Date of Issuance
March 23, 2012

Decision 12-03-056 March 22, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company to Revise Its Electric Marginal Costs, Revenue Allocation, and Rate Design Including Real Time Pricing, to Revise its Customer Energy Statements, And to Seek Recovery of Incremental Expenditures. (U 39 M)	Application 10-03-014 (Filed March 22, 2010)

ORDER DENYING REHEARING OF DECISION 11-05-047

I. INTRODUCTION

This Order denies the joint application for rehearing of Decision (D.) 11-05-047 filed by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and Kern County Taxpayers Association (Kern Taxpayers).[1] By Application (A.) 10-03-014 PG&E had proposed, among other things, to charge all of its customers in the California Alternate Rates for Energy (CARE) program a fixed customer charge of $2.40 for all CARE schedules (except EL-8); in addition, it proposed a $3.00 charge for all non-CARE residential schedule (except E-8). The record established that under PG&E's proposed increases, over 99.7% of low income customers on Schedule EL-1 would be charged increased rates, and an estimated 86.5% would receive increases of 10% or greater per year and 5.6% would receive increases of 20% or greater. D.11-05-047 determined that the proposed fixed customer charges were not

[1] Citations to Commission decisions in this order follow the form for non-published decisions and will, hereinafter, informally refer to the Commission's decision number as found in the pdf version on the Commission's website at: http://docs.cpuc.ca.gov/cyberdocs/Libraries/WEBPUB/Common?decSearchDsp.asp.

lawful under the relevant legislation. D.11-05-047 denied PG&E's proposal fixed customer charges.

II. BACKGROUND

D.11-05-047 adopted residential electric rate design measures for PG&E's residential electric customers for the following three years in Phase 2 of PG&E's general rate case (GRC) in A.10-03-014.[2] In 2001, by D.01-05-064, in response to Assembly Bill 1 from the First Extraordinary Session[3] (AB 1X) legislation mandating that all residential electricity use up to 130 percent of baseline be capped at levels in effect on February 1, 2001, the Commission adopted a five-tier rate design for PG&E based on an increasing rate per kilowatt hour (kWh) within each successive tier of use.[4] Because of restrictions in AB 1X, all future residential rate increases were allocated to rates in Tiers 3-5, and above the Tier 1 baseline and Tier 2 (130 percent of baseline) threshold. To protect low-income households against escalating costs, the Commission froze rates for the CARE program at July 2001 levels providing what has been termed a "safe harbor" of 130 percent of baseline. In addition, non-CARE Tier 1 and 2 rates were also frozen from early 2001 until 2009. In 2009, pursuant to Senate Bill (SB) 695[5] non-CARE rates became subject to statutorily limited increases in 2010 as set forth in Public Utilities Code section 739.9. Approximately one-half of PG&E's residential households and three-quarters of its residential kWh sales are in Tiers 1 or 2.

Because of the AB 1X rate freeze imposed on Tiers 1 and 2, all residential rate increases for PG&E's customers between 2001 and 2009 were imposed on Tiers 3-5 (for usage exceeding 130 percent of baseline). Pursuant to D.10-05-051, PG&E's Tiers 4 and 5 have been consolidated into a single Tier 4, thus narrowing some of the disparity between the upper and lower-tiered rates. Over time the rate tier differentials have

[2] Phase 1 of the GRC concerned revenue requirement issues; Phase 2 addressed marginal cost, revenue allocation, and rate design issues. (D.11-05-047 at p. 3.)

[3] Chapter 4 of the Statutes of 2001-02, First Extraordinary Session.

[4] Previously, a two tier rate structure was in place for PG&E.

widened. For example, at the time of its GRC application, PG&E's Tier 4 rate was almost three times as high as the rate imposed on Tier 2 customers.

A.10-03-014 was filed on March 22, 2010. Evidentiary hearings on residential rate design issues were held on November 12, 15, 18, 19 and 22, 2010. Opening briefs were filed on December 20, 2010 and reply briefs were filed on January 10, 2011. On April 5, 2011, the proposed decision (PD) of the presiding Administrative Law Judge (ALJ) and the alternate proposed decision (APD) of the Assigned Commissioner (AC) President Peevey were filed. Among other things, the PD denied PG&E's proposed residential fixed customer charge, while the APD approved the proposed charge. President Peevey's APD was withdrawn prior to a vote at the Commission's Meeting of May 26, 2011; the Commission adopted D.11-05-047 at that meeting. The Commission issued D.11-05-047 on June 2, 2011. The joint application for rehearing of D.11-05-047 was timely filed on July 1, 2011 by PG&E, SCE and Kern Taxpayers. Also on July 1, San Diego Gas & Electric Company filed a motion to intervene and participate as a party, which was denied in a July 28, 2011 ruling of the presiding ALJ. Timely oppositions to the joint application for rehearing were filed by the Commission's Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN) and The Vote Solar Initiative (Vote Solar).

