

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



December 12, 2002

**Agenda ID #1528**

TO: PARTIES OF RECORD IN RULEMAKING 01-05-047

This is the proposed decision of Administrative Law Judge (ALJ) TerKeurst, previously designated as the principal hearing officer in this proceeding. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. This matter was categorized as ratesetting and is subject to Pub. Util. Code § 1701.3(c). Pursuant to Resolution ALJ-180 a Ratesetting Deliberative Meeting to consider this matter may be held upon the request of any Commissioner. If that occurs, the Commission will prepare and mail an agenda for the Ratesetting Deliberative Meeting 10 days before hand, and will advise the parties of this fact, and of the related ex parte communications prohibition period.

The Commission may act at the regular meeting, or it may postpone action until later. If action is postponed, the Commission will announce whether and when there will be a further prohibition on communications.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ CAROL A. BROWN  
Carol A. Brown, Interim Chief  
Administrative Law Judge

CAB:hkr

**Appearances**

Decision **PROPOSED DECISION OF ALJ TERKEURST** (Mailed 12/12/2002)

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

Order Instituting Rulemaking on the  
Commission's Own Motion to Determine  
Whether Baseline Allowances for Residential  
Usage of Gas and Electricity Should Be Revised.

Rulemaking 01-05-047  
(Filed May 24, 2001)

(See Attachment A for List of Appearances.)

**INTERIM OPINION IN PHASE 2 APPROVING SETTLEMENT  
ON COMMON AREA ACCOUNTS**

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## **INTERIM OPINION IN PHASE 2 APPROVING SETTLEMENT ON COMMON AREA ACCOUNTS**

### **I. Summary**

In this opinion, we approve the modified settlement submitted on July 15, 2002, regarding Pacific Gas and Electric Company's (PG&E) residential common area electric accounts. This settlement provides PG&E's common area electric accounts, which are currently served on residential rate schedules, the option to be served on commercial rate schedules. We find that the five-tier residential rate structure adopted in Decision (D.) 01-05-064 is not well suited for application to common area accounts, particularly those with very high usage. The adopted settlement will ameliorate the disproportionately high bill impacts of the residential rate structure on PG&E's larger common area accounts.

In keeping with Rule 51 et seq. of the Commission's Rules of Practice and Procedure (Rules), we approve the modified settlement as being reasonable in light of the whole record, consistent with law, and in the public interest.

### **II. Background**

#### **A. 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 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.

The rulemaking has proceeded in two phases. In D.02-04-026 issued in Phase 1, we required that the utilities update baseline allowances to reflect current usage of gas and electricity, increase baseline allowances to the

maximum percentage levels allowed by state law for those customers not already receiving those maximum allowances, and simplify and improve the process by which customers may obtain additional baseline allowances for medical reasons.

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 issues related to multiple dwelling unit common areas, in addition to issues related to household characteristics, well water pumping, baseline zones, seasonal effects, proposed legislative changes, and rate impacts of changes to baseline. The Scoping Memo recognized that a settlement regarding multiple dwelling unit common areas would be presented in Phase 2.

The common area settlement is based on a proposal by the Office of Ratepayer Advocates (ORA). Parties pursued the proposal through a series of conferences, including a settlement conference held on March 25, 2002, pursuant to Rule 51.1.

On May 14, 2002, Executive Council of Homeowners (ECHO) filed the *Joint Motion for Adoption of Stipulation on Common Area Accounts in Baseline OIR Phase 2* (Joint Motion). The submitted stipulation was entered into by ECHO, PG&E, ORA, Spinnaker Cove Association, Silk Purse Properties, Post International Owners Association, Inc., and 10 Miller Place Homeowners Association (Stipulating Parties). Of the Stipulating Parties, only ECHO, PG&E, and ORA are parties to this proceeding.

Comments in response to the Joint Motion were filed by San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas), Aglet Consumer Alliance (Aglet), and Latino Issues Forum and the Greenlining Institute (LIF/Greenlining). Aglet and LIF/Greenlining contested the stipulation, whereas SDG&E and SoCalGas were concerned that the

stipulation not be precedential for their common area accounts. ECHO and PG&E filed reply comments.

