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Decision 01-03-082 March 27, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E 3338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan. (U 39 E)	Application 00-11-056 (Filed November 22, 2000)
Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)

(See Appendix A for List of Appearances.)

INTERIM OPINION REGARDING PROPOSED RATE INCREASES

I. Summary

This decision grants Southern California Edison Company (SCE) and Pacific Gas and Electric Company (PG&E) authority to increase rates by adding to their current rates a three-cent per kilowatt-hour (kWh) surcharge in response to the current emergency in the electric industry.

After an independent accounting review, an evidentiary hearing and a full opportunity to comment and testify provided to all parties, we conclude that the utilities have established the need for additional revenues on a going-forward basis in order for those utilities to comply with their statutory duty to provide adequate electric service to their customers. Today's decision does not address recovery of past power purchase costs and other costs claimed by the utilities.

The increase will be added to the utilities' currently controlled rates and will be in addition to the emergency surcharge approved on January 4, 2001 and made permanent by with this decision. It will cost the customers of the utilities approximately $2.5 billion dollars annually.[1] The California Department of Water Resources has yet to provide the Commission with either its revenue requirement or with detailed data regarding its net short needs. We will allocate a portion of this surcharge directly to the California Department of Water Resources (CDWR) when CDWR provides this Commission a revenue requirement that documents its need for revenues in excess of those allocated by D.01-03-081.

The Federal Energy Regulation Commission (FERC) has determined that current wholesale power rates are not just and reasonable. However, both the utilities and CDWR in large measure are subject to those wholesale rates in order

[1] As explained more fully below, the usage of residential customers below 130 percent of baseline allowance will be exempted from the surcharge.

to assure adequate electric service. An increase in retail electric rates is necessary because without it the state's electricity system and its economy will be severely jeopardized. We adopt this increase effective today, but we seek parties' comments on the amount of the increase and on rate design proposals for its collection, including that which the assigned commissioner set forth in the Assigned Commissioner's Ruling issued contemporaneously.

We recognize that this rate increase will impose expense on California's citizens and businesses; in this decision we also take steps to mitigate this pain somewhat. This decision modifies accounting rules which apply to the utilities, in response to a proposal made by TURN, so that we will be able to evaluate the full consequences of the accounting rules set up to implement AB 1890 and to adjust rates in the future, if warranted. In addition, we adopt a proposal that specifically shelters low-income households eligible for the California Alternative Rates for Energy (CARE) program for the electric customers of PG&E and Edison by expanding the eligibility criteria from 150% to 175% of federal poverty guidelines.[2]

II. Background

A. Events Leading to this Decision

This decision addresses the requests of PG&E and SCE for immediate rate increases in response to extraordinary circumstances in California's wholesale power markets. We consider their requests in the context of current state law and the state's dysfunctional wholesale energy markets that have led to unconscionable, unlawful wholesale prices and an increasingly unstable supply situation.

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[2] Families eligible for CARE are also severely effected by today's high gas bills and, therefore, we will move quickly to address the applicability of the changes we make here to all jurisdictional utilities.

The current industry structure evolves from Chapter 854 of the Statutes of 1996 Assembly Bill (AB) 1890 (Brulte), passed in 1996 to promote competition in California's electric market by opening generation markets. AB 1890 turned over operation of the state's transmission system to the Independent System Operator (ISO) and the pricing of unregulated generation to the Power Exchange (PX), both private nongovernmental corporations regulated by the Federal Energy Regulatory Commission (FERC), not the State of California. AB 1890 also required the utilities to file with this Commission rate plans that set electric utility rates at June 10, 1996 levels, except that bills for residential and small commercial customers were discounted by 10% from those levels, through the issuance of Rate Reduction Bonds approved by the Commission. The frozen rate levels were initially high enough to allow PG&E, SCE, and San Diego Gas & Electric Company (SDG&E) an opportunity to recover uneconomic generation costs within a specified period.

The original expectations of California decision-makers – that competitive markets would reduce power purchase prices – have not been fulfilled. Rather than dropping in response to competitive market forces, wholesale electricity prices have risen by staggering proportions since the summer of 2000. These increases accelerated their rate of ascent after the FERC eliminated wholesale electricity price caps in California markets in November and December, 2000. The uncontrolled price increases in wholesale markets have created enormous outstanding liabilities for PG&E and SCE. Indeed, SCE's and PG&E's continued financial viability and ability to serve their customers has been seriously compromised by the dramatic escalation in wholesale prices since.

B. Procedural Background

After the FERC refused to extend wholesale electricity price cap authority in California, the utility respondents filed Rate Stabilization Plans (RSPs) proposing to end the rate freeze and increase rates by 10 percent.

On December 8, 2000, the Federal Energy Regulatory Commission completely eliminated price caps in California, despite concluding that the market was dysfunctional and was being subverted by sellers' market power. Wholesale electricity prices immediately soared, peaking at $1400 per megawatt hour on December 14th. The utilities filed emergency motions to modify RSPs to provide for 30 percent rate increases on December 14, 2000. The next week the Commission issued an emergency order on December 21, setting out a schedule to address rate relief in the context of the FERC-created wholesale price emergency.

In the December 21st order, D.00-12-067, the Commission determined that expedited action was necessary to fulfill our statutory obligations to ensure that the utilities can provide adequate service at just and reasonable rates. We consolidated the applications of PG&E and Edison with TURN's Petition to Modify Resolution E-3527 and conducted hearings during the week of December 26, 2000. Those hearings were narrowly focused on PG&E's and Edison's claims that existing rates did not yield revenues sufficient to meet their cost obligations. The commission also engaged independent auditors to verify the extent of the utilities' financial hardship and cash positions.

The Commission issued D.01-01-018 on January 4, 2001, authorizing an interim rate increase to both PG&E and Edison, subject to refund, of one cent per kilowatt-hour (kWh). The decision exempted low-income customers eligible for the California Alternative Rates for Energy (CARE) program. We authorized this surcharge to be applied to recovery of future electricity procurement costs and to be in effect for 90 days, during which time independent consultants engaged by the Commission would review the utilities' financial circumstances and all parties would have the opportunity to submit evidence and testimony regarding the proposed rate increase.

The assigned Commissioner designated the following issues as within the scope of the hearings:

(1) Review of the independent audits of PG&E and Edison, ordered in D.00-12-067, and determination of whether or not the Commission should grant further rate increases;

(2) TURN's accounting proposal to reconcile the Transition Revenue Account (TRA) and Transition Cost Balancing Account (TCGA) accounts and the Generation Memorandum Accounts (GMA);

(3) Consideration of whether the rate freeze has ended on a prospective basis only, including interim valuation of retained utility generating assets;

(4) Greenlining / Latino Forum's CARE proposal;

(5) Parties' proposals for tiered residential rates.

C. Recent Legislative Action Provides the Commission With Enhanced Authority to Raise Rates

On January 19, 2001 the Legislature passed and the Governor signed Chapter 3 of the Statutes of 2001. (Senate Bill 7x (Burton) from the First Extraordinary Session). SB7X appropriated $400 million from the General Fund to the Department of Water Resources to purchase energy for the use of utility customers. This action was necessitated by a concerted refusal of wholesale sellers to sell energy to the utilities or to the Independent System Operator, thereby endangering the supply of power for California. The legislation directed the Commission to implement emergency regulations governing the utilities' collection and remittance of customer payments for the energy purchased by DWR. The Commission's decision implementing SB7X was issued on January 31, 2001. It allocated revenues collected by utilities to DWR in proportion to the energy delivered by DWR, and it ordered the utilities to establish accounting and billing procedures to pay DWR directly for the proportion of power DWR purchased and delivered to utility customers.

On February 1, 2001, the California Legislature enacted and the Governor signed Assembly Bill No. 1 from the First Extraordinary Session (Ch. 4, First Extraordinary Session 2001, hereafter referred to as AB1X). AB1X adds Division 27 to the Water Code, California Water Code sections 80000 et seq., which:

- Authorizes the California Department of Water Resources (CDWR) to purchase power and sell it to retail customers of PG&E, Edison, and SDG&E, as well as municipal utilities, Water Code section 80100.
- Establishes the Department of Water Resources Electric Power Fund in the State Treasury, into which are placed proceeds from power sales as well as bond proceeds and appropriations, Water Code section 80200.
- Authorizes CDWR to sell bonds to finance its power purchases, Water Code section 80130.
- Requires CDWR to establish a revenue requirement to defray the costs of its activities and to communicate that revenue requirement to the Commission, Water Code section 80134.
- Allows CDWR to recover its revenue requirement after it is communicated to the Commission, Water Code section 80110.

Pursuant to AB1X, the Commission is directed to designate a portion of the existing generation rates of PG&E, Edison, and SDG&E in effect as of January 5, 2001 as the California Procurement Adjustment (CPA). The statute anticipates that the utilities will collect the CPA revenues from retail customers and transfer some portion of those revenues to CDWR as the Fixed Department of Water Resources Set-Aside.[3] In describing the calculation of the CPA, AB1X refers to the rates that are in effect as of January 5, 2001 as the beginning point for the calculation. In accordance with the Legislature's clear intent, we therefore make permanent the one-cent rate surcharge that the Commission authorized in D.01-01-018, which was included in the rates in effect as of January 5, 2001.

AB1X authorizes CDWR to establish revenue requirements sufficient to recover its costs and to communicate those requirements to the Commission. As AB1X requires the Commission to provide for recovery of DWR's revenue requirements, it necessarily authorizes the Commission to impose an increase in customers' electric bills, whether the increase is technically described as an increase in "rates" payable to utilities or an increase attributable to DWR's deliveries of electricity to customers.[4] AB1X somewhat limits our authority, by providing that residential customer rates cannot be increased for usage up to 130% of baseline quantities. Water Code section 80110.

III. Utility Requests for Rate Relief

SCE and PG&E continue to seek additional rate increases to improve cash flow and to pay for future costs of power for their customers. PG&E claims it needs to increase retail rates by an additional two cents-per kWh. PG&E claims that the one-cent interim rate increase granted in D. 01-01-018 has not improved its financial circumstances, that it is unable to access credit to keep current with its

[3] The methodology for setting the CPA is developed in a separate decision D.01-03-081.

[4] When the Commission refers to rate increases in this decision, we are not distinguishing between utility and CDWR entitlements, or inadvertently deciding any issues about how the revenue stream paid by end use customers will be divided between utilities and CDWR.

maturing debts, and that its bonds are now rated as junk bonds. PG&E has defaulted on some wholesale power payments and claims that it cannot pay additional power bills that are coming due. PG&E is also experiencing problems securing natural gas for its gas customers, and claims problems with trade creditors in the normal course of business.

SCE originally sought a 10% rate increase in this proceeding, which it subsequently modified to a 30 % rate increase as described above. SCE's remaining request, after the one-cent per kWh increase granted to it in D.01-01-018, totals a 20% rate increase, or two cents per kWh. SCE claims that failure to grant the remaining 20% increase will prevent the utility from meeting its past and present financial obligations.

