filed within 30 days of the effective date of this decision, including identification of the type of application, filing date or anticipated filing date, and proceeding number.

The Commission's Office of Ratepayer Advocates (ORA) argued that the calculation methodology used for determining the baseline allowance should be standardized to the extent possible, as inconsistent methodologies could have a hidden impact, particularly on electric customers. This is a valid point; we do not want to have significant differences between the baseline allowances of different utilities merely because of differences in calculation methodology. Here, however, most of the differences do not appear to be significant.

We find that the standard approach to updating data should be to use the most recent full calendar year's data, normalized to account for weather. While Pacific Gas and Electric Company (PG&E) testified that its standard process is consistent with this approach, in this proceeding PG&E used a simple four-year average, due to damage to the software code used for the weather normalization process. Because the data is therefore not usable, we find this to be a reasonable alternative approach, and we will allow PG&E to use it in this proceeding.

PG&E's historic approach, for example, uses actual data and then normalizes it for weather, and SoCalGas utilizes a similar process. SCE and SDG&E, instead of weather-normalization, normalize their current data using historical usage. While we favor the weather-normalized approach, we are

allowing PG&E's alternative simple average approach in this proceeding, and the approach used by SCE and SDG&E is essentially a mix of the two. Accordingly, we will allow all four major utilities to use their proposed or existing methodologies. Any utility whose existing methodology is not consistent with one of the three methodologies used by the major utilities must apply one of these approved methodologies, with our preference being for weather normalization. All utilities must file compliance advice letters within 30 days of the effective date of this decision indicating which methodology they are currently using, and if changing methodology, which methodology they are adopting.

The Utility Reform Network (TURN) initially argued that baseline calculations should not be based upon data from June 2000 onward, but subsequently shifted its position to argue that data past December of 2000 should not be used for SCE and PG&E, and that data past August of 2000 should not be used for SDG&E. TURN argues that the data they seek to exclude exhibits short-term and non-recurring behavioral changes because of conservation efforts on the part of residential consumers. We are not going to exclude any particular time period from consideration in the calculation of baseline. First, while TURN may believe it can predict future residential usage levels, we are less confident, and question TURN's certainty in characterizing the changes in consumption as short-term and non-recurring. For example, to the extent that customers have installed energy efficient appliances, compact fluorescent lamps, or additional insulation, those changes will likely remain in place for a significant number of years. In addition, even if TURN is correct, the calculation methodologies used here by PG&E, SDG&E and SCE, which average or normalize on the basis of additional years of usage, rather than just weather, should serve to cushion any related impacts.

Aglet Consumer Alliance (Aglet), while recommending that basic baseline allowances be updated to reflect changes in use by customers receiving both electric and gas service, recommends no change in baseline quantities for all-electric service. Aglet bases this recommendation on the diversity of the changes that would result from an update of all-electric baseline allowances. Since as a result some all-electric customers would receive decreased baseline allowances, potential customer dissatisfaction and a perception of unfairness would arise.

While pragmatic, Aglet's suggestion is not consistent with the basic premise of the baseline statute which serves as a primary reason for this proceeding. We are trying to improve the alignment between baseline allowances and current usage, consistent with § 739, and must do so for both basic service and all-electric customers.

In calculating baseline quantities, the utilities use what is referred to as a "bill frequency" methodology, as opposed to a simple average methodology. This methodology results in a higher baseline quantity. The Commission adopted the bill frequency methodology in Decision (D.) 83-12-065, on the grounds that it was more consistent with the legislative intent behind the then-new baseline legislation.[4] A number of parties have recommended that the Commission continue to use the bill frequency methodology, and no party has recommended that the Commission change its methodology. We direct that the utilities continue to use the existing bill frequency methodology for calculating baseline quantities.

[4] As discussed in D.83-12-065, the bill frequency methodology results in a larger baseline allowance than the average bill method.

B. Percentage of Energy Usage to Use in Calculating Baseline Quantities

We must also determine the appropriate percentage of energy usage to use in calculating baseline quantities within the range specified by Pub. Util. Code § 739(d)(1). Section 739(d)(1) requires that baseline quantities be based on average residential consumption, and set in a range of 50 to 60% of use, except for residential gas customers and all-electric residential customers, for whom the baseline is set in a range of 60 to 70% during the winter heating season.

PG&E, as authorized by the Commission, sets its target baseline quantities at the highest percentage allowed by law, and proposes to continue doing so here. SoCalGas and SDG&E currently set their target baseline quantities at the midpoint of each range. SCE has some targets set at the maximum, with others set at the midpoint.[5] While there are valid reasons for consistently setting the target quantities at either the top or the midpoint of the statutory range, no valid reason was presented why some utilities should be at the top of the range while others are at the midpoint. We are resolving this discrepancy by setting all utility target baseline quantities for both basic and all-electric customers at the highest percentage allowed by § 739, consistent with PG&E's practice.

Those utilities whose baseline allowance has been set at the midpoint have raised concerns about the rate impact on those customers who would be

[5] This has apparently caused confusion to a number of parties, including SCE. In exhibit 2 at p.7, SCE states that basic customers' baseline is set at the midpoint of average use in both summer and winter months, while for all-electric customers, baseline allowances are currently set at the maximum percentage allowed under law. In its Reply Brief at p.4, SCE states that the Commission has not set SCE's baseline allowances for basic service and all-electric summer service at the highest possible percentages.

required to bear the cost of an increased baseline allowance. This is a valid concern, and we also wish to ensure that these costs do not cause undue hardship on customers. In order to determine the rate impacts on particular customers we would have to examine the allocation of any increased costs on various customers. We will examine the cost allocation of this change (and all other changes) in a unified manner in Phase 2. By assigning cost allocation entirely to Phase 2, we can more comprehensively identify and examine how particular customers are affected by certain rate impacts.

We note that today's decision is to be revenue-neutral; we are looking only at how the pie is sliced, not the size of the pie. In order to maintain revenue neutrality to the utilities until Phase 2, when rates will be subject to change, we authorize the establishment of a balancing account (the Baseline Balancing Account, or "BBA") that will track any under-collection or over-collection resulting from today's decision. If utilities already have an appropriate balancing account in which to record the effect of today's decision, they may use that account, rather than create a new one, as long as the balancing account to be used is clearly identified in a compliance advice letter. Due to the nature of the changes made in today's decision, which are a necessary response to the energy crisis, and are designed to drive down the costs to customers, particularly those consuming relatively small quantities of energy, any costs recorded in the BBA are recoverable after the end of the rate freeze. (*See* D.01-07-028.)