On July 15, 2002, ECHO filed a fully executed copy of the *Stipulation on Common Area Accounts in Baseline OIR Phase 2 (Parties' Modified Version)* (Modified Stipulation) which changed the original stipulation to address Aglet's concern that it would give priority to PG&E's largest common area accounts in the move to commercial tariffs. The Modified Stipulation is attached to this order as Attachment B.

On July 23, 2002, LIF / Greenlining filed a motion to strike PG&E's reply comments in their entirety or, alternatively, to strike specific portions of those reply comments. LIF / Greenlining argued that PG&E, in replying to LIF / Greenlining's protest, presented the equivalent of testimony and that a hearing must be held on the contested issues. PG&E replied to the LIF / Greenlining motion to strike on August 7, 2002.

A second PHC for Phase 2 was held on August 15, 2002. At that time, the administrative law judge (ALJ) denied the LIF / Greenlining motion to strike and ruled that an evidentiary hearing should be held on the contested factual issues regarding the settlement. While the signing parties characterize the submitted agreement as a stipulation, we agree with the ALJ that the Modified Stipulation's proposal to give PG&E's common area electric accounts the option of receiving service via commercial tariffs is properly classified under Rule 51 as a settlement ("a mutually acceptable outcome to the proceedings" (Rule 51(c))) rather than a stipulation (an agreement regarding an "issue of law or fact material to the proceeding" (Rule 51(d))).

An evidentiary hearing on the Modified Stipulation was held on September 3, 2002, the first day of the Phase 2 hearings. Testimony was presented by PG&E's witness Philip J. Quadrini, Watergate Community

Association's (Watergate) witness Tim Sutherland, and ORA's witness Dexter Khoury.

On September 13, 2002, parties were given the opportunity to make oral statements in lieu of briefs regarding the common area settlement. At that time, LIF/Greenlining withdrew its protest based on the record that had been developed during the evidentiary hearing. The Utility Reform Network (TURN) stated that it does not oppose the settlement, although TURN disagrees about whether it should have precedential value for the other utilities. The record on the Modified Stipulation was submitted following the oral statements.

## **B. Context**

About 1.1 million households served by PG&E live in multifamily dwelling units, including condominium complexes, apartment buildings, and mobile home parks. The bulk of common area electricity usage is for lighting (both outdoors and hallways), laundry rooms, and elevators. Electricity usage among common area accounts varies widely depending on the size of the building and how many meters are used for the common areas.

PG&E's common area electric accounts are served through residential tariffs. Each common area meter has a separate account, and each account receives one baseline allowance.

D.01-05-064 implemented the \$0.03 per kilowatt-hour (kWh) average surcharge authorized in D.01-03-082 for PG&E and Southern California Edison Company (SCE). The new five-tier residential rate structure assesses surcharges for usage above 130 percent of a customer's baseline allowance. PG&E's resulting residential surcharges range up to \$0.11505 per kWh for Tier 5 (usage over 300 percent of baseline). Because most of the usage of large common area accounts falls within the highest tiers, these accounts paid disproportionately

high bills as a result of this rate design. By contrast, PG&E's surcharges for commercial customers do not vary based on usage levels.

PG&E's common area electric accounts have not always received service under residential tariffs. PG&E's common area electric accounts with single-phase service were switched from commercial to residential rates in 1967, and PG&E's common area accounts with poly-phase service (used for large customers) were switched to residential rates beginning in 1992.

No party has requested modifications to the treatment of SCE's and SDG&E's common area electric accounts. Common area accounts served by these utilities have not experienced rate increases of the magnitude experienced by PG&E's larger common area accounts. All of SCE's common area accounts, SDG&E's single-phase accounts serving common areas associated with detached homes, and SDG&E's three-phase common area accounts are on commercial electric schedules and, thus, are not subject to residential tiered charges. While SDG&E's single-phase common area accounts not associated with detached homes are served through residential tariffs, SDG&E does not have a steeply tiered residential rate design like PG&E's. Similarly, no party has indicated a need for the treatment of common area gas accounts to be reconsidered.