Consumer groups argue that no additional rate increase is warranted at this time.[5] These parties generally argue that the utilities have not justified the need to burden customers with further increases given the various sources of funds and other remedies available to the utilities.

A. Independent Financial Assessments Confirm the Utilities' Current Financial Distress

In order to assess the utilities' claims concerning the extent and urgency of their financial problems, the Commission hired independent financial consultants as authorized in D.00-12-067. KPMG LLP (KPMG) conducted the review of SCE and Barrington-Wellesley Group, Inc. (BWG) conducted the review of PG&E. The consultants published their initial reports on January 29 and January 30, 2001, respectively.

[5] Parties presenting witnesses at hearing on this issue were Aglet, CLECA/CMTA, FEA, ORA, and TURN.

The reports covered the following general areas:

- Credit and Default Relationships
- Power Purchases and Cash Flows
- Cash Conservation Activities
- Accounting Mechanisms to Track Stranded Cost Recovery
- Inter-Company Cash Flows
- Affiliate Earnings in the California Energy Market
- Federal Income Tax Refunds

The reports confirm that the utilities are experiencing serious financial shortfalls in the revenues necessary to provide adequate electric service to their customers.

1. PG&E Report Findings

The BWG report concludes that PG&E has accurately described its borrowing capability, credit condition and potential events of default. BWG concludes that PG&E cannot obtain the credit it needs. BWG confirms that PG&E and its parent, PG&E Corp. have lost access to the commercial lending markets and are using their bank lines of credit to pay maturing commercial paper as it comes due.

The principal and interest payments due on PG&E's debt in 2001 total $3.2 billion. BWG reports that PG&E has exhausted its borrowing capability under existing lines of credit and is on the verge of defaulting many of its loan agreements. Under its short-term credit agreements, PG&E is required to make payments when due and will be in default if accounts payable arising in the ordinary course of business of $100 million or more become overdue. PG&E Corp.'s loan agreements contain default provisions that are similar to those of PG&E regarding the payment of debts when due.

Credit rating downgrades in January 2001 by Standard & Poor's and Moody's below minimum investment grade ratings for PG&E and PG&E Corp constitute an event of default under the PG&E Corp. bank lines of credit agreements and under one of PG&E's bank line of credit agreements. Beginning January 16, 2001, the banks have refused to allow drawdowns under the PG&E and PG&E Corp. credit agreements, and PG&E and PG&E Corp are not paying maturing commercial paper obligations as they come due.

BWG also found that PG&E would likely have positive cash reserves at least through March 2001. BWG projected PG&E's daily cash balances for the period through March 30, 2001 using a range of market clearing prices. On March 15, the Commission reopened the record to update PG&E's financial balances. The update indicates that PG&E's cash balance increased significantly from $827 million on January 31, 2001 to $2.508 billion as of March 8, 2001.[6] During the same period, PG&E's outstanding obligations due and in default increased from $1.542 billion on January 31, 2001 to $3.324 billion on March 8, 2001. Notwithstanding the one-cent increase granted on January 4, 2001, PG&E has failed to use the revenues produced from that surcharge to pay for ongoing power purchase costs.

2. Edison Report Findings

KPMG reports that SCE has used all available lines of credit and has been unable to extend or renew credit as obligations become due. SCE's share of secured and unsecured debt due in 2001 is $242 million. Under SCE's loan agreements debt becomes immediately due and payable on default. Credit rating agencies downgraded SCE's credit ratings on most of its rated indebtedness to below investment grade during January 2001. SCE suspended payment of certain obligations, including payments for electric power, and has not declared dividends on its preferred stock that normally would have been declared in February and

[6] This balance reflects the full receipt of a $1.1 Billion tax refund that PG&E stated was due the utility on a stand-alone calculation of its taxes.

March 2001. Notwithstanding the one-cent increase on January 4, 2001, SCE has failed to use the revenues produced from that surcharge to pay for ongoing power purchase costs.

KPMG forecasted SCE's cash flow using a range of assumptions regarding power costs and payment timing. KPMG reported that under those assumptions, tested, SCE would improve its cash flow position and retain cash at least through March 31, 2001. More recent information indicates that SCE's cash balance improved slightly from $1.5 billion at the end of January 2001 to $1.6 billion by early March 2001. The amounts in default increased from $1.24 billion to $1.77 billion over the same period.

The Edison and PG&E Reports suggest that even with the emergency increase in rates and the actions of the DWR to purchase a substantial portion of the energy for their loads, the utilities' financial condition has not become stable. When the utilities begin to segregate revenues from existing rates applicable to DWR purchases and remit them to DWR pursuant to AB1X and our decision D.01-03-081 also issued today, pressure on utility finances will inevitably increase. We will order utilities to resume payments to QFs on a going-forward basis; this will ratchet up the pressure even more. We have come to the bitter moment when the record shows that additional ratepayer money must be provided to protect the taxpayers' commitments through the CDWR power purchases and to prevent utility financial meltdown.

B. Rates Must Be Increased, Subject to Certain Conditions

1. The Current Financial Emergency Requires Additional Rate Revenues

The Commission's first duty is to assure that customers of California utilities receive reliable, safe service at reasonable rates. The findings of BWG and KPMG generally confirm the utilities' claims of current financial distress. Both have defaulted on various financial commitments and find it increasingly difficult to secure any credit.

Some parties argue that the Commission should not assume that its first responsibility is to promote utility financial health. This is a legitimate observation, but the current circumstances and the action we take today do not implicate that issue. The emergency in the electric industry affects more than utility finances. The Commission must protect the state's energy system, which is essential to the state's economy and the welfare of its families and businesses. Moreover, the Commission takes expedited action to fulfill its implicit responsibility to ensure the viability of the State's General Fund pursuant to the power purchase authority granted CDWR in AB1X.

SCE's and PG&E's financial problems have compromised the integrity of the state's electrical system. The utilities are in debt to the ISO and to power sellers that will not or cannot sell additional power unless they are paid. The state's energy supply system is further compromised because some suppliers have also refused to sell PG&E natural gas that it needs to purchase for its natural gas customers. Blackouts across the state on March 19 and 20 were attributable in part to the refusal of energy suppliers, including qualifying facilities (QFs), to sell electricity to the ISO and the utilities. While the failure of some of these suppliers to provide available power to the grid may stem from their desire to maximize profits, others say they are on the verge of insolvency as a result of the utilities' failure to pay. Whether or not the power sellers' actions are lawful, and whether or not we approve of those actions, without a rate increase it will become increasingly difficult to keep the lights on in California. However, we intend to continue to pursue remedies against power sellers charging unjust and unreasonable prices.

Although the state's wholesale markets continue to permit power sellers to receive extraordinary prices for the power they sell, the recent passage of AB1X, authorizing CDWR to purchase electric power and sell it to retail customers and local publicly owned electric utilities, has provided some financial relief to the utilities by reducing the volume of the power purchases they must make at unjust and unreasonable prices.

The utilities would rely on CDWR to purchase all of their net short electricity requirements.[7] Indeed, SCE suggests it requires no rate increase if CDWR were to purchase all of its net short power requirements. But AB1X continues the utilities' obligation to serve their customers. We cannot and will not relieve them of that fundamental statutory obligation. Further, although CDWR has assumed responsibility to purchase some of the utilities' power requirements, it has not committed to purchase all net short power requirements. For the Commission to assume here, for the purpose of setting rates, that CDWR will purchase all future net short electricity requirements would be the equivalent of ordering it to do so. Such an action would require authority the Commission does

[7] "Net short" power requirements refers here to the amount of power the utilities must purchase to supply to their customers, in addition to that provided by their own generation, purchases pursuant to contracts with qualifying facilities, and purchases made pursuant to bilateral and other power purchase contracts.

not possess. AB1X is permissive, not mandatory, with regard to CDWR's authority to purchase power for utility customers' use.

Even if CDWR does purchase the entire net short, we disagree with Edison's claim that this would allow rates to remain unchanged. CDWR must be paid for the electricity it provides, and some of that power is likely to be expensive.

Rather than increasing rates, some parties propose other ways of easing the utilities' financial distress. For example, some parties advocate reducing QF prices, exploring the use of over-funded pension programs, requiring infusions of capital from the utilities' holding companies, or restructuring the way the utilities are reimbursed for nuclear power. While there may be many logical places to turn for additional cost savings or cash, our evaluation of resources necessary for continued power purchase cannot rely solely on uncertain or future possibilities. In the future we can refund revenues that exceed costs, but a bankruptcy or financial collapse of the state's energy system would cause wide-ranging, undesirable consequences.

2. This Rate Increase is Authorized Subject to Conditions

In this decision we order emergency rate relief to SCE and PG&E in order to assure the continued viability of California's electric power supply, to safeguard the viability of the State's General Fund, and to minimize credit-related supply disruptions.

We first affirm that AB1X makes permanent the one-cent rate increase granted on January 4, 2001. This amount is part of the existing rates that are allocated between CDWR and the utilities.

We also grant an increase of three cents per kWh to be collected by SCE and PG&E, subject to several conditions. Revenue generated by the rate increases will be applied only to electric power costs that are incurred after the effective date of this order. We will direct the utilities to enter the revenues from the rate increases into balancing accounts and the revenues will be subject to refund if, at a later date, we determine that the utilities failed to use the funds to pay for future power purchases. We reiterate that the revenues the utilities have collected and continue to collect from the one-cent per kilowatt-hour rate increase authorized on January 4, 2001 must be used to pay for power purchases and not for any other costs incurred by the utilities. Upon receipt of and analysis and comment on DWR's revenue requirement, which has yet to be provided to this Commission, we will act promptly to further allocate a portion of these increases to CDWR.

As AB1X requires, the rate increase approved today will not apply to residential usage below 130% of baseline rates. In addition, we exempt CARE-eligible customers from these rate increases, as we discuss more fully below.

We impose one final condition on the utilities' authority to retain the revenues generated from this rate increase. This condition is based on the likelihood that refunds of overcharges can be obtained from generators and sellers if such refunds are aggressively sought.

The California Independent System Operator's (ISO) report of March 21, 2001 confirms many of the concerns this Commission has raised in its own proceedings and before FERC with regard to the impact on wholesale electricity market prices of generators' and power sellers' market behavior. Where these activities result in higher wholesale prices and compromise system reliability, the interests of the State's utilities, consumers and taxpayers are aligned.

We expect the utilities to join with the State and take any and all actions necessary to assure that California and its utility customers realize refunds for or repayment or disgorgement of power seller overcharges. The utilities possess market information and expertise that place them in a unique position to understand market behavior and to pursue legal remedies. To date, however, the utilities appear to have been hesitant to take legal action against the generators and sellers who are responsible for, and have profited by, the utilities' financial distress.