C. Commission Authority to Adjust Baseline Quantities

1. AB 1890

A number of parties have addressed statutory constraints on our ability to adjust baseline quantities. PG&E and SCE argue that the electric "rate freeze" of AB 1890 (Stats. 1996, Ch. 854) prevents us from changing baseline

allowances in this phase of this proceeding. We find this argument to be without merit.

We are not changing rates in this phase of the proceeding, even if we do change baseline allowances. Actual rate changes would occur in Phase 2, and any decision in Phase 2 will occur after the statutory end of the rate freeze on March 31, 2002. In essence, we are setting up part of the framework for the post-rate freeze period. Changing the baseline allowances at this time is not inconsistent with AB 1890, because any rate effects will occur after the end of the rate freeze.

2. Water Code § 80110

Parties expressed widely diverging views on the effect of specific language in AB 1X-1, codified as Water Code § 80110, which reads, in relevant part:

> In no case shall the commission increase the electricity charges in effect on the date that the act that adds this section becomes effective[6] for residential customers for existing baseline quantities or usage by those customers of up to 130 percent of existing baseline quantities, until such time as the [D]epartment [of Water Resources] has recovered the costs of power it has procured for the electrical corporation's retail end use customers as provided in this division.

We conclude that Water Code § 80110, read together with Pub. Util. Code § 739, the baseline statute, authorizes us to increase baseline allowances for electricity, but not to reduce them for utilities that take power from the state Department of Water Resources (DWR) or are otherwise bound by Water Code § 80110. For other utilities, baseline quantities may go up or down based on the

[6] The effective date of the legislation was February 1, 2001.

changes we make here. We first address several statutory arguments of the parties.

a) "Existing" Baseline Quantities

Aglet argues that the meaning of the word "existing" is not necessarily confined to the present time, citing to Black's Law Dictionary, and accordingly this aspect of the statute is ambiguous, and therefore the Commission must construe what the statute really means. Aglet concludes that the Commission can, even after the effective date of the legislation, change numerical baseline quantities, as long as it maintains the current inter-tier boundaries. PG&E disagrees, and argues that the clear and unambiguous meaning of "existing" is the date of enactment of the legislation. We agree with PG&E.[7] The plain meaning of the statute is that the term "existing baseline quantities" refers to those authorized as of the effective date of the statute, i.e., February 1, 2001.

b) Whether We May Increase Baseline Quantities

The determination that "existing baseline quantities" refers to those quantities in place on February 1, 2001, is only the beginning of our analysis. We still need to determine the impact of the legislation on this phase of this proceeding. To focus our analysis, it helps to remove the timing language (both effective date and expiration date[8]) from the statute, which results in the statement: "In no case shall the commission increase the electricity charges . . . for

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[7] We note that PG&E refers to the date of enactment, which PG&E identifies as January 31, 2001. The statute itself refers to the effective date, which is February 1, 2001. The difference has no significance for this proceeding.

[8] The expiration date relates to the Department of Water Resources' cost recovery for power procurement.

residential customers for existing baseline quantities or usage by those customers of up to 130 percent of existing baseline quantities." We find this statement to be unequivocal: the Legislature, for the life of the legislation, does not want residential customers to pay more money than they were paying on February 1 2001 for the baseline quantity of electricity they were receiving on that date. Likewise, residential customers should not pay more than they were paying on February 1, 2001 for their usage of electricity of up to 130% of the baseline quantity they were receiving on that date.

The question we need to consider here is whether the changes we implement today are inconsistent with these statutory requirements. One change we are considering is to raise the baseline allowances of certain customers. Raising the baseline allowance while leaving rates unchanged, as we are doing in this phase of this proceeding, results in the outcome that no customer will pay more for his or her baseline quantity of electricity than he or she paid on February 1, 2001. A higher baseline amount at the same price clearly complies with the requirement of the statute.

Furthermore, raising the baseline allowance while leaving rates unchanged also complies with the requirement that the charge for usage of 130% of baseline be no higher than it was on February 1, 2001. Unless the Commission was to significantly increase the rate for usage falling between any new baseline allowance and 130% of the previous baseline allowance, it could not violate the statute by increasing baseline quantities. We are not changing any rates in this decision, and if we avoid making this sort of rate change in later decisions, we can readily remain in compliance with the statutory requirements.

For those customers who do receive an increased baseline allowance, we must determine the effect of that increased baseline. Are their rate tiers calculated based upon 130% of the old baseline existing on February 1, 2001,

or are they calculated based upon 130% of the new baseline? We conclude that they are to be based upon 130% of the new baseline.

To the extent that electric baseline quantities are increased, and the rate tiers are based upon the new baseline allowance, this has the effect of protecting more usage from rate increases than would be protected if the rate tiers are based upon the previous baseline allowance. For example, if a customer had a baseline allowance of 100 units, that customer is protected under § 80110 from rate increases on their usage up to 130 units. If we increase that customer's baseline allowance to 110 units, they would be protected from rate increases on their usage up to 143 units. We conclude that Water Code § 80110 does not bar this additional level of protection.

c) Whether We May Decrease Baseline Quantities[9]

The more difficult scenario is one in which we would *decrease* the electricity baseline allowance for a particular customer or group of customers. Leaving rates unchanged in this scenario would result in customers paying more for both the pre-existing baseline quantity and for 130% of that same baseline quantity. For example, if the current baseline allowance was 100 units of electricity, and a customer who used exactly 100 units in a month paid a bill of $50, reducing the baseline allowance to 90 units while leaving rates unchanged would result in an increase in that customer's bill. Accordingly, decreasing the baseline allowance would violate Water Code § 80110 for those utilities that take DWR power or that are otherwise bound by Water Code § 80110.

[9] This section only applies to utilities that take power from the DWR.