The joint applicants for rehearing contend that D.11-05-047 erred by (1) finding the PG&E proposed fixed customer charge is unlawful and, thus, by not approving it, and (2) rejecting the charge on policy grounds. All three of the responses to the joint application for rehearing of D.11-05-047 oppose it on the grounds that the Commission correctly determined the legislative language at issue was ambiguous and, thus, correctly considered the legislative intent of the statutory language and properly interpreted the ambiguous statutory language so as not conflict with the intent of the legislation. They also argue that the joint application for rehearing improperly alleges a

[5] Chapter 337 of the Statutes of 2009-10.

policy argument in an application for rehearing and, in any event, fails to demonstrate error in the decision's policy grounds.

III. DISCUSSION

We have carefully reviewed each and every allegation raised by the joint applicants for rehearing and are of the opinion that there is no merit to the arguments presented. Accordingly, for the reasons discussed below, we shall deny rehearing of D.11-05-047.

The sole legal error alleged by the joint applicants for rehearing of D.11-05-047, i.e., the conclusion that PG&E's proposed fixed customer charge was unlawful, is premised on Public Utilities Code sections 739.1(b)(2) and 739.9(a).[6] In alleging the challenged decision erred by not approving PG&E's proposed fixed customer charge, the joint applicants for rehearing contend the challenged decision erred in: (1) finding ambiguity in the statutory language at issue; (2) interpreting the statutory language; (3) determining the phrase "rates charged residential customers for electricity use" does not include fixed customer charges; (4) excluding fixed customer charges from section 739.9(a) limitations and thereby undermining the legislative intent of the section; and (5) finding that excluding fixed customer charges from the phrase "rates charged customers for electricity usage," is inconsistent with Commission precedent. The joint applicants for rehearing also allege that the decision fails on policy grounds as well.

A. Allegations of legal error

1. Statutory ambiguity

The first argument presented by joint applicants for rehearing is that D.11-05-047 erred in finding ambiguity in the language of sections 739.1(b)(2) and 739.9(a). (Joint application for rehearing at pp. 3-5.) Yet within that same argument the joint applicants for rehearing also assert that there is ambiguity. (They argue: "Had the Legislature used language that limited increases to 'baseline rates,' rather than 'rates

[6] Hereinafter, all statutory references are to the Public Utilities Code unless otherwise indicated.

charged residential customers for electricity usage up to 130 percent of the baseline quantities,' there would be no ambiguity—it would have been clear that the statutory limit in [s]ection 739.9(a) also covers fixed customer charges." (Joint application for rehearing at p. 5.) The joint applicants for rehearing cannot have it both ways. In any event, as discussed below, D.11-05-047 did not err in determining ambiguity in the statutory language at issue.

At issue are sections 739.1(b)(2) and 739.9(a). Section 739.1(b)(2) provides:

> The commission may, subject to the limitation in paragraph (4), increase the rates in effect for CARE program participants for electricity usage up to 130 percent of baseline quantities by the annual percentage increase in benefits under the CalWORKs program as authorized by the Legislature for the fiscal year in which the rate increase would take effect, but not to exceed 3 percent per year.[7]

Section 739.9(a) provides:

> The commission may, subject to the limitation in subdivision (b), increase the rates charged residential customers for electricity usage up to 130 percent of the baseline quantities, as defined in Section 739, by the annual percentage change in the Consumer Price Index from the prior year plus 1 percent, but not less than 3 percent and not more than 5 percent per year. For purposes of this subdivision, the annual percentage change in the Consumer Price Index shall be calculated using the same formula that was used to determine the annual Social Security Cost of Living Adjustment on January 1, 2008. This subdivision shall become inoperative on January 1, 2019, unless a later enacted statute deletes or extends that date.[8]

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[7] Paragraph 4 of section 739.1(b)(2) provides: "Tier 1, tier 2, and tier 3 CARE rates shall not exceed 80 percent of the corresponding tier 1, tier 2, and tier 3 rates charged to residential customers not participating in the CARE program, excluding any Department of Water Resources bond charge imposed pursuant to Division 27 (commencing with Section 80000) of the Water Code, the CARE surcharge portion of the public goods charge, any charge imposed pursuant to the California Solar Initiative, and any charge imposed to fund any other program that exempts CARE participants from paying the charge."