We therefore make today's rate increase subject to refund in two circumstances. First, to the extent that generators and sellers make refunds for overcollections, those refunds should either be passed through ratepayers or applied to unrecovered power purchase costs, as we discuss more fully below. Second, to the extent that any administrative body or court denies refunds of overcollections in a proceeding where recovery has been hampered by a lack of cooperation from a utility, today's rate increases will also be subject to refund. The reason for this condition is simple: we cannot authorize a rate increase for the purpose of remedying the adverse consequences of the utilities' financial distress and at the same time ignore another significant source of revenue that would remedy such distress. If utilities do not actively seek to reduce the financial burden caused by the purchase of power at unjust and unreasonable prices, by pursuing refunds or recovery or disgorgement of excess profits from unlawfully obtained power prices, we will not continue to force California's consumers and businesses to shoulder that burden.

We affirm the assigned ALJ's instructions to PG&E and Edison to provide monthly reports (due on the 15th of each month) that detail their efforts to pursue FERC-related remedies and to pursue lawsuits against generators or marketers of electricity and natural gas. (TR: 34, January 10, 2001 PHC.) We direct PG&E and Edison to provide monthly reports on their efforts in state and federal forums, beginning April 1, 2001 and continuing for twelve months. A subsequent decision will analyze these reports, together with the question of specific requirements to enforce this condition.

3. AB 1890 Rate Controls Remain Effective

The actions we take today do not end the rate controls established by AB 1890. AB 1890 set up a mechanism under which utility-submitted cost recovery plans that included frozen rates would remain in effect until the Commission found that certain conditions existed or until March 31, 2002, whichever is earlier. We are not prepared to find here that the specific cost recovery requirements mandated by the statute have been met.

In addition, recent legislation enacted in January and February 2001 addresses electricity market conditions and utility financial distress that AB 1890 neither anticipated nor provided for. These new laws respond to the current emergency and provide enhanced authority for this Commission to set retail rates for electric power to provide for the recovery of revenues expended by CDWR for power purchases that it makes, despite the fact that the AB 1890 rate controls remain in effect.

Thus, while the rate control provisions of AB 1890 provide consumer protections that remain in effect, we must also respond to immediate circumstances and the potentially dire consequences of inaction. Nothing in AB 1890 provides that all limits on utility rates are ended if, for unforeseen reasons, and in response to further legislative direction, the Commission increases rates to prevent the collapse of the electric system. As we have stated consistently in our decisions, only two events end all the consequences of the rate freeze: (1)

recovery of all specified transition costs,[8] or (2) March 31, 2002.

PG&E and Edison argue that the AB 1890 rate controls have ended because, they claim, their transition costs have been fully recovered under the accounting mechanisms of Resolution E-3527. They allege that all stranded costs have been fully recovered, and therefore the law requires that the AB 1890 rate controls end on or before the date of our decision.

Both also cite policy reasons why the Commission should declare an end to AB 1890 rate controls. PG&E states that nothing is to be gained, and much is potentially lost, by prolonging the uncertainty over whether the AB 1890 controls have met their statutory triggers. Specifically, PG&E asserts that continuing AB 1890 rate controls exacerbates the concerns of lenders and creditors that their position may deteriorate if they do not take PG&E into bankruptcy. Edison states that there is a broad consensus among parties, citing to TURN and ORA, to end these rate controls and that no legal or policy reason exists to delay.

ORA states that the AB 1890 rate controls have ended on a prospective basis because AB1X and AB6X together make retail ratepayers responsible for the cost of any wholesale power procured by CDWR, whether a rate freeze is needed or not. Without this intervening legislation, ORA argues that the AB 1890 rate freeze could only be lifted if the Commission fails to adopt TURN's accounting proposal.

TURN states that AB1X renders the AB 1890 rate freeze largely irrelevant and, therefore, the Commission should declare the freeze over as of the date of the statute's enactment. TURN states that AB1X is premised on the notion that each utility's generation rate component will exceed the costs of its own generation resources, providing a component that will become the California Procurement

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[8] Determination that recovery has occurred is contingent upon Commission approved

Adjustment that flows to CDWR, rather than additional revenue made available to the utility for transition cost recovery. Further, AB1X provides for rate increases if the generation rate component is insufficient to meet CDWR's procurement costs, a provision that cannot be reconciled with a continuing rate

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valuation for these assets. (D.99-10-057, Ordering Paragraph 2.)

freeze. In the absence of AB1X, TURN states the rate freeze would not be over for either utility under any reasonable set of assumptions and appropriate accounting practices.

Parties that do not support a determination that the rate freeze has ended for either PG&E or Edison include Aglet, CIU, CLECA, CMTA, Farm Bureau, Los Angeles, and SMUD. All state that the conditions of AB 1890 have not been met. In addition, Farm Bureau cautions the Commission against arbitrarily ending the rate controls without the utilities accepting that costs incurred during the rate freeze cannot be recovered from customers. SMUD urges the Commission to adopt measures to mitigate the real and potential exercise of market power by PG&E and other generators prior to lifting the rate controls. CLECA states the Commission would be best served by awaiting further guidance from the administration and the Legislature before deciding whether the conditions of AB 1890 have been met.

FEA, while not taking a position on whether the conditions necessary for lifting the rate the rate freeze, states that the Commission needs to reaffirm clearly that, consistent with the intent and requirements of AB 1890 and prior decisions, any uncollected balances at the end of rate freeze cannot be collected from customers and must be written off by the utilities under Financial Accounting Standards Board (FASB) 71.

We find that under AB 1890 the rate freeze has not ended for either PG&E or Edison. As discussed in Section IV below, we will require SCE and PG&E to "true-up" their operating costs and profits for the period of the AB 1890 rate controls, as proposed by TURN. SCE and PG&E have not recovered all of their stranded costs under any scenario put forth by any party, given these accounting adjustments.

We recognize that, conceptually, the rate freeze mandated in AB 1890 may be incompatible with recent legislation. Further, we agree with CIU that to find existing AB 1890 statutes inconsistent with AB1X, and to take action based on that conclusion, would be to repeal by implication. These statutes can be harmonized by recognizing that the commonly referred to "AB 1890 rate freeze" is actually a term of art for a complex set of accounting and cost recovery standards that when met, could usher in a new method of ratemaking, largely left undefined by the provisions of AB 1890.

To end the rate control mechanisms imposed by AB 1890 would require us to address the disposition of the balances in the Transition Cost Balancing Account (TCBA). We intend to monitor the balances remaining in the TCBA and will consider how to address remaining balances as we continue with these proceedings. We recognize that the magnitude of remaining balances may not have been contemplated in the AB 1890 cost recovery schemes. We will consider other approaches. For example, as we stated early in this decision, to the extent that generators and sellers make refunds for overcharges, those refunds should either be passed on to ratepayers or applied to capital cost recovery. In addition, legislative and negotiated changes relating to enhanced stranded cost recovery are now underway and may significantly affect the ultimate treatment and disposition of these costs. In this period of legislative re-examination of the premises and operation of AB 1890's restructuring statutes, it would be premature and unwise to opine as to the ultimate disposition and treatment of these accounts. We direct the utilities to maintain the regulatory accounting mechanisms as detailed below, but we explicitly draw no conclusions as to the ultimate treatment flowing from legislative or regulatory changes that could well involve the amounts tracked in those accounts. Indeed, as with so many aspects of AB 1890, the extent of the actual consequences of the legislation may well have been unintended and certainly unforeseen by those supporting the AB 1890 stranded cost recovery constraints at the time.

IV. Current Regulatory Accounting Mechanisms Overstate Power Purchase Liabilities Which Should Be Netted Against Power Sales Revenues

The "rate freeze" created by AB 1890 refers to a specific term of art. The AB 1890 rate freeze constitutes controls on rates to be filed with the Commission during a transition period from historic methods or rate regulation to a post-transition period. At its essence, the rate freeze allowed rates to remain higher than would have been justified in cost-based rates in order to allow the utilities the opportunity to recover costs associated with moving from cost-of-service regulation to a competitive regulatory scheme. The "AB 1890 rate freeze" is shorthand for a set of specific accounting and cost recovery triggers that could operate to induce market-based rates. The imposition of AB 1890's consumer protections, commonly called the rate freeze, ends when the utilities collect their remaining capital costs which were assumed at the time to be uneconomic or stranded. The utility reduces these generation asset capital costs after accounting for all other authorized costs (which can be analogized to operating costs, such as those associated with distribution, transmission and energy procurement).

A. Current Regulatory Accounting Mechanisms Fail to Match Operating Costs Against Operating Revenues

The Commission established two accounts to track costs and revenues: the Transition Cost Balancing Account (TCBA) and the Transition Revenue Account (TRA) established by D.97-10-057. Three sources of revenue originally flowed into and were tracked by the TCBA account:

1. "headroom," or the revenues remaining from customers' bill payments after a utility's authorized operating costs were paid;

2. revenue from sales of utility power plants to private owners, and
3. revenues from the sales of electric power provided by remaining utility-owned generation.

The TCBA tracks accelerated depreciation of all the undepreciated capital costs from the utilities' power plants. These amounts, along with costs of above-market QF contracts and other specific costs, were added together to produce the TCBA balance. When that balance dropped or was paid down to zero, that zeroing out triggers the lifting of the AB 1890 rate controls.[9] The TCBA balance is reduced when generation assets are sold for greater than net book value. The Commission also established generation memorandum accounts that track the costs and revenues of operating in the marketplace. Prior to D.01-01-018, revenues in excess of costs from these accounts were credited to the TCBA annually.

A second account, the TRA, tracks a utility's operating costs and revenues. The operation of this account permits calculation of headroom revenues remaining after operating costs are paid out of customer bill revenues. The purpose of the TRA is to match the amount of billed revenues against the amount of the separated revenue requirement and Commission-approved obligations. Separated revenue requirements include transmission, distribution, public purpose programs, and nuclear decommissioning. Commission-approved obligations include of Independent System Operator (ISO) charges and Power Exchange (PX) charges. For PG&E, Commission-approved obligations also include Diablo Canyon-related ICIP exclusions. The TRA assures that PG&E recovers all approved costs for distribution operations, nuclear decommissioning and public purpose programs. Edison's distribution revenues fluctuate according to sales. The TRA ensures Edison recovers nuclear decommissioning and public purpose costs.

[9] CPUC-authorized valuation is also required before the rate control trigger is lifted.

The TRA and TCBA interact because headroom is calculated through the TRA and credited monthly to the TCBA. The Commission has recognized that there may be months where operating costs exceed revenues, because the costs of energy vary on an hourly basis.[10] The Commission allowed these unrecovered costs to be carried over in the TRA from month to month, and allowed revenues to be applied to these accumulated undercollections first before being transferred to the TCBA. When the AB 1890 rate controls expire, any undercollection in the TRA cannot be thereafter recovered. (D.99-10-057 and D.00-03-058.)