Similarly, if a customer was using 250 units in a month (again with a baseline of 100 units), and their baseline quantity was decreased from 100 units to 90 units with rates remaining unchanged, the bill for that customer for 130 units (130% of previous baseline) would also increase, again violating § 80110. The only difference in this scenario is that the Commission, by reducing the rate paid for usage falling between the new baseline and 130% of the old baseline, could equalize the amount paid by this customer for 130% of the previous baseline despite the reduction in the baseline quantity This approach violates the requirement of Water Code § 80110.

d) Interplay Between Water Code § 80110 and Pub. Util. Code § 739

We conclude that we must comply with the requirements of Water Code § 80110 by not reducing the electric baseline allowance of any customer of a utility taking DWR power or otherwise bound by Water Code § 80110. This would appear to conflict with the requirements of § 739(d)(1), at least for those customers whose baseline allowance currently falls above the statutory limit. Under § 739(d)(1), we are required to "review and revise baseline quantities as average consumption patterns change," and to keep those quantities within the statutory ranges.

It is possible, however, to harmonize the two statutes. Section 739(d)(1) is an older statute than Water Code § 80110, and in this aspect it is also a more general statute. Accordingly, we read Water Code § 80110 as modifying or limiting § 739 (d)(1). Even after the enactment of Water Code § 80110, we maintain our general duty and ability to review and revise baseline quantities, as that legislation neither expressly nor impliedly repealed § 739(d)(1). Our duty and ability is now more limited in that we cannot revise baseline quantities in a manner that would result in a violation of Water Code § 80110.

e) *Effect of § 80110 on Usage Above 130% of Baseline*

We find Water Code § 80110 to be clear and unambiguous on this issue. As PG&E pointed out earlier, if the language of a statute is clear and unambiguous on its face, the plain meaning of statute must be followed. Section 80110 only prohibits increases in charges for existing baseline quantities or usage up to 130 percent of existing baseline quantities. It is silent as to what happens above 130 percent of existing baseline quantities. Given the continued existence of Pub. Util. Code § 739(d)(1), the Commission may clearly increase the charges for usage above 130% of existing baseline, but there is nothing that requires the Commission to do so. Accordingly, the Commission may legally leave unchanged the charges for usage above 130% of existing baseline.

PG&E and SCE argue that the legislative intent was for protection to extend only to 130%, and no further.[10] Given the clarity of Water Code § 80110, there is no need to resort to a legislative intent analysis, and certainly not the general legislative history approach urged by PG&E and SCE.

In its Reply Brief, PG&E raises the argument that "any change to baseline quantities in *this* proceeding would per se cause increase to the electricity charges for some customers with usage under 130 percent of existing baseline." PG&E uses this to argue that Water Code § 80110 bars any change to baseline quantities. This argument ignores the plain language of the statute, which does not bar increases to charges for *customers* with usage under 130 percent of

[10] PG&E largely bases this argument on a document not introduced into evidence in this proceeding, which it has attached as Attachment 2 to its Opening Brief. Aglet objects to PG&E's use of this non-record document. We will grant Aglet's objection, and strike Attachment 2 from PG&E's Opening Brief, and strike all references to that document.

existing baseline (which would be all customers), but rather merely bars increased charges for *usage* under 130 percent.

f) Gas Baseline Quantities Not Affected

Water Code § 80110 only addresses electric baseline quantities, and is silent regarding gas baseline quantities. Accordingly, the above discussion does not apply to gas baseline quantities. For all gas utilities, we will calculate the changes resulting from applying updated data and moving the percentage to the top of the statutory range in order to implement that result whether it is an increase or a decrease in the gas baseline allowance.

3. Interplay Between Water Code § 80110 and Our Decision to Update Energy Usage Data and Set the Target Percentage at Top of Statutory Range

In applying the conclusion that the Commission may increase baseline allowances for electricity, but may not reduce them for utilities taking DWR power or otherwise bound by Water Code § 80110, we need to consider the combined effect of our resolution of the two issues of updating data and setting target percentages. By itself, updating the data used to calculate baseline allowances results in most customers receiving an increased baseline allowance, but some would see a decreased baseline allowance. Setting the target percentage at the top of the statutory range for all utilities results in many customers receiving an increased baseline allowance, while the remainder would see no change.

In order to determine whether this decision as a whole is in compliance with Water Code § 80110, we need to look at the combined or net effect of these changes. As discussed above, we must ensure that no customer of a utility taking DWR power or otherwise bound by Water Code § 80110 receives a decreased baseline allowance. Accordingly, if the combined effect of these

changes would result in a decreased baseline allowance for any customer or group of customers, that decrease will not be implemented. Instead, that customer's or group of customers' baseline allowance will remain the same as it is now, which is the same as it was on February 1, 2001. We will only implement changes in electric baseline quantities if the net result is an increase in the baseline allowance for those utilities taking DWR power or otherwise bound by § 80110.

4. Timing of Changes to Baseline

PG&E argues that the Commission can only change baseline allowances in the context of Phase 2 of a GRC.[11] According to PG&E, this is because the Legislature must be deemed to be aware of the Commission's long-standing practice to change baseline quantities every three years or so in the utilities' general rate cases. However, the factual basis for this argument is weak at best, for while it has been the general practice for the Commission to address baseline quantities in GRCs, the Commission does not require changes to baseline quantities to be made in a GRC. SDG&E, for example, has been allowed to review and update its electric baseline allowances in its Rate Design Window proceedings. Moreover, the baseline statute is silent on the appropriate timing of such changes. We find that this proceeding is an appropriate forum in which to update baseline quantities, and does not result in the delay that waiting for PG&E's GRC would cause.

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[11] PG&E intermixes this general argument with a more narrowly-phrased argument that the Commission cannot change electric baseline quantities relating the Rate Stabilization Plan's three-cent average surcharge until PG&E's next GRC Phase 2. Since PG&E appears to use these arguments interchangeably, we will address the more general version.

Parties have suggested a range of implementation dates for any changes ordered by this decision, with some parties suggesting January 1, 2002, and others suggesting dates in the spring of 2002. In general, the utilities suggest the later dates. In view of the passage of time since the Phase 1 hearings, we will order that all changes required to be made in the baseline quantities as a result of this decision (except those covered in Ordering Paragraph 8 related to the longer process of updating consumption data) be in place, at the utility's option by June 1, 2002, or at the time the utility changes over to the summer season. While providing prompt relief to utility customers is our primary consideration, we must temper that goal with the acknowledgement that we are requiring the utilities to implement further changes in already complex and difficult times.