### **III. Summary of Modified Stipulation**

The following is a summary of major terms in the Modified Stipulation (attached in its entirety as Attachment B):

Term 1. PG&E's tariffs will be amended to allow common area electric customers the option of taking service on a commercial rate schedule for which they qualify.

Terms 4 and 5. For common area customers choosing a time-of-use (TOU) schedule, a demand-metered schedule, or a demand-metered TOU schedule, PG&E shall install the needed meter, or reprogram

an existing qualified meter, on a first-come, first-served basis according to the date it receives the customer's application.<sup>1</sup>

- PG&E will install a TOU or demand meter, or reprogram an existing qualified meter, within 60 days upon receipt of each valid application and payment of the related charges. Exceptions are provided if requests exceed 1,500 per month and during a blackout period when PG&E's new customer information and billing system, CorDaptix, is installed, currently scheduled for late 2002 or early 2003.
- A customer may request service under commercial Schedule A-1 for an interim period pending meter installation or reprogramming needed for other schedules.

Term 7. For a two-calendar-month period beginning 14 months after the Commission approves the stipulation, common area customers who have transferred to a commercial class will have an opportunity to return to the residential class. PG&E will provide written notice to all eligible common area commercial customers of their right of return to a residential schedule within a reasonable time in advance of the beginning of this two-month right-of-return period.

Term 8. Common area customers will have a final opportunity to transfer back to the residential class if both of the following occur: (1) the Commission substantially reduces the three-cent surcharge or substantially amends any or all of PG&E's commercial or residential rate schedules, and (2) ECHO directs PG&E in writing to begin an optional second right-of-return period. PG&E will notify all eligible common area customers within 30 days. This final right-of-return period will begin 15 days after PG&E receives the written directive and will continue for 105 days.

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<sup>1</sup> The Modified Stipulation changed the original stipulation to provide first-come, first-served scheduling in response to concerns raised in Aglet's comments.

Term 9. Once the Term 7 right-of-return window has passed and the one described in Term 8 has either passed or is never exercised, common area customers will not be able to transfer to the residential class. If Term 8 is invoked prior to Term 7, this will be the only opportunity for customers to return to the residential class. Term 7 will be void if Term 8 is exercised before the 14-month period ends.

Term 10. During the right-of-return periods, common area customers will be allowed to return to Schedule E-8, even though it is otherwise closed to new customers, if all of the following have occurred: (1) Schedule E-8 has not been terminated in its entirety by the Commission, (2) the Commission authorizes commercial common area customers to return to Schedule E-8 by approving this stipulation, and (3) the returning party compensates PG&E at a fixed charge of \$40 per account for the full cost of manually processing its requests and /or reprogramming its billing system to allow the customer to return.

Term 11. The expected revenue shortfall of up to \$18 million per year from common area migration to commercial schedules must be ruled by the Commission decision adopting the stipulation to be fully recoverable and subject to tracking in a separate, dedicated new balancing account perhaps called the Common Area Balancing Account (CABA). Recovery of the common area migration revenue shortfalls will be effected through whatever Commission decision first determines both class allocation and rate changes needed for revenue neutrality in R.01-05-047. Specifically, the decision on this stipulation would authorize recovery, through future rate changes, of both the uncollected CABA balances and any expected ongoing revenue shortfalls due to common area migration after the rate change decision in R.01-05-047.

Terms 12 and 13. PG&E will have 30 days upon approval of the stipulation by the Commission to mail written confirmation to common area customers correctly designated in its billing system as “common usage” and who would save at least \$100 per year exclusive of any meter installation charge by moving to the commercial class, that this option is now open to them. These customers will receive an historical analysis comparing their bills for

the latest available 12 months on their current residential schedule to the anticipated bills, at the same usage, for commercial rate Schedules A-1, A-6, A-10, and E-19W. All other common area customers will be notified through a bill insert (with no bill analysis) within 90 days of Commission approval of the Stipulation.