B. TURN's Petition to Modify the TRA and TCBA Accounting Mechanisms Accurately Reflects True Costs and Profits

The current accounting rules under Resolution E-3527 prohibit the transfer of TRA liabilities to the TCBA. TURN asserts that this rule is inconsistent with the intent of AB 1890.

TURN proposes that we modify the current accounting rules to require that each month the balance in each utility whether negative or positive, be transferred to the TCBA. The effective date of the proposed accounting changes would be January 1, 1998, when Resolution E-3527 took effect. The TURN proposal would require reconciliation or a "true-up" of utility operating costs and profits for the AB 1890 rate control period, otherwise known as the rate freeze.

[10] The energy charge used for the headroom calculation is an average rate.

TURN and several other parties[11] maintain that this simple change will properly capture the concept of “headroom” over the entire rate-control period. This true-up allows the Commission to accurately capture the “rate freeze compact”and assess the recovery of transition costs over the entire rate control period, as was intended by the Legislature.

TURN believes that this change will recognize the billions of dollars the utilities have realized both on their sales of capital assets and in revenues from selling electricity generated by their own plants.[12] This true-up is necessary to correct inequities in the current accounting rules which make it appear that the utilities have fully collected their stranded capital costs, while at the same time recording monthly liabilities of billions of dollars in operating costs.

TURN also asserts that its proposed accounting change will correct the erroneous treatment of revenues associated with the rate reduction bonds (RRBs) authorized by AB 1890. TURN observes that the Commission’s current accounting treatment does not achieve the “indifference” outcome reflected in the Commission’s decisions on Rate Reduction Bonds when TRA undercollections are

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[11] The Office of Ratepayer Advocates (ORA), Aglet Consumer Alliance (Aglet), California Farm Bureau Federation (Farm Bureau), California Industrial Users (“CIU”), California Large Energy Consumers Association (“CLECA”), California Manufacturers & Technology Association (“CMTA”), City and County of San Francisco, Enron Energy Services, Inc. (Enron), Federal Executive Agencies (“FEA”), Greenlining Institute and Latino Issues Forum (Greenlining/LIF), Golden State Power Cooperative (“GSPC”), Los Angeles County, Sacramento Municipal Utility District unanimously urge the Commission to adopt TURN’s proposed accounting changes.

[12] As LAC/ISD and ORA point out, the November 1, 2000 FERC order (Order Proposing Remedies for California Wholesale Electric Markets, FERC Order Docket No. EL00-95-000, November 1, 2000, p. 11), recognizes that “[t]he utilities have reported about $4.6 billion in unrecovered wholesale costs of which about $2 billion reflects sales of electricity sold from generation which they still own.

accumulating. TURN contends that allowing the transfer of TRA undercollections merely reduces prior revenues recorded in the TCBA, thereby affecting only the amount of transition cost recovery achieved to date, not the amount of actual transition costs recorded in the TCBA.

In addition, TURN and the non-utility parties urge the Commission to true-up the accounting practices that track the costs and revenues from the utilities' fossil and hydroelectric generating plants in separate memorandum accounts until the end of the year. These parties point out that rising revenues reflected in these memo accounts are directly attributable to the same high-energy prices that have resulted to the growing TRA undecollections.

PG&E and Edison contend that this true-up is unlawful and would artificially extend the transition period. The utilities argue that such a true-up would force them to absorb the operating expenses incurred to provide service to their customers and would require the utilities to write off billions of dollars of transition costs. In essence, the utilities maintain that this (1) true-up would result in operating expenses being transformed into transition costs; (2) AB 1890 did not subject the utilities to the risk of non-recovery of FERC and CPUC-approved costs of providing service to their customers; (3) the accounting changes would be tantamount to retroactive ratemaking; and (4) the changes could deprive the utilities of a fair rate of return and result in confiscating rates. Edison states that the true-up would have a material impact on a case now pending before a federal court.

We disagree. We believe this true-up is critical in correcting an accounting anomaly.[13] As EPUC, CMTA, WPTF, CIU, Enron, and ORA point out, the utilities are wrong in claiming that the filed rate doctrine would be violated if the relief they seek were not granted.

FERC was aware of the "AB 1890 rate freeze" concept when it approved California's restructuring plan. In fact, FERC authorized market-based rates based on utilities' claims that the California "rate freeze" would mitigate the utilities' incentive to raise PX prices.

PG&E and Edison understood that their ability to collect their transition costs was tied directly to their operating costs, including wholesale electricity costs.

By adopting this true-up, i.e., by requiring that either the debit or credit balance determined through the TRA calculation be recorded in the TCBA, we give full effect to the "rate freeze" principle, properly apply the matching principle, and adhere to the requirements of Public Utilities Code § 368(a).

It is inconsistent with the intent of AB 1890 to continue to allow the utilities to appear to incur substantial liabilities in their operating costs on the one hand, while they continue to recover substantial amounts for accelerated capital costs on the other. The utilities insist that shareholders have achieved full recovery of transition costs and are therefore not at any risk. At the same time, the utilities demand that ratepayers now be required to reimburse the utilities for energy procurement costs, even while recognizing that rates were "frozen" at an

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[13] Later in this decision we order PG&E and Edison to restate their TCBA, TRA, and GMA account balances, on a monthly basis, in a manner consistent with this decision. Under the rules for current accounting mechanisms, the TCBA was overcollected in certain months in 1998. The AB 1890 rate controls obviously were not lifted then. The AB 1890 rate controls will not be lifted as a result of any restated balance with or unless other conditions for ending the rate freeze are met.

artificially high level to ensure that the utilities recover their prior transition costs. The true-up we adopt today corrects this inequity.

As stated in Resolution E-3527, Edison has previously proposed the approach we now take:

> Edison finds the ED's proposed approach inequitable because 'at the same time that the payments to the ISO and PX are increasing, potentially making the TRA balance negative, additional funds from the sales of Edison's generation output to the PX are being directly credited to the TCBA which will result in a direct benefit to the customers by immediately reducing transition costs recorded in the TCBA.' Edison argues that with an increase in the PX price, the ED's proposal results in the utilities bearing the risk of debit balances in the TRA while the benefits of the increased in the market price related to sale of their generation output to the PX are entirely reflected in the TCBA. (Resolution E-3527, mimeo at p. 5.)

Resolution E-3527 rejected Edison's arguments by stating that such treatment would be equivalent to treating the TRA debits as transition costs, which would be unlawful pursuant to § 367(a). The Resolution also declined to address the disposition of debits remaining in the TRA at the end of the transition period, as being beyond the scope of the Resolution.

In retrospect, Edison was correct in noting how E-3527 negated the matching principle. We believe the Resolution prematurely characterized the nature of TRA debit transfers. Applying the principles set forth in D.99-10-057 and upheld in D.00-03-058 requires that we take a closer look at the accounting anomalies caused by the treatment established by Resolution E-3527. We do not intend to further foster such inequities. As we have previously stated, the Commission has devised the TCBA and TRA accounting mechanisms and it is within our purview to change these mechanisms when inequities in accounting treatment become apparent.

Moreover, this true-up does not have the effect of treating TRA undercollections as an additional category of transition costs. Instead, it merely reduces prior revenues recorded in the TCBA, thereby affecting only the amount of transition cost recovery achieved to date. It does not affect the amount of transition costs recorded in the TCBA.[14] Aglet also correctly points out that debits in the TCBA include many non-transition costs.[15]

In D.97-11-074, the Commission determined the costs and categories of costs for generation-related capital costs and obligations that had the potential of becoming uneconomic as a result of transitioning in to a competitive generation market. These Commission-authorized costs and obligations will not increase, except as they may have been modified by other Commission decisions. Instead, transferring the TRA balance to the TCBA on a monthly basis, whether that balance is an under- or overcollection, simply matches operating costs and revenues appropriately. The effect of this true-up is fully consistent with AB 1890 and several prior Commission decisions, including D.97-10-057, D.99-10-057, and D.00-03-058.

In other proceedings at this Commission and before FERC, PG&E and Edison have long recognized the risk that the variable energy costs may create. For example, in early 1997, PG&E and Edison asserted to FERC that market-based rates were appropriate because they had no incentive to exercise market power. The utilities recognized that any increase in revenues obtained as a seller of energy in the PX would be offset by a greater loss in headroom revenues.[16] In its order conditionally approving the ISO and PX, FERC adopted market-based wholesale rates and confirmed that the existence of the "AB 1890 rate freeze," the fixed

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[14] Florio, TURN, RT Vol. 15 at 2055 and 2056.

[15] McManus, PG&E, RT Vol. 10 at 1353; Fellows, Edison, RT Vol. 13 at 1773.

[16] Phase II Market Power Filing of Pacific Gas and Electric Company, Docket No. ER96-1663-000, March 31, 1997, pp. 8-9 and Southern California Edison Company's Proposed Market Power Mitigation Strategies, Docket ER 96-1663-001, March 31, 1997, p. 13.

transition cost recovery period, and the mandatory sale of energy by the utilities into the PX helped to mitigate market power concerns. (Order Conditionally Authorizing Limited Operation of an Independent System Operator and Power Exchange, Pacific Gas and Electric Company, et al., Docket No. EC96-19-001, et al; 81 FERC ¶ 61,546, October 30, 1997.)

It is true that adopting this accounting true-up will increase the remaining level of unrecovered capital costs relating to generation assets. This is appropriate: the level of recorded transition cost recovery at any given time should reflect the fact that the utilities must first pay off operating costs incurred in providing service during the rate freeze and then may apply any remaining revenues to capital or stranded cost recovery.

PG&E now contends that while AB 1890 exposed them to the risk of recovering its transition costs, it did not subject them to the risk of not recovering of FERC-approved costs. PG&E argues that adopting TURN’s proposal would do exactly that and is therefore unlawful. Similarly, Edison contends that federal law requires states to pass through to retail customers federally tariffed charges and, to the extent that TURN’s proposal denies Edison the ability to recover procurement costs, it would contravene against the filed rate doctrine.

As stated above, we reject the utilities’ contention that allowing the transfer of the TRA undercollections will somehow transform energy procurement costs into transition costs. In adopting this accounting true-up, we merely reduce prior revenues recorded in the TCBA, thereby affecting only the amount of stranded cost recovery achieved to date. Under TURN’s proposed accounting mechanism, the utilities will achieve full recovery of their PX costs and any other FERC-approved costs incurred during the rate control period.

To be clear, the true-up we adopt today does not disallow the utilities' recovery of the cost of procuring and transmitting electricity in retail rates. Since the true-up alone does not disallow FERC-approved costs, there can be no violation of the filed rate doctrine in our adoption of the true-up accounting method.

PG&E and Edison assert that the true-up accounting method will deny them the ability to recover the TRA undercollections and that this would result in a "taking" under the California and United States Constitutions. Edison argues that nothing in AB 1890 changes the principle that a regulated company is entitled to a fair opportunity to recover its just and reasonable cost of operation. Both utilities claim constitutional right to retail rates that are not confiscatory.