D. Rate Impacts Addressed in Phase 2

We must also consider the potential rate impact on those customers who would be required to bear the cost of an increase in baseline allowances. In an ideal world, we would, as some parties suggested, not change baseline allowances until all cost impacts of such a change were thoroughly studied. We will address cost impacts in an integrated manner in the second phase of this proceeding, ensuring that all rate impacts are evaluated together, rather than in a piecemeal fashion.

E. Medical Baseline

Disability Rights Advocates (DRA) presents a number of proposals for changes to the medical baseline program. Some of these proposals were quite specific, while others are very general, and still others call for future work by the utilities, or coordination between the utilities and other groups, including groups that are not parties to this proceeding.

1. Translating Medical Baseline Forms Into Languages Other Than English and Into Braille

a) Foreign Languages

DRA argues that medical baseline forms[12] should be made available in multiple languages, citing to the significant cultural diversity of California, which presumably extends to the customers eligible for medical baseline quantities as well. While not totally embraced by the utilities, DRA's proposal is reasonable. Those customers faced with both a serious medical condition and a language barrier may be doubly disadvantaged in their ability to pay their energy bills and to find out about programs that can offer them assistance.

We will require the utilities to provide medical baseline forms in multiple languages. Each of the four large utilities (PG&E, SCE, SDG&E and SoCalGas) shall, in addition to English, provide all medical baseline forms in Spanish and in the most prevalent Asian language in its service territory. This requirement is consistent with what we have done in connection with our Energy Efficiency program.[13] We also encourage these four utilities to provide medical baseline forms in additional languages, particularly languages spoken by significant percentages of their customers. In the alternative, these utilities may work with community groups to provide information on the medical baseline program in additional languages.

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[12] Medical baseline forms include both an enrollment or application form and a re-certification form. Discussions of unspecified "forms" include both types.

[13] *See* D.02-03-056.

We recognize that the smaller and multi-jurisdictional utilities may vary significantly in the proportion of customers who speak a language other than English, and some may not have significant numbers of customers eligible for medical baseline. We do not wish to impose on utilities and their customers the cost of preparing materials in other languages if those materials will be largely useless. Accordingly, in an effort to tailor today's decision to the range of utilities subject to this proceeding, we will only require that medical baseline forms be prepared in other languages if there may be a need for such forms. If more than 10% of a given utility's customers' primary language is any language other than English, that utility shall make its medical baseline forms available in the second most common language in its service territory. We also encourage these utilities to perform outreach on medical baseline in additional languages but will leave the determination governing the best approach to each utility.

In addition to providing forms in additional languages, DRA made other recommendations discussed below for revising the utilities' medical baseline forms. PG&E recommends that the preparation and distribution provision of new forms in other languages should only occur after the forms themselves are revised. This recommendation is reasonable and pragmatic, as it would avoid the translation and printing of forms that would quickly be superseded. Accordingly, utilities should defer the translation, preparation and distribution of medical baseline forms in other languages until the forms are revised and simplified by the process described in Section III(E)(2) below.[14]

[14] This is purely a cost-saving measure, and should not be construed to limit any foreign language outreach that any utility is otherwise performing or considering for its medical baseline program.

b) Braille

DRA also proposes that information be made available in alternative formats, such as Braille. DRA states that conversion of materials into Braille and large print often requires only the provision of the document in electronic format. While providing medical baseline documents in electronic format sounds quite feasible, we do not have an adequate factual record to provide adequate direction to the utilities to implement this proposal. Among other issues, it is not clear what electronic format or formats would be required. Nor is it clear that requiring the utilities to prepare information in Braille would be either the most effective or the most cost-effective approach. Some utilities have indicated that they do have outreach programs for the visually impaired. We encourage all utilities to do such outreach through community organizations and state agencies that serve the blind and visually impaired.

While we do not require the utilities to provide medical baseline information in Braille at this time, all utilities should have all medical baseline information and forms available in large print, to be provided upon request.[15] Large print versions shall be made available immediately, and need not await the revision of the forms. During this interim period, these large print materials need not match the format of the standard size material, but may be a simple enlargement of the existing materials.

2. Simplification of Medical Baseline Forms

We concur with DRA that all medical baseline forms should be clear and simple, and some utilities have agreed to simplify their forms. DRA has also suggested that a standardized application form be developed that would be

[15] Large print means at least 16- to 18-point type.

common to all utilities. This proposal appears to have merit, and we establish a process here for developing standardized application and re-certification forms.

DRA should provide samples of the forms, as DRA believes they should appear, to all parties named on the service list in this proceeding within 30 days from the date of this order. DRA need not wait the 30 days, but may serve its samples earlier if they are ready. Within 30 days of the date that DRA provides samples of its suggested forms, the utilities shall and any other party may respond. All responses will be served on the service list in this proceeding, and responses may be made prior to the 30-day deadline. If DRA and the other parties that provided a response to DRA cannot agree on the content of the forms by 30 days after the utilities respond, all parties shall meet with the Commission's Energy Division, which will have authority to resolve any outstanding issues. DRA, the utilities, and other interested organizations are encouraged to meet informally outside of this framework, and may resolve this issue prior to the above dates. If such resolution is reached, the utilities shall send a report describing the resolution, including at least a copy of the agreed upon forms to all parties named on the service list in this proceeding, as well as to the Commission's Energy Division.

DRA makes several specific recommendations relating to the application forms, including a place for designating whether a customer has a visual disability, and whether a customer's disability is permanent. While we agree that both of these items should be on all forms, we believe that all changes should be addressed via the process described above. We do not want to mandate certain changes here, only to have those changes subsumed in another round of changes as a result of the above process, or have them somehow hinder the development of an integrated approach by the parties. We prefer a unified

and integrated approach, rather than a series of potentially confusing and expensive iterations.

As guidance for the parties, we want to ensure that customers who are either visually or permanently disabled and who have been qualified as having that status not inadvertently lose that status through mere inaction, such as failure to check a box on a form.

There was some disagreement as to the optimum level of detail that forms should have regarding the customers' particular equipment. DRA advocated for forms requesting less equipment detail, while SCE indicated that equipment detail can be useful in providing the most appropriate and sufficient allowance to a customer. We will let the parties address this issue through the foregoing process, and we will prescribe an approach only if they cannot reach resolution.