[8] Subdivision (b) of section 739.9 provides: "The rates charged residential customers for electricity usage up to the baseline quantities, including any customer charge revenues, shall not exceed 90 percent of the

(continued on next page)

The legislation at issue was amended (section 739.1) and added (section 739.9) by SB 695, in order to permit the Commission to begin allowing increases to the previously frozen rates paid by customers in Tiers 1 and 2 pursuant to AB 1X legislation. The joint applicants for rehearing argue that D.11-05-047 erred in determining that the Commission is "prohibited by law from approving PG&E's customer charge to the extent the total bill impacts exceed these statutory limitations [of sections 739.1(b)(2) and 739.9(a)] on baseline rate increases." (D.11-05-047 at p. 24.) D.11-05-047 provided that there were no statutory restrictions to "categorically prohibiting a fixed residential customer charge," rather, the statutory restriction applies to "all rate elements relevant to baseline usage…" and thus, a fixed customer charge was not excluded from the statute. (D.11-05-047 at pp. 24 and 26.)

In dispute was whether fixed charges proposed by PG&E for Tiers 1 and 2 were rates subject to SB 695. PG&E argued they were not. At issue was the meaning of the word "rates" in section 739.9(a). PG&E argued in the underlying proceeding that for purposes of section 739.9(a) its proposed fixed customer charge was excluded from the statute; D.11-05-047, reviewing, among other things, past Commission decisions, disagreed. "[T]he long-established Commission usage of the term "baseline rates" as including fixed customer charges," was at odds with PG&E's argument. (D.11-05-047 at p. 25.) The joint applicants for rehearing argue that because a fixed customer charge cannot be avoided by a customer's reduction of electrical usage it cannot be considered to be a "rate charged to customers for electricity usage." (Joint application for rehearing at p. 4.) Further, because the statutes at issue do not use the term "baseline rates," the joint applicants for rehearing argue that the Commission erred in relying on the historical usage of the term "baseline rates," as including customer charges.

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system average rate prior to January 1, 2019, and may not exceed 92.5 percent after that date. For purposes of this subdivision, the system average rate shall be determined by dividing the electrical corporation's total revenue requirements for bundled service customers by the adopted forecast of total bundled service sales."

PG&E argued in the underlying proceeding that because section 739.9(a) omits the phrase "including any customer charge revenues," which is included in section 739.9(b), the statutory limitation on increased rates excluded fixed customer charges in contrast to volumetric-based charges. We reaffirm our finding that the term "including" as used in section 739.9 is a term of expansion, not limitation as PG&E argued. D.11-05-047 also determined that "statutory construction based upon alleged surplusage of words within a statute which defies common sense, or leads to mischief or absurdity, is to be avoided." (See e.g., *California Manufacturers Association v. Public Utilities Comm.* (1979) 24 Cal.3d 836, 844.) Section 739.9(a) "does not explicitly mention 'customer charges,' but does refer to 'rates … for electric usage up to 130 percent of baseline quantities …. [and] [t]he Commission has repeatedly recognized that baseline rates include any fixed customer charges." (D.11-05-047 at p. 28.)

In discussing the conflicts between Commission precedent and PG&E's argument regarding whether its proposed charges constituted rates for purposes of the legislation at issue, D.11-05-047 explained:

> PG&E presents arguments interpreting the term "rates" narrowly so as to exclude fixed customer charges in contrast to volumetric-based charges. Yet, this narrow meaning is at odds with long-established Commission usage of the term "baseline rates" as including fixed customer charges. Therefore, we disagree with PG&E that there is no ambiguity in the statutory use of the term "rates."

(D.11-05-047 at p. 25.)