#### **IV. Discussion**

The Stipulating Parties ask that the Modified Stipulation be accorded expedited treatment rather than being considered at the same time as other Phase 2 issues. In light of the substantial and on-going rate impacts of PG&E's residential rate structure on its larger common area accounts, we agree that separate consideration is appropriate.

##### **A. Legal Standard**

The Modified Stipulation would give PG&E's common area electric accounts the option of moving to commercial rate schedules rather than continuing to pay residential rates. While not a modification to the baseline program itself, this proposal arose because of the tiered rate design pegged to baseline allowances that was adopted for residential customers in D.01-05-064. As a result, we believe that the Modified Stipulation is appropriately considered in this proceeding.

Pursuant to Rule 51.1(e), the Commission "will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest."

In evaluating the Modified Stipulation, we follow the guidance in D.94-04-088 regarding settlements that are not all-party settlements:

"[W]e consider whether the settlement taken as a whole is in the public interest. In so doing, we consider individual elements of the settlement in order to determine whether the settlement generally balances the various interests at stake as well as to

assure that each element is consistent with our policy objectives and the law.” (D.94-04-088, mimeo. at 10.)

In keeping with that guidance, we consider key provisions of the Modified Stipulation and then address the settlement taken as a whole.

## **B. Choice Between Residential and Commercial Rate Schedules**

### **1. Customer Impacts**

The residential tiered rate structure adopted for PG&E in D.01-05-064 has a disproportionate effect on larger-usage common area accounts, compared to other residential customers. PG&E reported that 16 percent of electricity used in single-family detached housing falls within Tier 4 and Tier 5. At the same time, PG&E’s work papers (Exhibit 104) indicate that 46 percent of electricity used by common area accounts falls within Tier 4 and Tier 5. The effect on larger-usage common area accounts is even greater, e.g., 96 percent of the usage of PG&E’s 64 largest common area accounts (each consuming over 300,000 kWh per year) falls in Tier 5.<sup>2</sup> Because more of their usage falls within the upper tiers, common area accounts as a whole pay proportionately higher bills than other types of residential customers.

According to PG&E, about 10 percent of its 90,000 common area accounts would likely benefit from the settlement’s proposed optional migration to commercial schedules. About 9,000 accounts would have yearly savings under commercial Schedule A-6 in excess of the cost of a new programmable TOU meter, i.e., \$443. This assessment does not take into account that some common area accounts have an existing TOU meter that would only need to be

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<sup>2</sup> Watergate indicates that approximately 98 percent of its common area usage (which averages 4,700 kWh per day or 1,715,500 kWh per year) is over baseline.

reprogrammed for an \$87 fee. PG&E calculated that almost 15,000 common area accounts would show at least some annual savings from switching to Schedule A-6, excluding any meter costs. Additional customers may benefit from switching to commercial schedules other than Schedule A-6; such customers are not included in PG&E's estimates.

Common area electricity costs are often passed on to a building's occupants indirectly, e.g., through increased rents or homeowners' association fees.<sup>3</sup> Reporting that multifamily households use 45 percent less electricity than those living in single-family households, PG&E calculated that, even if common area usage could be allocated to individual multifamily dwelling units, the multifamily dwelling units would still use 35 to 40 percent less electricity than the amount used in single-family detached houses. PG&E contends, as a result, that the disproportionate imposition of surcharges on common area usage is unfair to the multifamily dwellings' occupants.

LIF/Greenlining contested the stipulation initially based on lack of information regarding the socioeconomic status of the common area accounts that would benefit from the stipulation. Because of the "zero-sum game" nature of baseline, LIF/Greenlining argued that the Commission must conduct a balancing test in determining if the settlement is in the public interest.

In response, PG&E presented information regarding the types of multifamily dwellings that have common area accounts and the demographic characteristics of their occupants. PG&E reported that over 80 percent of

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<sup>3</sup> PG&E points out that, even if a landlord absorbs common area rate increases, the landlord may cut back on maintenance or take other cost-cutting steps that could be detrimental to the occupants.

multifamily dwellings are apartments and that households in multifamily dwellings have average incomes about 25 percent lower than single-family dwellers.

## **2. Discussion**

The evidence submitted in this proceeding indicates that PG&E's current residential rate design with increasing surcharges for usage over 130 percent of baseline allowances is not well suited for application to common area accounts, particularly those with very high usage. This rate structure, which is pegged to average usage of average households, does not reflect common area usage patterns. There is no realistic way for PG&E's larger common area accounts to avoid extensive over-baseline usage, regardless of how efficient they may become. As a result, mandatory application of the current residential rate design to PG&E's common area accounts does not meet the equity goals underlying its adoption.

In D.01-05-064, we declined to adopt a tiered rate design for PG&E's and SCE's commercial and industrial customers, expressing concern that "tiering would harm larger consumers to the benefit of smaller consumers within that class, without regard to their efficiency" (D.01-05-064, mimeo. at 37). In fact, this is what has happened to PG&E's largest common area accounts, which through historical circumstances are subject to the residential tiered rate design, while SCE's common area accounts are not. Despite the plight of PG&E's larger common area accounts, the vast majority of PG&E's common area accounts find residential classification to be beneficial.

Allowing PG&E's common area accounts to switch to commercial schedules would be equitable for PG&E's larger common area customers because it would ameliorate the negative effects of the mismatch between PG&E's current

tiered residential rate design and the usage patterns of common area accounts. At the same time, making the switch optional protects smaller common area accounts from the rate increases they may receive if served through commercial schedules. Further, even if a common area account discovers that its rates are higher after switching to a commercial schedule, the Modified Stipulation provides a window of opportunity during which the customer may return to residential status.

Pub. Util. Code § 739<sup>4</sup> mandates the utilities' baseline programs. Section 739(a) provides that "the commission 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." Section 739(d)(2) defines "residential customer" as "those customers receiving electrical or gas service pursuant to a domestic rate schedule, and excludes industrial, commercial, and every other category of customer." Common area customers who transfer to a commercial schedule would cease to be residential customers under § 739 and, therefore, their service would no longer be subject to that section. As a result, the Modified Stipulation is not counter to § 739.

Water Code § 80110, effective February 1, 2001, prohibits the Commission from increasing electricity charges for residential usage up to 130 percent of baseline quantities. Because it is voluntary, the proposed approach in which common area accounts self-select their classification and have an opportunity to return to residential status would not conflict with this statutory prohibition.

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<sup>4</sup> All statutory cites are to the Public Utilities Code unless specified otherwise.

Finally, since the settlement would tend to help rather than harm lower-income customers, we find that it treats those customers equitably.

For these reasons, we conclude that the provisions of the Modified Stipulation that allow common area customers to take service on commercial rate schedules balance the interests of PG&E's common area and other residential customers and are consistent with our policy objectives and the law.

### **C. Treatment of New Common Area Accounts**

The Modified Stipulation provides right-of-return windows for existing common area accounts for a period after the settlement is implemented. During these windows, common area accounts that migrated to commercial schedules would be allowed to return to residential status. However, it is not clear whether common area accounts created after that period that choose commercial schedules initially would be provided an opportunity to transfer to residential schedules at a later date.

The Modified Stipulation provides that return rights for common area customers could exist for a two-month window beginning 14 months after the Commission approves the stipulation (Term 7) and that ECHO could request that return rights be offered for a three-month window under certain conditions (Term 8). These terms would allow existing common area accounts a second opportunity to assess whether commercial classification is beneficial.

Lacking historical usage data, new common area accounts may not be able to determine at the outset what classification would be most beneficial to them. It would be equitable for them to be provided a right-of-transfer window comparable to the right-of-return window in Term 7 of the Modified Stipulation. Since it does not explicitly address the treatment of new common area accounts, the settlement should be construed to provide new common area accounts a

right-of-transfer window. Each common area account created after the effective date of the settlement that chooses to be served through a commercial schedule should be provided a two-month window, beginning 14 months after it first elects a commercial schedule, during which it may choose residential status. Term 8 should apply to new common area accounts, but the right-of-transfer window should apply regardless of whether or when ECHO exercises Term 8.

#### **D. Meter Installation and Reprogramming**

The Modified Stipulation provides that PG&E shall install TOU or demand meters, or reprogram existing qualified meters, on a first-come, first-served basis (Term 5). The original stipulation had allowed PG&E to give preference to larger common area accounts in the timing of meter installations and reprogramming, and the modification was developed in response to Aglet's concerns regarding the discriminatory effects of that preferential treatment. No party objects to the new provision in the Modified Stipulation, and we find that it balances equitably the interests of all common area accounts.

#### **E. Customer Notice**

Terms 12 and 13 of the Modified Stipulation provide that PG&E will provide written confirmations and historical bill analyses to common area customers who would save at least \$100 per year exclusive of meter charges and that all other common area customers will be notified through a bill insert of their option to transfer to a commercial schedule. No party objects to this provision in the Modified Stipulation, and we find it to be reasonable.

PG&E's witness stated that he assumed that the bill inserts would go to all residential customers in case some common area accounts are not identified as such in PG&E's billing system, but that "that's one of the details we haven't worked out yet." (Tr. at 954-955.) In order to ensure that all common area

accounts are notified of their option to transfer from residential to commercial schedules, we require that PG&E send the bill insert to all residential customers who do not receive the separate written confirmations and historical bill analyses, regardless of whether PG&E's billing system identifies them as common area accounts.

#### **F. Revenue Shortfall**

Assuming that the 9,000 largest common area accounts would migrate to commercial Schedule A-6, PG&E calculated that these customers would save about \$18 million per year, which consists of approximately \$13 million in surcharge savings and \$5 million in other rate savings. Actual revenue shortfalls may vary because PG&E's estimate is based on the A-6 schedule and because the number of migrating customers and their usage levels may differ from the assumed amounts.

The Modified Stipulation provides that revenue shortfalls would be tracked in a new balancing account. Recovery of both the uncollected balance and any expected ongoing revenue shortfalls would be "effected through whatever Commission decision first determines both class allocation and rate changes needed for revenue neutrality in R.01-05-047."

In its comments, Aglet asserted that balancing account treatment of the revenue shortfall should be temporary and should end on the effective date of a revenue requirement decision in PG&E's test year 2003 general rate case. Aglet also recommended that, if the Commission approves the stipulation, allocation of the revenue shortfall should be referred to PG&E's upcoming general rate case. In response, PG&E stated that it agrees that the balancing account should be temporary. PG&E also reported that it and Aglet now agree that related cost allocation issues should be resolved in Phase 2 of this proceeding.

In D.02-04-026, we authorized the use of balancing accounts to track any under-collection or over-collection resulting from the Phase 1 baseline changes, and we deferred cost allocation issues to Phase 2. Consistent with our findings in Phase 1, balancing account treatment of revenue shortfalls resulting from the Modified Stipulation is reasonable. We approve a CABA for that purpose.

We agree with the Stipulating Parties that revenue shortfalls due to the Modified Stipulation, including shortfalls reasonably booked in the CABA and expected ongoing revenue shortfalls, should be fully recoverable. The expected revenue shortfall is relatively modest, and its recovery will not have a significant impact on other ratepayers. We will address allocation and cost recovery issues on an integrated basis with other baseline-related cost impacts in our upcoming decision on remaining Phase 2 issues. We will also address termination of the baseline-related balancing accounts at that time.

### **G. The Settlement Taken as a Whole**

Based on our review of the evidentiary record and the provisions of the Modified Stipulation, we find that this settlement should be adopted.

The testimony showed that PG&E's residential tiered rate structure has caused disproportionately high bills for larger common area accounts and that the Modified Stipulation would ameliorate the negative effects of the mismatch between the residential rate design and common area account usage patterns. PG&E also established that the Modified Stipulation would tend to help rather than harm lower-income customers and that it would have no significant impact on other ratepayers. We are convinced that the settlement balances the various interests at stake.

While the settlement was not sponsored by all parties in Phase 2, at the end of the evidentiary hearings in Phase 2, no party actively opposed the settlement. This fact supports our conclusion that the Modified Stipulation is in the public interest.

We have some concerns regarding protection of the interests of new common area accounts, and require that the settlement be construed to provide them a right-of-transfer window comparable to the right-of-return window for existing common area accounts in Term 7 of the Modified Stipulation. We also take steps to ensure that all common area customers are notified of their option to transfer to commercial schedules. With these protections, we conclude that the settlement and concomitant revisions to PG&E's tariffs are consistent with the law, reasonable in light of the whole record, and in the public interest.

Separate from the Modified Stipulation, other common area issues are under consideration in Phase 2, including whether baseline allowances should be modified for residential common area accounts and the treatment of other utilities' common area accounts. We will consider these remaining issues based on the record developed during Phase 2. Our approval of the Modified Stipulation does not constitute approval of, or precedent regarding, any issues remaining in Phase 2 or in any future proceeding.

## **V. Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure.

## **VI. Assignment of Proceeding**

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

**Findings of Fact**

1. The Commission instituted R.01-05-047 to evaluate whether the utilities' baseline programs should be revised. This review was prompted, in large part, by the unprecedented surcharges we have been forced to impose on Californians and by our adoption of a rate design relying heavily on baseline quantities to determine which residential customers are affected and to what degree.

2. In D.01-05-064, the Commission implemented the \$0.03 per kWh average surcharge authorized in D.01-03-082, with PG&E's residential rate increase effected through a new five-tier residential rate structure pegged to customers' baseline allowances.

3. PG&E's electric rates for commercial customers do not vary based on usage levels.

4. PG&E's common area electric accounts with single-phase service were switched from commercial to residential rates in 1967, and PG&E's common area accounts with poly-phase service were switched to residential rates in 1992.

5. In D.94-04-088, we provided guidance that individual elements of settlements should be considered in order to determine whether the settlement generally balances the various interests at stake and to ensure that each element is consistent with our policy objectives and the law.

6. The residential tiered rate structure adopted for PG&E in D.01-05-064 has a disproportionate effect on larger-usage common area accounts, compared to other residential customers.

7. Many of PG&E's higher-usage common area accounts would benefit from the Modified Stipulation's proposed optional migration to commercial schedules.

8. Common area electricity costs are often passed on to a building's occupants.

9. PG&E's demographic information indicates that over 80 percent of multifamily dwellings served by PG&E are apartments, and that households in multifamily dwellings have average incomes about 25 percent lower than single-family dwellers.

10. PG&E's current residential rate design is not well suited for application to common area accounts, particularly those with very high usage.

11. Allowing PG&E's common area accounts to switch to commercial schedules would be equitable for PG&E's larger common area customers and would not harm smaller common area customers.

12. The Modified Stipulation treats lower-income customers equitably because it would tend to help rather than harm them.

13. The provisions of the Modified Stipulation that allow common area customers to take service on commercial rate schedules balance the interests of PG&E's common area and other residential customers and are consistent with our policy objectives.

14. It is equitable for new common area accounts to be provided a right-of-transfer window comparable to the right-of-return window in Term 7 of the Modified Stipulation.

15. The Modified Stipulation's requirement that PG&E install TOU or demand meters, or reprogram existing qualified meters, on a first-come, first-served basis balances equitably the interests of all common area accounts.

16. The Modified Stipulation's requirement that PG&E provide written confirmations and historical bill analyses to common area customers who would save at least \$100 per year exclusive of meter charges is reasonable.

17. It is reasonable to require that PG&E send a bill insert to all residential customers who do not receive the written confirmations and historical bill

analyses, in order to ensure that all common area accounts are notified of their option to transfer from residential to commercial schedules.

18. PG&E estimated that common area accounts could save about \$18 million per year from migrating to commercial schedules.

19. Recovery of the expected revenue shortfall due to the Modified Stipulation will not have a significant impact on ratepayers.

20. Balancing account treatment of revenue shortfalls resulting from the Modified Stipulation is reasonable.

21. It is reasonable to allow PG&E to recover revenue shortfalls due to the Modified Stipulation, including shortfalls reasonably booked in the authorized balancing account and expected ongoing revenue shortfalls.

22. We will address allocation and cost recovery issues regarding the Modified Stipulation and termination of the CABA in an order on remaining Phase 2 issues.

23. The Modified Stipulation is a reasonable settlement which ameliorates the negative effects of the mismatch between PG&E's current residential rate design and common area usage patterns, balances the various interests at stake, and is consistent with our policy objectives.

### **Conclusions of Law**

1. In compliance with Rule 51.2, the Modified Stipulation was proposed after the first PHC in this proceeding.

2. The Modified Stipulation is a settlement within the meaning of Rule 51(c).

3. The baseline program required by § 739 does not apply to customers receiving electrical service through commercial schedules.

4. Section 739 does not constrain the Commission from allowing PG&E's common area accounts to transfer voluntarily from a residential schedule to a commercial schedule.

5. Water Code § 80110, effective February 1, 2001, prohibits the Commission from increasing electricity charges for residential usage up to 130 percent of baseline quantities.

6. The voluntary transfer of electric common area accounts from PG&E residential schedules to PG&E commercial schedules would not violate Water Code § 80110.

7. The Modified Stipulation should be construed to provide new common area accounts a right-of-transfer window.

8. The parties' recommendation that the Modified Stipulation have no precedential effect is reasonable and should be adopted.

9. Consistent with Rule 51.1(e), the Modified Stipulation is reasonable in light of the whole record, consistent with law, and in the public interest, and should be adopted.

10. This order should be effective today, so that the Modified Stipulation may be implemented expeditiously.

### INTERIM ORDER

#### **IT IS ORDERED** that:

1. The *Stipulation on Common Area Accounts in Baseline OIR Phase 2 (Parties' Modified Version)* (Modified Stipulation), filed on July 15, 2002, is adopted, as set forth in Attachment B.

2. Pacific Gas and Electric Company (PG&E) shall provide each common area electric account created after the effective date of the Modified Stipulation that

chooses to be served through a commercial schedule a two-month window, beginning 14 months after it first elects a commercial schedule, during which it may choose residential status.

3. Term 8 of the Modified Stipulation shall apply to new common area electric accounts.

4. The right-of-transfer window required in Ordering Paragraph 2 shall apply regardless of whether or when Term 8 of the Modified Stipulation is exercised.

5. PG&E shall send a bill insert to all residential customers who do not receive written confirmations and historical bill analyses, informing them that common area accounts have an option to transfer from residential to commercial schedules.

6. PG&E shall establish a Common Area Balancing Account (CABA) and record in the CABA any under-collection or over-collection resulting from implementation of the Modified Stipulation.

7. PG&E shall file and serve a compliance advice letter within 30 days of the effective date of this decision to update its residential and commercial tariffs to implement the Modified Stipulation. The advice letter will become effective after appropriate review by the Energy Division.

8. Adoption of the Modified Stipulation does not constitute approval of, or precedent regarding, any issues remaining in Phase 2 or in any future proceeding.

This order is effective today.

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

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R.01-05-047 ALJ/CFT/hkr\*\*\* **ATTACHMENT A \*\*\***

**Appearances**

**(END OF ATTACHMENT A)**

## Attachment B

### Stipulation on Common Area Accounts in Baseline OIR Phase 2 (Parties' Modified Version)