Decision **PROPOSED DECISION OF ALJ TERKEURST (Mailed 10/10/2003)**

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)

(See Attachment A for List of Appearances.)

FINAL OPINION ON PHASE 2 ISSUES

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FINAL OPINION ON PHASE 2 ISSUES

I. Summary

This proceeding was initiated to consider steps to make it easier for residential customers to afford their basic energy needs in light of the substantial rate increases and the multi-tiered rate structure implemented to meet utility obligations caused by the energy crisis. We have determined separately that a 20% discount on total energy bills and exemption from electric surcharges provides an appropriate level of assistance, through the California Alternative Rates for Energy (CARE) program, for low-income customers to reflect their level of need. In Phase 2, we evaluate the affordability of basic energy needs for customers who may be vulnerable for reasons other than being low income.

We adopt the program proposed by The Utility Reform Network (TURN) whereby lower-middle income large household participants will be charged Tier 2 electricity rates for their Tier 3 usage. Lower-middle income households with income levels between 175% and 250% of the federal poverty threshold, e.g., $32,000 to $45,700 for a household of four, are just above the CARE limits. We adopt this program for Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E). We do not extend it to customers of the smaller electric utilities, since their upper tier rates are not as high and they do not appear to have a comparable need for rate relief.

Utilities will notify residential customers of the large household program through annual bill inserts. Additionally, the utilities' customer service representatives must describe the program (1) whenever service is initiated, (2) upon customer request, and (3) whenever a customer contact is related to affordability. Utilities must also make program information available through their web sites and their automated customer service prompts and scripts. They should undertake additional outreach when it can be done at little cost, e.g., a brief statement in CARE-related literature.

We instruct Energy Division to hold a workshop within 30 days to finalize implementation and administrative procedures for the adopted large household program. PG&E, SCE, and SDG&E must implement the large household program for all customers within 20 weeks of the effective date of this order, with the first customers receiving bill inserts able to receive reduced rates 4 weeks earlier than that. The utilities are authorized to accrue program costs and related revenue losses in their baseline balancing accounts (BBAs).

We adopt the policy that the usage of seasonal residences should be excluded from baseline calculations in climate zones where its inclusion would cause a material reduction in baseline quantities. Seasonal usage should be excluded if its inclusion would decrease baseline quantities by 3% or more. Each utility must file an advice letter demonstrating whether this materiality threshold is met in each climate zone. Baseline quantities are to be adjusted appropriately, to be effective at the beginning of the summer 2004 baseline period. While PG&E's proxy methodology for excluding seasonal residences from the baseline calculation is acceptable, utilities may propose alternative methods of exclusion. Utilities may accrue revenue losses due to these baseline adjustments in their BBAs.

We do not adopt a statewide requirement that baseline allowances be withheld from seasonal residences to the maximum extent permitted by Water Code § 80110, which was added by Assembly Bill (AB) 1 from the 2001 First Extraordinary Session (Stats. 2001, Ch. 4; hereinafter referred to as AB 1X) effective February 1, 2001. Instead, the question of whether baseline quantities should be withheld from seasonal residences should be assessed separately for each utility, taking into account the impact on permanent residents' bills, related administrative costs, and the complexities of identifying seasonal residences in an equitable manner. Each utility, including the companies that now restrict baseline quantities to only permanent residents, must submit in its next general rate proceeding or other appropriate proceeding information that would allow us to assess such an exclusion. Pending this further review, SCE should not implement the policy adopted in Decision (D.) 96-04-050 that it withhold baseline quantities from seasonal residences in climate Zones 15 and 16.

We require that SDG&E, and any other electric utility that currently serves common area accounts through residential schedules, allow its residential common area electric customers the option to switch to commercial schedules, under terms comparable to the provisions found reasonable and adopted for PG&E in D.03-01-037. The utilities may track any revenue losses resulting from this treatment of common area accounts in Common Area Balancing Accounts (CABAs). These changes are to be implemented within 45 days of the effective date of this order.

We address the recovery of cost and revenue undercollections resulting from changes adopted in this proceeding. As a threshold matter, we determine that SDG&E's proposal to increase its distribution and competitive transition charge (CTC) rate components without offsetting decreases to other rate components for usage up to 130% of baseline amounts is counter to AB 1X and, further, that its current rates for usage up to 130% of baseline do not comply with AB 1X. We require each electric company that is bound by the rate protections in Water Code § 80110 to adjust its rates if needed to comply with this statute.

We do not find it reasonable to raise total electric rates at this time, since it may be possible to provide revenue neutrality for the electric changes adopted in this proceeding without an increase in total electric rates. Non-generation rate components should be increased to maintain the revenue requirements adopted for these components, with equal and offsetting adjustments to generation rates (or commodity rates for SDG&E) so that total rates are unchanged. We defer issues regarding allocation of generation undercollections and rate design to recover such shortfalls to each company's general rate case or other appropriate proceeding.

Because the gas rate increases that are needed to maintain revenue neutrality for baseline-related changes are relatively small and will not cause excessive rate increases or threaten the affordability of gas for residential customers, we see no need to allocate them outside the residential class or to depart from adopted gas rate design procedures for their recovery. We authorize PG&E, SDG&E, and SoCalGas to use the rate design methodologies adopted in their most recent biennial cost allocation proceedings (BCAPs) to adjust residential gas rates to reflect baseline-related shortfalls on an on-going basis and to amortize gas BBA balances. The proposal of Southwest Gas Corporation (Southwest) to adjust its rates on an equal-cents-per-therm basis is reasonable. Other gas utilities may adjust their residential rates in a manner consistent with policies adopted in their most recent gas rate design proceedings or, if that is not feasible, on an equal cents-per-therm basis. The gas rate changes to establish revenue neutrality for the on-going effects of policies adopted in this proceeding are to become effective at the beginning of the summer 2004 baseline period. Amortization of BBA balances should commence at the time of the first seasonal baseline change or other change in residential gas rates after the final BBA balance is known.

Other Phase 2 proposals are not adopted for a variety of reasons, as explained in this decision.

II. Procedural History

On May 24, 2001, we instituted Rulemaking (R.) 01-05-047 to evaluate whether the utilities' baseline programs should be revised. This review was prompted, in large part, by the unprecedented rate increases we have been forced to impose on Californians due to the energy crisis and by our adoption of a rate design relying heavily on baseline quantities to determine which residential customers are affected and to what degree.

The rulemaking has proceeded in two phases. In D.02-04-026 issued in Phase 1, we required that the utilities update baseline quantities to reflect current usage of gas and electricity, increase baseline quantities to the maximum percentage levels allowed by law for customers not already receiving those maximum allowances, and simplify and improve the process by which customers may obtain the standard limited additional baseline allowance for medical reasons. We determined that the Commission may increase baseline allowances for electricity, but may not reduce them for utilities taking power purchased from the Department of Water Resources (DWR) or otherwise bound by Water Code § 80110. Revenue shortfalls due to the baseline changes and administrative costs of the changes to the medical baseline program are recorded in the utilities' BBAs, the disposition of which was deferred to Phase 2.

Public participation hearings were held in this proceeding on August 27, August 28, September 10, September 20, September 24, December 12, and

December 13, 2001. The Commission has received approximately 380 letters and other correspondence regarding this proceeding.

A prehearing conference (PHC) for Phase 2 was held on January 31, 2002. The *Scoping Memo of Assigned Commissioner and Administrative Law Judge for Phase 2 of Proceeding* (Scoping Memo), dated February 26, 2002, identified the scope of Phase 2 to include the following issues:

1. Household characteristics (including household/home size and demographics),
2. Climate zones and geographic boundaries of each utility's baseline zones,
3. Well water pumping for household use,
4. Condominium and other multiple dwelling unit common areas,
5. Seasonal residence effects on average use calculations (including the application of baseline to vacation homes),
6. Definition of seasons,
7. Rate impacts of changes to baseline, and
8. Proposed legislative changes.

The Scoping Memo provided for legal briefs in advance of the Phase 2 evidentiary hearing to address the scope of Commission authority to make changes to the baseline program related to items 1, 3, 4, and 5. Opening legal briefs were filed by Latino Issues Forum and Greenlining Institute (LIF/Greenlining), Office of Ratepayer Advocates (ORA), PG&E, Regional Council of Rural Counties (RCRC), SCE, Southern California Gas Company (SoCalGas) and SDG&E (collectively, SoCalGas/SDG&E), Southwest, and TURN. Reply legal briefs were filed by Aglet Consumer Alliance (Aglet), Executive Council of Homeowners (ECHO), LIF/Greenlining, ORA, PG&E, SCE, SoCalGas/SDG&E, and TURN.

In D.02-05-010, dated May 2, 2002, the Commission approved a request by SDG&E to divide its climate Zone 1 into a Coastal zone and an Inland zone based on different usage patterns in the two areas. The Commission increased the baseline quantities for the new Inland climate zone based on its higher average usage. Consistent with D.02-04-026, baseline quantities were not decreased for customers in the new Coastal zone.

The *Assigned Commissioner and Administrative Law Judge Ruling Re Legal Issues, Climate Zone Issue and Updated Schedule*, dated May 24, 2002, determined that the arguments in favor of a legal bar to the Commission making changes to its baseline program were not strong enough to preclude evidentiary hearings on the identified issues. The ruling required that parties file comments regarding whether information that the utilities had provided in response to an administrative law judge (ALJ) request for information regarding climate zones militates in favor of (or against) a climate zone change, provided for reply comments, and requested that the utilities supplement their responses to the request for information in certain respects. The ruling also modified testimony submittal dates. SCE, SDG&E, and SoCalGas filed comments on the utilities' climate zone submissions, and PG&E filed reply comments.

A second PHC for Phase 2 was held on August 15, 2002. Official notice was taken of the 2002 United States Census, and of the legislative history of Public Utilities Code § 739,[1] § 739.8, and AB 1X. It was determined that no party

[1] All code section references are to the California Public Utilities Code unless otherwise noted.

planned to present proposals regarding items 2 (baseline climate zones), 6 (seasons), and 8 (legislative changes) identified in the Scoping Memo. It was ruled that seasonal definitions and potential legislative changes would not be considered further in this proceeding but that evidence regarding the utilities' climate zones should be provided and company witnesses made available for cross examination. Upon review of the record regarding the utilities' climate zones, and in light of the parties' consensus that no climate zone modifications are needed at this time, we see no need to address baseline climate zones in this order.

At the second Phase 2 PHC, it was also determined that a settlement regarding PG&E's residential common area electric accounts would be addressed separate from other Phase 2 issues, to expedite Commission consideration. Evidence was received on the common area settlement and other common area issues on September 3, 2002, the first day of Phase 2 hearings, and the record regarding the common area settlement was submitted on September 13, 2002. In D.03-01-037, the Commission approved the settlement and deferred allocation and cost recovery issues regarding PG&E's CABA to this order on remaining Phase 2 issues.

Ten days of evidentiary hearings were held in Phase 2 between September 3 and September 13, 2002. Following the receipt of evidence on common area issues, the remaining hearings addressed other Phase 2 issues. Testimony was presented during the ten days by witnesses for the California Large Energy Consumers Association (CLECA), LIF/Greenlining, ORA, PG&E, RCRC, SCE, SoCalGas/SDG&E,[2] Southern California Water Company (which operates Bear Valley Electric Service) (SCWC), Southwest, TURN, and the Watergate Community Association (WCA). On September 13, 2002, the ALJ provided for the receipt of several late-filed exhibits and set a hearing for October 4, 2002, if needed, to address those exhibits. Following filing of the late-filed exhibits, no party objected to their receipt, the October 4, 2002 hearing was cancelled, and an October 9, 2002 ALJ ruling received the late-filed exhibits into evidence.

Opening briefs on Phase 2 issues (other than the common area settlement) were filed by Aglet, the California Farm Bureau Federation (Farm Bureau), CLECA, LIF/Greenlining, Mountain Utilities (Mountain), ORA, PG&E, RCRC, SoCalGas/SDG&E, SCE, Southwest, TURN, and WCA.[3] Reply briefs were filed by Aglet, LIF/Greenlining, Mountain, ORA, PG&E, RCRC, SoCalGas/SDG&E, SCE, Southwest, TURN, and WCA. No party requested oral arguments in Phase 2. The Phase 2 record was submitted on November 4, 2002.

On May 2, 2003, the assigned ALJ issued a ruling reopening the Phase 2 proceeding to allow receipt of information regarding the impact of a settlement agreement submitted on April 23, 2003 in Application (A.) 03-01-019. That settlement agreement, while primarily addressing SCE's Procurement Related Obligations Account (PROACT), also proposed to resolve disputes in Phase 2 of

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[2] Some witnesses were sponsored jointly by SDG&E and SoCalGas; others testified on behalf of SDG&E or SoCalGas alone. SDG&E and SoCalGas filed joint briefs and other legal pleadings.

[3] The California Manufacturers & Technology Association (CMTA), which is not a party in this proceeding but is on the "Information Only" service list, submitted a brief making arguments similar to the views of parties representing large users.

this proceeding regarding SCE's BBA. The ALJ ruling required that SCE file the PROACT settlement agreement in the Phase 2 proceeding and provided for additional briefs on the impact of the PROACT settlement on this proceeding. SCE, TURN, and SDG&E/SoCalGas filed supplemental briefs and RCRC filed a supplemental reply brief. Phase 2 was resubmitted on May 20, 2003.

We approved the PROACT settlement in D.03-07-029 and the revised rates became effective on August 1, 2003. The adopted settlement incorporated the ongoing revenue impacts of the Phase 1 decision in SCE's rates, so that no further Phase 1 undercollection will accrue. It also provided that the balance in SCE's BBA due to Phase 1 will be amortized over 12 months and that the BBA will be terminated at the end of the amortization period. SCE's rates were modified and its surcharges were replaced with a permanent four-tier rate structure.

On September 12, 2003, the assigned ALJ issued a ruling reopening the Phase 2 proceeding to allow receipt of information regarding 2002 sales and revenue by class and by residential tier for PG&E, SCE, SDG&E, and SoCalGas. No party objected to the receipt of this additional information and Phase 2 was resubmitted on September 25, 2003.

III. Proposals Based on Household Characteristics

In Phase 2, several parties propose changes in the Commission's baseline program and residential rate design policies. Some of these Phase 2 proposals are presented as alternatives, e.g., the proponents propose that either of two proposals be adopted. While TURN recommended during the hearings that certain proposals be made available only in limited areas, in its opening brief it suggests that the Commission may wish to provide them statewide. The following summary provides the essence of each Phase 2 proposal:

- TURN: Exemption from Tier 3 (and, for SDG&E, Tier 4) electric surcharges for households of three or more with household income between 175% and 250% of the federal poverty level.
- LIF/Greenlining: Increases in baseline quantities for households of six or more.
- TURN: Exemption from Tier 3 electric surcharges for senior citizen households served by all-electric tariffs.
- TURN: Increases in gas baseline quantities for senior citizen households.
- TURN: Provision of gas CARE protection for senior citizen households with income between 175% and 250% of the federal poverty level.
- RCRC: An additional baseline allowance for domestic water well pumping.
- TURN: Expansion of the current limited practice of excluding seasonal residences' usage from baseline calculations. In areas where seasonal residences currently receive baseline allowances, the resulting increase in baseline quantities would be made available only to permanent residents and baseline allowances would not be provided to new seasonal residence accounts.
- WCA: Increases in electric baseline quantities for residential common area accounts.
- WCA: Application of tiered electric rates to common area accounts based on actual usage of living units in the multifamily facility.[4]

A. Commission Authority

Parties have contested the legality of each Phase 2 proposal except TURN's proposal to expand CARE protection for senior citizens. We find it

[4] WCA's separate request for common area-related refunds is addressed in Section IV.

helpful to address first the extent to which the Commission has authority to adopt the Phase 2 proposals. Only where we find such authority do we reach the question of whether a particular proposal has merit.

1. Positions of the Parties

a. Authority Conferred by § 739

The opponents to the Phase 2 proposals[5] assert that, in implementing the baseline program, the Commission may consider only those factors explicitly included in the statute, i.e., climatic zone, season, and whether a customer is all-electric (§ 739(a) and (d)(1)), with an additional limited allowance available only to customers with the medical conditions specified in § 739(b).

PG&E maintains that the fact that § 739(d)(1)[6] does not use the term "including" when it states exceptions to the average usage baseline methodology, combined with the maxim of statutory construction "*expressio unius est exclusio alterius*" (the expression of certain things in a statute necessarily involves the exclusion of other things not expressed), prohibits the Commission

[5] As a general matter, ORA, PG&E, SCE, and SDG&E/SoCalGas oppose the Phase 2 proposals.

[6] Section 739(d)(1) provides the following:

> "Baseline quantity" means a quantity of electricity or gas for residential customers to be established by the commission based on from 50 to 60 percent of average residential consumption of these commodities, except that, for residential gas customers and for all-electric residential customers, the baseline quantity shall be established at from 60 to 70 percent of average residential consumption during the winter heating season. In establishing the baseline quantities, the commission shall take into account climatic and seasonal variations in consumption and the availability of gas service. The commission shall review and revise baseline quantities as average consumption patterns change in order to maintain these ratios.

Footnote continued on next page

from adding new exceptions. SCE contends similarly that, since the Legislature provided a list of specific factors to be considered in connection with the baseline allowance, its failure to include additional factors indicates the Legislature's intent to exclude those additional factors. SoCalGas and SDG&E argue that consideration of demographic factors and end uses not specified in § 739 would contradict the "average residential customer" language in the statute.[7] As additional support for their position, these parties point to language in Section 1 (the uncodified preamble) of AB 2443 establishing the baseline program, which prohibits inclusion in the baseline program of end uses not specified in the statute.

PG&E and other opponents assert that one of the major purposes behind the Legislature's shift from lifeline's end use-based structure to baseline's average usage structure was a desire to simplify the program. LIF/Greenlining respond that discussions in the legislative history that baseline would be easier to administer than lifeline do not constitute a strict legislative proscription against changes in the baseline system.

LIF/Greenlining argue that the Legislature did not institute a rigid baseline allocation procedure and did not provide an exhaustive or defined list of exemptions, contending instead that the exemptions to the averaged baseline procedure are scattered throughout the statute. LIF/Greenlining maintain that the direction that the Commission "take into account" the needs of

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[7] Section 739(a) specifies that, "The (C)ommission shall designate a baseline quantity of gas and electricity which is necessary to supply a significant portion of the reasonable energy needs of the average residential customer. …"

all-electric customers and differentials in energy needs by climatic zone and season demonstrates that these are not a specific list of exemptions.

LIF/Greenlining assert that, even if consideration of end uses is not permissible, the Commission may consider demographic factors in constructing baseline quantities. LIF/Greenlining state that legislative committee reports cited by the opponents as critical of proposals to provide lifeline allowances based on household size are not applicable to the baseline program.

Parties also take positions regarding the proper interpretation of § 739's requirement that baseline quantities address energy needs of the "average residential customer" and be set based on percentages of "average residential consumption." RCRC bases its water pumping proposal on its view that residential water well pumpers are a distinct subclass and are not average residential customers. TURN's proposals regarding seasonal residences are based on the view that seasonal customers are not average residential customers. LIF/Greenlining argue similarly that large households are not average.

TURN asks that the Commission expand the current practice in some areas of excluding seasonal residences' usage from baseline calculations. While it would prefer a blanket prohibition on baseline allowances for all seasonal residences, TURN recognizes AB 1X's prohibition on rate increases for usage up to 130% of baseline. Because of AB 1X, TURN requests that only new seasonal residence accounts not be eligible for baseline allowances, and that existing seasonal residences not receive any increases in baseline quantities resulting from Phase 1. Opponents of TURN's proposal maintain that the legislative history of § 739 demonstrates that the Commission may require that seasonal residences' usage be excluded from baseline calculations only where it finds that the baseline quantities for a climate zone would be artificially low due to a concentration of seasonal residences. PG&E argues further that baseline quantities should not be denied to seasonal residences under any circumstances. PG&E asserts that the legislative history demonstrates no concern about "double-dipping" and contains no suggestion that baseline quantities might be denied to seasonal homes. PG&E contends that the denial of baseline quantities to seasonal residences is counter to the goals of encouraging conservation and simplifying baseline. PG&E submits that, because of "real-world flaws" with identifying seasonal residences, such a policy would in reality violate the statutory requirement that baseline rates be provided for "a significant portion of the reasonable energy needs of the average residential customer."