The arguments by the joint applicants for rehearing are similar to those argued below by PG&E and addressed in D.11-05-047. Under the "plain meaning" rule, '[w]ords used in a statute or constitutional provision should be given the meaning they bear in ordinary use." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) Thus, where the statutory language is clear and unambiguous, there is no need for construction and it is unnecessary to resort to legislative intent, on the other hand, however,

> … the "plain meaning" rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute. The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. [Citation.] Literal construction should not prevail if it is contrary to the legislative intent apparent in the statute. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act. [Citation.] An interpretation that renders related provisions nugatory must be avoided [citation]; each sentence must be read not in isolation but in the light of the statutory scheme [citation]; and if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed [citation]. These rules apply as well to the interpretation of constitutional provisions. [Citation.]

(*Id*.)

Like PG&E, the joint applicants for rehearing argue that sections 739.9(a) and 739.1(b)(2) do not use the term "baseline rates," and therefore, the phrase "rates charged residential customers for electricity usage," excludes fixed customer charges. Like PG&E below, they have erroneously narrowed their focus to only a few words in the legislation. The authorization in section 739.9(a) for the Commission to permit previously frozen rates to increase provides: "[t]he commission may, subject to the limitation in subdivision (b), increase the rates charged residential customers for electricity usage up to 130 percent of the baseline quantities … by the annual percentage change in the Consumer Price Index from the prior year plus 1 percent, but not less than 3 percent and not more than 5 percent per year." The joint applicants for rehearing choose to ignore the qualifying language which permits the Commission to authorize rates charged to residential customers to be increased for "*electricity usage up to 130 percent of the baseline quantities*…." The joint applicants for rehearing have failed to establish that challenged decision erred regarding its finding of ambiguity in the statutory

language at issue and erred in failing to adopt PG&E's narrow focus on only a portion of the legislative language at issue.

2. In the case of statutory ambiguity, legislative intent prevails

In *California Manufacturers Association v. Public Utilities Commission*, *supra*, 24 Cal.3d at p. 844, the California Supreme Court, reviewing legislation that was not facially clear, declared:

> Where a statute is theoretically capable of more than one construction we choose that which most comports with the intent of the Legislature. [Citations.]… Words must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible. [Citations.] Interpretive constructions which render some words surplusage, defy common sense, or lead to mischief or absurdity, are to be avoided. [Citations omitted.] In the present instance both the legislative history of the statute and the wider historical circumstances of its enactment are legitimate and valuable aids in divining the statutory purpose. [Citations.]

In the underlying proceeding, we reasoned that because of the ambiguity concerning the language at issue, resorting to the legislative history became necessary. (D.11-05-047 at p. 25.) The joint applicants for rehearing have failed to establish the decision erred in determining that review of the legislative history was, under these circumstances, necessary, or that we committed error in reviewing the legislative history of the statutory language at issue.

3. Interpretation of statutory language

Assuming that the statutory language is ambiguous, the applicants for rehearing assert the challenged decision nevertheless "errs in finding that excluding fixed customer charges from the limit on increases on 'rates charged residential customers for electricity usage' is contrary to the legislative intent as revealed by the legislative history…." (Joint application for rehearing at p. 5.) They argue that there is no express statement as to what the Legislature intended with respect to fixed customer charges.

Moreover, they contend that despite language in SB 695 that specifically provided the Legislature "intended to minimize spikes in electricity rates and provide stability and predictability," the spikes the Legislature meant to avoid were limited to those that would be caused by increased revenue requirements for fuel and purchased power costs or the costs of Commission-mandated programs in the volumetric rates for Tiers 1 and 2, but not any increases that may occur from including fixed customer charges in the rates charged. (Joint application for rehearing at pp. 6-7.) They contend that "fixed customer charges that collect revenues from all customers result in reduced upper-tier volumetric rates, thus mitigating spikes caused by volumetric commodity rates and promoting 'stability and predictability.'" (Joint application for rehearing at p. 7.)

This is another example of repetition of an argument advanced by PG&E in the underlying proceeding. However, as we discussed in D.11-05-047, the legislative history of SB 695 established that the legislation was intended to minimize rate spikes for electric customers and provide stability and predictability. (D.11-05-047 at p. 26, citing the August 19, 2009 Assembly Committee on Appropriations Analysis of SB 695.) In reviewing and rejecting PG&E's argument, the challenged decision provided:

> In reference to the legislative history of SB 695, the Legislature has stated that "by restricting rate increases to an annual narrow range and controlling the increase within relatively small parameters, SB 695 is intended to minimize spikes in electricity rates and provide relative stability and predictability." Consistent with this express intent, the limitations in "rate" increases must be interpreted consistent with providing "relative stability and predictability" in customers' rates. Ignoring the effects of a fixed customer charge in assessing permissible statutory rate increases would conflict with this stated intent of SB 695. Otherwise, merely imposing limits on volumetric tiers would have little meaning if a fixed customer charge could be imposed without regard to such limits, and thereby undermine the intended overall rate stability. No customer using only baseline quantities could avoid the customer charge. Thus, it is logical to infer that the Legislature intended that all rate elements relevant to baseline usage be included for purposes of "restricting rate increases."

> Thus, by examining the legislative intent, we resolve the ambiguity in favor of interpreting customer charges as being included within the intended use of the term "rates" in Sec. 739.1(b)(2) and 739.9(a).
>
> We disagree with PG&E that omission of the phrase "including any customer charges" from Sec. 739.9(a) means that the cap on the "increase [in] the rates" referenced therein applies only to the volumetric rate, but not to fixed customer charges.
>
> Section 739.9(b) imposes a limitation on rate increases that expressly states that "rates charged residential customers for electricity usage up to the baseline quantities, *including any customer charge revenues*, shall not exceed 90 percent of the system average rate prior to January 1, 2019, and may not exceed 92.5 percent after that date." (Emphasis added.) Sec. 739.9(a) has similar language as Sec. 739.9(b), but omits the phrase "including any customer charge revenues."

(D.11-05-047 at pp. 25-27.)

The joint applicants for rehearing misconstrue case law, rely on unpersuasive cases and present a strained interpretation of the statutory language that is contrary to the general principle of statutory construction. The joint applicants for rehearing essentially argue that we should lower upper-tiered rates by shifting more of PG&E's residential revenue requirement to lower consuming residential customers through a fixed customer charge. We find that their demand contravenes legislative intent. We agree with the responses to the joint application for rehearing that the outcome sought by the joint applicants for rehearing "would effectively erase the SB 695 protections for CARE rates because there would be no requirement that fixed charges for CARE customers be limited to 80 percent of the fixed charges for non-CARE customers." (TURN response at p. 12.) The history of the residential rate freeze following passage of AB 1X and legislative intent of SB 695 to protect lower-tier usage customers amply support our interpretation of section 739.9(a) as including fixed customer charges. The joint applicants for rehearing

may not agree with D.11-05-047, but they have failed to establish that our reasoning was erroneous or that the findings and conclusions were not based upon the record.

4. Fixed charges, like other charges, are included within the relevant legislation

The joint applicants for rehearing contend that D.11-05-047 erred by "ignoring the limits the Legislature explicitly imposed on customer charges in [s]ection 739.9(b), and the fact that the Legislature's stated intent concerned the entire statute, not just subsection (a)." (Joint application for rehearing at p. 12.) The interpretation promoted by the joint applicants for rehearing would effectively deprive Tier 1 and 2 customers of their primary protection in section 739.9(a). Following the rate freeze, which shielded residential customers consuming less than 130 percent of baseline from rate increases for a number of years, the Legislature, through SB 695, established a means for phased-in rate increases, so that the affected customers were provided some protection, through statutorily indentified limitations, from suffering rate shock as the result of sudden rate increases. Under the outcome proposed by the joint applicants for rehearing significantly different charges could be assessed to PG&E's CARE and non-CARE customers, as well as significant increases to the total rates charged to CARE customers using up to 130 percent of baseline quantities. The outcome demanded by the joint applicants for rehearing defies the logic of the legislation at issue and does not comport with the legislative history. The arguments of the joint applicant for rehearing that PG&E's proposed increase would not undermine the legislative intent and is not prohibited by the legislation at issue are without merit. Joint applicants for rehearing have failed to establish the challenged decision erred.

5. The challenged decision comports with Commission precedent

As previously discussed, the joint applicants for rehearing contend that the phrase "rates charged [residential] customers for electricity usage," in section 739.9(a) is different from "baseline rates" and thus, the precedent relied upon by D.11-05-047 is misapplied. They argue that the Commission has always defined the term "usage rate" as

meaning volumetric rate, and not fixed charges. (Joint application for rehearing at pp. 13-14.)