PG&E maintains that any change of Commission's rules that would result in an indirect disallowance of PG&E's reasonable utility costs of service, whether the costs are operating costs or transition costs, is unlawful. According to Edison, TURN proposes that the TRA undercollection be transferred to the TCBA, where generation revenues are to offset them. Edison argues that TURN's proposal would deny Edison the ability to recover its procurement costs, and is therefore confiscatory.

These assertions are not persuasive. Under AB 1890, the utilities are at risk for the recovery of transition costs. Accordingly, the fact that this risk has now come to pass does not mean that there has been an unconstitutional taking. In short, the utilities' argument is premature. The AB 1890 rate controls are not over yet. Although the true-up accounting method will reduce prior transition cost recovery, no definitive landscape yet exists in which to ascertain the existence or extent of unrecovered costs.

Edison's argument about procurement costs adds nothing to PG&E's argument. Furthermore, in prior decisions we have consistently stressed that if we were to allow the utilities to recover procurement costs incurred during the rate-control period after rate controls end, the utilities' rates during the rate-control period would be made – retroactively – to exceed those in effect on June 10, 1996. This action would result in a recovery exceeding transition costs, an outcome inconsistent with AB 1890.

PG&E contends that the proposed true-up is illegal retroactive ratemaking because it changes the "rules of the game" after the fact. However, PG&E construes this prohibition too broadly. Even if this accounting change were a change in the rules of the game, it would not constitute prohibited retroactive ratemaking. As the California Supreme Court explained in Southern California Edison Company v. Public Utilities Commission (1978) 20 Cal.3d 813 (Edison), not every order involving rates that has a retroactive effect is prohibited retroactive ratemaking.

In Edison, the Court concluded that an adjustment of rate that does not involve general ratemaking may have a retroactive effect without violating the rule against retroactive ratemaking. Here, as in Edison, the accounting change at issue does not involve general ratemaking. In Edison, while the accounting rules changed in a way that Edison argued was detrimental, the changed rules, together with the required refund, simply carried out the Commission's original intent to allow Edison to recover its increased fuel costs on a dollar-for-dollar basis. Similarly, here, the effect of this accounting change is to carry out the original intent of AB 1890, i.e., that the utilities be at risk for recovery of transition costs during the transition period.

There are additional related reasons why TURN's proposal does not constitute prohibited retroactive ratemaking. First, no rates are being changed here. Unlike the situation in Edison, where refunds were ordered, here the utilities' rates remain frozen at the same level both before and after implementation of TURN's proposal. Second, the prohibition on retroactive ratemaking is a general statutory prohibition imposed by § 728. (See Edison, 20 Cal.3d at 816.) The accounting changes we adopt here are required to carry out a more specific and more recently enacted statute, AB 1890. Thus, even if there were a conflict between the retroactive ratemaking prohibition imposed by section 728 and the requirement of AB 1890 that the utilities be at risk for recovery of transition costs during the transition period, the more recently enacted and more specific requirements of AB 1890 would control.

The Commission established the TRA and TCBA based on our authority to implement the provisions of AB 1890. In retrospect, the accounting treatment we adopted in Resolution E-3527 contravenes the principles promulgated in AB 1890. We therefore find it necessary to modify our accounting approach in the manner proposed by TURN. The Commission has the authority to do so, and contrary to the utilities' claims that authority is not preempted by any law.

Edison asserts that when the Commission has cited the TURN proposal as a basis for dismissing the federal lawsuit, it is inappropriate for the Commission to grant TURN's request before the federal court has ruled. This argument is not persuasive under an estoppel theory or any other analysis.

Even if this argument were colorable, it would be defeated by the fact that Edison filed its federal lawsuit after TURN filed its accounting proposal with the Commission. We agree with the non-utility parties that accepting Edison' s contention and failing to act now on TURN's proposal would deny TURN its due process rights.

Moreover, the Commission's authority and responsibility to regulate utilities does not grind to a halt just because the utilities sue it. The Commission's authority to do its job continues, and our consideration of the proposed accounting true-up is a timely exercise of our ratemaking authority.

On a technical note, we agree with TURN's contention that current accounting treatment negates the neutrality of the rate reduction bond (RRB) transactions because the utilities' TRA accounts are undercollected. The Financing Order,[17] which governed the 10% rate reduction and the issuance of the RRBs, adopted a ratemaking approach designed to render the RRB transactions neutral as to when rate controls end and to prevent cost-shifting among residential customers, small commercial customers and large customers.[18] Since the TRA undercollections began to accrue, there has been no transition recovery from rate revenues.[19] Absent the financed 10% rate reduction, the total amount of revenues collected from residential and small commercial customers would have been applied to offset the undercollections in the TRA.[20] But because of the adopted RRB transactions and the Commission's current accounting mechanism, the utilities continue to impute to the TCBA revenues related to the RRBs. Consequently, residential and small commercial customers continue to contribute to transition cost recovery by the amount of the imputed revenues, despite the lack of headroom. As a result, the utilities have recorded a greater amount of transition

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[17] D.97-09-056 for Edison, D.97-09-055 for PG&E.

[18] D.97-09-054, mimeo at 22.

[19] McManus, PG&E, RT Vol. 11 at 1465; Dominski, Edison, RT Vol. 14 at 1869.

[20] Id., at RT Vol. 11 at 1466; RT Vol. 14 at 1869.

cost recovery than they would have had absent the RRB transaction and the residential and small commercial customers are paying a disproportionate share of the utilities' transition cost recovery,[21] an outcome that contradicts the objectives of the Financing Order. Adopting the proposed accounting true-up therefore has the additional advantage of ensuring that ratepayers are made indifferent as to how the revenues associated with the RRBs are treated.

[21] Ex. 72 (Florio Testimony), at 14.

We will also modify our approach to generation revenues tracked and recorded in the generation memorandum accounts. D.97-11-074 allowed the utilities to credit these accounts to the TCBA on an annual basis, in part to address Edison's concerns regarding the seasonal nature of its costs and revenues. TURN and other parties propose that the balance--whether overcollected or undercollected--in generation-related memorandum accounts be transferred to the TCBA monthly rather than annually. On the other hand, proposes that a portion of the retained generation revenues accruing in the TCBA accounts and generation memorandum accounts should be credited to the TRA undercollection. Enron agrees that to the extent we reject the accounting true-up, all generation revenue should first flow into the TRA to offset the utilities' operating costs on a monthly basis.

In D.01-01-018, we ordered the utilities to segregate the generation memorandum account balances, which otherwise would have been credited to the TCBA at year-end 2000. Because we are now transferring the balance in the TRA to the TCBA on a monthly basis, we will also now require the utilities to restate and record overcollected generation memorandum account balances to the TRA before any transfer to the TCBA. This should be done on a monthly basis. This is appropriate because it will match the costs of procuring power on a monthly basis with the revenues resulting from generating that power. We will consider any adjustments, including addressing monthly GMA undercollections, needed as we consider the interaction of AB6X, AB1X, and § 367(c) with regard to recording the monthly balance.

V. Care Discount

Greenlining/LIF presented testimony on specific changes to the California Alternative Rates for Energy (CARE) program for eligible low-income residential customers. Greenlining/LIF proposes to:

(1) Exempt CARE-eligible customers from the current surcharge and any increases that result from implementation of AB1X 1. Greenlining/LIF maintain that because low-income households often consist of multiple families living in sub-standard housing, electricity usage above the 130% baseline is often unavoidable;

(2) Increase the CARE discount from 15 to 25%, applicable to all Edison and PG&E customers, including PG&E's gas customers;

(3) Increase the CARE eligibility criteria from 150% to 175% of federal poverty guidelines. The effect of increasing eligibility would allow a family of three to earn up to $25,000 and still qualify for the discount. Adoption of an increase in eligibility criteria essentially acknowledges the reality of California's high cost of living;

(4) Rule favorably on Greenlining/LIF's motion for Clarification of D.01-01-018 regarding application of the EPS exemption.

TURN supports these proposals, stating that § 382 authorizes the Commission to ensure that the CARE program is funded at a level that will serve customers' needs. TURN provides evidence that customer need for such assistance may well be far higher than what is being provided today. CCSF also supports Commission consideration of financial assistance programs for low-income customers.

ORA and CMTA do not support further changes to the CARE discount during this phase of the proceeding because (1) CARE customers are already exempt from the 9% EPS increase applicable to residential customers; and (2) the Legislature is considering bills that increase the CARE discount. CMTA explains that CARE customers are already receiving an effective discount of 22.5% due to their exemption from the EPS and current CARE rates are 13% lower than they were in 1993. If additional discounts to CARE customers are adopted, CMTA fears that non-CARE customers will be forced to bear the increased cost burden.

PG&E supports increasing the CARE discount level to 25% for the electric portion of CARE customer bills if the Commission adopts PG&E's requested two cent per kWh increase in customer electric rates. Absent the Commission's adoption of a two cent per kWh rate increase, PG&E supports continuation of the current discount and the exemption for CARE customers from the one-cent per kWh increase (EPS) adopted in D. 01-01-018.

PG&E states that it may be appropriate to revisit the income threshold for participation in the CARE program, as well as other issues raised by Greenlining/LIF in its testimony, in the ongoing low-income proceeding. There consistency can be assured between gas and electricity customers, and among the state's investor-owned utilities. Edison asserts that the Commission should either retain the current EPS exemption for CARE customers or increase the CARE discount, but not both.

Edison is opposed to raising the income-eligibility guidelines for the CARE program because under the proposed guidelines Edison states that this would place over one-fourth of its residential customers as eligible for CARE, placing substantial additional burdens on the remaining ratepayers to cover these costs due to the potential increase in spending to fund the program.

Greenlining/LIF explains that low-income ratepayers tend to be renters rather than owners, reside in older housing that is less energy efficient, and who may have larger families or live in multi-family households. As Greenlining/LIF explains, under current CARE guidelines a family of three living in San Francisco and earning $21,505 per year would not qualify for the energy discount. (Greenlining/LIF Brief, p.4.) Low-income households are struggling now to meet the cost of utility energy services, which includes both their electric and gas usage bills. Greenlining / LIF has demonstrated that the poor (as defined by federal poverty level guidelines) bear a disproportionate energy burden. For example, according to a recent Rand Institute Study,[22] the percentage of household income devoted to energy services is far greater for low-income households.