Several of TURN's proposals would not modify baseline quantities, but instead would modify the tier design for specific groups of customers. TURN maintains that § 739 in no way limits the Commission's authority to adjust tier rates in excess of baseline for any subgroup of customers. TURN contends that § 739(c)(1), in requiring an increasing block rate structure, does not specify the number of tiers or whether the tiers are to be applied uniformly to all customers. TURN asserts that tier design should be guided by the direction in § 739(c)(1) to "avoid excessive rate increases for residential customers" and the direction in § 739(c)(2) to observe "the principle that electricity and gas services are necessities, for which a low affordable rate is desirable." TURN argues that whether rates are excessive or affordable depends upon the ability of a customer to pay.

PG&E responds that TURN tries to side-step statutory construction problems by focusing on rate design instead of baseline quantities. PG&E argues that, if TURN's rate design proposals are considered baseline related, they must conform to the intent of the Legislature in adopting baseline. TURN responds that, if § 739 prohibits its surcharge exemption proposals, the Commission would also have been barred from providing surcharge relief to CARE and medical baseline customers and could never adopt any residential rate design options that would modify Tier 3, 4, or 5 rates for any customer subgroup.

SCE asserts that the proposals to exempt certain customers from Tier 3 surcharges are not properly part of this proceeding since they do not involve changes to baseline quantities, and that they are better addressed through CARE and other low-income proceedings.

SCE asserts that TURN misinterprets § 739(c)(1), arguing that the purpose of the requirement added in 1988 that "the Commission shall avoid excessive rate increases for residential customers, and shall establish an appropriate gradual difference between the rates for the respective blocks of usage" was to reduce the rate differential that existed at that time between baseline and non-baseline rate levels so that residential bills did not increase excessively when residential customers increased their usage of electricity or gas significantly as a result of hot summers or cold winters.

The opponents to the Phase 2 proposals assert that the Legislature's intent for the baseline program centered on encouraging energy conservation and that, as a result, any Commission action on baseline must be found to advance, or at least not detract from, the goal of conservation. TURN and Aglet respond that the statute establishes a balancing test to ensure that incentives for conservation do not result in unaffordable bills for consumers. Aglet contends further that revenue neutral baseline changes may not change overall energy usage since, while customers receiving rate reductions may use more energy, the customers receiving offsetting rate increases may use less.

The opponents argue that the Legislature did not intend for the baseline program to be a need-based program or to be used for social engineering purposes and that baseline is meant to treat all customers on an equal footing, regardless of income. They assert that the Legislature decided to protect low-income customers through what is now the CARE program (§ 739.1) and that looking to CARE to perform the "social welfare" function is consistent with the legislative history.

Opponents to the Phase 2 proposals argue that, because the Legislature has rejected bills that would require baseline allowances to be based on certain factors not specified in § 739, it would violate statutory construction principles for the Commission to provide such baseline allowances administratively. They cite the Legislature's rejection of several bills, both before and after AB 2443[8] was enacted, that sought special baseline treatment based on household size, senior citizen status, water well pumping, and other factors. The supporters of Phase 2 proposals respond that courts have long held that unpassed bills have little value as evidence of legislative intent.

Finally, the opposing parties assert that prior actions of the Commission in interpreting § 739 are instructive. They interpret several Commission statements as consistent with their position, and cite the fact that the Commission has not added any end uses or taken into account demographic

[8] The lifeline system, predecessor to the current baseline program, was established in 1975. The baseline program came into being in 1982, when AB 2443 rewrote § 739.

factors such as household size in the 20 years since baseline was enacted. LIF/Greenlining respond that some of the cited Commission pronouncements regarded lifeline rather than baseline; they point instead to a draft Commission letter prepared when the Governor was considering AB 2443, which stated that the Commission would resolve seasonal home issues if the statute became law. LIF/Greenlining interpret this draft letter as recognizing the Commission's authority to address a problem not mentioned in § 739. They assert that the Commission likewise may consider other factors such as demographic characteristics not referenced in the statute.

b. Authority under § 739.8

As a statutory basis for its recommendation that residential water pumpers be granted a baseline allowance, RCRC relies on § 789.8(a), which states as follows:

> Access to an adequate supply of healthful water is a basic necessity of human life, and shall be made available to all residents of California at an affordable cost.

For privately pumped water, RCRC asserts that the Commission must fulfill this mandate through electricity rates, since they are the only component to the provision of privately pumped water that the Commission can influence. In RCRC's view, an additional limited baseline allowance for water well pumping would satisfy this mandate. For water companies under the Commission's jurisdiction, RCRC asserts that the Commission has met its § 739.8(a) responsibility by the establishment of increasing water prices for increasing amounts of usage, which RCRC calls the water equivalent of baseline rates.

Noting that AB 2815 added § 739.8 in 1992 and relying on its view that "[a] basic tenet of legislative interpretation is that more recent legislation supercedes older legislation," RCRC contends that it is obvious that the Legislature intended for baseline determinations to take into consideration the impact of electricity rates and rate design on water well pumping costs.

Aglet agrees with RCRC that the Commission should rely on § 739.8(a) as an expression of legislative intent regarding private water pumpers. While the Commission might consider well pumping rate schedules outside of the baseline program, Aglet notes that is not RCRC's proposal and submits that adoption of a water pumping baseline allowance would be administratively efficient, compared to development of new rate schedules.

ORA, PG&E, and SCE argue that RCRC's reliance on § 739.8 as requiring an electric rate adjustment for water well pumping is unsupported by either AB 2815 or its legislative history. PG&E points out that the title of AB 2815, its policy pronouncements, its content, and its legislative history make no mention of electric rates, electric corporations, or baseline rates. Aglet argues in response that § 739.8(a) is not vague or ambiguous; that there is no need to review legislative history; and that it would be unreasonable to construe the statute's mandate regarding "all residents of California" to apply only to customers of regulated water utilities.

PG&E and SCE assert that RCRC has not established that the cost of pumped well water is not currently affordable, and contend that the effort needed to evaluate whether baseline electric rates affect well water affordability would be contrary to the legislative intent to simplify the baseline program. Aglet responds that it is not necessary to establish that the cost of pumped well water is not affordable in order to provide baseline relief for water pumpers, noting that the language in § 739.8(a) simply parallels language elsewhere in the

Public Utilities Code regarding the affordability of electricity and gas, e.g., § 739(c)(2).

Finally, PG&E argues that a pumper's well water is not covered by the very terms of § 739.8(a) since it is not "made available" by someone else.

c. Other Sources of Statutory Authority

The proponents of Phase 2 baseline modifications take the position that § 739 does not categorically limit the Commission's broad authority under § 701 to establish rates so long as they are "just and reasonable" as required by § 451. TURN maintains that § 739 does not proscribe the Commission from adopting rate schedules that expand or augment the baseline rate protections. TURN contends that the Commission may consider factors not enumerated in the statute and may employ other elements of rate design so long as there is no explicit conflict with § 739.

Opponents assert that, because of their view that § 739 prohibits consideration of end uses or demographic factors not specified therein, it limits the Commission's § 701 authority. They cite the principle of statutory construction that the more specific statute (§ 739) governs the more general (§ 701) and conclude that § 739 prohibits consideration of demographic factors, even if consideration of such factors could be shown to be necessary or convenient under § 701.

TURN points to the Commission's surcharge exemptions for CARE and medical baseline customers as an example in which the Commission exercised its independent authority under § 701. PG&E responds that, in granting the surcharge exemptions, the Commission did not add any new category of protection but merely harmonized various statutes, consistent with the intent that these two categories of customers be protected.

LIF/Greenlining submit that, in stating that the Commission "shall" develop various baseline quantities, the Legislature assumed that the Commission has the authority to do so. Consistent with that interpretation, LIF/Greenlining conclude that the Commission "may" use its broader authority and flexibility to establish other baseline quantities as well, as long as they do not contradict any statutory language.

LIF/Greenlining also assert that the high cost of energy for large households due to current baseline procedures may be discriminatory to such households, and that this may violate § 453(a) and (b) if utilities are aware that certain racial and ethnic groups generally have larger households. PG&E disagrees, contending that baseline's averaging system is not targeted to any of the categories for which § 453 prohibits discrimination. PG&E argues that the current rate structure is not discriminatory because there is no one type of customer whose usage always falls above or below a particular level. PG&E asserts that LIF/Greenlining's interpretation would immobilize the Commission's ratemaking efforts. It argues further that, under principles of statutory construction, § 453 (the more general statute) would give way to § 739 (the more specific statute). The opponents conclude that the principle of statutory harmonization prevents the Commission from using § 701 or § 453 to do what the Legislature expressly rejected, i.e., provide demographic or end use stratifications within baseline.

d. Application of § 739(d)(1) and Water Code § 80110

The opponents raise another concern regarding Phase 2 proposals due to the fact that baseline quantities are currently set at the maximum percentages of average residential consumption allowed by

§ 739(d)(1). They argue that, if a higher baseline quantity were adopted for customers such as senior citizens or water pumpers, it would be necessary to reduce baseline quantities for the remaining customers in that climate zone in order to stay within the statutory baseline limits. They assert that this cannot be done legally under Water Code § 80110 added by AB 1X and the Phase 1 decision's finding that baseline quantities for customers protected by AB 1X cannot be decreased. These parties view this conflict as a bar to the establishment of increased baseline quantities for any new subgroup of customers.

RCRC disagrees, arguing that there is no need to adjust baseline quantities if a special baseline allowance is provided for residential water well pumpers. RCRC draws a comparison to the treatment of medical baseline customers. It asserts that water well pumpers do not materially affect the baseline calculation, since they are only a small percentage of customers. PG&E responds that the proportion of water pumpers is sufficiently high in some climate zones, e.g., 29% of residential customers in PG&E's climate Zone P, so that their separate treatment would affect baseline calculations for other customers.

2. Discussion

a. Authority to Adjust Baseline for End Uses

One Phase 2 proposal asks for baseline relief for customers with a particular end use; that is RCRC's request for an additional baseline allowance for water pumpers. We conclude that we lack authority in developing the baseline program to consider end uses other than those specified in the statute.

This conclusion is based on the plain language in AB 2443 establishing the baseline program, subsequent amendments to § 739, and an analysis of § 739.8.

AB 2443 explicitly addressed end uses. Section 1(e) of AB 2443 made the unequivocal statement that, "In order for the Miller-Warren Energy Lifeline Act to continue as an incentive to conserve energy, no end uses shall be specifically included in the baseline program established by Section 739 of the Public Utilities Code as amended by this act except for those specified in subdivision (b) thereof." We find this statement, though uncodified, a persuasive indicator of legislative intent at the time AB 2443 was enacted. Legislative analyses contemporaneous with AB 2443 and subsequent legislative actions adding additional medical conditions to § 739(b) lend further support to this conclusion. While we have broad ratemaking authority under § 701, we will not rely on our general powers to disregard this express legislative intent.

RCRC cites a September 13, 2001 letter to the Commission signed by 25 rural legislators supporting baseline allowances for water pumpers. This letter is not indicative of legislative intent in enacting § 739, both because it is after the fact and because it reflects the views of individual legislators rather than the Legislature as a whole.

We find additionally that RCRC's reliance on § 739.8(a) as a more recent grant of Commission authority is misplaced. The statement in § 739.8(a) regarding access to affordable water "must be read in context, considering the nature and purpose of the statutory enactment." (Nahrstedt v. Lakeside Village Condominium Assn. (1994) 8 Cal. 4th 361, 378-379; see also California Mfrs. Assn. v. Public Utilities Comm. (1979) 24 Cal.3d 836, 844.) AB 2815 adding § 739.8 to the Public Utilities Code dealt solely with the regulation of water companies. No portion of AB 2815 nor any of its legislative history mentions electric companies, baseline rates, or private water pumpers. Had the Legislature intended to authorize the Commission to provide baseline allowances for private water pumpers, "it could easily have expressly so provided at that time, yet it did not." (Peralta Community College Dist. v. Fair Employment & Housing Comm. (1990) 52 Cal.3d 40, 51.) We should not "seek hidden meanings not suggested by the statute or by the available extrinsic aids." (Rich v. State Board of Optometry (1965) 235 Cal.App.2d 591, 604.)

Additionally, contrary to RCRC's claim, § 739.8 is not part of § 739 and should not be construed as part of the baseline statute. While several nearby code sections share some common themes regarding rate design and affordability, e.g., the intervening § 739.3 addresses telephone rate structures, the proximity of these code sections does not indicate that the Legislature intended the requirements of § 739.8 to modify § 739.

b. Authority to Consider Other Customer Characteristics in Baseline

Several Phase 2 proposals ask for baseline modifications based on factors other than end uses. LIF/Greenlining proposes that baseline amounts be increased for households of six or more, and TURN proposes that gas baseline amounts be increased for senior citizen households. WCA asks that baseline amounts be increased for electric common area accounts. Additionally, TURN asks that the Commission consider whether a residence is seasonal or year-round, requesting specifically that seasonal residences' usage be excluded from baseline calculations where such exclusion would have a material impact on baseline quantities and that seasonal residences' access to baseline quantities and rates be limited to the level required by AB 1X. The baseline quantities of existing seasonal residences would be frozen as of the date AB 1X was enacted and baseline allowances would not be provided to new seasonal residence accounts.

We conclude that we have authority, in establishing and applying baseline quantities, to take into account factors (except for end uses) in addition to those specified in § 739(a) and (d)(1). This conclusion is based on the lack of explicit restrictions in AB 2443, other than the prohibition on consideration of end uses, and on our general authority to regulate the services and rates of public utilities. We do not have authority, however, to make the limited additional allowance required by § 739(b) available to customers other than those specified in that subsection.

A central issue is whether the requirement in § 739(d)(1) that the Commission "take into account climatic and seasonal variations in consumption and the availability of gas service" precludes us from considering other factors in setting baseline quantities. This determination guides the extent to which we have discretion in calculating "average residential consumption" and in meeting the requirement that baseline quantities "supply a significant portion of the reasonable energy needs of the average residential customer."

The opponents' reliance on legislative history in support of their claim that we cannot consider additional factors is not convincing. While legislative history describes that AB 2443, in creating the baseline program, would simplify the lifeline program, this characterization was made with reference to elimination of end uses. The legislative history does not support the view that AB 2443 also simplified the program by prohibiting consideration in setting baseline quantities of any factors not specified in § 739(a) or (d)(1).

Comparable to the preamble's pronouncement regarding end uses, the Legislature could have specified in AB 2443 the extent of Commission authority to consider demographic or other types of factors not mentioned in § 739. The opponents' arguments are contradictory regarding the failure of the Legislature to do so. They assert, inexplicably, that the Legislature's failure to mandate separate treatment of large households or households with senior citizens precludes us from considering household size or presence of a senior citizen, but that the Legislature's failure to specify the treatment of seasonal residences gives us authority to do so. The legislative history establishes that the Legislature was aware of concerns regarding each of these types of customers. We are left with the conclusion that the Legislature, by its inaction in this regard, intended that we retain authority to take into account factors, except for end uses, not specified in § 739(a) and (d)(1) as we establish baseline quantities.[9]

The general rule of statutory construction commonly called "*expressio unius est exclusio alterius*," while widely applied, is not binding in all situations. (See, for example, Estate of Banerjee (1978), 21 Cal.3d 527, 540, n. 10; Wildlife Alive v. Chickering (1976), 18 Cal.3d 190, 195.) In light of the Legislature's choice to explicitly restrict consideration of end uses in the baseline program but not to limit consideration of other types of factors, and consistent with the Legislature's general direction that we establish baseline quantities while "tak(ing) into account" various factors, we conclude that this general rule is not applicable to the setting of baseline quantities based on factors not specified in AB 2443.

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[9] This conclusion is consistent with our earlier determinations, e.g., in D.88651, that we had authority to designate lifeline quantities for end uses in addition to those enumerated in the lifeline version of § 739, since lifeline lacked a prohibition on consideration of non-specified end uses.

The provision in § 739(b) for a standard limited allowance in addition to a customer's baseline quantity is very specific and is very narrowly drawn. We see a clear distinction between § 739(b)'s requirement that we establish a single standard limited allowance for customers with specified medical conditions and the more general guidance in § 739(a) and (d)(1) regarding the establishment of multiple baseline quantities for the residential class. We agree that we may not make the standard limited allowance available to, or create additional standard limited allowances for, customers not specified in § 739(b).

While not mentioned during the hearings, companies currently set baseline quantities based on factors not specified in the statute. Separate, lower baseline quantities are provided to certain residential master-metered accounts.[10] We have routinely approved utilities' proposed lower baseline quantities for such customers, e.g., "on the basis of smaller dwellings and lower average usage."[11] Applying the opponents' rationale, these lower baseline quantities would be prohibited by § 739.

Additionally, for several years, SCWC's Bear Valley Electric Service provided separate, lower baseline quantities for nonpermanent residences based on the lower average usage patterns of such customers.[12] For

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[10] See PG&E's Schedules EM and GM, SCE's Schedules DM and DMS-3, SDG&E's Schedules DM and GM, Southwest's Schedule GM, and Schedule DM of SCWC's Bear Valley Electric Service.

[11] D.95-09-015, 61 CPUC 2d 326, 329. See also D.85-08-017, D.85-12-103, D.87-12-066, and D.89-12-057.

[12] See, D.85-08-017 and D.89-10-043.

some utilities and climate zones, we subsequently have excluded seasonal residences from eligibility for baseline allowances. We affirm that § 739 does not prohibit either of these treatments for nonpermanent or seasonal residences.

No party contests our authority to take into account the lower usage patterns of seasonal residences by excluding them from average usage calculations. While opponents of the Phase 2 proposals argue that this exclusion is permissible due to concerns expressed in the legislative history regarding the effects of inclusion of seasonal usage, our authority to determine the appropriate treatment of seasonal residences is grounded in our general authority and the fact that § 739 does not limit our authority in this regard.

Finally, LIF/Greenlining's suggestion that current baseline quantities may impermissibly discriminate, in violation of § 453, against particular ethnic groups that tend to have larger households is not developed sufficiently for us to assess its validity. We consider the Phase 2 proposals addressing energy needs of large households using the evaluation criteria established in Section III.B.

c. Authority Regarding Rate Structures

Two of TURN's proposals would exempt certain groups of residential customers from Tier 3, and in one instance Tier 4, surcharges, based on household size, income, and whether a senior citizen resides in the household. WCA would have common area electric usage charged beginning at the tier rate applicable to the average usage of residences served by the common area. We conclude that we have authority to adopt such proposals if they are reasonable and consistent with the rate design requirements in § 739(c) and other statutory provisions.

Statutory requirements for the baseline program do not apply to the non-baseline tiers of the residential rate design, since they are not part of the baseline program. This conclusion is not affected by the fact that we have chosen to set the size of the upper tiers based on percentages of a customer's baseline allowance. Thus, even if we agreed that § 739 prohibits consideration of demographic characteristics in setting baseline quantities, that restriction would not apply to other portions of the rate structure.

We disagree with the opponents' contention that, if a proposal is not part of the baseline program, it should not be considered in this proceeding. The burden to individual customers of the current steeply tiered electric rate design depends on the amount by which customers' usage exceeds baseline amounts. As we have explained, this proceeding was "prompted, in large part, by the unprecedented rate surcharges we have been forced to impose on Californians due to the energy crisis and by our adoption of a rate design relying heavily on baseline quantities to determine which residential customers are affected and to what degree."[13] Like the common area settlement, it is appropriate for this proceeding to consider rate design proposals to "ameliorate the disproportionately high bill impacts of the residential rate structure"[14] on vulnerable customers.

We disagree with the arguments that the residential rate design may consider customers' financial situation only through the CARE program and that our decision to exempt CARE and medical baseline customers from the

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[13] D.03-01-037, *mimeo.* at 2.

[14] *Id.*

surcharges was permissible only because of the legislative intent that such customers be protected. There is no support in the statutes or the legislative history for either contention. To the contrary, the principle in § 739(c)(2) that electricity and gas services should be affordable encompasses all residential customers.