However, the legislative history shows that the legislative intent was to use the entire phrase 'the rates charged residential customers for electricity usage up to 130 percent of the baseline quantities' with respect to Tiers 1 and 2, whose rates had been previously frozen under AB 1X. The legislative history establishes that the phrase refers to the entire retail rates for Tier 1 and Tier 2 customers, whose rates under the legislation may rise only in a limited and gradual manner. (§ 739.9(b), "[t]he rates charged residential customers for electricity usage up to the baseline quantities, including any customer charge revenues, shall not exceed 90 percent of the system average rate prior to January 1, 2019, and may not exceed 92.5 percent after that date.")

The joint applicants for rehearing argue that D.09-12-048 is the only decision to interpret the meaning of section 739.9(a); however, that decision is not on point, as even the joint applicants for rehearing admit: "SCE … was not proposing to increase its customer charge…." (Joint application for rehearing at p. 14.) The history of AB 1X is recounted in D.11-05-047 and there is no dispute that SB 695 was enacted to begin allowing for limited annual Tier 1 and 2 rate increases. The joint applicants for rehearing, as well as parties opposing the rehearing application point to the Commission's history of interpreting language in AB 1X legislation (see e.g., Water Code section 80110(e)), that prohibited rate increases for "residential customers for existing baseline quantities or usage by those customers of up to 130 percent of existing baseline quantities." (See e.g., D.04-04-020 at pp. 11-12, 15; D.03-02-036 at p. 6; D.02-04-026 at pp. 12-13; D.01-03-082 at p. 65 Conclusion of Law No. 16.)

The essential argument made by PG&E in the underlying proceeding and by the joint applicants for rehearing is that the limitation on rate increases permitted by SB 695 should not be interpreted to mean PG&E's proposed fixed charges for purposes of section 739.9(a). This argument conflicts with arguments advanced by PG&E in an earlier Commission proceeding concerning AB 1X legislation with respect to charges concerning all electricity use in Tiers 1 and 2. In a 2002 filing in R.01-05-047,

concerning whether baseline allowances for residential usage of gas and electricity should be revised, PG&E argued that the legislative purpose of AB 1X was "to protect low-income customers through a separate … CARE program…." (October 16, 2002 PG&E opening brief on Phase 2 issues in R.01-05-047 at p. 3, and see pp. 20-21 (hereinafter, PG&E's October 16, 2002 brief).) In discussing Water Code section 80110, adopted by the Legislature under AB 1X, PG&E argued: "In other words, A.B. 1x-1 exempted from any increases in *total* charges all residential electricity usage falling within 130 percent of baseline usage." (PG&E's October 16, 2002 brief at p. 11, emphasis retained.) With respect to customer charge protections in Water Code section 80110(e), PG&E agreed with the Commission's interpretation of AB 1X as prohibiting "any and all bill increases on usage below 130 percent of baseline." (PG&E's October 16, 2002 brief at p. 59.) We agree with TURN that there is "no material difference between the [section] 80110(e) restrictions on 'electricity charges … for usage by those customers up to 130 percent of existing quantities' and the [section] 739.9(a) limits on 'rates charged residential customers for electricity usage up to 130 percent of the baseline quantities." (TURN response at p. 9.) The joint applicants for rehearing have taken a portion of the relevant legislation out of context. Their argument is neither logical nor reasonable in light of Commission history and the legislative purpose of SB 695. The joint applicants for rehearing have failed to show that the challenged decision erroneously relied on Commission precedent and erred in its interpretation.

B. Policy Allegation

The joint applicants for rehearing allege that the challenged decision "ignores compelling policy reasons for adopting the customer charge." (Joint application for rehearing at p. 15.) However, D.11-05-047 discussed various policy reasons for not adopting PG&E's policy, in addition to the legal reasons for denying the proposed fixed charge. In any event, the allegation is not one of legal error and it is improper to re-litigate policy issues in an application for rehearing. (Commission Rules of Practice and Procedure, rule 16.1(c).)

IV. CONCLUSION

For the reasons discussed above, we find the joint application for rehearing of D.11-05-047 is denied because no legal error has been shown.

THEREFORE, IT IS ORDERED that:

1. The joint application of Pacific Gas and Electric Company, Southern California Edison Company, and Kern County Taxpayers Association for rehearing of Decision 11-05-047 is denied.

2. Application 10-03-014 remains open.

This order is effective today.

Dated March 22, 2012, at San Francisco, California.

MICHAEL R. PEEVEY
President
CATHERINE J.K. SANDOVAL
MARK J. FERRON
TIMOTHY ALAN SIMON
Commissioners

Commissioner Michael Peter Florio recused himself and did not participate.