The following table demonstrates current guidelines for the CARE program (at 150% of Federal Poverty Level) and the proposed new guidelines (at 175% of Federal Poverty Level):

Family/Household Size	**Current Guidelines (150% of Federal Poverty Level)**	**Proposed Guidelines (175% of Federal Poverty Level)**
1 – 2	$18,200	$21,233 (round to $21,250)
3	$21,500	$25,083 (round to $25,000)
4	$25,800	$30,100
Each additional person	$ 4,300	$5,016 (round to $5,000)

It is reasonable to adopt Greenlining / LIF's revised guidelines for eligibility in the CARE program to help relieve the energy burden of low-income households. We will increase the CARE eligibility levels from 150% of federal poverty guidelines to 175% for electric customers of PG&E and Edison. By adopting these new guidelines, we increase the number of households who may be eligible for this important program. As we expand the eligibility for this important program, it is crucial to make eligible people aware of the program. Therefore, consumer education and notice becomes imperative. We are impressed that Greenlining / LIF and Edison were able to negotiate a Memorandum of Understanding regarding

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[22] Exhibit 66, Attachment A: *The Public Benefit of California's Investments in Energy Efficiency*.

customer notification. We direct PG&E and Edison to consult with Greenlining/LIF and our Public Advisor's Office so that notification by bill inserts or other agreed upon methods can occur expeditiously. We will consider other issues related to consumer education in our current low-income proceedings, A.00-11-009, et al.

We do not increase the CARE discount from 15% to 25% at this time. While we propose to adopt a significant rate increase, we will consider the issue of an increased discount for both electric and gas customers in current related proceedings, A.00-11-009, et al.

We adopt Greenlining/LIF's proposal to exempt eligible CARE customers from this rate increase. We will determine whether similar exemptions apply to any additional increases that result from implementation of AB1X. It is clear that AB1X continues the exemption of CARE customers from the EPS, based on the statute's references to rates in effect as of January 5, 2001, and we affirm that finding here.

VI. Residential Tiering and Rate Design Proposals

The issue of tiered residential rates was included in the January 26th ACR setting the scope of this phase of these proceedings. Parties initially presented detailed proposals on this issue. At the February 2nd PHC, TURN voiced its concern that if PG&E and Edison presented their originally served rate design testimony in Phase 1, this issue would be addressed at a level of detail which would be inappropriate and would extend hearings beyond the time available within the schedule.

Subsequent to this discussion, PG&E and Edison notified parties that they were withdrawing their rate-design testimony based on TURN's comments and an understanding that if the Commission adopts a rate increase in this phase, the

Commission must use some rate design and revenue allocation principles to allocate the increase.[23] All parties who address rate design in this phase, except FEA, propose we use the equal cent/kWh approach that we adopted for the EPS in D.01-01-018.

While we adopt a rate increase today, we decline to adopt a specific residential tiering approach in the absence of an overall rate-design proposal and sufficient record evidence to so act. The assigned Commissioner's ACR, issued concurrently, sets forth a proposal for tiered rate design and ask for comments. Conceptually, we agree that it is time to adopt a tiered approach for those customer classes that do not have rates structured on a time-of-use (TOU) basis. Residential customers whose usage is below 130% of baseline are now statutorily exempt from rate increases that were not in effect as of January 5, 2001.

VII. Issuance of the Alternate Proposed Decision

Both the proposed decision and this proposed alternate decision were issued on March 26, 2001. Parties' appeared for final oral argument (FOA) before a quorum of the Commission on Monday, March 26, 2001. Pub. Util. Code § 311(e) requires that an alternate item to a proposed decision shall be subject to public review and comment before it may be voted upon. Rule 77.6(f) provides that the assigned Commissioner or ALJ may waive or reduce the comment period in any of the circumstances described in Rule 77.7(f)(1-9). In this case, Rule 77.7(f)(9) is applicable. For an alternate decision, the Commission may shorten the public review and comment period where it determines that public necessity so requires.

In this matter, the public interest in the Commission adopting a decision before expiration of the 30-day review and comment period outweighs the public

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[23] See February 2, 2001 PHC-2 RT 114 and February 6, 2001 letter from PG&E.

interest in having the full comment period. We will hold oral argument on March 26th in lieu of providing for written comments on the alternate decision. In addition, we will allow for comment on the rate design discussed herein.

Findings of Fact

1. Edison and PG&E seek additional rate increases to improve cash flow and pay fo future costs of power for their customers. We consider these requests in the context of current state law and the state's dysfunctional wholesale markets that have led to unconscionable, unlawful wholesale prices and an increasingly unstable supply situation.

2. The current industry structure evolves from AB 1890 passed in 1996 to promote competition in California's electric market by opening generation markets.

3. AB 1890 turned over operation of the state's transmission system to the Independent System Operator (ISO) and the pricing of unregulated generation to the Power Exchange (PX), both private nongovernmental corporations regulated by the Federal Energy Regulatory Commission (FERC), not the State of California.

4. AB 1890 required the utilities to file with this Commission rate plans that set electric utility rates at June 10, 1996 levels, except that bills for residential and small commercial customers were discounted by 10% from those levels, through the issuance of Rate Reduction Bonds approved by the Commission.

5. The frozen rate levels were initially high enough to allow PG&E, SCE, and SDG&E an opportunity to recover uneconomic generation costs within a specified period.

6. The original expectations of California decision-makers that competitive markets would reduce generation prices have not been fulfilled. Rather than dropping in response to competitive market forces, wholesale electricity prices in

California have risen by staggering proportions since the beginning of 2000.

7. The uncontrolled price increases in wholesale markets have created enormous outstanding liabilities for PG&E and SCE.

8. SCE's and PG&E's continued financial viability and ability to serve their customers has been seriously compromised by the dramatic escalation in wholesale prices since November 1.

9. On February 1, 2001, the California Legislature enacted and the Governor signed AB1X, which authorizes DWR to purchase power and sell it to retail customers of PG&E, Edison and SDG&E.

10. AB1X directs the Commission to designate a portion of existing generation rates as the CPA.

11. In describing the calculation of the CPA, AB1X refers to the rates that are in effect as of January 5, 2001 as the beginning point for the calculation. In accordance with the Legislature's clear intent, we therefore make permanent the one-cent rate surcharge that the Commission authorized in D.01-01-018, which was included in the rates in effect as of January 5, 2001.

12. The Barrington-Wellesley Group, Inc. (BWG) conducted an independent review of PG&E, and KPMG LLP (KPMG) conducted an independent review of Edison focusing on their cash liquidity, credit capacity, and solvency.

13. The BWG and KPMG report findings regarding the utilities' cash flow difficulties and inability to obtain additional credit, generally confirm that the financial problems facing the utilities are serious in nature, and could potentially lead to bankruptcy proceedings for the utilities.

14. PG&E's debt principal and interest payments due in 2001 total $3.2 billion. BWG reports that PG&E has exhausted its borrowing capability under existing lines of credit and is one the verge of default under the provisions of many of its

loan agreements.

15. Credit ratings downgrades in January 2001 by Standard & Poor's and Moody's below minimum investment grade ratings for PG&E and PG&E Corp constitute an event of default under the PG&E Corp. bank lines of credit agreements and under one of PG&E's bank line of credit agreements.

16. BWG’s update indicates that PG&E's cash balance increased significantly from $827 million on January 31, 2001 to$2.508 billion as of March 8, 2001. During the same period, its outstanding obligations due and in default increased from $1.542 billion on January 31, 2001 to $3.324 billion on March 8, 2001.

17. KPMG reports that SCE has exercised all available lines of credit and has been unable to extend or renew credit as obligations become due. SCE's share of secured and unsecured debt that is due in 2001 is $242 million. SCE's loan agreements provide for specific clauses with respect to default whereby the underlying debt becomes immediately due and payable. Credit rating agencies downgraded SCE's credit ratings on most of its rated indebtedness to below investment grade during January 2001.

18. Since the KPMG Report was released, several creditors have formed an informal credit committee that threatens to force SCE into involuntary bankruptcy. To help alleviate liquidity concerns, SCE suspended payment of certain obligations, including payments for electric power, and has not declared dividends on its preferred stock that normally would have been paid in February and March 2001.

19. KPMG’s update indicates that SCE's cash balance improved slightly from $1.5 billion at the end of January 2001 to $1.6 billion as of March 8, 2001. The amounts in default increased from $1.24 billion to $1.77 billion over the same period.

20. Even with the emergency increase in rates and the actions of DWR to procure a substantial portion of energy for their loads, the utilities' financial condition remains unstable.

21. Pressure on utility finances will increase when the utilities' begin to segregate revenues applicable to DWR purchases from existing rates and remit these revenues directly to DWR, as required by AB1X and our decisions.

22. Requiring the utilities to resume payments to QFs on a going forward basis will also increase pressure on utility finances.

23. Additional ratepayer money must be provided to protect the taxpayers' commitments through DWR purchases and to prevent utility financial collapse.

24. SCE and PG&E's financial problems have compromised the integrity of the state's electrical system. The utilities are increasingly in debt to the ISO and to power sellers that will not or cannot sell additional power into California's grid.

25. The state's energy supply system is further compromised because some suppliers have also refused to sell natural gas to PG&E, which it needs to purchase on behalf of its natural gas customers.

26. Blackouts across the state on March 19 and 20 were attributable in part to the refusal of energy suppliers, including QFs, to sell electricity to the ISO and the utilities because of concerns that they might not be paid.

27. Although the state's wholesale markets continue to permit power sellers to receive extraordinary prices for the power they sell, the recent passage of AB1X has provided some financial relief to the utilities by reducing the volume of the power purchases they must make at unjust and unreasonable prices.

28. Although CDWR has assumed responsibility to purchase significant portions of the utilities' requirement, it has not stated a commitment to purchase

all net short power requirements.

29. CDWR must be paid for the electricity it provides, some of which is likely to be expensive.

30. While there may be many logical places to turn for additional cost savings or cash, our evaluation of resources necessary for continued power purchase cannot rely solely on uncertain future possibilities.

31. In the future we can refund revenues that exceed costs, but a bankruptcy or financial collapse of the state's energy system would cause wide-ranging, undesirable consequences.

32. Revenue generated by the rate increases will be applied only to electric power costs that are incurred after the effective date of this order. The revenues will be subject to refund if, at a later date, we determine that the utilities failed to use the funds to pay for future power purchases.

33. The revenues the utilities have collected and continue to collect from the one-cent per kilowatt-hour rate increase authorized on January 4, 2001 must be used to pay for power purchases and not for any other costs incurred by the utilities.

34. Upon receipt of and comment on DWR's revenue requirement, which has yet to be provided to this Commission, we will act promptly to further allocate a portion of these increases to CDWR.

35. As AB1X requires, the rate increase approved today will not apply to residential usage below 130% of baseline rates.

36. We expect the utilities to join with the State and take any and all actions necessary to assure that California and its utility customers realize refunds for or repayment or disgorgement of power seller overcharges.

37. The utilities possess market information and expertise that place them in a

unique position to understand market behavior and to pursue legal remedies.

38. To date, the utilities appear to have been hesitant to take legal action against the generators and sellers who are responsible for, and have profited by, the utilities' financial distress.

39. To the extent that generators and sellers make refunds for overcollections, those refunds should either be passed through ratepayers or applied to unrecovered power purchase costs.