Finally, we are perplexed by SCE's implication that the direction in § 739(c)(1) to "avoid excessive rate increases" and the direction in § 739(c)(2) to observe the "principle that electricity and gas services are necessities, for which a low affordable rate is desirable" were temporary admonitions that are no longer applicable. While the amendment adding these requirements may have been in response to specific conditions existing at that time, the general guidance remains in the statute. Indeed, the need to ensure affordable rates remains valid and, if anything, is even more pressing in light of the extraordinary conditions we currently face.

d. Importance of Conservation Goal of § 739

Conservation is an important, but not exclusive, goal of § 739. Some parties appear to take the view that proposals that may increase energy use should be rejected on that basis. However, § 739(c)(2) establishes joint principles of affordability and conservation, which must both be observed in establishing residential electric and gas rates. The extraordinarily high electric rates, in particular, that the customers of the large utilities face already encourage conservation. We consider in Phase 2 whether steps should be taken to relieve the burdens of these high rates when they threaten the affordability of basic energy needs for particularly vulnerable customers.[15]

We view the principles of affordability and conservation as complementary underpinnings of a sound rate design. As a general matter, basic energy needs should be affordable, with incentives for conservation focused on higher usage levels that are more likely to be discretionary. Thus, we do not exclude from consideration any Phase 2 proposal that advances the affordability of basic energy needs on the basis that it does not advance conservation.

e. Harmonization of § 739(d)(1) and Water Code § 80110

Because baseline quantities are set at the maximum percentages of average use specified in § 739(d)(1), the creation of a separate increased baseline quantity for a subgroup of customers implies that the existing baseline quantity would exceed the maximum percentage of average use specified in § 739(d)(1) for the remaining customers to whom it is applied. However, Water Code § 80110 added by AB 1X prevents baseline quantities from being decreased for customers of utilities subject to its provisions, as we explained in D.02-04-026.

We do not view this potential conflict between § 739(d)(1) and AB 1X as a bar to our ability to adopt increased baseline quantities if needed to ensure the affordability of basic energy needs for a subgroup of vulnerable customers. In harmonizing the two statutes, we must consider § 739 in its entirety. The statute's goal that rates be affordable should be given great weight, even if the specific numerical requirements in § 739(d)(1) may not always be met

[15] The effect of AB 1X on the manner in which baseline-related electric shortfalls can be recovered is addressed in Section VI.

because of conflicts with AB 1X. Thus, we may consider and, if reasonable, adopt Phase 2 proposals that increase baseline quantities for a subgroup of vulnerable residential customers even if baseline decreases for other customers needed to comply with § 739(d)(1) are not permissible due to AB 1X.

This harmonization of the two statutes is consistent with our action in D.02-05-010, in which we approved a division of SDG&E's climate Zone 1 into a warmer Inland zone and a cooler Coastal zone. We increased the baseline quantities for the Inland zone but did not reduce the baseline quantities for the other Zone 1 customers now in the Coastal zone. While strict application of § 739(d)(1) would result in a decrease in Coastal zone baseline quantities, AB 1X precludes such a decrease at this time. Rather than delaying this climate zone change until AB 1X is no longer applicable, D.02-05-010 correctly took steps to help ensure the affordability of rates for residential customers in the newly-created Inland zone.

B. Evaluation Criteria

This proceeding was initiated to consider steps to make it easier for residential customers to afford their basic energy needs in light of the substantial rate increases and the multi-tiered rate structure implemented to meet utility obligations caused by the energy crisis. We have determined separately that a 20% discount on total energy bills and exemption from the electric surcharges provide an appropriate level of assistance for low-income customers to reflect their level of need. In Phase 2, we evaluate the affordability of basic energy needs for customers who may be vulnerable for reasons other than being low income.

In general, the Phase 2 proposals would provide rate relief for certain customer groups who may have difficulty affording their reasonable energy needs due to factors that limit their ability to conserve, e.g., larger household sizes, the presence of senior citizens in the household, or the need to pump water for residential use. We appreciate the work and the creative options that parties have brought forward for our consideration in Phase 2.

Because rate design is a zero sum game, we must consider rate effects of the Phase 2 proposals on non-participants. Particularly in light of the current high rate levels, any modifications adopted in Phase 2 should be designed to meet a clearly identified need for rate relief in a targeted fashion that minimizes revenue loss. Implementation and other administrative costs should be reasonable in comparison to the rate relief obtained.

Parties express concerns about proposals that may not be offered statewide, pointing to steps taken in Phase 1 to make the baseline program more consistent among the utilities. We agree that consistency would make a program more understandable and easier to administer and would foster a perception that all customers are being treated equitably. However, targeting rate relief to take into account differing conditions among the utilities may increase cost-effectiveness. Thus, we would not preclude programs whose benefit levels are not uniform statewide, as long as they are designed carefully to meet identified needs and are reasonable in other respects. Overall understandability of a program must also be considered. Administrative complexities are other areas of concern. In order to be adopted, a program should be practical to implement and administer.

To summarize, we employ the following criteria, in addition to the rate design principles articulated in § 739(c), in evaluating each Phase 2 proposal:

1. A proposal should be tailored to meet identified needs for rate relief while avoiding unnecessary revenue loss,

2. Implementation and other administrative costs should be reasonable relative to the expected rate relief,
3. The burdens on non-participants should be reasonable,
4. Any inconsistencies in the treatment of customers or among utilities should be reasonable,
5. The program should be understandable to customers, and
6. It should be practical to administer.

C. Large Household and Senior Citizen Proposals

We consider the large household and senior citizen proposals together because of similarities among the issues and among the parties' positions regarding these proposals.

Parties debated at length whether proposals based on household size are truly aimed at large households and how to characterize the targeted income range for income-based proposals. We do not find such debates to be fruitful and will not dwell on them. The issue of importance is whether the identified groups require rate relief in order for their reasonable energy needs to be affordable. For convenience, we use the term "large households" in referring to TURN's proposal aimed at households of three or more and in referring to LIF/Greenlining's proposal focused on households of six or more. We refer to the targeted income range (175% to 250% of the federal poverty levels) in the income-based proposals as "lower-middle income," to distinguish these customers from low income households as defined for purposes of CARE. This range encompasses the following income levels:

Persons in Household	175 % of Poverty Limit	250% of Poverty Limit
1 to 2	$22,600	$32,300
3	$26,600	$38,000
4	$32,000	$45,700
5	$37,400	$53,400
6	$42,800	$61,100
Each Additional Person	$ 5,400	$ 7,700

Contrary to the recommendations of several parties, we do not believe that any of the Phase 2 proposals should be referred to the CARE proceeding. That would cause unwarranted delay. To the extent we find that rate relief is appropriate, it should be implemented forthwith. We note that TURN's proposal that it characterizes as gas CARE protection for lower-middle income senior citizen households is not truly a CARE proposal, since it is not targeted to low income customers. We consider on its merits the substance of this proposal, i.e., that eligible customers receive a 20% discount on all gas usage.

1. Positions of the Parties

a. TURN and LIF/Greenlining Proposals

TURN bases its large household and senior citizen proposals on a statistical analysis of the influence of household size and composition, housing characteristics, and income on residential electricity usage for PG&E, SDG&E, and SCE, and on residential gas usage for PG&E. This analysis used the results of residential surveys that the utilities undertake for the California Energy Commission. TURN did not have access to comparable data for residential energy usage elsewhere in the state.

TURN presented evidence that household energy usage is most closely correlated with the square footage of the housing unit and is also correlated with household income and to a lesser extent with household size (the number of occupants). While households with higher incomes or with larger dwelling units are the largest energy users, TURN does not propose lower rates for them because, in its view, rate relief based on these higher usage patterns would merely “reward[ ] people for having money and being able to afford big homes.”

TURN finds electric rate relief based on household size to warranted. Focusing on large households that may be least able to pay for their higher energy needs, TURN reports that households of three or more persons with lower-middle incomes[16] in moderate-sized dwellings typically use more than 130% of baseline quantities year-round, with even higher use in peak summer months.[17] Based on this finding, TURN recommends that households of three or more with income between 175% (the current upper limit for CARE) and 250% of the federal poverty limits be exempt from Tier 3 electricity surcharges (or, more generally, charges for Tier 3 usage in excess of Tier 2 charges) of PG&E, SCE, and SDG&E.

TURN explains that its large household proposal focuses on customers with lower-middle incomes because the combination of large

[16] The income ranges in the survey data analyzed by TURN do not correspond precisely to the lower-middle income range established in this decision.

[17] TURN reported that, in a number of climate zones, use does not clearly increase as more than four persons are included in a household. TURN reported that average electricity usage of representative households with six occupants exceeds the usage of two-person households between 19% and 49% of baseline amounts for PG&E customers, between 19% and 30% of baseline amounts for SCE customers, and between 27% and 33% of baseline amounts for SDG&E customers, depending on climate zone.

household size and lower income leaves these customers highly exposed to rate impacts that cannot be mitigated sufficiently through reasonable conservation efforts. TURN submits that its approach would provide targeted rate relief to this subgroup of customers who are most in need of the proposed "modest" rate reductions.

Because SDG&E's rate structure was not as steeply tiered as PG&E's or SCE's, SDG&E's estimate of the rate relief due to a Tier 3 exemption was lower than the other utilities' estimates. Based on this disparity, TURN suggests in its opening brief that the exemption for SDG&E customers apply to both Tier 3 and Tier 4 charges, in order to provide relief that is more significant and more consistent with that proposed for SCE and PG&E.

In its supplemental brief regarding SCE's PROACT settlement, TURN continues to support adoption of its large household proposal for SCE, stating that, even with the lower settlement rates, large households would continue to experience high bills that should be mitigated.

TURN found that household size has only a modest effect on gas usage in PG&E's region. SoCalGas provided a comparable statistical analysis for its customers and reported similarly that household size has only a minor effect on gas usage. Because of the minimal effect of household size on gas usage, TURN did not present any gas proposals based on household size.

LIF/Greenlining support TURN's large household proposal but suggest an alternative whereby lower-middle income households with six or more occupants would be granted additional baseline allocations.
LIF/Greenlining presented testimony that low-moderate income large households face a high energy burden even while conserving. They submit that large households with income just above CARE eligibility limits are at risk when

their consumption necessarily exceeds existing baseline levels because of the large number of individuals depending on a single baseline allocation. They assert that, by allocating the same baseline quantity to a household of one or a household of ten or more, the Commission is failing to ensure just and reasonable rates to large households and is prejudicing and disadvantaging them.

TURN supports electric and gas rate relief for certain households with at least one senior citizen occupant, defined as someone over 65. TURN presented evidence that households with senior citizens in PG&E and SDG&E territories tend to use more electricity than other households, after taking other factors into account. TURN found the average increase in usage to be small for basic electric households. For representative all-electric households in PG&E's Central Valley climate zones (Zones R and S), however, the average increases are about 200 kWh per month, with a large portion of this usage occurring in peak winter months. The increased usage pattern of all-electric households is smaller in PG&E's coastal zones and in SDG&E areas. TURN reported that the presence of a senior citizen has virtually no influence on average household electricity use for SCE customers.

TURN reported that electricity use by representative lower-middle income all-electric households with senior citizens in PG&E's Central Valley climate zones is likely to exceed 130% of baseline amounts. On that basis, TURN recommends that all-electric senior citizen households with lower-middle incomes in Zones R and S be exempt from PG&E's Tier 3 surcharges. TURN did not have enough information to analyze senior citizen household electricity usage in PG&E's mountain regions (Zones Y and Z) but recommends that the Commission offer the surcharge exemption to all-electric lower-middle income senior citizen households in these two zones because of the relatively cold climate. In its opening brief, TURN suggests that the Commission may wish to provide the senior citizen surcharge exemption statewide in order to maintain uniformity.

TURN also reported a substantial relationship between senior citizen household occupancy and gas usage in PG&E's territory, the only area in which it examined gas usage. It found that the presence of one or more people over 65 in a representative household adds approximately 100 therms per year (21% to 25% of baseline quantities) to gas consumption in all climate zones. TURN's witness explained that senior citizens tend to spend more time at home and to keep their houses warmer, factors that may not be conducive to conservation. TURN recommends that the Commission increase the gas baseline quantities for PG&E's senior citizen households to reflect their higher usage and suggests a baseline adder of 14 to 22 therms during peak winter months, based on January usage data. As an alternative, TURN suggests that the Commission provide CARE protection for the gas bills of PG&E's senior citizen households with lower-middle income levels.

SoCalGas found a similar, although smaller, correlation for senior citizen households, reporting that its senior citizen households use about 45 therms more each year than do other similar households without senior citizens. Asserting that this pattern of higher gas usage by senior citizen households is likely to exist throughout the state, TURN suggests in its opening brief that the Commission provide a senior citizen gas program statewide.

TURN explains that its surcharge exemption proposals for large households and senior citizen households would be offered as new rate options made available to eligible customers upon request, with self-certification and verification protocols similar to CARE. If adopted, the increased baseline amounts for senior citizen households would be implemented as a special condition to the baseline tariff. TURN states that its proposal to provide gas CARE protection to senior citizen households could be a tariff change to CARE. LIF/Greenlining suggest workshops as needed to address the details of their large household proposal.

While multi-faceted customer outreach has been undertaken for CARE, TURN and LIF/Greenlining propose more modest, and less expensive, outreach for their rate relief proposals, with reliance primarily on bill inserts and on customer contacts with the utilities' customer service representatives. In their briefs, these parties suggest that outreach could also occur through community groups and in coordination with CARE promotional efforts.

b. Arguments Regarding the Proposals

ORA, PG&E, SCE, and SoCalGas/SDG&E oppose TURN's and LIF/Greenlining's large household and senior citizen proposals. In addition to legal grounds, these parties argue that the proposals are unwarranted and costly, would be confusing to customers and difficult to implement, and would not promote conservation. They argue that TURN's and LIF/Greenlining's proposals would exacerbate subsidies within the residential class and/or cross-subsidies between the business and residential classes.[18] They submit that the Commission and the utilities should focus on current CARE efforts and recovery of CARE revenue undercollections before considering any of the Phase 2

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[18] An SDG&E and SoCalGas witness uses the term "subsidies" to mean rate differences that are instituted for reasons other than the cost of service

proposals. SCE, SoCalGas, and SDG&E raise evidentiary and due process concerns with TURN's suggestions in its opening brief that its large household Tier 3 exemption proposal be extended to Tier 4 for SDG&E and that its senior citizen proposals be expanded statewide.

The utilities' estimates of the number of customers eligible for each of TURN's and LIF/Greenlining's proposals, the average yearly bill savings for each eligible customer and the resulting utility revenue losses, and administrative costs are summarized in the following table.

Table 1

Utility Estimates of Number of Eligible Customers, Savings, Revenue Losses, and Costs of Large Household and Senior Citizen Proposals

	PG&E	SCE	SDG&E	SoCalGas
Large Household Tier 3 Exemption:				XX
Eligible customers	208,000	212,000	63,000	
Avg. yearly savings/customer	$115	$28 - $49	$5*	
Revenue loss	$24,000,000	$5.9-$10.3 M	$ 320,000*	
Administrative costs:				
Start-up costs			$0.9 - $1.2 M	
On-going costs	$2,000,000	N/A	$930,000	
Large Household Baseline Adjustment:	N/A	N/A		
Eligible customers			7800**	69,000
Avg. yearly savings/customer			$13	$12
Annual revenue loss			$100,000	$820,000
Administrative costs:				
Start-up costs			$739,000	$1,000,000
On-going costs			$701,000	$2,800,000
Senior Citizen Tier 3 Exemption:		XX	XX	XX
Eligible customers	17,000			
Avg. yearly savings/customer	$9			
Revenue loss	$150,000			
Administrative costs	$160,000			
Senior Citizen Gas Baseline Adjustment:		XX	XX	XX
Eligible customers	600,000***			
Avg. yearly savings/customer	$18			
Revenue loss	$11,000,000			
Administrative costs	$ 5,700,000			
Senior Citizen Gas CARE protection:		XX	XX	XX
Eligible customers	140,000			
Avg. yearly savings/customer	$83			
Revenue shortfall	$12,000,000			
Administrative costs	$ 1,300,000			

N/A: Data not available.
XX: Not applicable.
* Does not include Tier 4 exemption proposed for SDG&E territory.
** Electricity only.
*** Appears to include only senior citizen households with incomes over 175% of federal poverty limit.

PG&E argues that the large household proposals are not targeted to those truly in need, reporting that, whereas its CARE-eligible customers pay an average of 4.2% of their gross income for electricity, customers who would be eligible for TURN's large household proposal pay only 2.6% of their gross income. PG&E submits further that the average electric bill differential between its CARE-eligible customers and those in TURN's target population is about $300 annually while the differential in their average gross income is over $20,000 per year. SDG&E contends that Tier 3 rates are not a hardship for its customers, reporting that the average customer bill impact of a Tier 3 exemption would only be about $0.42 per month at present rates. Regarding TURN's proposal that the exemption be extended to include SDG&E's Tier 4, SDG&E objects that there is no record evidence regarding a target savings amount and reiterates its view that TURN's proposal is inappropriate for SDG&E customers in light of its relatively flat residential rate structure.

SoCalGas and SDG&E were the only utilities that provided revenue loss and administrative cost estimates for the proposal that baseline allowances be increased for large households. They report that this proposal would provide only minor benefits for the targeted group while imposing much greater costs on other customers.

PG&E asserts that the number of customers who would benefit from the proposed Tier 3 electric exemption for senior citizen households is miniscule. PG&E reports that approximately 17,000 customers in the Central Valley and mountain climate zones would be eligible for this exemption, but that 84% of them are in one- and two-person households, many of whom have virtually no Tier 3 usage. PG&E estimates that only about 400 senior citizen households would find significant benefit from TURN's proposal. TURN responds that PG&E's estimates of likely savings and the number of households that would benefit from this proposal are low because of PG&E's reliance on annual rather than monthly data.

Opponents criticize the proposal that gas baseline quantities be increased for senior citizen households because it is not income-based and, as a result, would provide unnecessary benefits to senior citizen households with high incomes. PG&E also takes issue with the gas baseline amounts proposed by TURN since they are based on January data and further are not adjusted to reflect 60% to 70% of average usage as required by statute. If income limits are imposed, PG&E maintains that the appropriate baseline adjustment would decline further, since lower-middle income households use less energy than higher income households. PG&E reports that annual average gas usage of lower-middle income senior citizen households of two or more persons is about 75 therms higher than average residential usage, and that single-person senior citizen households in this income range actually use 9% less gas than the average household. SoCalGas and SDG&E assert that a modified gas baseline quantity is unwarranted for senior citizens in their territories because the amount of increased usage by their senior citizen households is small.

Opponents assert that the large household and senior citizen proposals are likely to create customer confusion and perceptions of inequity. They caution against the consolidation of administrative procedures for CARE and any proposals adopted in Phase 2. Noting that the current CARE application would need to be modified for joint use, they assert that putting information about programs with different eligibility requirements and benefits on a CARE application would create customer confusion.

ORA points out that CARE's automatic enrollment program would require that customers who participate in other State-sponsored welfare programs be included automatically in the CARE program regardless of whether the customer's income is within CARE's low income guideline. This may result in some customers receiving CARE assistance who would also be eligible for an income-based Phase 2 program. ORA asserts that this eligibility overlap between CARE and some of the Phase 2 programs could make it difficult for people to understand which programs they are eligible for and the correct way to obtain benefits.

Opponents opine that customer outreach for Phase 2 programs would be more complex and more expensive than the proponents acknowledge. PG&E questions whether TURN, LIF/Greenlining, or the Commission itself would be willing to limit outreach to bill inserts and contact with customer service representatives if experience shows low enrollment, citing increased CARE outreach costs incurred in an effort to increase enrollment. At the same time, PG&E asserts that, once automatic enrollment is in place for CARE, other CARE outreach efforts may be curtailed and therefore may not be available to promote Phase 2 proposals.

PG&E cites the Commission's Low-Income Needs Assessment Phase I Report in support of its views regarding the limited effectiveness of bill inserts and a host of asserted difficulties in reaching "working poor" households and moderate-income senior citizen households.[19] In PG&E's view, effective

[19] The Low-Income Needs Assessment reported the results of two focus groups of low income customers.

outreach to the lower-middle income population would be more difficult than for CARE-eligible customers and, thus, would be more expensive.

Opponents also express concerns that the proposals would be inefficient and difficult to administer. ORA points to the need to develop procedures for collection, tracking, and possibly verification of additional customer information, and complications arising due to different income eligibility criteria and the availability of certain discounts only in limited geographic areas. ORA would want more accurate and reliable verification procedures than used for CARE. ORA recommends that, if any Phase 2 proposals are adopted, the Commission require Energy Division to hold workshops to address these issues.

PG&E raises master metering problems that may arise if customers have different baseline amounts, and concerns that landlords may not pass the extra baseline allowance on to renters. PG&E also objects to administrative complexities raised by TURN's apparent proposal to create a third gas baseline allowance for peak winter months.

TURN does not view its proposals to be any more confusing than the existing CARE program. TURN and LIF/Greenlining suggest that utilities, community based organizations, or other current CARE customer information mechanisms can be used to provide outreach and help alleviate confusion that may exist. They support workshops, as suggested by ORA, to address program implementation.

Opponents argue that the programs would be quite expensive, with projected administrative costs of some of the proposals exceeding the likely benefits to participants. Southwest urges the Commission to consider that implementation costs for small multi-jurisdictional utilities like Southwest likely would be much higher on a per-customer basis than for larger utilities.

TURN and LIF/Greenlining counter that the utilities' estimates of implementation costs are overstated in several respects. They assert that existing utility staff can handle some portion of program implementation at no additional cost, as was done for the common area settlement. They recommend that utility service representatives explain the programs only when a customer signs up for a new account rather than during every billing or credit inquiry, as reflected in the utilities' cost estimates. TURN takes particular issue with PG&E's revised cost estimates based on per-participant administrative costs for CARE. LIF/Greenlining contest the utilities' cost estimates for adding an additional prompt to automated customer service menus.

TURN and LIF/Greenlining take issue with the utilities' assumption of 100% customer participation, which overstates both revenue losses and costs. SoCalGas and SDG&E respond that implementation costs would not be significantly reduced even if participation is less than 100%, since system costs are a large component of implementation costs. PG&E also submits that use of community groups for outreach and coordination with CARE promotional efforts would add costs not included in the utilities' estimates.

PG&E argues that most of the Phase 2 proposals would not encourage conservation or at least that the proponents have not established their consistency with baseline's conservation goal. PG&E asserts that Tier 3 exemptions or increases in baseline allowances because of above-average usage of any specific customer subgroup would defeat conservation objectives. TURN replies that its proposals retain conservation incentives by keeping higher tier rates in place. LIF/Greenlining respond that the current baseline methodology does not promote conservation for a household of one or two, whose usage may remain below current baseline quantities without practicing conservation.

2. Discussion

We assess the reasonableness of each of the large household and senior citizen proposals based on rate design principles in § 739(c) and the additional evaluation criteria described in Section III.B. We adopt TURN's proposed program whereby lower-middle income large household participants are charged Tier 2 electricity rates for their Tier 3 usage. The other large household and senior citizen proposals are not adopted, for reasons discussed below.

We agree with TURN that rate relief should not be targeted to households with larger dwelling units or higher income, since there is no indication that rate reductions are needed to ensure affordability of the reasonable energy needs of these customers. Conceptually, the number of occupants or the presence of a senior citizen in the household may provide a more supportable basis for rate relief, particularly if combined with income limits, since large households or households with senior citizen occupants are unlikely to be able to conserve as much as other households as a means of maintaining affordable energy bills.

The lower-middle income range targeted by several of the Phase 2 proposals includes households with income between 175% and 250% of the federal poverty guidelines. We have already found that customers with income levels up to 175% of the federal poverty limit warrant the full level of CARE protection, i.e., a 20% reduction for all electricity and gas usage and full exemption from electric surcharges. While customers in the lower-middle income range just above CARE limits, e.g., $32,000 to $45,700 for a household of four, are better off than low income customers, lower-middle income customers may still struggle to pay for basic energy needs, particularly if their ability to conserve is limited, for example, by the number of household occupants.

Opponents argue that the Phase 2 proposals would subsidize program participants. However, even if these parties supported their claim by a showing that Tier 2 rates are below the current cost of serving residential customers, this would not obviate the need to ensure affordability of basic energy needs.

The need for rate relief depends on both the amount of energy used and the charges for that energy. The following table compares total electric charges for residential customers served through the basic residential schedules of the three largest electric utilities as of August 1, 2003. For SCE, the post-PROACT residential rate structure contains four rather than five tiers, with the prior Tier 4 and Tier 5 now combined, as indicated in this table.

Total Electric Charges (cents/kWh)

Tier	PG&E	SCE	SDG&E	
			Summer	Winter
1 (baseline)	11.430	11.808	13.747	13.747
2 (101-130% of baseline)	12.989	13.741	16.293	15.526
3 (131-200% of baseline)	18.113	15.368	17.218	16.404
4 (201-300% of baseline)	22.506	17.126	18.125	17.286
5 (over 300% of baseline)	24.494	17.126	19.708	19.094

As explained in Section V.A, these companies' total electric charges for residential usage up to 130% of baseline should be no higher than the charges in effect when AB 1X became effective. When SDG&E modifies its rates to comply with this statutory requirement, as directed by this order, SDG&E's Tier 1 and Tier 2 rates should drop to $0.12867 and $0.14884, respectively, based on its tariffed rates when AB 1X became effective on February 1, 2001.[20] We evaluate the Phase 2 proposals for SDG&E with reference to these rates for Tier 1 and Tier 2, consistent with AB 1X.

The large utilities' bundled gas rates for residential customers as of August 1, 2003 are as follow:

Total Gas Charges ($/therm)

	PG&E	SoCalGas	SDG&E
Tier 1 (baseline)	$0.91097	$0.75708	$0.94975
Tier 2 (over baseline)	$1.12847	$0.93859	$1.12609

a. Tier Exemption for Lower-Middle Income Large Households

The record establishes that the average electricity use of households with three or more occupants is higher than the average usage of smaller households that are similar in other respects, with usage typically exceeding 130% of baseline quantities year-round and with higher use in peak summer months. Large households are unlikely to be able to conserve as much as other households as a means of maintaining affordable energy bills. TURN and LIF/Greenlining have made a convincing showing that many lower-middle income large households in PG&E, SCE, and SDG&E territories have difficulty paying their electricity bills, particularly when their usage falls within the higher tiers. This evidentiary showing is buttressed by customers who wrote or otherwise contacted the Commission or who spoke at public participation hearings, many of whom complained about the unaffordability of their upper

[20] SDG&E's residential rates did not have a summer-winter differential when AB 1X became effective.

tier electricity usage. Thus, we find that lower-middle income large households served by PG&E, SCE, and SDG&E have a need for electric rate relief in order to ensure the affordability of their reasonable energy needs.

TURN and LIF/Greenlining do not appear to contemplate, and the record does not support, application of a large household program to electric companies other than PG&E, SCE, and SDG&E. No party has argued that affordability is threatened for customers of the smaller companies, which do not have upper tier rates comparable to those that burden customers of PG&E, SCE, and SDG&E.

Having established need in the PG&E, SCE, and SDG&E territories, the next question is whether TURN's large household proposal is an effective means of meeting that need. The utilities' estimates in Table 1 of average yearly savings per customer, while informative, do not convey adequately the relief that individual customers may realize due to a Tier 3 exemption. Those averages encompass all climate zones, including more temperate zones with smaller baseline allowances, smaller tiers, and thus smaller savings potential under TURN's proposal. The averages also include customers who may seldom reach Tier 3 usage levels along with customers who routinely have Tier 4 and Tier 5 usage.

The following table indicates customers' maximum annual savings available through TURN's large household proposal, which would occur if a customer uses the full Tier 3 allotment each month. The indicated ranges reflect the effect of different climate zones; the savings are based on tariffed baseline quantities and residential rates, with the AB 1X modification described above for SDG&E.

Maximum Annual Bill Savings

Large Household Tier Exemption Proposal

	Basic Customer	All-Electric
PG&E (Tier 3)	$121 - $201	$193 - $347
SCE (Tier 3)	$38 - $82	$58 - $133
SDG&E:		
Tier 3 only	$51 - $74	$61 - $111
Tier 3 and Tier 4	$157 - $227	$190 - $345

TURN has established that the electricity usage of lower-middle income large household customers tends to extend into Tier 3, which encompasses usage near and somewhat above average consumption. TURN's Tier 3 proposal would provide bill savings to those customers, and the potential savings as indicated above are substantial enough to help ensure the affordability of these customers' reasonable energy needs.

The record does not contain evidence regarding the prevalence of Tier 4 usage by large households, and does not support a finding that rate relief is needed for Tier 4 usage. As a result, TURN's proposal that a Tier 4 exemption be provided for SDG&E customers should not be adopted. We find instead that TURN's Tier 3 proposal is reasonably targeted in a manner that provides effective rate relief while avoiding unnecessary revenue loss.

TURN's Tier 3 proposal is intended to provide greater rate relief where it is most needed. In addition to climatological differences, the maximum savings under this proposal depend on how steeply tiered a utility's rate design is, in particular, the amount by which each utility's Tier 3 rate exceeds its Tier 2 rate. Due to SDG&E's lower Tier 2/Tier 3 differentials, the savings available to SDG&E's customers are less than the savings available to PG&E or SCE customers, even in areas with comparable climates. We note that, even with the

AB 1X modifications, SDG&E's Tier 1 and Tier 2 rates will be higher than those of PG&E and SCE and thus may impose greater burdens on vulnerable customers. TURN's proposal would provide needed rate relief to SDG&E customers, even if the savings are somewhat less than in other areas. In future rate design proceedings, we may increase or decrease tier differentials as appropriate. We may also reassess the need for Tier 3 rate relief if overall rates or tier differentials change significantly.

We agree with TURN's and LIF/Greenlining's suggestion that outreach for a large household program does not need to be as extensive or as costly as for CARE. Because eligible customers with little or no Tier 3 usage would see minimal benefit from a Tier 3 exemption, we would not expect participation to ever be as large as for the CARE program, nor would that be our goal.

PG&E and SDG&E estimate annual administrative costs for TURN's large household proposal to be between $10 and $15 per eligible customer. Keeping in mind the imprecision of these estimates, as the parties have explained, and the fact that SCE did not provide cost estimates, administrative costs for TURN's large household proposal appear to be reasonable relative to the expected rate relief.

We must also assess the effect on non-participants caused by the program's revenue losses and administrative costs. It appears that the utilities may have over-estimated potential revenue losses, due in particular to their assumption that all eligible customers would participate. As discussed in Section V.A, we are deferring a determination of how generation undercollections resulting from today's order will be allocated and reflected in rates. Without pre-judging this issue, we note that PG&E's estimated $26 million program cost, including revenue losses and administrative costs, is about 1.9% of PG&E's Tiers 3 through 5 revenues and about 0.3% of total revenues from all customer classes excluding Tier 1 and Tier 2 residential revenues. Because of the lower per-participant savings estimates for SCE and SDG&E, the impact on these two utilities' non-participants likely would be somewhat less. We conclude that TURN's proposal would not impose unreasonable burdens on non-participants.

The proposed lower-middle income large household program is reasonably consistent among customers and utilities and is equitable. The goal of ensuring the affordability of basic energy needs warrants a program targeted to lower-middle income large households. This program would be available to all similarly situated customers of the three large utilities. It is reasonable to exclude customers of the smaller utilities, since they do not appear to have a comparable need for rate relief.

We turn next to the issues of understandability and administrative feasibility. We believe that a large household program can be explained to customers in a way that minimizes misunderstanding. The program should be no more difficult to understand than existing rate options and assistance programs. The potential overlap in program eligibility due to CARE's automatic enrollment program (which has not yet been implemented) does not concern us; customers automatically enrolled in CARE who inquire about the large household program could be informed that CARE is preferable because it provides greater benefits. Nor do we see any insurmountable administrative difficulties. With CARE, the utilities already have experience with administering programs for which eligibility is based on household size and income. The existing procedures could be modified as needed for the large household program.

Finally, we have already discussed that the conservation principle in § 739(c) complements but does not take precedent over the goal of affordability. We agree with TURN that keeping Tier 4 and Tier 5 rates in place would retain a sufficient conservation incentive for large households exempt from Tier 3 rates.

Based on the foregoing assessment, we find that TURN's proposed large household program is reasonable and should be adopted because it is consistent with the rate design principles in § 739(c) and would meet an identified need for rate relief in an effective manner consistent with the additional evaluation criteria described in Section III.B.

We turn now to implementation and administration of the adopted program. The large household program should use existing protocols and procedures already developed and found reasonable for CARE or other programs, to the extent feasible. Information regarding household size and income is already gathered through the CARE process. We see no need to deviate from CARE's definitions, criteria, or verification procedures regarding household size or income.

All residential customers should be notified of the large household program through annual bill inserts. In order to reduce costs, such bill inserts may combine notification of the large household program with comparable information regarding other customer assistance programs.

Customer service representatives should provide customers with information regarding the large household program, but the program does not need to be mentioned during every customer contact as the utilities contemplate. Customer service representatives should describe the large household program whenever service is initiated or upon customer request. They should also inform potentially eligible customers of this program whenever a customer contact is related to affordability, e.g., calls about overdue bills, requests for level payment options, or inquiries about CARE or low income energy efficiency programs. The utilities' web sites and their automated customer service prompts and scripts should be modified so that customers may obtain program information through these means comparable to the information available regarding other tariff options and assistance programs.

Additional outreach should be undertaken when it can be done at little cost, e.g., a brief statement in literature related to CARE,[21] low income energy efficiency programs, or level payment options that information regarding the large household program may be obtained by calling the utility.

We agree that a workshop held by Energy Division is needed and should be held to finalize implementation and administrative procedures for the adopted large household program. Issues to be addressed include details of the application process, coordination with CARE procedures and outreach, the extent to which applications and other program materials and outreach should be provided in multiple languages, and implementation in master meter situations. While other issues may also be addressed, parties should not use the workshop to re-argue program provisions adopted by this order.

The large utilities submitted late-filed exhibits addressing implementation procedures and timeframes needed to implement each of the Phase 2 proposals. The submitted estimates of implementation times for TURN's

[21] Contrary to the inference that some parties appear to draw, we have no plans to curtail CARE outreach efforts after automatic enrollment is implemented.

large household proposal range between 16 weeks and 8 months. Billing system modifications appear to require the most time, with estimates ranging up to 5 months. Some of the necessary tasks can be performed concurrently. Based on our review of the submitted information, it is reasonable to require PG&E, SCE, and SDG&E to implement the program for all customers within 20 weeks of the effective date of this order, with the first qualified customers who respond to bill inserts or otherwise request the program receiving reduced rates at least 4 weeks earlier than that. The adopted implementation period will allow activities to proceed according to the following approximate schedule, based on the timeline submitted by PG&E:

Workshop and development of application, brochure, and bill insert.	10 weeks
Billing system programming and testing.	Concurrent
Customer service representative training; development of modifications for website and for customer service automated prompts and scripts.	Concurrent
Tariff modifications developed and advice letter filed and reviewed.	Concurrent
Bill insert production.	2 weeks
Bill insert mailing begins; customer service representatives begin to offer program to customers; website and automated customer service prompts and scripts contain program information.	1 week
Bill insert mailing continues.	0 – 4 weeks
Upon customer request, company mails application to customer; customer completes and returns it.	1 week
Company processes initial applications and first participants' Tier 3 rates are changed.	2 weeks
TOTAL IMPLEMENTATION TIME	16 – 20 weeks

PG&E, SCE, and SDG&E should file advice letters to implement the large household program within 60 days of the effective date of this order, with the tariff modifications to become effective no later than 16 weeks after the effective date of this order.

While the large household program is not a baseline program, it is reasonable to allow the utilities to accrue program costs and related revenue losses in their BBAs, with the balances recoverable as described in Section V of this order. Recognizing that the PROACT settlement adopted in D.03-07-029 provided for the elimination of SCE's BBA, we authorize SCE to use its existing BBA or create a new BBA for the purposes of this order.

b. Baseline Adjustments for Lower-Middle Income Large Households

LIF/Greenlining supports the TURN large household proposal and proposes, alternatively, that baseline amounts be adjusted for lower-middle income households of six or more occupants.

The need for electric rate relief for lower-middle income large households has been established. However, the need for gas rate relief for such households is not clear. The two-tier gas rate structure, with upper/lower tier differentials that currently do not exceed 25%, has less potential for rate shock than does the multi-tiered electric rate design. Thus, higher gas usage does not affect affordability to the same extent as does electric usage subject to upper tier charges. This finding is supported by LIF/Greenlining's apparent view that TURN's large household electric proposal would provide acceptable relief for such households. Additionally, of the customers who contacted the Commission or spoke at public participation hearings in this proceeding, almost all complained about electric rates, particularly upper tier charges, with few customers voicing concerns about gas affordability.

The record contains only limited information regarding the potential bill savings and costs associated with LIF/Greenlining's large household proposal. TURN analyzed the effects of household size and income on energy usage but did not determine baseline amounts. TURN's submissions indicate that large households tend to use more energy than do smaller households that are similar in other respects, and that lower income households tend to use less energy than do higher income households that are similar in other respects. TURN reported that gas usage is less affected than electricity usage by either household size or income. On that basis, TURN does not propose gas rate relief for large households.

PG&E and SCE did not quantify baseline amounts for lower-middle income large households or the resulting savings, nor did they estimate administrative costs of this program.

SDG&E calculated a potential electric (but not gas) baseline adjustment for lower-middle income large households; SoCalGas reported on a potential gas baseline adjustment for such households. SDG&E and SoCalGas reported that lower-middle income households with 6 or more occupants use approximately 10% more electricity and 17% more gas than the average household, and that baseline increases to reflect these above-average energy consumption patterns would be about 402 kWh per year for SDG&E and 67 therms per year for SoCalGas.

The countervailing effects of household size and income may explain why baseline increases for lower-middle income large households, as calculated by SDG&E and SoCalGas, would be relatively small. The resulting bill savings would be modest, averaging about $1 per month. Administrative costs could exceed the bill reductions, as indicated in Table 1.

We find that TURN's large household proposal is preferable to baseline adjustments because it provides more meaningful relief to lower-middle income large households and is more cost-effective.

c. Tier Exemption for Lower-Middle Income All-Electric Senior Citizen Households

TURN recommends that all-electric senior citizen households with lower-middle incomes in PG&E's Central Valley and mountain climate zones be exempt from Tier 3 surcharges, based on its report that the target households use more electricity than other similarly situated households without a senior citizen occupant. TURN suggests that the Commission may wish to expand the program statewide to maintain consistency.

TURN's assertion that all-electric senior citizen households with lower-middle incomes in the specified climate zones are in need of Tier 3 rate relief is not convincing. PG&E established that the vast majority of the targeted households are in one- or two-person households with minimal Tier 3 usage. Even if some of these households have Tier 3 usage in peak winter months, their annual savings due to a Tier 3 exemption are likely to be much smaller than the savings for large households, which TURN demonstrated generally have Tier 3 usage year-round.

PG&E estimates that the administrative costs for this program would exceed the total bill savings available to the 17,000 eligible customers. Because of the very narrow focus of the proposal, it appears unlikely that the program would be cost-effective even if PG&E underestimated the potential bill savings that could be obtained from TURN's proposal.

Because the need for rate relief has not been demonstrated and because of additional concerns regarding program cost-effectiveness, we do not adopt TURN's lower-middle income all-electric senior citizen proposal.

d. Gas Baseline Adjustment for Senior Citizen Households

TURN recommends a gas baseline adjustment for PG&E's senior citizen households based on its finding that the average annual gas usage of such households is about 100 therms higher than the average gas usage of other similarly situated households without a senior citizen. TURN suggests that the Commission provide this program statewide if it wishes to maintain consistency.

TURN proposes a baseline adder of 14 to 22 therms during peak winter months, based on January usage data. It is not clear whether TURN views this baseline adder as a standard limited allowance under § 739(b) or as a revision to baseline quantities subject to § 739(a) and (d)(1). As explained in Section III.A, we may not make the standard limited allowance available to customers other than those specified in § 739(b). Further, TURN has not established that an increase in baseline quantities for senior citizen households would be consistent with the percentage restrictions on baseline quantities in § 739(d)(1). As a result, we cannot adopt this proposal based on the current record.

While we may establish separate baseline quantities for distinct customer groups (except groups based on end uses), the baseline quantities must be based on average usage of each customer group, and must fall within the statutory limits, i.e., 50% to 60% of the group's average consumption, except for a 60% to 70% range for winter usage of gas or all-electric customers.[22] The fact that

[22] This requirement is subject to AB 1X restrictions, as discussed elsewhere in this order.

a senior citizen household tends to use more gas than a similarly situated non-senior citizen household does not establish that the average use of all senior citizen households as a group exceeds the average use of all non-senior citizen households. If, as an example, senior citizen households tend to live in smaller dwellings or tend to have fewer occupants than other households, this would tend to lower their average energy use compared to the average usage of non-senior citizen households. The statistical analyses presented by TURN and SoCalGas do not establish the average usage of all senior citizen households or whether it is higher than the average usage of all customers, which is the basis for current baseline quantities. As a result, we cannot determine that baseline quantities for senior citizen households could be increased and still be consistent with § 739(d)(1).

Even if it were established that the gas usage of senior citizen households is high enough so that their baseline quantities could be increased, we have other concerns about this proposal.

First, a clear need has not been established for gas rate relief for senior citizen households. While senior citizen households tend to use more gas than other similarly situated households, TURN did not present evidence that this increased usage threatens the affordability of senior citizen households' reasonable energy needs. Of the senior citizens who made their views known through written communications or through statements at the public participation hearings, almost all complained about their electric bills. As we have described, the two-tier gas rate structure does not affect affordability for those customers with increased usage requirements to the same extent as does the electric rate design.

As an additional concern, TURN's baseline adjustment proposal is not targeted to the senior citizen households most likely to need rate relief. Instead, it would provide bill reductions for all senior citizen households, including high income households who are unlikely to need assistance in order to afford their gas bills.

e. Gas CARE Protection for Lower-Middle Income Senior Citizen Households

As an alternative to a baseline adjustment, TURN suggests gas CARE protection for PG&E's lower-middle income senior citizen households. As we have explained, we view this proposal as a rate discount program rather than an expansion of the low income CARE program. Consistent with the CARE discounts, program participants would receive a 20% discount on all gas usage.

As we discuss with regard to TURN's gas baseline proposal, a need has not been established for gas rate relief for senior citizen households. While this proposal focuses on lower-middle income households, there is still inadequate basis for concluding that gas rate assistance is needed for the targeted customer group. Further, even if rate assistance were needed, there is no indication that an across-the-board 20% reduction for all gas usage, comparable to full CARE protection, is warranted. This level of support could create unnecessary revenue losses and thus unreasonable burdens on non-participants. For these reasons, this proposal should not be adopted.

D. Water Well Pumping

RCRC requests a separate baseline allowance for residential customers with water wells, comparable to the standard limited allowance for medical purposes provided in § 739(b). RCRC does not recommend that water well pumpers be treated separately in the determination of baseline quantities, recognizing that utilities do not know which customers have water wells. A customer would be deemed eligible for the additional baseline allowance upon returning a signed affidavit stating that a private well is the customer's sole source of domestic water.

TURN had access to end use survey data for SCE customers, and reports that water pumpers in some climate zones use between 170 kWh and 225 kWh per month more electricity than do other similarly situated customers. PG&E indicates that its residential water pumping customers use about 130 kWh per month for water pumping. PG&E cautions, however, that the increased usage for water pumping is already reflected in current baseline amounts. While RCRC contends that the effect of water pumping on averaged baseline amounts is small, PG&E points out that the incidence of water pumpers varies widely among climate zones, reaching as high as 29% of residential customers in PG&E's Zone P. SDG&E reports that only 1.4% of its residential customers are water pumpers.

As explained in Section III.A, AB 2443 prohibits consideration of end uses in developing the baseline program; it also precludes provision of a standard limited baseline allowance to customers not specified in § 739(b). Thus, we may not grant RCRC's request for a special baseline allowance for water pumpers, regardless of the merits of the request.

While AB 2443 did not preclude consideration of the needs of customers such as water pumpers in non-baseline portions of the residential rate design, the current record is not sufficient to determine the desirability of such an action. We take this opportunity to address certain issues raised in this proceeding, in hopes of providing useful guidance if special non-baseline rate treatment for water pumpers is proposed in the future.

As RCRC explained, many water pumpers do not have access to water from commercial sources; other customers may install water wells because commercial water available to them is more expensive or is unattractive for other reasons. Regardless of whether alternative sources of water are unavailable, water pumping is a reasonable energy need that is not conducive to conservation. Parties debated whether total residential pumping needs should be considered in assessing the need for rate relief, or only pumping for indoor water use. We see no basis for limiting application of the affordability goal in §739(c) to indoor water use. Of course, if privately pumped water is used for agricultural or other non-residential purposes, the associated electricity should not be served on residential schedules.

Parties also presented evidence regarding water costs, with opponents of RCRC's proposal attempting to establish that the total cost of privately pumped water is no higher than water prices charged by water agencies. We find this evidence unconvincing, both because water costs may be very location-specific and because an agency's water prices may not reflect its actual costs.

Our focus in Phase 2 is on residential rate proposals designed to meet a clearly identified need for rate relief. There is no indication that all residential water pumpers require special rate treatment to ensure the affordability of their energy needs. High income customers may be able to afford the electricity needed for water pumping. For low income water pumpers, the adequacy of the rate support already provided through CARE would need to be explored. We expect any party proposing special rate consideration for water pumping in a future proceeding to address fully the extent to which its proposal would promote affordability while limiting revenue loss to avoid unwarranted impacts on non-participants.

E. Seasonal Residences

TURN proposes that seasonal residence usage be excluded from the calculation of baseline quantities in climate zones where this exclusion would have a material impact. TURN asks that all utilities be required to identify customers as permanent or seasonal at the time of service initiation, in any climate zone where the most recent residential appliance saturation survey (RASS) or a comparable survey shows at least 5% seasonal residences. In addition, TURN asks that Commission consider, to the extent legally permissible, eliminating or reducing baseline allowances for seasonal residences in those areas where they are currently available.[23]

1. Positions of the Parties

All parties that weighed in on this issue agree that seasonal residences should be excluded from baseline calculations in climate zones where their inclusion would have a material impact on baseline quantities, since they are not representative of average customers. Disagreements arose, however, regarding the threshold and manner of exclusion, and whether seasonal residences should receive baseline allowances.

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[23] Four companies—SCWC's Bear Valley Electric Service, Southwest, Sierra Pacific Power Company, and SCE—are currently required to not provide baseline allowances to seasonal residences. SCE's requirement, adopted in D.96-04-050, is limited to its climate Zones 15 and 16 where there is a significant number of seasonal residences. SCE reports that it never implemented this directive because of the rate freeze in AB 1890, which became law soon after D.96-04-050 was issued.

TURN recommends that each utility be required to exclude seasonal residence usage from baseline calculations if inclusion would reduce baseline quantities by more than 3%. While it focused earlier on electric baseline calculations, TURN recommends in its reply brief that this requirement also apply to gas baseline calculations.

PG&E's RASS data indicate that seasonal residences account for 20%, 52%, and 6% of residences in climate Zones Y, Z, and P, respectively. In PG&E's other climate zones, seasonal residences comprise less than 2% of all homes. TURN proposes that the usage of seasonal residences in climate Zones Y and Z be excluded from baseline calculations, and that PG&E be required to investigate possible exclusion of seasonal usage in Zone P.

Citing the Commission's action in D.96-04-050, PG&E recommends that baseline quantities be adjusted for seasonal residence usage only where the impact on baseline quantities is 9% or more. PG&E reports that it already adjusts winter all-electric baseline quantities in Zones Y and Z to remove the effect of seasonal homes, pursuant to Commission directive in D.83-12-068. PG&E agrees that the other electric baseline quantities in these two climate zones should also be adjusted if they meet the proposed 9% materiality threshold. Because Zone P is combined with Zone Y in the winter and with Zone S in the summer, PG&E points out that the combined zones may not meet the materiality threshold. PG&E proposes to investigate these matters in Phase 2 of its 2003 general rate case. TURN responds that PG&E should be required to adjust both summer and winter baseline quantities in any climate zone where the adopted threshold is reached, regardless of whether the zone is currently combined with another zone for a portion of the year.

SCE reports that, in updating baseline allowances pursuant to the Phase 1 decision, SCE excluded seasonal customers' usage data in some baseline calculations for climate Zones 15 and 16. SCE states that seasonal residences are less than 4% of total residences in SCE's other climate zones and that there would be no appreciable benefits from excluding them from the baseline calculation.

SDG&E reports that, according to U.S. Census data, 1.4% of homes in San Diego County are classified for seasonal, recreational, or occasional use and that previous survey data showed an even lower percentage of seasonal residences. SoCalGas' RASS indicates that 2.9% of its customers do not live in their residence year round. Because of the low prevalence of seasonal homes, these companies do not support the exclusion of seasonal residences from the calculation of their baseline quantities.

TURN submits that, if utilities identify customers as seasonal or permanent when service is initiated in climate zones known to have significant numbers of seasonal residences, most seasonal accounts would be identified within several years and could be excluded from baseline calculations. PG&E responds that only a subset of customers account for most moves and that TURN's approach would only partially identify seasonal accounts even after many years. PG&E adjusts baseline calculations using what it calls a "proxy" method, which excludes the set of lowest bills equivalent to the percentage of seasonal residences, as indicated by survey data. PG&E supports this approach because it can be employed at virtually no cost and does not require identification of each seasonal home.

Recognizing that its proposal based on identifying seasonal customers may require a significant period of time to implement, TURN suggests that the Commission adopt PG&E's proxy methodology as an interim approach.

TURN maintains, however, that the utilities should be required to identify seasonal residences and ultimately to exclude the identified accounts from baseline calculations.

TURN recommends that the Commission preclude seasonal residences from receiving baseline allowances to the extent legally permissible, in order to prevent the "double dipping" that allegedly occurs when a customer receives baseline allowances at two residences. In recognition of limitations imposed by AB 1X, TURN proposes that seasonal residences be prohibited from receiving the increases in baseline quantities resulting from the Phase 1 order and that they not be eligible for any rate relief that may be adopted in this phase. TURN proposes that, once the AB 1X protections are no longer operative, baseline allowances be eliminated for all seasonal customers, with all of their Tier 1 and Tier 2 usage charged at the Tier 2 rate.

PG&E, SCE, SDG&E/SoCalGas, and ORA oppose TURN's proposal that seasonal residences be prohibited, to the extent legally permissible, from receiving baseline allowances. These parties argue that many owners of seasonal homes do not receive unfair baseline advantages and that the effect of any "double dipping" that may occur is small for most companies. They contend that denial of baseline allowances to seasonal homes would be inequitable and that such a program would be difficult and expensive to administer. PG&E also takes issue with the rates that TURN would apply to seasonal customers.

PG&E, SCE, and ORA provide several examples of seasonal homes that do not "double dip," including retired people who take advantage of seasonal weather patterns, tenants who rent someone's secondary residence for several months, and second home owners whose primary residence is not in California. PG&E submits that withholding baseline allowances for such customers would be counter to the statute's requirement that baseline quantities be provided for a significant portion of customers' reasonable energy needs. PG&E argues that it is better to err in favor of customers by rejecting TURN's proposal.

The opponents assert that TURN's definition of a seasonal residence as anything other than one's primary residence is too simplistic and would have inequitable results. The opponents question the reliability of self verification and are concerned about the costs of utility identification of seasonal residences. They caution that billing records may not be helpful in identifying seasonal residences, for a variety of reasons. PG&E also opposes TURN's suggestion that utilities could monitor customers' usage to identify seasonal residences, asserting that such monitoring would be an inappropriate invasion of privacy likely to greatly offend many customers. PG&E further questions the effectiveness of such monitoring since other types of situations could lead to usage patterns similar to seasonal home usage.

PG&E and SCE contend that elimination of any supposed double dipping is not worth the administrative expense. In addition to the cost of identifying seasonal residences, they point to the cost of maintaining separate rate schedules for seasonal residences and to problems with master-metered accounts that serve both year-round and seasonal residences. PG&E estimates that, even when AB 1X restrictions are lifted, the annual revenue impact of withholding baseline allowances from its seasonal residences would be only $1.6 million.

PG&E and SCE express additional concerns with TURN's suggestion that any baseline amounts that have increased for seasonal residences be reduced back to their level when AB 1X became effective. PG&E asserts that

TURN's rollback proposal would confound historical analyses or reports of tier usage.

Southwest opposes any suggestion that it begin to provide baseline allowances to seasonal residences, which are a large percentage of its customer base, due to the adverse impacts on the bills of permanent residents.

Mountain Utilities, which serves the Kirkwood community and currently provides baseline allowances to seasonal residences, asks that it be authorized to provide baseline allowances only to permanent residential customers. It states that a large portion of its customers are seasonal and use their residences for brief periods. Because Mountain Utilities does not take power from DWR, it could implement such a requirement at this time without violating AB 1X.

2. Discussion

Seasonal residences should be excluded from baseline calculations in climate zones where their inclusion would cause a material reduction in baseline quantities, so that baseline quantities more accurately reflect the average usage of permanent residential customers. Because the need for accuracy applies to both electric and gas baseline quantities, this policy is adopted for both types of energy usage.

While the previously adopted exclusion of seasonal residences from baseline calculations in two SCE climate zones may have affected baseline allowances by 9%, this impact should not be viewed as a precedential threshold for other companies. We agree with TURN that seasonal usage should be excluded if its inclusion would decrease baseline quantities by 3%, so that baseline quantities more accurately reflect the average usage of permanent residential customers. To further ensure accuracy of baseline calculations, this

3% materiality threshold should be applied separately for electricity usage and for gas usage, and for the summer and winter seasons.

Although certain baseline zones currently are combined for a portion of the year for purposes of establishing baseline quantities, the determination of whether seasonal residences make a material difference in baseline quantities should be made separately for each climate zone. If a finding of materiality is made, the utility should de-consolidate the zones and implement separate baseline quantities for each zone to reflect the adopted treatment of seasonal residence usage.

We do not adopt TURN's proposed requirement that baseline quantities be adjusted based on identification of seasonal homes when service is initiated. It could take many years before even a majority of homes are identified as permanent or seasonal. In the meantime, even if reported accurately initially, the classification of some homes may have changed from that reported earlier. While PG&E's proxy methodology is not perfect, we do not see that TURN's proposal would yield improved results or that its administrative costs are justified.

PG&E's proxy methodology excludes the effects of seasonal homes from baseline calculations in a manner that is reasonably accurate and cost-effective. PG&E may continue to use its proxy methodology, subject to review in general rate cases or other appropriate proceedings. While SCE states that it has begun adjusting baseline quantities for seasonal residences in climate Zones 15 and 16, it does not explain how such adjustments are made. We do not mandate an adjustment methodology for SCE or other utilities at this time.

Each utility should maintain a reasonable method for determining the percentage of customers who are seasonal residents in each climate zone for purposes of excluding their usage from the baseline calculation. An acceptable method would be to gather such information through RASS or similar customer surveys. We will not require utilities to ask new residential customers whether they are seasonal residents, other than in areas where seasonal residents do not receive baseline quantities.

We require that each utility file an advice letter within 60 days of the effective date of this order to implement the adopted requirement that the energy usage of seasonal residences be excluded from baseline calculations if exclusion increases baseline quantities in a climate zone by at least 3%. Each utility should explain and document in its advice letter whether the adopted materiality threshold is met in each climate zone during each season. If the materiality threshold is met, the advice letter should include any tariff changes needed to adjust baseline quantities appropriately, to be effective at the beginning of the summer 2004 baseline period. While PG&E's proxy methodology is acceptable, utilities may propose alternative methods to exclude the usage of seasonal residences from baseline calculations, with supporting documentation to allow review of the reasonableness of the methodology.

It is reasonable to allow the utilities to recover revenue losses that result if baseline quantities are adjusted to exclude the usage of seasonal residences. Since the revenue impacts of baseline modifications can be determined, and consistent with our conclusions in Section V regarding revenue recovery, gas rates and non-generation electric rates should be adjusted concurrently with the baseline changes in order to maintain revenue neutrality for those rates. As explained in Section V, there should be offsetting adjustments to generation rates so that total electric rates are unchanged. Generation revenue losses may be accrued in the utilities' BBAs, for later recovery as provided in Section V.

We do not adopt a statewide requirement that baseline allowances be withheld from seasonal residences to the maximum extent permitted by AB 1X. We share TURN's desire to avoid "double dipping" but are concerned about difficulties involved in implementing such a policy in a fair, equitable, and cost-effective manner. While allowing seasonal residents to receive baseline benefits may have a significant impact on the bills of permanent residents served by a small utility in a recreational area with a high proportion of seasonal residences, the effect may be *de minimis* for larger utilities' permanent residents. As PG&E demonstrated, administrative costs for the larger utilities may exceed any benefit to permanent residents.

Because of these concerns, we conclude that the question of whether baseline quantities should be withheld from seasonal residences should be assessed separately for each utility, taking into account the impact on permanent residents' bills and the related administrative costs and complexities. Care must be taken that seasonal residences are identified in an equitable manner if they are precluded from receiving baseline allowances. An alternative in which separate, lower baseline allowances are implemented for seasonal residences, as was done by SCWC's Bear Valley Electric Service for several years, may be easier to administer in an equitable fashion and is worthy of renewed consideration.

The current record does not allow us to specify under what conditions a utility should deny baseline quantities to seasonal residences, nor may it be appropriate to adopt statewide criteria for such a determination. We instruct each utility--including the companies that now restrict baseline quantities to only permanent residents--to submit in its next general rate proceeding or other appropriate proceeding information that would allow us to assess such an exclusion. This information should include the proportion of seasonal residences in each climate zone, the effect a baseline exclusion has or would have on permanent residents' bills, and actual or projected costs of administering an equitable program of withholding baseline quantities from seasonal residences. The utility should describe an appropriate and equitable method for identifying seasonal residences in its service area for purposes of withholding baseline quantities, and should also assess the effects of providing separate, lower baseline allowances for seasonal residences. Pending this further review, SCE should not implement the policy adopted in D.96-04-050 that it withhold baseline quantities from seasonal residences in climate Zones 15 and 16.

F. Common Area Accounts

With the adoption of PG&E's common area settlement in D.03-01-037, the remaining common area issues include the treatment of PG&E's common area electric accounts that choose not to migrate to commercial schedules and the treatment of other utilities' common area electric accounts currently served through residential schedules. There does not appear to be a need to reconsider the treatment of common area gas accounts. WCA's request for common area-related refunds is addressed in Section IV.[24]

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[24] WCA is a non-profit mutual benefit homeowners' association with 1249 residential units located in Emeryville, California.

1. Positions of the Parties

SDG&E states that it does not support but would not object to allowing its common area electric accounts now receiving residential service to transfer to commercial schedules, as provided by PG&E's common area settlement. Most of SDG&E's common area electric accounts are served through a residential schedule, although commercial schedules are used for most three-phase common area accounts and for single-phase accounts serving common areas associated with detached homes.

SDG&E reports that approximately 1,600 residential common area electric customers (of approximately 31,000 residential common area accounts) would benefit from switching to a commercial schedule. For those customers, the average monthly savings would be $28.92, with 24 customers each saving over $1600 annually.[25] SDG&E asserts that customers are not harmed by not having the option to switch between the schedules and that no common area customer has complained about its rate treatment.

SCE and Southwest report that all of their common area accounts are on commercial electric schedules. SCE opposes giving its common area customers a choice to be served through residential tariffs, arguing that its common area accounts are better off on commercial schedules and that no party has proposed that its commercial common area accounts be given the option to transfer to residential schedules.

[25] This information regarding potential savings does not appear to include the 110 three-phase common area residential customers SDG&E identified for the first time in late-filed Revised Exhibit 184.

During the evidentiary hearings, WCA requested that the Commission grant a higher baseline allowance for PG&E's common area electric accounts that remain on residential schedules, to take into account the function and efficiency of large, multi-unit housing. In its opening brief, WCA suggests a procedure whereby the average electricity usage of individual units in a multifamily complex would be calculated and the common area usage would be charged beginning at the tier rate applicable to the average usage of the residences. WCA points to PG&E testimony that multifamily accounts use 45% less energy than single-family accounts, and states that its approach would result in most common area usage being charged Tier 2 and Tier 3 rates rather than Tier 4 and Tier 5 rates. WCA suggests that, if the record is not developed adequately for either of its proposals to be adopted, they could be considered in another proceeding as appropriate.

PG&E, SCE, and ORA oppose WCA's proposals. ORA and PG&E submit that PG&E's common area settlement provides the appropriate relief for those common area accounts seriously affected by the current residential electric rate design. PG&E asserts further that units in a multifamily building already benefit from baseline quantities based on total average usage in the climate zone, including a predominance of single-family dwellings with higher usage. It also contends that a separate baseline allocation for common areas would be very complicated to design and implement, in light of the wide variety of sizes of buildings and the variation in usage for those buildings. PG&E argues that it would be unduly costly to create the needed databases and processes to implement either of WCA's proposals.

2. Discussion

In adopting a five-tier residential electric rate structure for SDG&E in D.01-09-059, we recognized this structure would result in significant bill increases for some common area accounts. We stated at that time that we would address the treatment of SDG&E's residential common area customers in this proceeding.

For the reasons explained in D.03-01-037 approving PG&E's common area settlement, a multi-tiered rate structure is not well suited for application to common area electric accounts. Tier sizes are based on the average usage of average households and do not reflect common area usage patterns. Large common area accounts cannot avoid extensive over-baseline usage, regardless of their conservation efforts.

Because of these identified shortcomings, we require that SDG&E allow its residential common area electric customers the option to switch to commercial schedules, under terms comparable to the provisions found reasonable and adopted for PG&E in D.03-01-037. This requirement should apply to any other electric company that currently serves any common area accounts through residential schedules, and should be implemented through advice letters filed within 30 days, to become effective within 45 days of the effective date of this order. SDG&E and any other affected electric utility may track any revenue losses resulting from this treatment of common area accounts in new CABAs, with recovery as described in Section V.

Consistent with the provisions approved in D.03-01-037, residential common area accounts switching to a commercial schedule should be given a window of opportunity to return to residential status, and new common area accounts that the utility ordinarily would place on residential schedules should be allowed to choose between residential and commercial schedules and should be provided a right-of-transfer window. As we concluded in D.03-01-037, residential common area accounts that transfer to a commercial schedule would cease to be residential customers and their service would no longer be subject to § 739. Because residential common area accounts would choose to transfer to a commercial schedule and would have an opportunity to return, providing them this choice would not conflict with AB 1X.

It would not be appropriate to allow common area accounts already on commercial schedules to switch to residential service. Since baseline quantities bear no relationship to common area usage, small common area accounts may reap baseline benefits independently of conservation efforts. While this is not the time to consider whether all residential common areas should be switched to commercial schedules, common area accounts currently served on commercial schedules should not be allowed to switch to residential service to take advantage of the residential rate design.

WCA's proposals to grant higher electric baseline allowances or to bill common area electric usage based on the average usage of households served by the common area should not be adopted. The need for common areas to receive rate relief in addition to that afforded by the common area settlement has not been established. The fact that households in multifamily dwelling units use less energy, on average, than households in single-family detached houses does not establish that preferential rate treatment is warranted for their common areas. To the contrary, households in multifamily dwellings already benefit from baseline quantities based on average usage patterns including the usage of single-family dwellings. The ability to switch to commercial schedules should provide adequate protection to ensure the affordability of common area usage.

Additionally, the logistical problems associated with WCA's proposals may be insurmountable. For these reasons, common area accounts that remain on residential schedules should not receive additional benefits as proposed by WCA.

IV. WCA Request for Rebate or Refund

A. Positions of the Parties

WCA reports that its common area electricity bill doubled as a result of the residential tiered rate design adopted in D.01-05-064, with 95% of its usage now assessed Tier 5 surcharges. WCA does not contest that PG&E has billed common area accounts according to its tariffs implementing D.01-05-064. However, WCA requests a rebate or refund of the surcharges, with interest, on the basis that the increases are excessive and unreasonable under §§ 451, 453, and 739 and do not comport with standards of fairness and due process.

PG&E contends that retroactive relief such as WCA requests is prohibited under § 728 and, on that basis, made a motion to strike the related WCA testimony. The assigned ALJ admitted the disputed testimony subject to PG&E's motion and directed the parties to address common area refund-related issues, including the motion to strike, in their briefs.

WCA asserts that the statutory prohibition on retroactive ratemaking applies only to Commission acts promulgating general rates, and maintains that the procedure for adopting the surcharges was similar to that used for fuel cost adjustment clauses, which the California Supreme Court found not subject to the ban on retroactive relief. Southern California Edison Company v. Public Utilities Comm. (1978) 20 Cal.3d 813 (Edison), 817. WCA maintains further that D.01-05-064 and PG&E's implementing advice letter contain no findings that support or anticipate that a doubling of rates for certain residential customers might occur or was intended. WCA points to the discussion in D.01-05-064 that rates for residential customers could increase up to 47%, depending on usage (D.01-05-064, *mimeo.* at 4), and also to a newspaper article which quoted a Staff representative as saying that the large common area rate increases were an unintended consequence of the adopted surcharges. WCA notes that bill limiters were adopted to protect customers from unanticipated impacts of increases, with agricultural increases capped at 15% to 20%, but believes that the bill limiters were not applicable to residential customers.

PG&E argues that the Commission cannot award refunds after it has approved rates in a ratemaking setting. PG&E contends that, even if the Commission could approve a refund, the appropriate forum would be a complaint case rather than this proceeding. As further grounds for its opposition, PG&E maintains that WCA has not described what the refund should be, other than to say that it should consist of "excess surcharges."

PG&E argues that the situation in Edison is distinguishable from the rates at issue here, with the customer credits granted in that instance related to a rate increase made prospectively by SCE under its fuel adjustment clause, without Commission approval. PG&E contends that the Court held that returning the fuel cost overcollections was not retroactive ratemaking because it was simply another way of balancing the fuel collection costs which, in the long run, would have been balanced by the weather cycles anyway. PG&E maintains that, in contrast, the Commission conducted a forward-looking ratemaking proceeding and issued a decision (D.01-05-064) adopting the surcharges which WCA finds objectionable.

B. Discussion

Upon consideration of WCA's request for common area-related refunds, we find no basis for granting the request.

We disagree with PG&E regarding our ability to order refunds if WCA's request were found to have merit. Our adoption of surcharges for PG&E and SCE in D.01-03-082 and the subsequent rate design in D.01-05-064 did not constitute general ratemaking. The revenues generated by the surcharges were to be applied only to the utilities' power purchases.[26] The surcharges were considered and adopted on an expedited basis under emergency conditions in order to allow PG&E and SCE to continue to provide adequate electric service to their customers. The resulting revenues were to be entered into a balancing account subject to refund. We agree with WCA that the surcharges and balancing account mechanism have strong parallels with the fuel cost adjustment clause considered in Edison. For these reasons, a refund such as WCA proposes would not disallow the recovery of costs previously approved through general ratemaking.

The Court concluded in Edison that an adjustment of rates that does not involve general ratemaking may have a retroactive effect without violating the prohibition on retroactive ratemaking. Because the surcharges were not the result of general ratemaking, we conclude that a refund such as WCA requests would not be prohibited due to its retroactive effects. As this situation indicates, and contrary to PG&E's apparent belief, not all proceedings classified as ratemaking pursuant to § 1701.1 and Rules 5 and 6.1 of the Commission Rules of

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[26] In D.02-11-026, we changed this restriction so that surcharge revenues may be applied to returning each utility to financial health, in addition to funding power purchases.

Practice and Procedure undertake general ratemaking for which the retroactive ratemaking ban in § 728 applies. Because the relief which WCA requests is not prohibited under § 728, PG&E's motion to strike WCA's related testimony is denied.

We disagree with WCA's assertions regarding lack of due process. As D.01-05-064 explained, the adopted residential rate structure was based on a tiered rate design proposed initially by the assigned commissioner in a ruling sent to all parties. We held workshops, public participation hearings, and evidentiary hearings on the residential rate design, and all customers received notice by a special mailing. Thus, customers had ample notice regarding potential impacts of the proposed tiered rate design and the opportunity to express their views and concerns to the Commission.

While in D.01-05-064 we did not explicitly consider the effects of the residential tiered rate design on large common area accounts, we were well aware that the surcharges could be burdensome for high use customers. Because of this concern, we adopted bill limiters for all rate classes (including residential customers, contrary to WCA's understanding), with the intent of protecting high use customers from unanticipated impacts of the increases in electric bills. Upon further consideration we eliminated the bill limiter mechanism in D.01-06-040 because of concerns regarding its effectiveness, its impact on conservation efforts, and other potential adverse consequences.

The common area settlement approved for PG&E in D.03-01-037 and today's adoption of comparable provisions for other residential common area accounts substantially mitigate the disproportionate impacts of the residential tiered rate design on WCA and other large common area accounts. As described above and in D.03-01-037, the majority of common area accounts benefit from access to residential service, even with the tiered rate design. Further, WCA has received advantageous rates on PG&E's residential seasonal Schedule E-8, a schedule originally intended to discourage fuel switching and now closed to new customers. For these reasons, we find no basis for granting WCA's request for refunds.

V. Revenue and Rate Impacts

We turn now to the recovery of cost and revenue undercollections resulting from baseline and rate design changes adopted in this proceeding.

A. Electric Undercollections

1. Positions of the Parties

PG&E, ORA, and TURN recommend that no change be made to total electric rates in this proceeding and that issues regarding class allocation and rate design to collect the baseline-related undercollections be deferred to future rate proceedings. In D.03-07-029, we resolved the treatment of SCE's shortfalls due to the Phase 1 order and provided for the elimination of SCE's existing BBA. While SCE recognizes in its supplemental brief that a new balancing account will be needed if the Phase 2 order has revenue impacts, it does not address how the resulting undercollections should be recovered in a post-PROACT world. SDG&E proposes to recover its baseline-related shortfalls through residential rate increases to be approved in the Phase 2 decision. The smaller electric companies did not present electric rate proposals.

PG&E proposes that total electric rates not be changed at this time for any customers, since the Commission has not established the level of PG&E's generation revenue requirement or how it is to be paid by bundled service customers. PG&E proposes that its non-generation rate components be increased so that they recover their baseline-related shortfalls, but that there be equal and offsetting adjustments to generation rates so that total rates are unchanged. The changes to eliminate ongoing shortfalls in the non-generation rate components would be made soon after the Phase 2 decision, while rate changes to amortize existing non-generation undercollections could be made only after the final balances are known.

PG&E initially proposed that its baseline-related generation undercollections be transferred to its Procurement Surcharge Balance Account (PSBA). With the placement of non-generation shortfalls in rates, the transfer of generation undercollections to the PSBA would eliminate PG&E's baseline-related balancing accounts. ORA disagrees with this transfer because the PSBA is not customer class specific and such a transfer could result in allocation of the undercollection to all ratepayers rather than just to residential customers. ORA recommends that PG&E continue to accrue its generation undercollection in its baseline-related balancing accounts until the Commission addresses the responsibility for generation costs among rate groups. In response, PG&E agrees with ORA and now supports maintaining the generation component of its balancing accounts.

SDG&E proposes to recover its BBA undercollections through residential rate increases after the Phase 2 decision is issued. SDG&E proposes to increase distribution and CTC rates for all residential usage to recover the baseline-related distribution and CTC shortfalls, and to recover the baseline-related commodity[27] undercollection from the top three rate tiers.

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[27] Generally speaking, SDG&E's commodity rate component is comparable to PG&E's and SCE's generation rate components.

Because excess surcharge revenues are more than sufficient to eliminate BBA balances, TURN maintains that there is no "shortfall" and no need to adjust total rates as a result of the Phase 1 order. TURN proposes that all baseline-related balancing accounts be eliminated at this time. TURN supports adjustment of individual rate components other than generation or commodity rates in order to prevent undercollection of Commission-approved revenue requirements. Changes to these components would be offset by reductions in generation or commodity rates so that total rates are maintained at their current levels. Consistent with PG&E's earlier proposal, PG&E's BBA (and, presumably, CABA) balance would be transferred to its PSBA. SDG&E's BBA balance would be transferred to its Purchased Energy Commodity Account (PECA). With these changes, no baseline-related undercollections would be tracked on a prospective basis and any further rate setting would be left to the companies' general rate cases. Aglet supports TURN in these recommendations.

Several parties oppose SDG&E's proposal to increase residential rates at this time, raising both legal and policy concerns. PG&E, TURN, and ORA take the position that Water Code § 80110 added by AB 1X precludes increases in total rates for residential usage up to 130% of baseline. In their view, SDG&E's proposal to increase its distribution and CTC rate components for all residential usage, without offsetting reductions in other rate elements, would be impermissible because this would increase total rates for usage below 130% of baseline. SDG&E counters that AB 1X's 130% of baseline protection applies only to the commodity component of its residential rates. SDG&E argues that the intent of this provision of AB 1X was to protect residential usage up to 130% of baseline from rate increases to pay DWR costs. Since DWR costs are commodity costs, SDG&E concludes that the AB 1X protection is limited to only the commodity component of its rates.

In support for its position, TURN points out that AB 1X was amended to remove language that would have limited the rate protection to only "the electric procurement portion of" electricity charges. SDG&E replies that removal of these words from the bill signifies that the Legislature intended the bill's protection to apply "to the entire commodity charge and not just to the procurement portion of the commodity charge." SDG&E also notes that AB 1X provides protection for "electricity charges" rather than "total rates." In response, TURN states that there is no separate "procurement portion" of SDG&E's commodity charge and no justification or evidence supporting SDG&E's artificial distinction.

Both sides cite prior Commission orders as supporting their respective positions regarding the residential rate protection afforded by AB 1X. SDG&E points to the Commission's statement in D.01-09-059 that, "Because of the mandatory capping of prices in the first two tiers, i.e., all usage up to 130% of the baseline is capped at 6.5 cents per kWh, increases to the residential rate are limited to the upper three tiers i.e., Tiers 3, 4 and 5." (D.01-09-059, *mimeo.* at 37.) Because SDG&E's commodity rate was 6.5 cents per kWh at that time, SDG&E interprets this statement to mean that the AB 1X protection only applies to commodity increases. TURN cites language in several orders, including a statement elsewhere in D.01-09-059.

ORA objects to SDG&E's proposal to increase total rates for CARE and medical baseline customers. LIF/Greenlining also opposes any increases for CARE customers, on the basis that they are low-income, have a high energy burden, and are the most at-risk customers.

TURN recommends that, if the Commission allows recovery of baseline-related revenue shortfalls at this time, the undercollections be allocated using one of the methodologies adopted in D.01-05-064 and D.01-09-059 for allocation of residential surcharge shortfalls.[28] TURN argues that there is no basis for keeping baseline-related electric surcharge undercollections within the residential class because the Commission never adopted a formal surcharge revenue requirement by customer class. TURN urges that, if the Commission orders the collection of additional revenues from the residential class, the Commission consider current residential rates a maximum cap which cannot be exceeded and that all such obligations should be deferred until rates are to be decreased, e.g., when surcharges are reduced.

Taking the opposite view, ORA, PG&E, SCE, SDG&E, CLECA, and Farm Bureau oppose any allocation of residential baseline-related shortfalls to other customers. These parties assert that baseline-related shortfalls are very different from the surcharge exemptions granted in D.01-05-064 and D.01-09-059, which were made in the context of "the largest single electric rate increase ever imposed by the Commission" and with AB 1X protection for residential usage up to 130% of baseline. Farm Bureau asserts that the surcharges were instituted to pay for energy procurement costs incurred on behalf of all customers, whereas baseline allowances solely benefit residential customers, and that it would be fair

[28] In D.01-05-064, we allocated the shortfall caused by exempting PG&E's and SCE's residential sales below 130% of baseline and all sales to CARE and medical baseline customers from the 3 cents per kWh surcharge approved in D.01-03-082. The adopted allocation spread the shortfall one-third to the residential class, one-third to commercial customers, and one-third to industrial customers (the "1/3 – 1/3 – 1/3" formula). In D.01-09-059, we allocated SDG&E's residential shortfalls on an equal cents per kWh basis among all non-exempt sales.

and equitable to allocate all baseline-related shortfalls solely to the residential class. CLECA maintains that baseline was created to establish a clear economic incentive for residential customers to use less power and that, except for the surcharge exemptions, the Commission has kept shortfalls due to baseline rates within the residential class. These parties submit that there is no valid reason to shift residential customers' revenue responsibility to other customers.

Parties that oppose allocation of any portion of the baseline-related undercollections outside the residential class are concerned about the potential effect on business customers. SDG&E contends that further increases in what it characterizes as the existing cross-subsidy from business customers to residential customers would worsen the business climate in California leading to job losses. CLECA urges that the Commission ensure that commercial and industrial customers, "who have suffered the brunt of the increases resulting from the energy crisis," not be hit again by shortfalls created by changes in residential rate design. Farm Bureau asserts that the allocation of any of the residential class revenue shortfall to other customer classes would result in desperately needed rate reductions being delayed for non-residential customers. Farm Bureau also argues that collection of the shortfall from only the residential class would be consistent with the Commission's long-standing policy of recovering costs from the customers who cause them.

SDG&E, PG&E, SCE, and ORA oppose TURN's recommendation that generation or commodity overcollections be used to eliminate BBA balances. SDG&E argues that the existence of overcollections in one balancing account, e.g., the PECA, should not prevent recovery of undercollections in another balancing account, e.g., the BBA. SDG&E asserts that the small customers' portion of current commodity overcollections is being used to pay down AB 265 undercollections and that, if some of the PECA revenues were used for another purpose, the recovery of the AB 265 undercollection would be delayed. SDG&E also contends that use of commodity overcollections to pay off baseline shortfalls would result in cross-subsidies among the customer classes.

TURN responds that the Commission regularly requires companies to net overcollections in one balancing account with undercollections in another account, citing SDG&E's own example that a portion of the AB 265 undercollection is being eliminated by transferring overcollections from other balancing accounts. TURN states that it does not oppose the use of true commodity overcollections to repay AB 265 undercollections but that such overcollections should be calculated after netting out SDG&E's BBA balance. TURN asserts that many factors affect the amount of commodity overcollections, including levels of direct access, weather, economic conditions, and changes to baseline quantities. TURN maintains that merging SDG&E's BBA with its PECA would eliminate the fiction of tracking expected surplus revenues that are not actually being collected. The actual surplus could then be used to pay off the AB 265 balance. Regarding SDG&E's concerns about cross-subsidization, TURN submits that if, as it recommends, non-commodity rate components are adjusted to collect all approved non-commodity revenue requirements and commodity rates are reduced by equivalent amounts, the residential class will pay its entire share of these non-commodity costs.

2. Discussion

a. AB 1X Restriction on Electric Rates

As a threshold issue, we address first whether SDG&E's proposal to increase total rates for all of its residential usage would be legally permissible. SDG&E alone among the parties in Phase 2 argues that AB 1X's rate protection for usage up to 130% of baseline applies only to the commodity component of its residential rates.

Water Code § 80110 added by AB 1X provides in part that,

> In no case shall the [C]ommission increase the electricity charges in effect on the date that the act that adds this section becomes effective 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 [DWR] has recovered the costs of power it has procured for the electrical corporation's retail end use customers as provided in this division.

We have consistently interpreted this AB 1X restriction to provide protection for total charges for residential usage up to 130% of baseline, for utilities subject to the provisions of Water Code § 80110. As we explained in the Phase 1 order:

> 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. (D.02-04-026, *mimeo.* at 14.)

More recently, we confirmed that Water Code § 80110 continues to apply following DWR's bond sale and explained that,

> [W]e do not believe that we can legally allocate a bond charge that applies to all non-exempt residential customers without also adopting some offsetting adjustments to ensure that charges do not increase on usage by residential customers up to 130% of baseline. (D.02-10-063 as modified by D.02-12-082, *mimeo.* at 18.)

While AB 1X does not define the "electricity charges" protected by Water Code § 80110, the bill's legislative history clearly supports our conclusion that the term refers to total retail rates. A contemporaneous Senate committee analysis describes the Senate amendment adding Water Code § 80110 to AB 1X as "insulat[ing] residential usage up to 130% of the baseline allowance from any potential rate increase." Other legislative analyses consistently characterize Water Code § 80110 as prohibiting "any future rate increase" or "any potential rate increase" for usage up to 130% of baseline. Similarly, the Governor's press release announcing the signing of AB 1X states that the bill "(p)rohibits any future rate increase for residential customers for usage up to 130 percent of baseline usage." None of these statements are qualified in any respect or indicate that the rate protection is restricted in the manner SDG&E suggests. To the contrary, they support our view that the statutory protection applies to total rates.

Contrary to SDG&E's assertion, the removal from AB 1X of language that would have limited the rate protection to "the electric procurement portion of" electricity charges is not informative of legislative intent. AB 1X was introduced, amended several times, and adopted within a very short time in response to the emergency conditions California was facing. The phrase "electric procurement portion of" was inserted to qualify "electricity charges" on January 30, 2001 and was removed by a subsequent amendment the very next day. Committee analysis of the amendment removing the phrase explained that, "This bill contains a provision which insulates residential usage up to 130% of the baseline allowance from any potential rate increase. Language taken in the committee last night inadvertently modified and confused that provision." Based on the committee explanation and considering the haste of the amendment and its retraction, we find that the phrase's brief existence should be given no weight in an analysis of legislative intent.

When the Legislature was considering AB 1X, it was clearly aware of the fact that electric rates have several components. AB 1X itself added statutory sections that reference "component rates" (Water Code § 80114) and the "generation related component of the retail rate" (§ 3605). AB 1890 mandated the separation of electric rates into individual rate components (§ 368(b)). AB 265 and AB 1X 43 imposed restrictions (§ 332.1(b) and (f)) on "the energy component of electric bills" for SDG&E. We find the lack of comparable qualifying language in Water Code § 80110 to be a further indication that the intent of this section is to prohibit any rate changes that would increase total rates for residential usage up to 130% of baseline amounts.

SDG&E's contention that in D.01-09-059 we interpreted the AB 1X limitation to apply only to the commodity rate component is incorrect. In that decision, we were only considering changes to SDG&E's commodity rates. Our statement that SDG&E's usage was capped at 6.5 cents per kWh was correct in the context of that decision. SDG&E's interpretation would contradict our unqualified statement elsewhere in the same decision that "Water Code § 80110 prohibits rate increases for residential customers for usage up to 130% of baseline allowances in existence when AB1X was enacted." (D.01-09-059, *mimeo.* at 28.)

We conclude that SDG&E's proposal to increase its distribution and CTC rate components for all residential usage without offsetting decreases in other rate components for usage up to 130% of baseline is counter to AB 1X. In analyzing SDG&E's proposal, it has come to our attention that SDG&E has implemented several uncontested increases in non-commodity rate components, with the effect that its total rates for residential usage up to 130% of baseline now exceed the total rates for such usage when AB 1X became effective on February 1, 2001. While we allowed those component rate increases to become effective, we conclude based on the above analysis that SDG&E's total rates for residential usage up to 130% of baseline amounts currently do not comply with AB 1X.

Any electric company that takes power from DWR or is otherwise bound by the provisions of Water Code § 80110 and whose total rates for residential usage up to 130% of baseline are higher than when AB 1X was enacted should adjust its rates prospectively to comply with this statute, as we have interpreted it previously and affirm in this decision. Each utility bound by Water Code § 80110 should make a compliance advice letter filing within 30 days of the effective date of this order informing us regarding its compliance with the rate protection provision of this statute and, if necessary, adjusting its rates to bring them into compliance. As discussed below, we agree with SDG&E and other parties that rate components other than the commodity or generation component should be set to recover their authorized revenue requirements. As a result, any utility whose rates are not in compliance with Water Code § 80110 should reduce its generation or commodity rates for usage up to 130% of baseline so that total rates for such usage are no higher than they were when AB 1X became effective.

b. Treatment of Electric Undercollections

We are reluctant to raise any customer's total electric rates at this time in light of the additional hardships that such rate increases could cause. California is still experiencing the aftermath of the extraordinarily high and volatile wholesale electric prices that reigned in 2000-2001. While wholesale prices have declined and stabilized to some extent, we are striving to maintain the most reasonable retail prices possible while returning the utilities to financial health. Although electric rates were reduced somewhat for SCE with the recovery of its PROACT balance, upper tier rates are still at levels never seen in California before the energy crisis.

The first general rate proceedings to return the larger utilities to cost-of-service ratemaking are underway. New electric revenue requirements will be established in the pending general rate case proceedings. While SCE's PROACT balance has been recovered, other generation and procurement costs remain in various balancing accounts. Similar to our findings in D.02-12-064 for SDG&E, it may be possible to provide revenue neutrality for the changes adopted in this proceeding without an increase in total electric rates. In light of these conditions, we do not find that it would be reasonable to raise total electric rates at this time.

Several parties propose that non-generation rate components be increased to maintain the revenue requirements adopted previously for these components, with equal and offsetting adjustments to generation rates (or commodity rates for SDG&E) so that total rates are unchanged. The full unbundling of rates is beneficial because it conveys the underlying cost elements of electricity usage. We agree with and adopt these parties' proposal, which is consistent with our action in other instances, e.g., D.02-10-019, in which generation rates have been set residually to maintain total rate levels.

Because the shortfalls resulting from the large household program and the treatment of residential common area accounts adopted today are not fully known, we provide that their impacts will be accrued in the utilities' BBAs and CABAs for later recovery. However, the revenue impacts of baseline modifications to exclude seasonal residence usage can be determined, so it is appropriate to adjust non-generation electric rates concurrently with the baseline changes in order to maintain revenue neutrality for these rate components, with offsetting adjustments to generation rates so that total rates are unchanged. Generation revenue losses due to the baseline changes should be accrued in the utilities' BBAs for later recovery.

Each company should adjust its non-generation rates to reflect the on-going effects of previously authorized changes that are currently being accrued in its BBA or (for PG&E) CABA, and to amortize existing undercollections of non-generation revenue requirements, with offsetting reductions in generation rates so that total rates are unchanged. The utilities should file advice letters within 30 days with this effect. Additional rate adjustments and termination of the baseline-related balancing accounts may then be made in the general rate cases or other appropriate proceedings.

We will defer issues regarding allocation of generation undercollections and rate design to collect such shortfalls to each company's general rate case or other appropriate proceeding, e.g., the gas Biennial Cost Allocation Proceeding (BCAP) for SDG&E and SoCalGas, and SDG&E's electric rate design window proceeding. In those proceedings, we can examine these issues in a broader context, both as to theory and effect, and whether mitigation measures are needed to avoid excessive bill increases for any customer class or segment. While we may find it necessary to raise total rates for some customers following these comprehensive reviews, at least we will be confident that the rate increases are really needed and that they are being implemented in a way that does not threaten the affordability of electric bills. If schedules will not permit consideration of the recovery of the generation undercollections in the proceedings that are already underway, consideration of this issue at a later date will have the benefit of the comprehensive analyses that will have transpired in those proceedings.

Several parties argue that generation undercollections arising from this proceeding should be recovered from the residential class. These parties draw a distinction between baseline-related shortfalls and the revenue shortfalls due to surcharge exemptions for CARE and medical baseline customers and for residential usage up to 130% of baseline. However, the two types of shortfalls are not unrelated. The need for the rate protections adopted in this proceeding arises in large part due to the effect of the surcharges on vulnerable groups of residential customers whose needs were not addressed by the existing surcharge exemptions. Our goal of allocating costs and designing rates on the basis of cost causation must be tempered by equity and affordability principles, as mandated by § 739(c). Further, as we have recognized previously, customers did not cause the recent exorbitant wholesale prices, which bore no relationship to the cost of production. It would be appropriate to consider recovery of generation undercollections after there has been an opportunity to review current costs and to consider cost allocation and rate design issues in a more comprehensive fashion.

Until that time, it is prudent to maintain the generation portions of the baseline-related balancing accounts. Transferring this portion of the account balances to other accounts, as TURN suggests, would lose the information regarding the source of these undercollections. We are cognizant of the dispute regarding whether these amounts actually constitute shortfalls when there are overcollections in other generation accounts, and our characterization of these amounts as shortfalls or undercollections should not be viewed as prejudging this issue or the disposition of these amounts. While, as pointed out by TURN, many factors affect the amount of generation overcollections or undercollections, we believe that this information should be retained until our comprehensive assessments in the general rate cases or other appropriate proceedings.

B. Natural Gas Undercollections

1. Positions of the Parties

PG&E proposes to adjust residential gas rates using rate design methods adopted in its 2000 BCAP decision (D.01-11-001). Because the Phase 1 decision ordered decreases as well as increases in gas baseline quantities, PG&E reports that gas undercollections are relatively small, approximately $6 million. PG&E estimates that the total revenue increase to amortize the balance in the BBA and to prevent further undercollections would be about $12 million, with residential rate increases of less than 1%. PG&E asks that the rate change to correct gas rates for on-going shortfalls be made soon after a Phase 2 decision. PG&E states that it would require two months after that change is made to determine the final BBA balance, and proposes to change rates to amortize the BBA balance when seasonal changes to baseline quantities are made or in combination with other rate changes. PG&E agrees with Southwest that a 12-month amortization of the BBA balance is reasonable.

SDG&E and SoCalGas propose to increase residential gas rates using rate design methods adopted in their most recent BCAP decision (D.00-04-060). They anticipate that rate increases of about $136,000 (about 0.1%) for SDG&E and about $2.6 million (about 0.2%) for SoCalGas will be needed to incorporate the baseline changes in ongoing rates and amortize the BBA balances.

Southwest anticipated that new rates resulting from its pending general rate case (A.02-02-012) would become effective on January 1, 2003 and would reflect its updated baseline quantities so that there would be no ongoing shortfalls. Southwest proposes that its BBA balance, which it estimates to be about $520,000, be amortized over 12 months. Southwest proposes an equal cents per therm surcharge applicable to all residential usage, which it estimates would be $0.00870 per therm in its Southern California Division and $0.00027 in its Northern California Division. Southwest states that this approach is equitable and can be applied easily to all volumes.

TURN states that, because there are no gas surcharges or statutory protections for gas rates, it does not oppose the recovery of gas baseline-related shortfalls from residential customers. TURN did not present testimony on gas rate design but recommends in its opening brief that any gas rate increases be limited to Tier 2 consumption with no recovery from CARE or medical baseline customers. TURN argues that there is no good rationale for making smaller gas users pay more, and receive no benefit, from the updating of gas baseline quantities. TURN states that its proposal would also provide valuable conservation signals. TURN points to the explicit identification in the baseline statute of the need to "avoid excessive rate increases for residential customers" and "the principle that electricity and gas services are necessities, for which a low affordable rate is desirable," as support for its proposal.

SDG&E and SoCalGas respond that TURN's proposal is not based on record evidence and ignores the fact that the utilities' approach reflects currently approved rate design methods. SoCalGas and SDG&E recommend that, if the Commission deviates from current rate design methods, the rate changes should be adopted only on an experimental basis pending their next BCAP, on the basis that the BCAP, not a baseline proceeding, is the appropriate forum in which to determine gas rate design methodology.

Southwest asserts TURN's proposal would have a significant impact in Southwest's Southern California Division, which has a much greater baseline shortfall than the Northern California Division and where approximately 21% of residential customers are CARE customers.

2. Discussion

Conditions are markedly different for gas compared to electricity rates, with no surcharges and no statutory restrictions. As discussed earlier in this decision, we do not find that rate relief is needed to maintain the affordability of gas rates for any identified group of residential customers. For these reasons, we see no need to deviate from existing ratemaking practices for recovery of shortfalls due to gas baseline-related changes. These shortfalls should be recovered from the residential class, with rate changes based on previously adopted gas rate design principles to the extent feasible.

We authorize PG&E, SDG&E, and SoCalGas to use the rate design methodologies adopted in their most recent BCAPs to adjust residential gas rates to reflect baseline-related shortfalls on an on-going basis and to amortize gas BBA balances over 12 months.

Because Southwest's general rate case has not concluded, it is reasonable to allow Southwest to adjust gas rates to reflect the on-going effect of baseline adjustments and to amortize its BBA. Lacking an up-to-date gas rate design for Southwest, we find that its proposal to adjust rates on an equal-cents-per-therm basis is reasonable.

Several small gas utilities did not participate in this proceeding. They may adjust their residential rates to provide revenue neutrality for the adopted baseline-related changes in a manner consistent with policies adopted in their most recent gas rate design proceedings or, if that is not feasible, on an equal cents-per-therm basis.

Gas revenue neutrality should be established for the on-going effect of gas baseline-related changes through rate changes effective at the beginning of the summer 2004 baseline period. Amortization of gas BBA balances should commence at the time of the first seasonal baseline change or other change in residential gas rates after the final BBA balance is known, no later than the beginning of the 2004-2005 winter baseline period.

VI. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with § 311(d) and Rule 77.1 of the Commission Rules of Practice and Procedure. Comments were filed on _________, and reply comments were filed on __________.

VII. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Charlotte F. TerKeurst is the assigned ALJ in this proceeding.

VIII. Rehearing and Judicial Review

This decision construes, applies, implements, and interprets the provisions of AB 1X (Chapter 4 of the Statutes of 2001-2002 First Extraordinary Session). Therefore, § 1731(c) (applications for rehearing are due within 10 days after the date of issuance of the order or decision) and § 1768 (procedures applicable to judicial review) are applicable.

Findings of Fact

1. Section 1(e) of AB 2443, legislative analyses contemporaneous with AB 2443, and subsequent legislative actions adding additional medical conditions to § 739(b) indicate a legislative intent that the Commission, in

developing the baseline program, not consider end uses other than those specified in § 739(b).

2. The legislative history of AB 2443 describes that AB 2443 would simplify the lifeline program, with reference to elimination of end uses.

3. The legislative history of AB 2443 establishes that the Legislature was aware of concerns regarding the baseline treatment of large households, households with senior citizens, and seasonal residences when it passed AB 2443.

4. The fact that in AB 2443 the Legislature provided general direction that we take into account certain factors in the baseline program, in contrast to the explicit restriction on consideration of end uses, and the legislative history indicate a legislative intent that the Commission retain authority to take into account factors, except end uses, not specified in § 739(a) and (d)(1) in developing the baseline program.

5. The provision in § 739(b) for a standard limited allowance in addition to a customer's baseline quantity is very specific and is very narrowly drawn.

6. The non-baseline tiers of the residential rate design are not part of the baseline program.

7. Because the burden to individual customers of the current steeply tiered electric rate design depends on the amount by which the customers' usage exceeds baseline amounts, it is appropriate to consider in this proceeding rate design proposals to ameliorate the impacts of the rate design on vulnerable customers.

8. The direction in §739(c)(1) to avoid excessive rate increases and the principle in § 739(c)(2) that electricity and gas services should be affordable continue to apply and encompass all residential customers.

9. The principles of affordability and conservation established by § 739(c)(2) provide complementary underpinnings of a sound rate design.

10. Because baseline quantities are set at the maximum percentages of average use specified in § 739(d)(1), the creation of a separate increased baseline quantity for a subgroup of customers implies that the existing baseline quantity would exceed the maximum percentage of average use specified in § 739(d)(1) for the remaining customers to whom it is applied.

11. Water Code § 80110, enacted as part of AB 1X effective February 1, 2001, prohibits the Commission from increasing electricity charges for residential usage up to 130% of baseline quantities for utilities that take power from DWR or are otherwise bound by its provisions.

12. Water Code § 80110 prevents baseline quantities from being decreased for customers of utilities that take power from DWR or are otherwise bound by its provisions, as explained in D.02-04-026.

13. In harmonizing § 739(d)(1) and Water Code § 80110, it is reasonable to give great weight to the goal of § 739 that rates be affordable, even if the specific numerical requirements in § 739(d)(1) may not always be met because of conflicts with AB 1X.

14. It is reasonable to evaluate the Phase 2 proposals using the criteria set forth in Section III.B, in addition to the rate design principles in § 739(c).

15. Large households are unlikely to be able to conserve as much as other households as a means of maintaining affordable energy bills.

16. The average electricity use of households with three or more occupants is higher than the average usage of smaller households that are similar in other respects, with usage typically exceeding 130% of baseline quantities year-round and with higher use in peak summer months.

17. Approximately 380 customers have written or otherwise contacted the Commission regarding this proceeding. Of the customers who contacted to the Commission or spoke at public participation hearings in this proceeding, almost all complained about electric rates, particularly upper tier charges, with few customers voicing concerns about gas affordability.

18. Lower-middle income large households served by PG&E, SCE, and SDG&E have a need for electric rate relief in order to ensure the affordability of their reasonable energy needs.

19. The potential bill savings due to TURN's Tier 3 proposal for lower-middle income large households are substantial enough to help ensure the affordability of these customers' reasonable energy needs.

20. TURN's Tier 3 proposal for lower-middle income large households is reasonably targeted in a manner that provides effective rate relief while avoiding unnecessary revenue losses.

21. As explained in Section III.C.2.a, TURN's Tier 3 proposal for lower-middle income large households is reasonable because it is consistent with the rate design principles in § 739(c) and the additional evaluation criteria we have established.

22. The following procedures regarding implementation and administration of the adopted large household program are reasonable, as explained in Section III.C.2.a:

a. Use of CARE's definitions, criteria, and verification procedures regarding household size and income.

b. Notification to all residential customers through annual bill inserts.

c. Use of customer service representatives to provide customers with information regarding the large household program

(i) whenever service is initiated, (ii) upon customer request, and (iii) whenever a customer contact is related to affordability.

d. Modification of the utilities' web sites and their automated customer service prompts and scripts so that customers may obtain program information through these means comparable to the information available regarding other tariff options and assistance programs.

e. Additional outreach that can undertaken at little cost.

23. A workshop held by Energy Division is needed to finalize implementation and administrative procedures for the adopted large household program.

24. Based on the utilities' estimates of timeframes needed to implement the Phase 2 proposals, it is reasonable to require PG&E, SCE, and SDG&E to implement the adopted large household program for all customers within 20 weeks of the effective date of this order, with the first qualified customers who respond to bill inserts or otherwise request the program receiving reduced rates at least 4 weeks earlier than that.

25. It is reasonable to allow the utilities to recover reasonably booked costs and revenue losses of the adopted large household program through their BBAs.

26. The PROACT settlement adopted in D.03-07-029 provided for the elimination of SCE's BBA.

27. The two-tier gas rate structure, with upper/lower tier differentials that currently do not exceed 25%, has less potential for rate shock than does the multi-tiered electric rate design.

28. Gas usage is less affected than electricity usage by either household size or income.

29. A clear need has not been established for additional residential gas rate relief.

30. The bill savings that would result if baseline amounts were increased for lower-middle income large households would average about $1 per month for SDG&E and SoCalGas customers, and administrative costs could exceed the bill reductions.

31. TURN's large household proposal is preferable to baseline adjustments for large households, as proposed by LIF/Greenlining, because it provides more meaningful rate relief to lower-middle income large households and is more cost-effective.

32. It is reasonable to exclude seasonal residences from electricity and gas baseline calculations in climate zones where their inclusion would cause a material reduction in baseline quantities, so that baseline quantities more accurately reflect the average usage of permanent residential customers.

33. A 3% effect on baseline quantities is a reasonable threshold for the exclusion of seasonal usage from baseline calculations, so that baseline quantities more accurately reflect the average usage of permanent residential customers.

34. It is reasonable to apply the adopted materiality threshold for the exclusion of seasonal usage separately for electricity and for gas usage, for the summer and winter seasons, and for each climate zone.

35. PG&E's proxy methodology excludes the effects of seasonal homes from baseline calculations in a manner that is reasonably accurate and cost-effective.

36. For utilities that perform them, the Residential Appliance Saturation Surveys (RASS) provide a reasonable means for determining the percentage of customers who are seasonal residents in each climate zone for the purpose of excluding their usage from baseline calculations.

37. It is reasonable to allow the utilities to recover revenue losses that result if baseline quantities are adjusted to exclude the usage of seasonal residences, with

gas rates and non-generation electric rates adjusted concurrently with the baseline changes in order to maintain revenue neutrality for these rates, with offsetting adjustments to non-generation rates so that total electric rates are unchanged, and with generation revenue losses accrued in the utilities' BBAs.

38. Allowing seasonal residents to receive baseline benefits may have a significant impact on the bills of permanent residents served by a small utility in an area with a high proportion of seasonal residences, while the effect may be *de minimis* for larger utilities' permanent residents.

39. It is reasonable to assess whether baseline quantities should be withheld from seasonal residences separately for each utility, taking into account the impact on permanent residents' bills, related administrative costs, and the complexities of identifying seasonal residences in an equitable manner for purposes of withholding baseline quantities.

40. In D.96-04-050, the Commission required that SCE not provide baseline quantities to seasonal residences in climate Zones 15 and 16. SCE did not implement this directive because of the rate freeze in AB 1890, which became law soon after D.96-04-050 was issued.

41. It is reasonable for SCE to not implement the policy adopted in D.96-04-050 that it withhold baseline quantities from seasonal residences in climate Zones 15 and 16, pending further review in its next general rate case.

42. In D.01-09-059, the Commission adopted a five-tier residential electric rate structure for SDG&E, with the tier sizes pegged to customers' baseline allowances, and recognized that this structure would result in significant bill increases for some residential common area accounts.

43. Many of SDG&E's higher-usage residential common area electric accounts would benefit from switching to a commercial schedule.

44. A tiered rate structure is not well suited for application to common area electric accounts, since tier sizes are based on the average usage of average households and do not reflect common area usage patterns.

45. Because of the identified shortcomings with application of a multi-tiered rate structure to common area usage, it is reasonable to require that utilities provide existing residential common area electric customers an option to switch to commercial schedules, under terms comparable to the provisions found reasonable and adopted for PG&E in D.03-01-037.

46. It is reasonable to allow the utilities to recover through CABAs reasonably booked revenue losses due to residential common area accounts switching to commercial schedules.

47. The surcharges approved for PG&E and SCE in D.01-03-082, with the revenues to be recovered through the rate design adopted in D.01-05-064, were to be applied only to the utilities' power purchases, subject to refund. In D.02-11-026, the Commission changed this restriction so that surcharge revenues may be applied to returning each utility to financial health, in addition to funding power purchases.

48. Because of their nature, adoption of the surcharges in D.01-03-082 and the implementing rate design in D.01-05-064 did not constitute general ratemaking.

49. A refund such as WCA proposes would not disallow the recovery of costs previously approved through general ratemaking.

50. Not all proceedings classified as ratemaking pursuant to §1701.1 and Rules 5 and 6.1 undertake general ratemaking.

51. SDG&E proposes to increase its distribution and CTC electric rate components for all residential usage without offsetting decreases in other electric rate components.

52. Legislative analyses characterize Water Code § 80110 as prohibiting "any future rate increase" or "any potential rate increase" for electric usage up to 130% of baseline, and the Governor's press release announcing the signing of AB 1X states that the bill "(p)rohibits any future rate increase for residential customers for usage up to 130 percent of baseline usage."

53. Based on a committee explanation of the Senate amendment inserting the term "the electric procurement portion of" to qualify "electricity charges" in Water Code § 80110 and its hasty retraction, the amendment does not elucidate legislative intent regarding the meaning of "electricity charges" in the statute.

54. The Legislature was aware of the fact that electric rates have several components when it was considering AB 1X, with AB 1X itself adding statutory sections that reference "component rates" and the "generation related component of the retail rate."

55. Based on the legislative history described in the preceding four Findings of Fact, it is reasonable to interpret the term "electricity charges" in Water Code § 80110 as referring to total retail rates rather than a component of such rates.

56. SDG&E has implemented several uncontested increases in non-commodity rate components, with the effect that its total rates for residential usage up to 130% of baseline now exceed the total rates for such usage when AB 1X became effective.

57. It is reasonable to require each electric utility that takes power from DWR or is otherwise bound by Water Code § 80110 and whose total rates for residential usage up to 130% of baseline are higher than when AB 1X was enacted to adjust its rates prospectively to comply with this statute.

58. In D.02-04-026, the Commission authorized the utilities to establish BBAs to record and recover revenue losses and certain costs resulting from that decision and deferred cost allocation issues to Phase 2 of this proceeding.

59. In D.03-01-037, the Commission authorized PG&E to establish a CABA to record and recover revenue shortfalls due to the adopted common area settlement and deferred allocation and cost recovery issues to this order on remaining Phase 2 issues.

60. Although electric rates have been reduced somewhat for SCE with the recovery of its PROACT balance, upper tier rates are still at levels never seen in California before the energy crisis.

61. The first general rate proceedings to return the larger utilities to cost-of-service ratemaking are underway, and new electric revenue requirements will be established in those proceedings.

62. Because current electric rates are extraordinarily high and because it may be possible to provide revenue neutrality for the changes adopted in this proceeding without an increase in total electric rates, it would not be reasonable to raise total electric rates at this time.

63. The full unbundling of electricity rates is beneficial because it conveys the underlying cost elements of electricity usage.

64. It is reasonable for electric utilities to adjust non-generation rates to reflect the on-going effects of changes currently being accrued in their BBAs or (for PG&E) CABA and to amortize undercollections of non-generation revenue requirements, with offsetting reductions in generation rates, so that the revenue requirements adopted previously for non-generation components are maintained and total rates are unchanged.

65. It is reasonable to defer issues regarding allocation of generation undercollections and rate design to collect such shortfalls to each utility's general rate case or other appropriate proceeding, so that the Commission may examine these issues in a broader context.

66. Transferring the generation portion of baseline-related balancing accounts to other accounts would lose the information regarding the source of these undercollections.

67. It is reasonable to maintain the generation portions of each electric utility's baseline-related balancing accounts until a comprehensive assessment of costs, cost allocation, and rate design issues is undertaken in its general rate case or other appropriate proceeding.

68. It is reasonable to recover shortfalls due to gas baseline-related changes adopted in this proceeding from the residential class, with rate changes based on previously adopted gas rate design principles to the extent feasible.

Conclusions of Law

1. AB 2443 prohibits the Commission, in developing the baseline program, from considering end uses other than those specified in § 739(b).

2. Section 739 does not restrict our ability in establishing and applying baseline quantities to take into account factors, except for end uses, in addition to those specified in § 739(a) and (d)(1). Thus, the Commission may consider factors such as whether a residence is seasonal or permanent, household size, and income in establishing the baseline program.

3. The Commission may not make the standard limited allowance available to, or create additional standard limited allowances for, customers not specified in § 739(b).

4. Statutory requirements for the baseline program do not apply to the non-baseline tiers of the residential rate design.

5. Because the principle in § 739(c)(2) that electricity and gas services should be affordable encompasses all residential customers, the residential rate design may consider customers' financial situation in other ways in addition to the CARE program.

6. Because the principles of affordability and conservation established by Section § 739(c)(2) are complementary, we may consider proposals that advance the affordability of basic energy needs even if they do not improve conservation.

7. Based on the harmonization of § 739(d)(1) and Water Code § 80110, we may consider proposals that increase baseline quantities for a subgroup of vulnerable residential customers even if baseline decreases for other customers needed to comply with § 739(d)(1) are not permissible due to a conflict with Water Code § 80110.

8. TURN's Tier 3 lower-middle income large household program should be adopted because it is consistent with the rate design principles in § 739(c), will meet an identified need for rate relief in an effective manner consistent with the evaluation criteria we have established, and is preferable to baseline adjustments for large households, as proposed by LIF/Greenlining.

9. The procedures regarding implementation and administration of the adopted large household program described in Finding of Fact 22 should be adopted.

10. Energy Division should hold a workshop within 30 days of the effective date of this order, in order to finalize implementation and administrative procedures for the adopted large household program.

11. PG&E, SCE, and SDG&E should implement the adopted large household program for all customers within 20 weeks of the effective date of this order, with the first qualified customers who respond to the bill inserts or otherwise request the program receiving reduced rates at least 4 weeks earlier than that.

12. PG&E, SCE, and SDG&E should be authorized to recover through their BBAs reasonably booked costs and revenue losses of the adopted large household program.

13. Recognizing that the PROACT settlement adopted in D.03-07-029 provided for the elimination of SCE's BBA, SCE should be authorized to use its existing BBA or create a new BBA for the purposes of this order.

14. Each electric or gas utility should exclude seasonal residences from baseline calculations in climate zones where their inclusion would cause a reduction in baseline quantities of 3% or more, with this materiality threshold applied separately for electricity and for gas usage, for the summer and winter seasons, and for each climate zone.

15. If the materiality threshold is met, changes to baseline quantities to reflect the exclusion of seasonal residences should be effective at the beginning of the summer 2004 baseline period.

16. Each utility should be allowed to use PG&E's proxy methodology to exclude the effects of seasonal homes from baseline calculations.

17. Each utility should maintain a reasonable method for determining the percentage of customers who are seasonal residents in each climate zone for the purpose of excluding their usage from baseline calculations, and should be allowed to gather such information through its RASS or similar customer surveys.

18. The utilities should be authorized to recover revenue losses that result if baseline quantities are adjusted to exclude the usage of seasonal residences, with gas rates and non-generation electric rates adjusted concurrently with the baseline changes in order to maintain revenue neutrality for these rates, with offsetting adjustments to non-generation rates so that total electric rates are unchanged, and with generation revenue losses accrued in the utilities' BBAs.

19. Each utility should submit in its next general rate proceeding or other appropriate proceeding an assessment of whether it should deny baseline quantities to seasonal residences, as described in Section III.E.2 of this order.

20. Pending further review in its next general rate case, SCE should not implement the policy adopted in D.96-04-050 that it withhold baseline quantities from seasonal residences in climate Zones 15 and 16.

21. Section 739 does not constrain the Commission from requiring that utilities allow common area electric accounts to transfer voluntarily from a residential schedule to a commercial schedule.

22. The voluntary transfer of electric common area accounts from residential to commercial schedules would not violate AB 1X.

23. Each electric utility that currently serves any common area accounts through residential schedules should allow its residential common area customers the option to switch to commercial schedules, under terms comparable to the provisions found reasonable and adopted for PG&E in D.03-01-037 and within 45 days of the effective date of this order.

24. Each electric utility that allows its residential common area customers the option to switch to commercial schedules should be authorized to establish a CABA to recover its reasonably booked revenue losses resulting from residential common area accounts that switch to commercial tariffs.

25. An adjustment to rates that does not involve general ratemaking may have a retroactive effect without violating the prohibition on retroactive ratemaking in § 728.

26. Because the surcharges adopted in D.01-03-082 were not the result of general ratemaking, a refund such as WCA requests would not be prohibited by § 728.

27. Because the relief which WCA requests is not prohibited under § 728, PG&E's motion to strike WCA's related testimony should be denied.

28. Based on an analysis of the legislative history of AB 1X, the rate protection in Water Code § 80110 should be interpreted to apply to total retail rates for residential electricity usage up to 130% of baseline amounts in effect when AB 1X became effective, for utilities that take power from DWR or are otherwise bound by its provisions.

29. SDG&E's proposal to increase its distribution and CTC rate components for all residential usage without offsetting decreases in other rate components for usage up to 130% of baseline is counter to Water Code § 80110 added by AB 1X.

30. Because SDG&E's total rates for residential usage up to 130% of baseline currently exceed the total rates for such usage when AB 1X became effective, SDG&E's total rates for residential usage up to 130% of baseline do not comply with AB 1X.

31. Each electric utility that takes power from DWR or is otherwise bound by Water Code § 80110 and whose total rates for residential usage up to 130% of baseline are higher than when AB 1X was enacted should adjust its generation or commodity rates for residential usage up to 130% of baseline amounts, effective within 45 days of the effective date of this order, to comply with AB 1X as we have interpreted it previously and affirm in this decision.

32. Each electric utility should be required to adjust its non-generation rates to reflect the on-going effect of changes currently being accrued in its BBA or (for PG&E) CABA and to amortize existing undercollections of non-generation revenue requirements, with offsetting reductions in generation rates, so that revenue requirements adopted previously for non-generation rate components are maintained and total rates are unchanged.

33. Each electric utility should maintain the generation portion of its baseline-related balancing accounts until a comprehensive assessment of costs, cost allocation, and rate design issues is undertaken in its general rate case or other appropriate proceeding.

34. Shortfalls due to gas baseline-related changes should be recovered from the residential class, with rate changes based on previously adopted gas rate design principles to the extent feasible.

35. Because this decision construes, applies, implements, and interprets the provisions of AB 1X (Chapter 4 of the Statutes of 2001-2002 First Extraordinary Session), §1731(c) (applications for rehearing are due within 10 days after the date of issuance of the order or decision) and § 1768 (procedures applicable to judicial review) are applicable.

36. This order should be effective today, so that the modifications adopted herein may be implemented expeditiously.

FINAL ORDER

IT IS ORDERED that:

1. The determinations made in this order apply to all Commission-regulated gas or electric utilities.

2. The Tier 3 large household program proposed by The Utility Reform Network (TURN) is adopted, as described in this order and incorporating the procedures described in Finding of Fact 22, for Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E).

3. Energy Division shall hold a workshop within 30 days of the effective date of this order, in order to finalize implementation and administrative procedures for the adopted large household program.

4. PG&E, SCE, and SDG&E shall fully implement the adopted large household program for all customers within 20 weeks of the effective date of this order.

5. PG&E, SCE, and SDG&E shall each file and serve a compliance advice letter within 60 days of the effective date of this order to implement the large household program, with tariff modifications to become effective no later than 16 weeks after the effective date of this order. The advice letters shall become effective after appropriate review by Energy Division.

6. PG&E, SCE, and SDG&E shall each record its program costs and related revenue shortfalls resulting from the large household program in its Baseline Balancing Account (BBA).

7. In recognition of the provisions in Decision (D.) 03-07-029 regarding its BBA, SCE is authorized to use its existing BBA or create a new BBA for the purposes of this order.

8. Each electric or gas utility shall exclude seasonal residences from baseline calculations in climate zones where their inclusion would cause a reduction in baseline quantities of 3% or more, with this materiality threshold applied separately for electricity and for gas usage, for the summer and winter seasons, and for each climate zone.

9. Each electric or gas utility shall maintain a reasonable method for determining the percentage of customers who are seasonal residents in each climate zone, and may gather such information through its RASS or similar customer surveys.

10. Each electric or gas utility shall file and serve a compliance advice letter within 60 days of the effective date of this order to implement the adopted exclusion of seasonal residences from baseline calculations. Each utility shall explain and document in its advice letter whether the adopted 3% materiality threshold is met in each climate zone during each season. If the adopted materiality threshold is met, the advice letter shall include any tariff modifications needed to adjust baseline quantities appropriately, to be effective at the beginning of the summer 2004 baseline period. Each utility may use PG&E's proxy methodology and shall explain the methodology it uses to exclude the usage of seasonal residences from baseline calculations, with supporting documentation to allow review of the reasonableness of the methodology. The advice letters shall become effective after appropriate review by Energy Division.

11. If the advice letter of a gas utility filed as provided in Ordering Paragraph 10 adjusts baseline quantities, its concurrent advice letter filed as provided in Ordering Paragraph 27 shall reflect the expected revenue losses and shall include tariff modifications with gas rate adjustments to maintain revenue neutrality.

12. If the advice letter of an electric utility filed as provided in Ordering Paragraph 10 adjusts baseline quantities, the accompanying tariff modifications shall adjust its non-generation or non-commodity rates to maintain revenue neutrality for those rate components and shall adjust its generation or commodity rates so that total rates are unchanged, to be effective at the beginning of the summer 2004 baseline period.

13. Each electric utility shall record in its BBA any generation or commodity revenue shortfalls resulting from the exclusion of seasonal residences from baseline calculations.

14. Each electric or gas utility shall submit in its next general rate proceeding or other appropriate proceeding an assessment of whether it should deny baseline quantities to seasonal residences. Its assessment shall include the proportion of seasonal residences in each climate zone, the effect a baseline exclusion has or would have on permanent residents' bills, and actual or projected costs of administering an equitable program of withholding baseline quantities from seasonal residences. The utility shall describe an appropriate and equitable method for identifying seasonal residences for purposes of withholding baseline quantities, and shall assess an alternative approach in which separate, lower baseline allowances would be provided to seasonal residences.

15. Pending further review in its next general rate case, SCE shall not implement the policy adopted in D.96-04-050 that it withhold baseline quantities from seasonal residences in climate Zones 15 and 16.

16. Each electric utility, in addition to PG&E, that currently serves any common area accounts through residential tariffs shall allow such accounts the

option to switch to commercial schedules, under terms comparable to the provisions found reasonable and adopted for PG&E in D.03-01-037.

17. Each electric utility other than PG&E that currently serves any common area accounts through residential tariffs shall file and serve a compliance advice letter within 30 days of the effective date of this order, with tariff modifications to become effective within 45 days of the effective date of this order, to implement the adopted treatment of residential common area accounts. Each such utility shall establish a Common Area Balancing Account (CABA) to record any revenue undercollection or overcollection resulting from residential common area accounts that switch to commercial tariffs. The advice letters shall become effective after appropriate review by Energy Division.

18. PG&E's motion to strike the testimony of Watergate Community Association regarding its request for common area-related refunds is denied.

19. Each electric company that takes power from Department of Water Resources (DWR) or is otherwise bound by the provisions of Water Code § 80110 and whose total rates for residential usage up to 130% of baseline are higher than when AB 1X was enacted on February 1, 2001 shall adjust its rates to comply with this statute.

20. Each electric utility that takes power from DWR or is otherwise bound by Water Code § 80110 shall file and serve a compliance advice letter filing within 30 days of the effective date of this order demonstrating that its total residential rates for usage up to 130% of baseline quantities are no higher than they were when AB 1X became effective. If total residential rates are not in compliance with Water Code § 80110, the advice letter filing shall contain tariff modifications, effective within 45 days of the effective date of this order, to reduce the utility's generation or commodity rates for usage up to 130% of

baseline so that total rates for such usage are no higher than they were when AB 1X became effective.

21. Cost and revenue shortfalls due to baseline and rate design changes adopted in this proceeding are recoverable to the extent provided by this order.

22. Each electric utility shall adjust its non-generation or non-commodity rates to reflect the on-going effect of changes currently being accrued in its BBA and (for PG&E only) CABA and to amortize existing undercollections of non-generation or non-commodity revenue requirements so that the revenue requirements adopted for non-generation or non-commodity rate components are maintained, and shall adjust its generation or commodity rates so that total rates are unchanged.

23. Each electric utility shall file and serve a compliance advice letter within 30 days of the effective date of this order, with tariff modifications to become effective within 45 days of the effective date of this order, to adjust its non-generation or non-commodity rates to reflect the on-going effect of changes currently being accrued in its BBA and (for PG&E only) CABA and to amortize over 12 months its existing undercollections of non-generation or non-commodity revenue requirements. Generation or commodity rates shall be adjusted so that total rates are unchanged. The advice letters shall become effective after appropriate review by Energy Division.

24. Each electric utility shall maintain the generation or commodity portion of its baseline-related balancing accounts until a comprehensive assessment of costs, cost allocation, and rate design issues is undertaken in its general rate case or other appropriate proceeding.

25. Additional electric rate adjustments to maintain revenue neutrality and to terminate the baseline-related balancing accounts shall be made in utilities' general rate cases or other appropriate proceedings.

26. Each gas utility is authorized to recover shortfalls due to gas baseline-related changes from the residential class, with rate changes based on previously adopted gas rate design principles to the extent feasible.

27. Each gas utility shall file and serve a compliance advice letter within 60 days of the effective date of this order, with tariff modifications to become effective at the beginning of the summer 2004 baseline period, to adjust residential gas rates to effect the authorized recovery of on-going baseline-related shortfalls. PG&E, SDG&E, and SoCalGas shall each adjust its residential gas rates in a manner consistent with the rate design methodologies adopted in its most recently completed Biennial Cost Allocation Proceeding (BCAP). Southwest Gas Corporation (Southwest) shall adjust residential gas rates on an equal cents-per-therm basis. Each remaining gas utility shall adjust residential gas rates consistent with the rate design methodologies adopted in its most recently completed gas rate design proceeding or, if that is not feasible, on an equal cents-per-therm basis. The advice letters shall become effective after appropriate review by Energy Division.

28. Each gas utility shall file and serve a compliance advice letter with tariff changes to become effective concurrent with other changes in residential gas rates and no later than the beginning of the 2004-2005 winter baseline period, to adjust residential gas rates to amortize over 12 months its gas BBA balance and to terminate its gas BBA. PG&E, SDG&E, and SoCalGas shall each adjust its residential gas rates in a manner consistent with the rate design methodologies adopted in its most recently completed BCAP. Southwest shall adjust residential

gas rates on an equal cents-per-therm basis. Each remaining gas utility shall adjust residential gas rates consistent with the rate design methodologies adopted in its most recently completed gas rate design proceeding or, if that is not feasible, on an equal cents-per-therm basis. The advice letters shall become effective after appropriate review by Energy Division.

29. This proceeding is closed.

This order is effective today.

Dated ________________________, at San Francisco, California.

ATTACHMENT A

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