3. Availability of Medical Baseline Forms

In addition to changes to the forms themselves, DRA recommends that forms should be available to anyone who requests one, and should also be available on the utilities' websites. We agree that medical baseline forms should be made available to anyone requesting such forms, whether or not that person is potentially qualified for medical baseline or even a customer of the utility. Friends, relatives, or caregivers of a qualifying disabled customer are likely to be among those trying to obtain forms, and should be able to obtain them easily. The utilities should confirm that their customer service personnel have easy access to the forms and readily provide the forms to anyone who asks for them.

We agree that medical baseline forms should be available on the utilities' websites (if they are required to or actually do maintain websites), but we also agree with PG&E that this posting may be deferred until the forms are

updated. However, any utility that currently offers any customer form online must add its current medical baseline form to its website within 20 days of the date of this order. All other utilities should have the form available on the website within 30 days of the revised form becoming available. All utilities should have information about medical baseline on their websites, including a telephone number to call to request medical baseline forms, and a means to request medical baseline forms by e-mail, within 20 days of the date of this order.

4. Outreach

a) CARE Programs

DRA recommends that outreach for the medical baseline program be integrated with the outreach for California Alternate Rates for Energy (CARE) programs, citing to statistics indicating a linkage between disability and low income. While DRA raises a valid issue, it does not provide specific details on how this could best be accomplished. In addition, SoCalGas raised concerns that combining medical baseline information on all CARE forms could result in customer confusion. We believe that this is also a valid concern and are reluctant to take any steps in this proceeding that could adversely impact enrollment of eligible customers in the CARE program. Thus, we will not order that CARE forms or brochures include information on medical baseline. We will order that the utilities with CARE programs inform organizations involved in CARE outreach of the existence of the medical baseline program, if they have not already done so, and inform those organizations of the availability of forms and information relating to medical baseline.

b) Other Outreach

DRA recommends that the utilities perform outreach on medical baseline with Independent Living Centers and Senior Organizations.

This is a reasonable and practical recommendation, as these organizations are likely to have contact with and knowledge of disabled populations at the community level. We direct the utilities to perform reasonable outreach to Independent Living Centers and Senior Organizations in their service territories. In their compliance advice letters, utilities should describe in detail how they are performing this outreach.

5. Recertification

DRA advocates reduced recertification requirements, particularly for those customers with permanent disabilities, citing to the difficulty often experienced by the disabled in obtaining a doctor's signature. Those customers certified as having a permanent disability will need to self-certify their eligibility, in lieu of obtaining a physician's signature or authorization, every two years to ensure their continued residence at the service address. Those customers not having a permanent disability will need to self-certify each year, and they will need to obtain or secure a doctor's certification every two years.

6. Size of Medical Baseline Allowance

While the size of medical baseline allowances was not a particularly controversial issue, Sierra Pacific has acknowledged that its electric medical baseline quantity is currently only 8.9 kilowatt per hour (kWh) per day in the winter and 6.5 kWh per day in the summer, compared with higher allowances of the three large electric utilities. Sierra Pacific has recommended that its medical baseline allowance be reevaluated in its next general rate case. We will order Sierra Pacific, and any other electric utilities whose electric medical baseline allowance is lower than that of the three major electric utilities, to revise their medical baseline allowance upward to match that of the three major electric utilities in this proceeding, and to implement this change within 30 days of the

effective date of this decision. Any revenue shortfall resulting from this change should be recorded in the BBA, as discussed above.

IV. Climate Zone Study for Phase 2

In Phase 2 of this proceeding, the Commission may find it necessary to retain a consultant with expertise to study the utilities' climate zones and any suggestions for changes to those climate zones. Accordingly, the Commission delegates to the assigned Commissioner the authority to retain for this proceeding, on behalf of the Commission, a consultant or consultants for the purpose of reviewing the utilities' climate zones, reviewing any proposals relating to climate zones, and if necessary, suggesting changes to the climate zones.

V. Comments on Proposed Decision

The proposed decision in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed on March 11, 2002, and reply comments were filed on March 18, 2002.

The comments raise the following issues, which we discuss in turn:

- The timing of the ordered change in baseline quantities, and whether our decision to raise baseline quantities must occur concurrently with our examination of the effect on rates.

- Whether requiring utilities to set baseline quantities at the top of the statutory range violates Pub. Util. Code § 739.

- What qualifies as an "open" application that obviates the need for the utility to make a filing in this proceeding to recalculate baseline quantities.

- Whether the draft decision's "up not down" approach to baseline quantities applies to utilities that do not buy power

from the Department of Water Resources, and treatment of small utilities generally.

- Whether utilities may use 2001 data in updating baseline quantities.

- Whether the draft decision violates the October 2001 Settlement Agreement between SCE and the Commission.

- Use of the BBA to track gas revenue shortfalls, and interest on the BBA.

- Whether the draft decision goes far enough to improve the medical baseline process, the recertification requirements for the permanently disabled, and utility cost recovery for medical baseline changes.

A. Timing of Updated Baseline Consumption Data and Rate Changes

Due to the passage of time between the hearings and the date the draft decision mailed, we agree with the parties that the effective date for baseline changes ordered in the decision must change. Such changes shall now be effective, at the utility's option, on the date the affected utility changes its baseline quantities for the summer 2002 season, or June 1, 2002. All utilities shall file an advice letter no later than 30 days following the effective date of this decision demonstrating that they have made the required changes.

We reject the utilities' claims that we may not require them to update baseline quantities without a simultaneous revision in rates. The BBA mechanism will ensure that utilities are compensated for any rate shortfall between the foregoing effective date and the time after the July 2002 Phase 2 hearings when the Commission adjusts rates to reflect the changes. It makes no sense to handle rate changes piecemeal, since there may well be additional

changes as a result of the hearings. Nor do the utilities make a valid legal claim that we must do both simultaneously.

We also agree with the ORA that we should set an outside time limit for updating baseline consumption data. We adopt ORA's suggested deadlines. Thus, for the natural gas baseline allowance, the deadline for updating baseline consumption data shall be the beginning of the 2003-04 winter heating season (generally October 2003). For new electric baseline allowances, the deadline shall be the summer cooling season of 2003 (generally May-June 2003). If the Commission has not issued a decision updating utility data regarding baseline allowances at least 30 days prior to these season changes, the utilities shall file an advice letter implementing such baseline allowance changes.