40. To the extent that any administrative body or court denies refunds of overcollections in a proceeding where recovery has been hampered by a lack of cooperation from a utility, today's rate increases will also be subject to refund.

41. The action we take today does not end the AB 1890 rate controls.

42. AB 1890 set up a mechanism under which utility-submitted cost recovery plans that included frozen rates would remain in effect until the Commission found that certain conditions existed or until March 31, 2002, whichever is earlier.

43. We will require SCE and PG&E to "true-up" their operating costs and profits for the period of the AB 1890 rate controls, as proposed by TURN. SCE and PG&E have not recovered all of their stranded costs under any scenario put forth by any party, given the accounting adjustment we are requiring.

44. The Commission established the TCBA to track the accelerated cost recovery of generation assets and other authorized transition cost, and also established the TRA to track the residual calculation of the CTC and to ensure that headroom is properly calculated and credited to the TCBA.

45. Three sources of revenue originally flowed into and were tracked by the TCBA account: "headroom," or the revenues remaining from customers' bill payments after a utility's authorized operating costs were paid; revenue from sales of utility power plants to private owners, and revenues from the sales of electric

power provided by remaining utility-owned generation.

46. In Resolution E-3527, the Commission allowed unrecovered operating costs to be carried over in the TRA from month to month, and allowed revenues to be applied to these accumulated undercollections first before being transferred to the TCBA. Our current rules provide that to the extent that after the rate freeze ends (i.e., transition costs are fully collected and final market valuation is established by the Commission), any undercollection in the TRA cannot be recovered.

47. In A.00-10-028, TURN recognizes the interaction of the TRA and the TCBA and focuses on Resolution E-3527, which prohibits the transfer of any TRA undercollection to the TCBA on a monthly basis. TURN proposes that this ratemaking be revised to allow such a transfer.

48. At its essence, the AB 1890 rate control allowed rates to remain higher than they would have been in order to allow the utilities the opportunity to recover costs associated with moving from cost-of-service regulation to a competitive regulatory scheme.

49. The utilities' assertions regarding potential violations of the filed rate doctrine are premature. FERC was aware of the rate freeze concept when it approved California's restructuring plan, FERC, in fact, authorized market-based rates based on utilities' claims that the California "rate freeze" would mitigate the utilities' incentive to raise PX prices.

50. PG&E and Edison understood that the ability to fully collect their transition costs was tied directly to their operating costs, including wholesale electricity costs.

51. Adopting the accounting true-up that TURN proposes in A.00-10-028 corrects an anomaly that was adopted in Resolution E-3527. By requiring that either the debit or credit balance determined through the TRA calculation be

recorded in the TCBA, we give full effect to the rate freeze principle, properly apply the matching principle, and adhere to the requirements of § 368(a). This approach also properly offsets generation revenues and costs of procurement.

52. Resolution E-3527 incorrectly characterized the nature of transfers of debits in the TRA to the TCBA. Applying the principles set forth in D.99-10-057 and upheld in D.00-03-058 requires that we take a closer look at the accounting anomalies caused by the treatment provided for in Resolution E-3527, as TURN requests.

53. The transfer of TRA undercollections to the TCBA does not transform energy procurement costs into transition costs, but merely reduces the prior revenues recorded in the TCBA.

54. Adopting the accounting treatment proposed in A.00-10-028 will properly recognize the risks that variable energy costs may create.

55. Transferring the TRA balance to the TCBA each month allows us to consider the net impacts of operating cost recovery and transition cost recovery. This adjustment will delay transition cost recovery. The restated TCBA for Edison will show unrecovered costs of approximately $3.7 billion. The restated TCBA for PG&E would show approximately $6.3 billion in unrecovered costs.

56. Under TURN's proposed accounting mechanism, the utilities would achieve full recovery of their PX costs and any other FERC-approved costs incurred during the rate freeze.

57. We have consistently stressed that if we were to allow the utilities to recover procurement costs incurred during the rate control period after rate controls end, the utilities' rates during the rate freeze period would have effectively exceeded those in effect on June 10, 1996. This action would result in

recovery of excess transition costs, an outcome inconsistent with AB 1890.

58. Although TURN has proposed an accounting change, the effect of this change is to carry out the original intent of AB 1890, that the utilities are at risk for recovery of transition costs during the transition period.

59. The Commission established the TRA and TCBA based on our authority as an administrative agency to implement the provisions of AB 1890.

60. Our consideration of the proposed accounting true-up is a timely exercise of our ratemaking authority.

61. We accept TURN's contention that current accounting treatment negates the neutrality of the rate reduction bond (RRB) transactions since the utilities' TRAs are undercollected.

62. Since the TRA undercollections began to accrue, there has been no transition recovery from rate revenues.

63. Because of the adopted RRB transactions and the Commission's current accounting mechanism, the utilities continue to impute into the TCBA revenues related to the RRBs. Consequently, residential and small commercial customers continue to contribute to transition cost recovery by the amount of the imputed revenues, despite the lack of headroom.

64. The utilities have recorded a greater amount of transition cost recovery than they would have had absent the RRB transaction and the residential and small commercial customers are paying a disproportionate share of the utilities' transition cost recovery, an outcome that contradicts the objectives of the Financing Order.

65. Adopting the proposed accounting true-up therefore has the additional advantage of ensuring that ratepayers are made indifferent as to how the revenues associated with the RRBs are treated.

66. In D.01-01-018, we ordered the utilities to segregate the generation memorandum account balances, which otherwise would have been credited to the TCBA at year-end 2000.

67. Because we are now transferring the balance in the TRA to the TCBA on a monthly basis, we will also now require the utilities to restate and record overcollected generation memorandum account balances to the TRA before any transfer to the TCBA. This should be done on a monthly basis. This is appropriate because it will match the costs of procuring power on a monthly basis with the revenues resulting from generating that power.

68. We will consider any adjustments needed, including addressing GMA monthly undercollections, as we consider the interaction of AB 6, AB 1X, and § 367(c) on appropriately recording the monthly balance.

69. Low-income ratepayers tend to be renters rather than owners, reside in older housing stock that is less energy efficient, and who may have larger families or live in multi-family households.

70. Low-income households are struggling now to meet the cost of utility energy services, which includes both their electric and gas usage bills.

71. Greenlining/LIF has demonstrated that the poor (as defined by Federal Poverty Level Guidelines) bear a disproportionate energy burden; i.e., the percentage of household income devoted to energy services is far greater for low-income households.

72. We will increase the CARE eligibility levels from 150% of federal poverty guidelines to 175% for electric customers of PG&E and Edison.

73. By adopting these new guidelines, we increase the number of households who may be eligible for this important program. As we expand the eligibility for

this important program, it is crucial to increase penetration.

74. Consumer education and notice becomes imperative in order to notify eligible customers.

75. We do not increase the CARE discount from 15% to 25% at this time. While we propose to adopt a very significant rate increase, we wish to consider the increased discount for both electric and gas customers in A.00-11-009 et al.

76. We adopt Greenlining/LIF's proposal to exempt eligible CARE customers from this rate increase.

77. While we adopt a rate increase today, we decline to adopt a specific residential tiering approach in the absence of an overall rate design proposal. The assigned Commissioner's companion ACR issued concurrently sets forth a proposal for tiered rate design for review.

78. Conceptually, we agree it is time to adopt a tiered approach for those customer classes that do not have rates structured on a time-of-use (TOU) basis.

Conclusions of Law

1. AB1X refers to rates that are in effect as of January 5, 2001. We therefore make permanent the rate increase the Commission authorized in D.01-01-018.

2. The Commission's first duty is to assure that customers of California public utilities receive reliable, safe service at reasonable rates.

3. The emergency in the electric industry affects more than the utility finances. The Commission must protect the state's energy system, which is essential to the continued health of the state's economy and the welfare of individuals and businesses.

4. AB1X expressly continues the utilities' of their obligation to serve their customers. We cannot and will not relieve them of that fundamental obligation.

5. The Commission cannot assume that CDWR will purchase all net short electricity requirements for the purpose of setting rates; this action would be the equivalent of ordering CDWR to procure all net short electricity requirements. We do not have such authority.

6. We are not prepared in this decision to find that the requirements of AB 1890 for ending the rate control period have been met.

7. This rate increase is within our authority in light of existing financial conditions, and in response to more recent legislation, such as AB1X and AB6X.

8. Since AB1X requires the Commission to provide for recovery of DWR's revenue requirement, it necessarily authorizes the Commission to impose an increase on customers' electric bills, whether that increase is described as an increase in "rates" payable to utilities or an increase attributable to DWR's delivery of electricity.

9. The legislation enacted in January and February 2001 addresses electricity market conditions and utility financial distress that AB 1890 neither anticipated nor provided for. These new laws respond to the current emergency and provide enhanced authority for this Commission to set retail rates for electric power to provide for the recovery of revenues expended by CDWR for power purchases that it makes, despite the fact that the AB 1890 rate controls remain in effect.

10. While the rate control provisions of AB 1890 provide certain consumer protections that we continue to recognize, we must supplement these consumer protections with our response to immediate circumstances and the potentially dire consequences of inaction. Nothing in AB 1890 provides that if, for unforeseen reasons, in response to additional legislation, the Commission increased rates to prevent the collapse of the electric system, all limits on utility rates are ended.

11. It is reasonable to order emergency relief to both utilities in order to assure the continued viability of California's electric system and to minimize the effects of the dysfunctional energy market on utility customers, both today and in the longer term.

12. It is reasonable to grant a rate surcharge of not more than three cents per kWh to SCE and to PG&E with several conditions.

13. It is reasonable that revenue generated by the rate increases will apply only to power costs that are incurred after the effective date of this order.

14. It is reasonable to direct the utilities to enter the revenues from the rate increases into balancing accounts and the revenues will be subject to refund if at a later date we determine that the utilities failed to use the funds to pay for future power purchases.

15. It is reasonable that a certain amount of the revenues from the rate increases will be provided to DWR for its power costs, once DWR provides us with its revenue requirement.

16. Residential customers whose usage is below 130% of baseline are now statutorily exempt from rate increases not in effect as of January 5, 2001. CARE customers should be exempt from the additional surcharge we impose today.

17. To the extent that generators and sellers make refunds for overcharges, it is reasonable to require that those refunds should either be passed onto ratepayers or potentially could be applied to stranded costs.

18. To the extent that any administrative body or court denies refunds of overcollections in a proceeding where the Commission has been hampered by the lack of cooperation from utilities, it is reasonable to make the proposed rate increases subject to refund.

19. It would not be reasonable to authorize a rate increase for the purpose of remedying the adverse consequences or utilities financial distress and at the same time ignore another potential source of funding that would remedy such distress; therefore, if utilities do not actively seek to relieve themselves of their financial burden by pursuing refunds we will not step in and relieve their burden with a price increase.

20. Consistent with the requirements of AB 1890, the level of recorded transition cost recovery at any given time should reflect the total revenues collected to date during the rate freeze, as well as the total costs incurred to date in providing service during the rate freeze.

21. Adopting TURN's true-up proposal does not constitute retroactive ratemaking. Rates obviously have not changed. The TCBA is a balancing account and the TRA is simply an accounting mechanism used to determine the residual calculation of CTC.

22. The California Supreme Court in Southern California Edison Company v. Public Utilities Commission (1978) 20 Cal.3d 813 concluded that an adjustment of rates, which does not involve general ratemaking, may be retroactive in effect without violating the rule against retroactive ratemaking.

23. Because TURN's proposed accounting change at issue does not involve general ratemaking, the Commission may adopt the change without violating the prohibition against retroactive ratemaking.

24. In retrospect, the accounting treatment we adopted in Resolution E-3527 contravenes the principles promulgated in AB 1890. Given the change in circumstances, we find it necessary to modify our accounting approach, as proposed by TURN. The Commission has the authority to do so and is not

preempted by any law, contrary to the claims proffered by the utilities.

25. We direct the utilities to maintain the regulatory accounting mechanisms, but we explicitly draw no conclusions as to the ultimate treatment flowing from legislative or regulatory changes that could well involve the amounts tracked in those accounts.

26. The true-up we adopt today, in and of itself, does not disallow the recovery of the utilities' cost of procuring and transmitting electricity in retail rates. Since the true-up alone does not disallow FERC-approved costs, there can be no violation of the filed rate doctrine in our adoption of the true-up at this time.

27. Under AB 1890 the utilities are at risk for the recovery of transition costs. Accordingly, we do not believe that the fact that some portion of this risk has now come to pass necessarily means that there has been an unconstitutional taking. The utilities' argument is premature. We do not find that the AB 1890 rate controls are over yet. Therefore, while adopting the accounting true-up proposal reduces prior transition cost recovery, no definitive landscape exists yet in which to ascertain the existence or extent of unrecovered costs.

28. It is reasonable to increase the CARE eligibility levels from 150% of federal poverty guidelines to 175% for electric customers of PG&E and Edison.

29. CARE changes for gas customers of PG&E, SDG&E, and Southern California Gas Company, as well as an increase in the CARE discount should be addressed expeditiously in A.00-11-009 et al.

30. It is clear that AB1X 1 continues the exemption of CARE customers from the EPS, based on the statute's references to rates in effect as of January 5, 2001, and we affirm that finding here.

31. For an alternate decision, the Commission may reduce the public review and comment period where it determines that public necessity so requires.

Pursuant to Rule 77.7(f)(9), the public interest in the Commission adopting a decision before expiration of the 30-day review and comment period outweighs the public interest in having the full comment period. It is reasonable to hold oral argument on March 26th in lieu of providing for written comments on the alternate decision. In addition, we will allow for comment on the rate increase.

32. This order should be effective today in order to allow the rate surcharge and accounting true-ups to go into effect expeditiously.

INTERIM ORDER

IT IS ORDERED that:

1. Pacific Gas & Electric Company's (PG&E) and Southern California Edison Company's (Edison) request for rate relief is granted to the extent set forth herein. The rate surcharge of three-cents per kilowatt-hour (kWh) shall be applied to power costs incurred after the effective date of this decision. The three-cents per kWh shall be added to generation-related rates for PG&E and Edison that are adopted in Ordering Paragraph 1 of our companion decision in this docket only for the purpose of all calculations required by that decision dealing with the transfer of funds to CDWR. (D.01-03-081.) PG&E and Edison shall provide revenues from the generation-related rates and the three-cent surcharge to the DWR immediately, consistent with D.0l-03-081.

2. PG&E and Edison shall enter the revenues from the rate increases into balancing accounts and the revenues shall be subject to refund if, at a later date, we determine that the utilities failed to use the funds to pay for future power purchases. The revenues the utilities have collected and continue to collect from the one-cent per kilowatt-hour rate increase authorized on January 4, 2001 shall be

used to pay for power purchases and not for any other costs incurred by the utilities. Within five days after the effective date of this decision, PG&E and Edison shall file advice letters to establish these balancing accounts, which will be effective upon approval by the Energy Division.

3. PG&E and Edison shall join with the State and take any and all actions necessary to assure that California and its utility customers realize refunds for or repayment or disgorgement of power seller overcharges.

4. To the extent that generators and sellers make refunds for overcollections, those refunds shall either be passed through ratepayers or applied to unrecovered power purchase costs. To the extent that any administrative body or court denies refunds of overcollections in a proceeding where recovery has been hampered by a lack of cooperation from a utility, today's rate increases shall also be subject to refund.

5. PG&E and Edison shall continue to provide monthly reports on their efforts in state and federal forums, beginning April 1, 2001 and continuing for twelve months.

6. The one-cent rate surcharge that the Commission authorized in Decision 01-01-018 is now permanent.

7. The Petition to Modify Resolution E-3527, filed by The Utility Reform Network (TURN), and docketed as Application (A.) 00-10-028 is granted. The balance in PG&E's and Edison's respective Transition Revenue Account (TRA) shall be transferred on a monthly basis to each utility's respective Transition Cost Balancing Account (TCBA). This action shall be effective as of January 1, 1998.

8. PG&E and Edison shall file advice letters within 15 days of the effective date of this decision to revise their tariffs as necessary. PG&E and Edison shall attach

reports that restate the TRA, TCBA, and Generation Memorandum Accounts in compliance with this decision. The advice letters shall be deemed in compliance with this decision only upon the written approval of Energy Division.

9. Under Assembly Bill 1890, the rate freeze has not ended for either PG&E or Edison.

10. The California Alternative Rates for Energy (CARE) eligibility guidelines shall be updated according to the following table:

Family/Household Size	**Current Guidelines (150% of Federal Poverty Level)**	**Adopted Guidelines (175% of Federal Poverty Level)**
1 – 2	$18,200	$21,233 (round to $21,250)
3	$21,500	$25,083 (round to $25,000)
4	$25,800	$30,100
Each additional person	$ 4,300	$5,016 (round to $5,000)

11. PG&E and Edison shall consult with Greenlining Institute, Latino Issues Forum, /LIF and our Public Advisor's Office so that notification by bill inserts of the revised CARE guidelines shall occur expeditiously.

12. Eligible CARE customers are exempt from the surcharge we impose today.

13. Eligible CARE customers shall continue to be exempt from the Emergency Procurement Surcharge adopted in Decision 01-01-018, based on the Assembly Bill 1X references to rates in effect as of January 5, 2001.

This order is effective today.

Dated March 27, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

I will file a concurring opinion.

/s/ RICHARD A. BILAS
Commissioner

Appendix A

APPENDIX A

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(END OF APPENDIX A)

A.00-11-038 et al.
D.01-03-082

Commissioner Bilas, concurring:

I have been advocating an increase in rates and asking whether the rate freeze has already ended since last fall. Now that the General Fund finds itself in the same position as the utilities, economic reality has finally sunk in. We are finally transfusing some blood into the utility turnips since the Department of Water Resources (DWR) now shares their turnip patch.

We have no choice but to act to raise rates. The PX is in Chapter 11 because it cannot collect its costs and pay its debts. The ISO is not getting paid and is spending money to cover the net short like a drunken sailor. It will be spending much more this summer when we run short of hydroelectric power due to drought conditions. The proper economic signals to conserve are not being sent so some citizens simply are not conserving. We have had two days of statewide rolling blackouts coinciding with warm spring, not hot summer, weather. Energy Secretary Abraham has forecast a 5000 megawatt shortage in California this summer.

Natural gas prices have quadrupled. Natural gas is the predominate fuel for California generation. Under regulation, with the attendant ECACs, these costs would have already been passed through to ratepayers. Deregulation eliminated that adjustment. So those who call for reregulation would still get fuel related rate increases. New York last year raised rates 30 percent and its power authority is arranging for expensive peakers this summer. Maine raised rates even more. This year Bonneville Power expects to raise its rates up to 60 percent. This is not just a California phenomenon.

The utilities' lenders are not getting paid and are tired of forebearing on all of the utilities' events of default. We have told the utilities that they cannot conserve cash by laying anyone off. The QFs are shutting down because they are not getting paid, and the gas fired ones cannot afford the natural gas to run. QFs are circulating an involuntary bankruptcy petition. Just today we have ordered the utilities to pay the QFs on a going forward basis under our new Malin based formula. We have also just voted out an order requiring the utilities to pay the DWR a proportionate share of utility revenue to staunch the flow of taxpayer General Fund blood. Additionally, we have today obligated the utilities to implement SB 970 energy efficiency programs and transmission upgrades and to find the cash to do them. I voted against the SB 970 order because it did not include a surcharge to cover utility costs and to ensure these programs are implemented by this summer.

DWR is not even buying the full net short position of the utilities, but the General Fund is being depleted at an alarming rate. Our State Controller has stated it must stop. Both Democrat and Republican Legislators are now calling for rate increases. So is the State Treasurer. This is no longer a partisan fight. Instead it is a fight to maintain the economic vitality of the State and its citizens. As Assemblymember Wright declared at today's Commission meeting, the transactional losses from rolling blackouts far exceed the utilities' power bills. Those transactional losses affect jobs and therefore paychecks. We can craft rate designs that spare residential ratepayers the pain of drastic increases. But, if workers have no paychecks because their employers cannot operate or have left the state, they will not be able to pay any bills. Absent today's rate increase, the utilities will be in bankruptcy court. The consequences to ratepayers will be far worse if that happens. A rate increase designed by this Commission is far superior to one designed by a bankruptcy judge. I commend President Lynch on her proposal for a rate design with tiered rates for those not on time of use meters. And I call on the Legislature to do all it can to incent the spread of time of use meters. I also urge us to carefully consider the impact on jobs and paychecks of rate design for the large commercial and industrial classes.

Today's rate increase is long overdue. I regret that we were not able to act sooner. Had we done so, we could have avoided rate increases of the magnitude we impose today and the depletion of the General Fund. Assemblymember Wright also expressed that view at today's meeting. I concur with his statement that had this Commission kept the utilities solvent, we would be looking at lower numbers in this order. I share his concerns about piecemealing increase on top of increase. Further decisions in our docket on AB1X will determine whether his fears are justified. I hope they are not. It is my hope that by raising rates today we will finally place some discipline on dysfunctional wholesale markets as a result of consumer backlash and conservation. Nothing else has worked. Maybe consumer fury will.

There continues to be one economic reality this Commission has not faced. When will the rate freeze end? Under the TURN proposal we adopt today, can it ever end? I believe it still can because TURN asserts the rate freeze is over even though its accounting proposal is adopted. I agree with TURN that AB 1X signals the end of the rate freeze. We must deal forthrightly with this issue soon.

/s/ RICHARD A. BILAS

RICHARD A. BILAS
Commissioner

San Francisco, California
March 27, 2001