B. Setting Baseline At Top of Statutory Range

SDG&E and SoCalGas repeat arguments made during the proceeding and rejected in the draft decision that setting baseline quantities at the top of the statutory range actually violates the statute. They note that baseline quantities will be set based on an average of several years' usage. If, they contend, there is an unusual weather year, actual usage will not match the average. For example, in an average winter, usage may be at 100 units, with the baseline set at 70 units. However, in a warm winter, usage may lower to 90 units, with the baseline quantity remaining at 70 units. Seventy units are more than 70% of 90 units, so a customer with a 70-unit baseline quantity will actually receive a baseline of more than 70 percent.

We do not agree that this circumstance violates the statute. Section 739(d)(1) only requires the Commission to "establish," or set, baseline quantities based on the statutory percentages. If, over time, these quantities are out of sync with "average consumption patterns," then it is the Commission's obligation to

review and revise baseline quantities to reflect these changes. However, the existence of an outlying year presenting the scenario reflected above does not mean that the Commission has not "established" baseline quantities at an amount reflecting average consumption. Thus, we reject the utilities' claim.

C. Definition of "Open" Applications

The draft decision gives utilities four ways to update their baseline quantities:

> Any respondent energy utility that [1] has its current baseline rates calculated on calendar year 1999 or 2000 data or [2] has an open application before this Commission in which its baseline rates will be updated using 1999 or later data, is not required to update its data in this proceeding, but may choose to do so. [3] Any respondent energy utility currently using data no older than calendar year 1996 that files an application prior to March 31, 2002[16] to update its baseline data using calendar year 2000 or 2001 data is not required to update its data in this proceeding, but again may choose to do so. [4] All other respondent utilities must update their data and their corresponding baseline amounts in this proceeding.

ORA notes that the decision is not clear as to what constitutes an "open" application under choice 2. It explains that a GRC might be "open" currently, but not contain updated proposed baseline quantities. We clarify that to qualify as an "open" proceeding under choice 2, the proceeding must be open on or before the effective date of this decision and already present, as of the effective date of this decision, proposed updated baseline quantities. Thus, an open GRC proceeding that does not present such updated quantities does not qualify as an "open" proceeding for purposes of this decision. It makes sense to define "open"

[16] We change this date due to the passage of time.

proceedings in this way, since it could take a long period of time for large GRC proceedings to reach a phase in which baseline quantities would be examined. Since updating of baseline quantities should happen expeditiously, we are not prepared to allow any GRC to qualify regardless of how far off in the future baseline quantities might be addressed.

Thus, as ORA suggests, an "open" application only pertains to a utility filing that has actually evaluated baseline quantities based upon updated consumption data.

We change the March 31, 2002 date under choice 3 to state "prior to a date that falls 30 days after the effective date of this decision." We also clarify that all utilities shall file a compliance advice letter no later than 30 days following the effective date of this decision stating which of the four foregoing choices they opt for. We agree with ORA's suggestion that the advice letter present and distinguish the effects of new baseline quantities attributable to updated consumption data from the effects of the new statutory maximum baseline allowance levels approved in the decision. Protests to or comments on the advice letters shall be filed no later than 15 days following the advice letters' filing.

D. Application of "Up Not Down" Rule to Utilities Not Taking Power from the Department of Water Resources, and Small Utility Issues Generally

Mountain Utilities and ORA note that since AB1X applies only to utilities taking Department of Water Resources (DWR) power, other utilities should be allowed to adjust baseline quantities up or down. (The draft decision found that pursuant to AB1X, baseline quantities for affected utilities could only be adjusted upward.)

We agree that the constraints imposed by AB1X do not apply to utilities not taking power from the DWR. Therefore, those utilities that take no power from the DWR should adjust their baseline quantities to whatever levels the new average use data suggests, whether those quantities go up or down.

As to the treatment of small utilities generally, only Mountain Utilities (MU) has made the case that it should receive different treatment from the other utilities in California. It explains that it has only 500 customers in one California valley characterized by mild summers and harsh winters. Therefore, MU explains, it should not be required to recalculate baseline quantities until winter 2002. MU also claims that it is exempt from the requirement to update its data since its last update was based on 1998 and 1999 data.

We do not agree that it makes sense to exempt MU. It states that the rates and baseline quantities approved in its last GRC only last through part of 2002, citing D.99-12-006. Moreover, those quantities included 1998 data, while the draft decision adopts 1999 as the cut-off year. Nor does MU explain why having to update baseline quantities in summer, rather than winter, would cause it hardship. Thus, the draft decision applies to MU and all small utilities with the exception noted about with regard to the "up not down" rule.

E. The Draft Decision Does Not Violate the Edison Settlement Agreement

We do not agree with Edison that a decision affecting baseline quantities violates its October 2001 Settlement Agreement. As ORA points out, altering baseline quantities is not the same as lowering baseline rates. Moreover, we disagree with SCE's contention that anything that lowers the combination of settlement rates and revenues violates the Settlement Agreement. As ORA points out, under SCE's faulty reasoning, virtually every fluctuation in Edison's revenue would be a violation of the Settlement Agreement, which clearly is not

the case. Rather, only a rate change – and then only under certain circumstances – implicates the Settlement Agreement.

F. Use of 2001 Data

The draft decision adequately considers, and rejects, TURN's argument that the utilities should exclude 2001 data in recalculating average usage. While we agree that 2001 was an extraordinary year for energy use and users, we do not believe excluding that data makes sense. Because usage is calculated over several years' time, and because energy usage naturally fluctuates over time, an average usage figure should include the outliers as well as the years that pose no change to the norm. Thus, 2001 data may be included in updating baseline quantities.

TURN's argument that we should prohibit the utilities from using 2001 data in the future is premature. It may raise this argument the next time we order the utilities to update baseline quantities.

G. BBA Issues

Because we plan to address rate impacts of all baseline changes in Phase 2 of this proceeding, gas utilities should also use the BBA even though they were never affected by the AB 1890 rate freeze.

We agree that amounts in the BBA should receive interest at the 3-month commercial paper rate, and adjust the pertinent ordering paragraph accordingly.

H. Medical Baseline Issues

DRA challenges our decision not to require medical baseline forms to be in Braille. There simply was not adequate evidence in the record on this point, and we make no change.

With regard to the draft decision's requirement that applications shall be available in large print, we clarify, based on DRA's comments, that "large print" means at least 16- to 18-point type.

With regard to recertification for those with permanent disabilities, we make no change to the draft decision, which allows such customers to self-certify every two years. DRA has adequately demonstrated the hardship those with permanent disabilities face gaining access to medical providers, and also notes that 48.2% of persons with disabilities are uninsured, making it even more difficult to obtain a doctor's certification. Moreover, by definition, those with a permanent disability will not recover, so we see no reason to require them to get a doctor's recertification every two years.

We do not change the certification periods for those with permanent or non-permanent disabilities.

Finally, we affirm that utilities may receive reasonable cost recovery for the costs caused by the changes we order to the medical baseline program.

Findings of Fact

1. The age of the usage data used to calculate gas and electric baseline allowances varies widely between utilities.

2. The age of the usage data used to calculate gas and electric baseline allowances sometimes varies between gas and electric customers of a single utility.

3. While the methodology used to calculate gas and electric baseline allowances varies somewhat, all of the major utilities incorporate an averaging or normalization process.

4. The predominant calculation methodology is the bill frequency methodology, previously adopted by this Commission.

5. The percentage of energy usage used in calculating baseline quantities must fall within the statutory ranges identified in Pub Util. Code § 739.

6. Some utility customers have their baseline allowances calculated using a percentage of energy usage at the top of the statutory range, while other customers have their baseline allowances calculated using a percentage of energy usage at the midpoint of the statutory range.

7. Water Code § 80110 addresses electric baseline cost issues, but is silent on gas baseline cost issues.

8. The medical baseline program can be improved in the areas of outreach, ease of enrollment and certification, and consistency among utilities.

9. Customers faced with both a serious medical condition and a language barrier may be doubly disadvantaged in their ability to pay their energy bills and find out about programs that can offer them assistance.

10. We do not have an adequate record to require utilities to provide medical baseline forms in Braille.

11. Combining medical baseline information on all CARE forms could result in customer confusion.

12. We do not have an adequate record to order changes to the medical baseline forms. It is appropriate, therefore, to order that the parties meet and confer regarding proposed changes to the form prior to addressing such changes in a decision.

13. A significant percentage of permanently disabled consumers is uninsured, making access to medical providers difficult.

14. Our most recent Energy Efficiency decision, D.02-03-056, orders utilities to use English, Spanish and the most prevalent Asian language for key energy efficiency materials.

15. It is not clear whether the Commission and the parties currently have adequate information and expertise to thoroughly review the utilities' climate zones. The Commission may find it necessary to retain a consultant with expertise in this area to study the utilities' climate zones and any suggestions for changes to those climate zones.

16. There is no reason why the age of the usage data used to calculate gas and electric baseline allowances should vary significantly between utilities or between gas and electric customers of a single utility.

17. All electric and gas customers should have their baseline allowances calculated using relatively current usage data.

18. All utilities should use the bill frequency methodology previously adopted by the Commission.

19. No customer or utility hardship has been shown to result from setting the percentage of energy usage used in calculating baseline allowances at the maximum of the statutory range.

20. The baseline allowance for all electric and gas customers should be calculated using maximum allowable percentage of energy usage.

21. The Commission need not wait for a utility to file its GRC in order to adjust baseline allowances.

22. We will resolve cost allocation issues raised by our decisions here in Phase 2 of this proceeding.

23. The adjustment in baseline quantities ordered here does not violate the Edison Settlement Agreement of October 2001.

Conclusions of Law

1. Pub. Util. Code § 739 requires the Commission to review and revise baseline quantities as average consumption patterns change.

2. Section 739 requires that baseline ratios be maintained at 50 to 60 percent of average residential consumption and 60 to 70 percent of such consumption during the water-heating season for residential gas customers and all-electric residential customers. That section requires the Commission to "establish" baseline at these levels. If, due to unusual weather, baseline actually exceeds these percentages, there is no § 739 violation so long as the Commission "establishes" baseline quantities based on the statutory percentages.

3. In setting baseline quantities, we are not required to use data from identical time periods for each utility.

4. AB 1890 does not constrain the Commission from changing baseline allowances in this phase of the proceeding.

5. Water Code § 80110, read together with Pub. Util. Code § 739, authorizes us to increase baseline allowances for electricity, but not to decrease them, for electric utilities that take power from the DWR or that are otherwise bound by § 80110. For other electric utilities, baseline quantities may go up or down based on this decision's changes.

6. Consistent with Water Code § 80110, customers' rates will be calculated based on 130% of the new baseline levels we set in this proceeding, rather than based on 130% of the levels in existence on February 1, 2001. In order to maintain revenue neutrality to the utilities until Phase 2, when rates will be subject to change, it is reasonable to authorize the establishment of a balancing account (the BBA) that will track any under-collection or over-collection resulting from today's decision.

7. Under Pub. Util. Code § 739, the Commission may increase the charges for usage above 130% of existing baseline, but is not required to do so.

8. Water Code § 80110 does not affect gas baseline quantities. Thus, the Commission is free in this proceeding to raise or lower gas baseline quantities.

9. The Commission need not wait for a utility to file its GRC in order to adjust baseline allowances.

10. This order should be effective today in order to increase baseline allowances expeditiously.

INTERIM ORDER

IT IS ORDERED that:

1. The determinations made in this order apply to all Commission-regulated gas or electric utilities. Any Commission-regulated gas or electric utility that has its current baseline rates calculated on calendar year 1999 or 2000 data or has an open application before this Commission which already presents, as of the effective date of this decision, proposed updated baseline quantities using 1999 or later data, may update its data in this proceeding, but is not required to do so.

2. Any utility currently using data no older than calendar year 1996 shall either file an application prior to the date that falls 30 days after the effective date of this decision to update its baseline data using calendar year 2000 or 2001 data or shall update its data in this proceeding.

3. All other utilities must update their data and their corresponding baselines in this proceeding. Any utility intending to update its data and baseline in any other proceeding shall notify the Commission within 30 days of the effective date of this decision of its intent to do so via compliance advice letter, including identification of the type of application, filing date or anticipated filing date, and proceeding number.

4. Southern California Edison Company (Edison or SCE), Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) shall use their proposed or existing methodologies to update their data.

5. Any utilities whose existing methodology is not consistent with one of the three methodologies used by the major utilities (four-year average, weather normalization or normalization of current data using historical usage) shall update their data by applying one of these approved methodologies, with our preference being for weather normalization.

6. The respondent utilities shall file compliance advice letters within 30 days of the effective date of this decision indicating which methodology they are currently using, and if changing methodology, which methodology they are adopting.

7. The respondent utilities shall continue to use the existing bill frequency methodology, adopted in Decision (D.) 83-12-065, for calculating baseline quantities.

8. For the natural gas baseline allowance, the deadline for updating baseline consumption data shall be the beginning of the 2003-04 winter heating season (generally October 2003). For new electric baseline allowances, the deadline shall be the summer heating season of 2003 (generally May-June 2003). If the Commission has not issued a decision updating utility data regarding baseline allowances at least 30 days prior to these season changes, the utilities shall file an advice letter implementing such baseline allowance changes. This paragraph only pertains to the requirement that utilities update energy usage data contained in Section III(A) of this decision. In that section, the Commission orders utilities to use this proceeding (or others in certain cases) to update their consumption data. All other changes ordered in this decision – those discussed in Sections III(B) (raising baseline quantities to statutory maximums) and (E) (changing medical baseline program) – shall be implemented as set forth in Ordering Paragraph 12.

9. The respondent utilities shall set their baseline quantities for both basic and all-electric customers at the highest percentage allowed by § 739, consistent with PG&E's practice. They shall file an advice letter demonstrating that they are in compliance with this requirement no later than 30 days following the effective date of this decision.

10. The "up not down" rule articulated in Section III(C) of this decision only applies to utilities that take power from the Department of Water Resources or that are otherwise bound by Water Code § 80110. For other utilities, baseline quantities may go up or down based on the changes this decision orders.

11. If gas and electric utilities already have an appropriate balancing account in which to record the effect of today's decision, they may use that account, rather than create a new one, as long as the balancing account to be used is clearly identified in a compliance advice letter. Otherwise, the respondent gas and electric utilities shall establish the Baseline Balancing Account (BBA). Any costs recorded in the BBA, or other applicable account, are recoverable after the end of the rate freeze, consistent with the procedures adopted in D.01-07-028.

12. All changes required to be made in the baseline quantities as a result of this decision shall be in place, at the utility's option, by the date the utility changes baseline quantities for the 2002 summer season, or June 1, 2002, except those changes with a different deadline as set forth in Ordering Paragraph 8.

13. PG&E, SCE, SDG&E, and SoCalGas shall, in addition to English, provide all medical baseline forms in Spanish and in the most prevalent Asian language in their respective service territories. We also encourage these four utilities to provide medical baseline forms in additional languages, particularly languages spoken by significant percentages of their customers. In the alternative, these utilities may work with community groups to provide information in additional languages on the medical baseline program.

14. If more than 10% of the customers of a utility not covered by the previous ordering paragraph speak as their primary language any language other than English, that utility shall make its medical baseline forms available in the second most common language in its service territory. We also encourage these utilities to perform outreach on medical baseline in additional languages, but the Commission will leave the determination of the best approach up to each utility.

15. All respondent gas and electric utilities shall have all medical baseline information and forms available in large print (at least 16- to 18-point type) and should be provided upon request. Large print versions shall be made available immediately, and need not await the revision of the forms. During this interim period, these large print materials need not match the format of the standard size material, and can be a simple enlargement of the existing materials.

16. We encourage all utilities to conduct outreach programs for the visually impaired through community organizations and state agencies that serve the blind and visually impaired.

17. Utilities with California Alternate Rates for Energy (CARE) programs shall inform organizations involved in CARE outreach of the existence of the medical baseline program if they have not done so already, and let those organizations know of the availability of forms and information relating to medical baseline.

18. The respondent gas and electric utilities shall perform reasonable outreach regarding the medical baseline program to Independent Living Centers and Senior Organizations in their service territories. They shall describe in detail how they are performing this outreach in the compliance advice letters we require in this decision.

19. Disability Rights Advocates (DRA) shall file and serve samples of the medical baseline forms, as DRA believes they should appear, within 30 days from the date of this order. DRA need not wait the 30 days, but may serve its

samples earlier if they are ready. Within 30 days of the date that DRA provides samples of its suggested forms, the respondent gas and electric utilities shall and any other party may respond. All responses shall be filed and served; responses may be made prior to the 30-day deadline. If DRA and the other parties that provided a response to DRA cannot agree on the content of the forms within 30 days from when those utilities respond, all parties shall meet with the Commission's Energy Division, which retains or maintains or reserves the authority to resolve any outstanding issues. DRA, the utilities, and other interested organizations are encouraged to meet informally outside of the framework, devised for this proceeding in order to achieve a resolution of this issue prior to the above dates. If such resolution is reached, the utilities shall file and serve a report describing the resolution, including at least a copy of the agreed upon forms to those named on the service list in this proceeding, and to the Commission's Energy Division.

20. The utilities shall make medical baseline forms available to anyone requesting such forms, whether or not that person is potentially qualified for medical baseline or is even a customer of the utility. The utilities shall confirm that their customer service personnel have easy access to the forms and readily provide the forms to anyone who asks for them.

21. Any utility that currently offers any of its customer forms online must add its current medical baseline form to its website within 20 days of the date of this order. Other utilities shall have the form available on the website within 30 days of the revised form becoming available, if they are required to, or actually do, maintain a website. All utilities shall have information about medical baseline on their websites, including a telephone number to call to request medical baseline forms, and a means to request medical baseline forms by e-mail, within 20 days of the date of this order.

22. Respondent gas and electric utilities shall inform their customers of the following: 1) Customers certified as having a permanent disability will need to self-certify their eligibility every two years, in lieu of obtaining a physician's signature or authorization, to (at a minimum) ensure their continued residence at the service address, and 2) Those customers not having a permanent disability will need to self-certify each year, and will need a doctor's certification every two years.

23. Any electric utility whose electric medical baseline allowance is lower than the allowances of the three major electric utilities shall revise upward its medical baseline allowance to match those of the three major electric utilities in this proceeding, and to implement this change by advice letter filing within 30 days of the effective date of this decision. Any revenue shortfall resulting from this change should be recorded in the BBA.

24. The Commission delegates to the assigned Commissioner the authority to retain for this proceeding, on behalf of the Commission, a consultant or consultants for the purpose of reviewing the utilities' climate zones, reviewing any proposals relating to climate zones, and if necessary, suggesting changes to the climate zones.

This order is effective today.

Dated April 9, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners