

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION G-3372

January 13, 2005

R E S O L U T I O N

Resolution G-3372. Pacific Gas and Electric Company (PG&E) seeks revisions to Gas and Electric Rule 17.1 – Adjustment of Bills for Billing Error and Rule 17.2 – Adjustment of Bills for Unauthorized Use, and addition of Gas and Electric Rule 17.3 – Limitation on Adjustment of Bills for Energy Use. Approved with modifications.

By Advice Letter (AL) 2581-G/2568-E filed on October 15, 2004.

SUMMARY

PG&E proposes to modify electric and gas Rules 17.1 and 17.2 to limit a residential customer's exposure to three months for undercharges resulting from PG&E's failure to deliver an actual or estimated bill. PG&E also proposes new Rule 17.3 to address when customers may be back billed for up to 3 years. We grant PG&E's proposal in part and deny the proposed new Rule 17.3 as summarized below:

- Consistent with the policy underlying its existing tariffs, failure to issue a bill shall be treated as a billing error. If billing error has occurred, Rule 17.2 addressing unauthorized use shall not apply, and PG&E may back bill residential customers for undercharges for a period limited to 3 months.
- As specified in this resolution PG&E shall revise gas and electric Rules 9 and 17 to show when the issuance of estimated bills constitutes billing error for purposes of applying Rule 17.1; PG&E shall also remove the reference to "unusual conditions" in the portion of Rule 9 which addresses estimated bills.

- The billing delays and billing estimates resulting from PG&E's implementation of a new billing system may be reviewed in Application (A.) 02-11-017, et. al., PG&E's test year 2003 general rate case.
- PG&E shall modify Rule 17.2 to reflect that PG&E shall bill for unauthorized use the person who benefited from the unauthorized use for the full period of that person's unauthorized use.
- The tariff changes we authorize today are consistent with existing CPUC policy, tariffs, and requirements, including those set forth in Decision (D.) 86-06-035.
- PG&E's proposed Rule 17.3 is denied. The rule as proposed by PG&E is overly broad and vague.
- PG&E shall file a report explaining the reasons for the large number of delayed and estimated bills over the past five years and its plan for reducing the number of these bills in A.02-11-017, et. al. The report shall also include an estimate of the numbers of customers affected by delayed and estimated bills over this time period and the associated dollar amounts.

BACKGROUND

D.86-06-035 established procedures for retroactive billing by gas and electric utilities to correct alleged under billings.

In D.86-06-035 the Commission established rules applicable to gas and electric utilities regarding application for service, disputed bills, discontinuance of service, and adjustment of bills for billing error, meter error, and unauthorized use. These rules form the basis for the utilities' tariff Rules 9 relating to rendering of bills, Rules 17 and 17.1 on meter tests and adjustments for meter and billing error, and Rule 17.2 regarding adjustment of bills for unauthorized use.

Tariff Rule 9 requires PG&E typically to read meters and render bills monthly; PG&E may estimate bills for reasons beyond PG&E's control.

PG&E's gas and electric tariff Rule 9 establishes that meters will be read as nearly as possible at regular intervals, and that except as otherwise stated, the regular billing period will be once each month.

Rule 9 also allows PG&E to estimate bills. Rule 9C states:

"If, because of unusual conditions or for reasons beyond the meter reading entity's control, the customer's meter cannot be read on the scheduled reading date, or if for any reason accurate usage data are not available, PG&E will bill the customer for estimated consumption during the billing period. Estimated consumption for this purpose will be calculated considering the customer's prior usage, PG&E's experience with other customers of the same class in that area, and the general characteristics of the customer's operations."

Tariff Rule 17 allows PG&E to estimate a customer's usage for billing purposes if accurate meter readings are not available or usage has not been accurately measured.

Gas and electric tariff Rule 17 address meter tests and adjustment of bills for meter error. Rule 17.B.5 states that PG&E may estimate a customer's gas or electric usage for billing purposes when regular, accurate meter readings are not available or usage has not been accurately measured.

Tariff Rule 17.1 defines billing error and allows PG&E to adjust residential bills for undercharges due to billing error for a period of 3 months; for nonresidential customers adjustments may be made for a period of 3 years.

PG&E's gas and electric Rules 17.1A define billing error. Gas Rule 17.1.A states:

"Billing error is the incorrect billing of an account due to an error by PG&E or the Customer which results in incorrect charges to the Customer. Billing error includes, but is not limited to, incorrect meter reads or clerical errors, wrong daily billing factor, wrong connected load information, crossed meters, an incorrect billing calculation, an incorrect meter multiplier, an inapplicable rate, or PG&E's failure to provide the Customer with notice of rate options in accordance with Rule 12.

Field error, including, but not limited to, installing the meter or regulator incorrectly, is also considered billing error.

Billing error which does not entitle the Customer to a credit adjustment includes failure of the Customer to notify PG&E of changes in the Customer's connected load, equipment or operation or failure of the Customer to take advantage of any

noticed rate option or condition of service for which the Customer becomes eligible subsequent to the date of application for service.”

Electric Rule 17.1.A states:

“Billing error is the incorrect billing of an account due to an error by PG&E, the energy service provider (ESP), or its agents, or the Customer which results in incorrect charges to the Customer. Billing error includes, but is not limited to, incorrect meter reads or clerical errors, wrong daily billing factor, incorrect voltage discount, wrong connected load information, crossed meters, an incorrect billing calculation, an incorrect meter multiplier, an inapplicable rate, or PG&E's and/or the ESP's failure to provide the Customer with notice of rate options in accordance with Rule 12. Billing error shall also include errors or failures of PG&E, an Energy Service Provider (ESP), or its agent, to properly edit and validate meter data into bill quality data pursuant to meter data processing standards and protocols adopted by the Commission.

Field error, including, but not limited to, installing the meter incorrectly and failure to close the meter potential or test switches, is also considered billing error.

Billing error which does not entitle the Customer to a credit adjustment includes failure of the Customer to notify PG&E of changes in the Customer's connected load, equipment or operation or failure of the Customer to take advantage of any noticed rate option or condition of service for which the Customer becomes eligible subsequent to the date of application for service.”

Gas and electric Rule 17.1.B allows PG&E to adjust bills for billing errors. According to the rule PG&E may bill a residential customer for the amount of an undercharge due to billing error for a period of 3 months. PG&E may bill a nonresidential customer for the amount of an undercharge resulting from billing error for a period of 3 years. Rule 17.1.B.2 states:

“a. RESIDENTIAL SERVICE

If a residential service is found to have been undercharged due to a billing error, PG&E may bill the Customer for the amount of the undercharge for a period of three months. However, if it is known that the period of billing error was less than three months, the undercharge will be calculated for only those months during which the billing error occurred.

b. NONRESIDENTIAL SERVICE

If a nonresidential service is found to have been undercharged due to a billing error, PG&E may bill the Customer for the amount of the undercharge for a period of three years. However, if it is known that the period of billing error was less than three years, the undercharge will be calculated for only those months during which the billing error occurred.”

Tariff Rule 17.2 allows PG&E to investigate and recover charges for unauthorized use of gas and electricity.

Gas and electric tariff Rule 17.2 permits PG&E to investigate and recover charges for unauthorized use, for example when meter tampering or unauthorized connection of service has occurred. PG&E may adjust bills for unauthorized use based on actual meter readings if they are available or on estimates if accurate readings are not available.

The Commission has received a high level of complaints from PG&E customers regarding delayed and estimated bills; some related to PG&E's new billing system.

In 2003 and 2004 the Commission's Consumer Affairs Branch (CAB) received a significant number of complaints from PG&E customers claiming that PG&E failed to bill them for actual gas or electric usage on a regular monthly basis as specified in tariff Rule 9. In some cases PG&E allegedly failed to issue a bill for several months, and subsequently issued a single bill covering all the previous months not billed ("back bill"). In other cases PG&E allegedly estimated a customer's bill for several months and later rendered a back bill for undercharges associated with the difference between estimated usage and the actual usage during the months usage was estimated.

According to data submitted to Energy Division, PG&E issued a relatively large number of delayed bills in 2003. "Delayed" in this context refers to a bill that is issued more than 60 days after gas or electric usage occurred. PG&E informed Energy Division that some delayed bills in 2003 were related to implementation of PG&E's new billing system (the CorDaptix system or "CDx") at the end of 2002.

Data provided by PG&E to the Energy Division show that the number of delayed bills peaked in July 2003 when PG&E issued about 59,600 such bills. Between April 2002 and December 2002 the number of delayed bills varied between about 14,000 and 24,000 per month. From March through August 2004 the number of delayed bills was in the range of 14,000 to 20,000 per month.

The number of estimated bills (in which either gas, electricity, or both gas and electricity usage were estimated) has varied. Between December 2002 and

August 2004 PG&E issued estimated bills in the range of 52,650 (March 2003) to about 179,400 (January 2003) per month. PG&E issues about 5.5 million bills each month.

The Commission's Executive Director called on PG&E to suspend collection activities for overdue amounts related to delayed and estimated bills.

By letter to PG&E dated October 12, 2004 the Commission's Executive Director noted the numerous customer complaints related to delayed and estimated bills. The Executive Director stated that if PG&E is experiencing circumstances requiring it to estimate so many bills each month that it should proactively address the situation. The Executive Director requested that PG&E stop collecting overdue amounts from residential customers that date back more than 90 days and referred to Rule 17.1.

In response to the letter from the Executive Director PG&E proposed revisions to gas and electric Rules 17.1 and 17.2 and the addition of Rule 17.3.

By AL 2581-G/2568-E filed on October 15, 2004 PG&E proposes to add language to Rule 17.1 indicating that billing error includes failure to issue a bill, actual or estimated. PG&E also seeks by the AL to add language to Rule 17.2 stating that meter or billing errors defined under Rule 17.1 do not constitute unauthorized use. In addition PG&E proposes to add Rule 17.3 which would allow it to make billing adjustments covering a period of three years in situations not defined as billing error, meter error, or unauthorized use. PG&E notes that Southern California Edison Company's tariff Rule 17.F contains language similar to what PG&E proposes in Rule 17.3.

PG&E requests that AL 2581-G/2568-E become effective on October 13, 2004. PG&E points out that the Executive Director requested that it discontinue collection of overdue amounts from residential customers that exceed the three-month limit set forth in Rule 17.1. PG&E states that the tariff changes it proposes modify Rules 17.1 and 17.2 to implement the three-month limit and that the changes would not affect customers' billing obligations for bills rendered prior to the proposed effective date of the AL.

NOTICE

Notice of AL 2581-G/2568-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the AL was mailed and distributed in accordance with Section III-G of General Order 96-A. On October 21, 2004 PG&E issued an electronic copy of the AL to the service list in its test year 2003 general rate case A.02-11-017, et. al.

PROTESTS

TURN recommends that the Commission reject PG&E's advice letter and instead conduct a comprehensive investigation; otherwise TURN proposes modifications to the AL.

TURN protested AL 2581-G/2568-E on November 4, 2004. TURN recommends that we reject the AL and consider issues raised by the AL in a formal proceeding. After issuing its protest on PG&E's AL, TURN filed a motion in A.02-11-017, et. al., requesting that the Commission open an investigation into PG&E's billing and collection practices. TURN proposes the modifications summarized below in the event that we consider the AL:

- Failure to issue a timely and accurate bill whether due to reliance on estimated meter reads or other delays constitutes billing error and did so prior to issuance of AL 2581-G/2568-E.
- Extended reliance on an estimated bill constitutes billing error as tariffs are currently written.
- Rule 17.1 should not exclude from billing error causes beyond the reasonable control of the utility.
- PG&E's proposed Rule 17.3 should be rejected.
- PG&E's assertion that bills rendered prior to the effective date of AL 2581-G/2568-E are not subject to the provisions of the tariffs proposed in the AL should be rejected.

PG&E states that TURN's protest is unfair and unreasonable and urges the Commission to reject the protest.

PG&E responded to TURN's protest on November 12. A summary of PG&E's response is as follows:

- PG&E cannot eliminate all estimated bills; limiting adjustments of estimated bills to 3 months is unfair; estimation is justified for extended periods for reasons beyond PG&E's control such as when roads are inaccessible, or access to the meter is denied.
- Under TURN's proposal a customer would have a financial incentive to block access to a meter since PG&E would only be able to back bill for a 3 month period.
- PG&E cannot be limited to 3 months for adjustment of delayed bills when the cause is beyond the utility's reasonable control.
- PG&E's proposed Rule 17.3 is designed to be an accommodation to the customer.
- The Commission should approve PG&E's AL without opening a broad investigation proposed by TURN; past conduct is not an issue in PG&E's AL.
- The tariff changes proposed by PG&E in its AL are prospective and intended to address the "long" bills that customers have disputed; these customers benefited from usage charged in the "long" bills.
- The Commission can act on PG&E's AL without addressing TURN's argument that Rule 17.1 already defined delayed bills as "billing error".

DISCUSSION

The Commission should act on PG&E's AL 2581-G/2568-E to ensure that further back billing does not occur as requested by the Executive Director and may formally investigate issues raised by PG&E's past billing practices.

PG&E's proposal in AL 2581-G/2568-E should be considered at this time. Changes must be made to PG&E's tariffs now given the numerous customer complaints that have arisen regarding estimated and delayed bills.

While we deny TURN's protest that the AL be rejected, we require that PG&E file a report in A.02-11-017, et. al. relating to delayed and estimated bills. TURN's request that PG&E's past billing practices be reviewed in A.02-11-017, et. al. is subject to a future ruling on TURN's pending motion in that proceeding. If an investigation is conducted, the issues to be reviewed may include consideration as to whether refunds or other adjustments should be made to previously rendered bills, as well as any other issues specified by the assigned

Commissioner and Administrative Law Judge (ALJ) in their disposition of TURN's pending motion in A.02-11-017, et. al.

PG&E's proposed change to Rule 17.1 to reflect that the failure to issue a bill constitutes billing error is approved. This change is consistent with existing CPUC policy, tariffs, and requirements, including those requirements set forth in D.86-06-035.

PG&E proposes to add the following language to gas and electric Rule 17.1 which we approve:

"Billing error shall also include failure to deliver a gas, electric, or combined commodity bill, actual or estimated, in a timely manner in accordance with Rule 9A."

The change to the tariffs cited above is consistent with existing CPUC policy, tariffs, and requirements, including those set forth in D.86-06-035. This tariff change reflects the proper interpretation of existing tariffs.

PG&E's proposed changes to Rule 17.1 concerning exclusions from billing error are modified.

PG&E also proposes to add the following language to gas and electric Rule 17.1 which we deny:

"Failure to issue a bill due to causes beyond the reasonable control of PG&E, including inaccessible roads, the customer, the customer's agent, other occupant, animal or physical condition of the property preventing access to PG&E's facilities on the customer's premise, the customer's failure to establish service with PG&E or other causes within reasonable control of the customer shall not be considered "billing error" for the purposes of this Rule."

In cases where roads are inaccessible or PG&E's access to the customer's property is prevented, PG&E should issue an estimated bill rather than no bill at all. When the customer fails to establish service with PG&E, the provisions of Rule 17.2 regarding unauthorized use apply; Rule 17.1 relating to billing error does not apply in such a case. However, where PG&E has been unresponsive to the customer's reasonable attempts to establish service, there is billing error, and Rule 17.1 does apply and PG&E may only back bill for 3 months in the case of a residential customer. We deny the proposed language cited above since it is unnecessary.

We grant TURN's protest regarding PG&E's proposed modification to Rule 17.1 to exclude from billing error, "causes beyond the reasonable control of the utility". The language as proposed by PG&E is overly broad and vague. Delayed bills resulting from a natural or man-made disaster should be excluded from billing error. We thus modify PG&E's proposed language as follows:

"Failure to issue a bill due to a natural or man-made disaster, such as a fire, earthquake, flood, or severe storms shall not be considered billing error for purposes of this Rule."

In the tariff changes that we require PG&E make to Rules 9C and 17.B.5 described below, we exclude certain circumstances from billing error when bills are estimated; we do not use the broad language "causes beyond the reasonable control of the utility" to describe those circumstances.

Billing error occurs and Rule 17.1 applies when delayed and estimated bills are issued due to circumstances involving changes to a billing system.

Energy Division has reviewed some responses by PG&E to customer complaints received by CAB.¹ Customers submitted these complaints because PG&E issued back bills for the difference between several months' prior bills based on estimated usage and what those bills should have been using actual consumption. PG&E had to estimate bills in these instances because its billing system did not register new meters that had been installed at the customers' residences.

In a response to one complaint PG&E informed the customer that usage had been estimated for 7 months from the end of December 2002 until the end of July 2003. PG&E stated that estimating usage is in accordance with Rule 9, and cited "unusual conditions" as a reason for estimating usage. PG&E told the customer

¹ CAB over the past years has been contacted by PG&E customers questioning a deferred bill or back bill that exceeded the 3 month limitation in Rule 17.1. Until recently, CAB advised these customers that PG&E's bills were not inconsistent with its tariffs. Such informal advice provided by staff is not binding upon the Commission which issues formal opinions only through its decisions and resolutions.

that “due to the migration process to our new customer information system the meter change was not recognized in our system and accurate usage data could not be used in your billing.” PG&E informed the customer that it had since been able to process the meter change in its system and verified reads were used to re bill the customer for actual usage.

In another instance a customer disputed PG&E’s back billing for a period longer than 3 months. PG&E informed the customer that the system did not register a meter change at his residence and PG&E was allowed to estimate consumption in accordance with Rule 9. PG&E told the customer that Rule 9 “states for any unusual conditions actual data is not readily available, PG&E will bill for estimate usage.” PG&E told the customer that the meter change had since been processed in its system and it was able to bill for actual reads. In its communications to CAB about this complaint PG&E stated that “this situation is not stipulated in Rule 17.1”.

Billings in these examples are not consistent with CPUC policy, tariffs, and requirements. In these instances the policy underlying Rule 17.1 would apply. Problems with the implementation of PG&E’s new billing system should be treated as billing errors. These examples also are not circumstances in which PG&E may issue estimated bills indefinitely, i.e., in cases of a natural or man-made disaster, or inaccessible roads, the customer, the customer’s agent, other occupant, animal, or physical condition of the property preventing access to PG&E’s facilities on the customer’s premise, or other causes within control of the customer. The customers in examples such as these should be back billed only for a period of 3 months in accordance with Rule 17.1.B.a.

PG&E’s responses to complaints that CAB has received indicate that PG&E may have misinterpreted the provisions of Rule 9C and Rule 17.1. It would be improper to rely on the phrase “unusual conditions” in Rule 9C to justify estimating bills indefinitely when billing error occurred. In such cases PG&E should apply Rule 17.1. We instruct PG&E to remove that language from the tariffs since it is overly broad and vague. In addition Rules 9C and 17.B.5 should be clarified to identify those situations under which the issuance of estimated bills may be excluded from the provisions of Rule 17.1 relating to billing error.

The assigned Commissioner and ALJ may decide to review the billing delays and estimates resulting from the implementation of PG&E’s new billing system as

part of an investigation of PG&E's past billing practices in A.02-11-017, et. al. Such an investigation would also include any other issues specified by the assigned Commissioner and ALJ in their disposition of TURN's pending motion in A.02-11-017, et. al.

PG&E shall modify Rule 9C and Rule 17 to limit circumstances under which the issuance of estimated bills is not considered billing error; PG&E shall remove the phrase "unusual conditions" from Rule 9C.

PG&E shall modify gas and electric Rule 9C so that it reads as follows:

"If for reasons beyond the meter reading entity's control, the customer's meter cannot be read on the scheduled reading date, or if for any reason accurate usage data are not available, PG&E will bill the customer for estimated consumption during the billing period. Estimated consumption for this purpose will be calculated considering the customer's prior usage, PG&E's experience with other customers of the same class in that area, and the general characteristics of the customer's operations.

Unless estimated bills result from inaccessible roads, the customer, the customer's agent, other occupant, animal or physical condition of the property preventing access to PG&E's facilities on the customer's premise, other causes within control of the customer, or a natural or man-made disaster such as a fire, earthquake, flood, or severe storms, the issuance of estimated bills shall be considered "billing error" for the purposes of applying Rule 17.1."

Since Rule 17 also allows PG&E to estimate bills, PG&E shall add the second paragraph above in quotations to gas and electric Rule 17.B.5 to clarify when the issuance of estimated bills constitutes billing error.

These tariff changes are consistent with existing CPUC policy, tariffs, and requirements.

We grant in part TURN's protest that failure to issue a timely and accurate bill whether due to reliance on estimated meter reads or other delays constitutes billing error. We also grant in part TURN's protest that extended reliance on an estimated bill constitutes billing error as the tariffs are currently written. The revisions that we require PG&E to make to Rule 9C and Rule 17 set forth when issuance of estimated bills constitutes billing error and when it does not.

We require PG&E to make additional revisions to Rules 9C and 17.B.5 as described below.

PG&E's estimated bills shall include a message that identifies the reason for requiring that the bill be estimated; when the meter reader codes a message in the field the bill message shall reflect the same reason for estimating as that coded by the meter reader.

We seek to minimize the need to estimate bills. On estimated bills, PG&E shall include a message that identifies the reason for requiring that the bill be estimated. When the meter reader codes a message in the field, the estimated bill shall reflect the same reason coded by the meter reader. This will notify the customer of the reason that the meter could not be read as scheduled.

We note that PG&E may disconnect service if the customer denies access to the meter for an extended period of time and the situation otherwise falls within the conditions of PG&E's gas tariff Rule 11.K.2 and electric tariff Rule 11.J.2. Thus any financial incentive of the customer to deliberately deny access is mitigated.

PG&E's proposed changes to Rule 17.2 clarifying use of PG&E service without compensation are approved with modifications; these tariff changes are consistent with existing CPUC policy, tariffs, and requirements.

PG&E's current gas and electric tariff Rule 17.2 includes as one example of unauthorized use the following:

"Using PG&E service without compensation to PG&E in violation of applicable tariffs and/or statutes."

PG&E proposes to extend this language as follows:

"Using PG&E service without compensation to PG&E in violation of applicable tariffs and/or statutes, except for meter and billing errors as defined under Rule 17 and 17.1. If it is found that a meter or billing error has occurred, those tariffs, and not Rule 17.2, shall apply. Examples of using PG&E service without compensation include, but are not limited to, the customer, its agent, or other occupant reconnecting service after it has been discontinued in accordance with Rule 11 or the customer, its agent, other occupant, an animal, or the physical condition of the property preventing access to PG&E facilities on the customer's premise."

We grant in part PG&E's proposed tariff revisions. We deny PG&E's proposed additions relating to lack of access.

Lack of access does not constitute service without compensation.

We deny the tariff revisions to Rule 17.2 proposed by PG&E that includes the following examples of service without compensation: “the customer, its agent, other occupant, an animal, or the physical condition of the property preventing access to PG&E facilities on the customer’s premise”. In these cases PG&E should issue a bill based on estimated usage. They are not examples of unauthorized use.

PG&E shall revise gas Rule 17.2.A.5 and electric Rule 17.2.B.6 to read as follows:

“Using PG&E service without compensation to PG&E in violation of applicable tariffs and/or statutes, except for meter and billing errors as defined under Rule 17 and 17.1. If it is found that a meter or billing error has occurred, those tariffs, and not Rule 17.2, shall apply. Examples of using PG&E service without compensation include, but are not limited to, the customer, its agent, or other occupant reconnecting service after it has been discontinued in accordance with Rule 11.”

The tariff changes that we require are consistent with existing CPUC policy, tariffs, and requirements.

PG&E shall modify Rule 17.2 to clarify that a person shall only be held responsible for unauthorized use from which that person benefited.

While we are considering changes to Rule 17.2 as proposed by PG&E, it is desirable to address another aspect of the rule. The rule currently states that PG&E shall have the legal right to recover from any customer or other person who caused or benefited from unauthorized use, the estimated undercharges for the full period of such unauthorized use. CAB has received complaints from consumers about being billed by PG&E for unauthorized use which occurred at a location prior to their taking service at the location, i.e., they allegedly were billed for unauthorized use from which they did not benefit.

It is possible that a customer may not have caused the unauthorized use to occur but benefited from that use. For example, a customer may start taking service at a location where the meter had been tampered with by a prior customer at that location. If PG&E subsequently determines that unauthorized use occurred, the new customer should only be responsible for the unauthorized use that took place from the time the new customer began taking service.

D.86-06-035 states that the Commission's sole purpose in resolving complaints from customers about back bills for unauthorized use "is to determine the value of any energy that can be shown to have been *used by the customer* but not metered or billed by the utility." (21 CPUC 2d, p. 273, emphasis added). We require PG&E to modify Rule 17.2 to clarify that a customer shall only be billed for unauthorized use of energy used by that customer. The first sentence of the paragraph immediately following gas Rule 17.2.A.5, and the first sentence of the paragraph immediately following electric Rule 17.2.A.6 shall be revised so that they read:

"Where PG&E determines there has been unauthorized use, PG&E shall have the legal right to recover, from the person who benefited from such unauthorized use, the estimated undercharges for the full period of that person's unauthorized use."

This tariff change is consistent with existing CPUC policy, tariffs, and requirements.

PG&E's proposed Rule 17.3 is overly broad and vague and is denied.

PG&E proposes new Rule 17.3 as follows:

"For any situations where a customer's bill requires adjustment but is not defined as billing error, meter error, or unauthorized use, PG&E will apply Rule 17.3. Under Rule 17.3, billing adjustments for an undercharge or overcharge shall not exceed three years (36 months of energy usage)."

It is not clear from this proposed rule to what situations it would apply, i.e., what is "not defined as billing error, meter error, or unauthorized use". We deny this proposed rule as it is overly broad and vague. TURN's protest that we reject PG&E's proposed Rule 17.3 is granted.

PG&E shall file a report in A.02-11-017, et. al. to explain the reasons for the large number of delayed and estimated bills and a plan for reducing the number of these bills.

In AL 2581-G/2568-E PG&E states that the Executive Director's October 12 letter requested that PG&E discontinue collection of overdue accounts from its residential customers that exceed a three-month limit. PG&E further states that the AL modifies Rules 17.1 and 17.2 to implement the three-month limitation, and references PU Code Section 532. PG&E also states that the changes proposed

in the AL would not affect customers' billing obligations for bills rendered prior to the proposed effective date of the AL (October 13, 2004). PU Code Section 532 prohibits a utility from refunding or remitting a portion of charges to a customer unless extended to all affected customers.

The tariff changes we authorize in this resolution are consistent with existing CPUC policy, tariffs, and requirements, including the requirements set forth in D.86-06-035. These changes simply reflect the proper interpretation of existing tariffs.

Within 15 days from today, PG&E shall file a report in A.02-11-017, et. al., explaining the reasons for the large number of delayed bills and estimated bills over the past five years and a plan for reducing the number of these bills. PG&E's report shall also contain its good faith estimate of the numbers of customers affected by delayed and estimated bills and the associated dollar amounts over the last five years, i.e., calendar years 2000 through 2004. TURN's protest regarding PG&E's assertion that bills rendered prior to the effective date of AL 2581-G/2568-E are not subject to the tariffs proposed in the AL, is denied without prejudice. The assigned Commissioner and ALJ have yet to rule on TURN's motion requesting that we formally investigate PG&E's past billing practices.

COMMENTS

Public Utilities Code section 311(g)(1) provides that a draft resolution must be served on all parties and subject to at least 30 days of public review and comment prior to a vote of the Commission. Accordingly the draft resolution was issued for comment to all parties no later than 30 days prior to being considered by the Commission. PG&E, SCE, and TURN submitted comments on December 30, 2004. TURN submitted a reply to the comments of PG&E and SCE on January 6, 2005.

PG&E states that the draft resolution errs in concluding that PG&E violated its tariff.

PG&E claims that the draft resolution essentially concludes that PG&E's billing practices violated its tariff in finding that failure to issue a bill is billing error, and that billing delays and estimates associated with billing system changes

constitute billing error. PG&E asserts that Findings 3, 4, 7, 13, and 14 and related text should be deleted. PG&E states that it was not afforded due process with the opportunity for adjudicatory hearings on these matters. PG&E states that Energy Division cannot bypass the Commission's procedures for complaint resolution, and that it has reversed long-standing CAB back-billing policies in the draft resolution.

The Commission is not attempting to adjudicate PG&E's past behavior in this resolution. Accordingly, we have revised language throughout the draft resolution to indicate that we are relying on reports of complaints about PG&E's behavior solely for the purpose of promulgating tariff language and not for the purpose of investigating PG&E's past behavior. PG&E shall be free in any future Commission proceeding to litigate its past behavior.

The Commission may review whether PG&E violated its tariffs if it conducts an investigation of PG&E's past billing practices as requested by TURN in A.02-11-017, et. al. Findings 3, 4, and 7 and related text have been clarified such that they address the tariff changes that are required by the draft resolution based on a proper interpretation of the tariffs. Findings 13 and 14 grant in part TURN's protests on PG&E's advice letter relating to whether failure to issue a bill constitutes billing error, and estimated bills. These findings directly relate to PG&E's proposed tariff revisions. The Commission has the authority to rescind staff disposition of complaints. PG&E's argument that Energy Division cannot bypass Commission procedures for complaint resolution is misguided. The draft resolution is prepared to be adopted by the Commission.

PG&E states that the draft resolution wrongly grants TURN's motion for an investigation and orders PG&E to file a report based on a flawed premise unsupported by facts.

PG&E claims that the draft resolution grants TURN's motion filed in A.02-11-017, et. al., for an investigation on PG&E's billing practices, and by doing so violates its right to respond to TURN's motion. We note that PG&E responded to TURN's motion on December 30, 2004. PG&E states that Findings 11, 12, 17, Ordering Paragraph (OP) 2, and related text should be deleted.

In reply comments TURN states that the draft resolution does not improperly deny PG&E proper notice and opportunity to be heard on the matters raised in

its motion. TURN states that the assigned Commissioner and ALJ will give PG&E ample opportunity to consider PG&E's response to the motion. TURN believes that the requirement that PG&E file a report in A.02-11-017, et. al. presents an efficient means of expediting data collection for an investigation.

The ALJ and the assigned Commissioner will issue a ruling on TURN's motion in A.02-11-017, et. al, after considering PG&E's December 30, 2004 response to the motion. Whether or not PG&E has complied with its tariffs may be subject to further Commission action in A.02-11-017, et. al. Findings 12 and 17 and related text have been clarified to reflect that TURN's motion will be dealt with in A.02-11-017, et. al. We retain Finding 11 relating to a report that PG&E should file in A.02-11-017, et. al., and the portions of OP 2 requiring that report. They are proper given that PG&E filed its advice letter after receiving a letter from the Executive Director about delayed and estimated bills. OP 2 has been clarified to reflect that the ALJ and assigned Commissioner have yet to rule on TURN's motion in A.02-11-017, et. al.

PG&E asserts that the draft resolution errs by allowing customers to avoid charges even if they are at fault or due to a force majeure.

PG&E believes that the draft resolution errs because it does not adopt PG&E's proposed changes to Rule 17.1 that would exclude from billing error, billing delays caused by the customer or causes "beyond the reasonable control" of PG&E. PG&E states that since Rule 17.1 defines billing error as incorrect billing of an account due to PG&E "or the customer", its proposed language should be adopted or the phrase "or the customer" be deleted from that portion of the rule. PG&E also states that billing delays in cases of a force majeure such as fire, flood, or earthquake should be excluded from the definition of billing error.

In reply to the comments of PG&E and similar comments made by SCE, TURN points out that the draft resolution does not permit customers to avoid paying for energy services when force majeure events or other causes within the customer's control prevent PG&E from being able to read the meter.

The language that PG&E proposed in AL 2581-G/2568-E describes situations in which access is prevented by the customer. In such cases PG&E should estimate the bill, as the draft resolution states. The draft resolution also clarifies that failure to establish service by the customer constitutes unauthorized use, unless

PG&E has not responded to reasonable requests by the customer to establish service. When a natural or man-made disaster such as a fire, earthquake, flood, or severe storms prevents PG&E from issuing an actual or estimated bill, billing error should not apply. We have revised the draft resolution to exclude those specific circumstances from billing error.

PG&E states that the draft resolution errs by striking the phrase “unusual conditions” from Rule 9C and making similar changes to Rule 17.

PG&E states that the draft resolution is incorrect to delete from Rule 9C language which would allow it to estimate bills under “unusual conditions”. PG&E states that the clause should be retained or revised to read “emergency or unusual system conditions.” PG&E notes that the clause allows it to use meter readers to supplement its emergency response forces during storms and natural disasters. PG&E is willing to modify Rules 9C and 17 to state that estimated bills will be treated as “billing error” subject to the 3 month undercharge limitation when the estimated bill results from causes within PG&E’s control.

In reply comments TURN notes that so long as PG&E issues estimated bills within a reasonable period after a force majeure event that might prevent meter reading, the draft resolution does not limit PG&E’s ability to true-up estimated bills necessitated by such conditions. TURN states that PG&E can deploy meter readers for 3 months before Rule 17 would have any restrictive impact on its billing practices. TURN asserts that the Commission need not afford PG&E the opportunity to justify estimating bills indefinitely by referencing “unusual conditions” or even “emergency or system conditions”.

We agree with TURN that PG&E should not be estimating bills indefinitely. We have, however, revised the draft resolution to exclude from billing error specific cases in which estimated bills are caused by a natural or man-made disaster such as a fire, earthquake, or flood. We also revise the draft resolution to clarify that PG&E may have relied on the phrase unusual conditions in Rule 9C to justify extended reliance on estimated bills when the provisions of Rule 17.1 relating to billing error applied. It is necessary to remove the phrase “unusual conditions” from Rule 9C to eliminate this overly broad and vague language that could lead to misapplication of the tariffs.

PG&E states that the draft resolution errs by mandating unnecessary customer notification.

PG&E states that the draft resolution's proposal to expand notice obligations and excuse customer payment responsibility when it must estimate bills should be rejected. PG&E notes that it already requires meter readers to leave door hangers when it cannot access meters or obtain meter reads. According to PG&E, the specificity required by the draft resolution's notification requirement is impractical, and would add new, unwarranted costs. PG&E asserts that its failure to provide a separate notice is not justification for excusing a customer from paying an estimated bill.

In reply comments TURN indicates its support for the written notice requirement. TURN believes that the new notice requirement is useful and not burdensome, and that it reasonably balances utility and customer obligations in cases within the customer's control which necessitate estimated bills.

We have removed the additional written notification requirement from the draft resolution since PG&E already leave a door hanger notice when access is prevented from the meter. Additionally the costs involved in creating the notice should be reviewed before it is required. We have modified the draft resolution to instead require that on estimated bills, PG&E bill shall include a message that identifies the reason for requiring that the bill be estimated. When the meter reader codes a message in the field, the estimated bill shall reflect the same reason coded by the meter reader. This will notify the customer of the reason that the meter could not be read as scheduled. The Commission may consider more specific notice requirements in a future investigation.

PG&E states that the draft resolution errs by striking the phrase "caused or" from Rule 17.2 in regards to responsibility for unauthorized use.

PG&E notes that Rule 17.2 currently authorizes it to recover undercharges for unauthorized energy use from the person "who caused or benefited" from such use. PG&E states that the draft resolution's requirement to delete the words "caused or" from the phrase is not well conceived, and does not address the problem identified in the draft resolution, i.e., that customers may have been billed for unauthorized use which they neither caused nor from which they benefited.

The phrase “caused or” is not consistent with D.86-06-035. In that decision the Commission addressed billing for energy that can be shown to have been used by the customer but not metered or billed by the utility (21 CPUC 2d, p. 273). That decision does not address situations in which a person may have caused but did not benefit from unauthorized use. As we stated in the decision the “issue is whether the customer benefited from unmetered energy regardless of whether or not there was meter tampering or energy diversion and regardless of who performed any tampering or energy diversion” (21 CPUC 2d, p.274). We will not insert the phrase “caused or” because that tariff language goes beyond the intent of D.86-06-35. The Commission may choose to review the tariff language that PG&E asserts should be retained at a later time. We have modified the draft resolution to clarify that the essence of the concern of customers contacting CAB on this matter was that they were billed for unauthorized use from which they did not benefit.

SCE states that the Commission should not modify billing and estimation policy by resolution.

SCE is concerned that the draft resolution would include estimated bills within the definition of billing error, and that it moves away from a long-standing policy that a customer should pay for the energy used. SCE states that the draft resolution would penalize all ratepayers when circumstances beyond the utility’s control cause a delayed or estimated bill. SCE asserts that the Commission has not yet determined that the changes required by the draft resolution are fair to all ratepayers, and SCE questions whether a resolution is the proper mechanism to make those changes.

In reply comments TURN states that SCE’s comments suggest that SCE’s believes that revenue shortfalls due to billing error are eligible for recovery through the uncollectibles charge. TURN notes that the draft resolution does not indicate that PG&E would be able to get around the 3 month limitation for billing error by increasing the uncollectibles rates. TURN states that any under-collection resulting from Rule 17.1 limits should be shouldered by shareholders and that shifting the shortfall to ratepayers would eliminate the incentive for PG&E that the draft resolution seeks to create. TURN urges that this be made explicit in the resolution.

In addressing PG&E's proposed tariff changes, the draft resolution clarifies cases that involve billing error, e.g., failure to issue a bill, and distinguishes particular circumstances beyond the utility's control (e.g., prevention of access to the meter) in coming up with proposed tariff changes. The resolution is intended to revise the tariffs, and does not address ratepayer and shareholder risks. With regard to SCE's general claim that we are modifying billing and estimation policy by this resolution, we note that as stated throughout the resolution the tariff changes being authorized are consistent with existing Commission policy, tariffs, and requirements, including those set forth in D.86-06-035. No changes to the draft resolution have been made in response to this comment by SCE.

SCE states that the Commission should reject the tariff changes required by the draft resolution concerning estimated usage.

SCE disagrees with the inclusion of estimated bills within the definition of billing error and states that it often estimates bills to avoid billing error, e.g., when a meter read is clearly in error. SCE recommends that the Commission consider a separate tariff rule addressing adjustment of estimated bills rather than include estimated bills within the definition of billing error.

In reply comments TURN states that SCE exaggerates the impact of the draft resolution on PG&E's ability to estimate bills where it suspects meter error. According to TURN the draft resolution affords PG&E three months to send estimated bills while it investigates meter misreads.

The draft resolution provides clarity for PG&E as to when billing error occurs when bills are estimated. No changes have been made based on SCE's comment in this regard.

SCE states that the Commission should adopt PG&E's proposed language concerning delayed bills.

SCE supports PG&E's proposed change to Rule 17.1 which would except from the definition from billing error, delayed bills due to circumstances beyond the utility's control. SCE notes that in some cases where there is lack of access to the meter, estimated bills may not be possible, e.g., a new account for which no prior usage data is available. SCE also notes that in cases of force majeure it may be impossible to even issue an estimate a bill.

PG&E's tariff Rule 9C allows it to estimate bills "considering the customer's prior usage, PG&E's experience with other customers of the same class in that area, and the general characteristics of the customer's operations." If PG&E had no prior usage data it could develop an estimated bill based on its experience with other customers of the same class in the area, and the general characteristics of the customer's operations. SCE's assertion that estimating is not possible for a new account for which there is no prior data is not compelling. We have modified the draft resolution to exclude from billing error, delayed or estimated bills issued due to a natural or man-made disaster such as a fire, earthquake, flood, or severe storms.

TURN generally supports the draft resolution but recommends two modifications.

TURN supports the draft resolution's treatment of PG&E's AL, but recommends it be modified in two regards to clarify the circumstances under which PG&E may bill for unauthorized use pursuant to Rule 17.2. First TURN recommends that the example of unauthorized use cited in the draft resolution, i.e., when the customer fails to establish service, be modified to exclude circumstances where PG&E has not responded to the customer's reasonable requests to establish service. TURN also recommends modifying tariff language required by the draft resolution regarding billing a customer for unauthorized use only from which the customer benefits.

We have modified the text to clarify that unauthorized use does not occur when PG&E has not responded to the customer's reasonable requests to establish service. If a customer has repeatedly requested to establish service, and PG&E has failed to do so, billing error has occurred and the provisions of Rule 17.1 apply. We have also incorporated TURN's comment which clarifies portions of Rule 17.2 that are being modified. Where PG&E determines that there has been unauthorized use, PG&E shall have the legal right to recover from the person who benefited from such unauthorized use, the estimated undercharges for the full period of "that person's" unauthorized use.

FINDINGS

1. PG&E filed AL 2581-G/2568-E on October 15, 2004 proposing to modify electric and gas Rules 17.1 and 17.2 to limit a residential customer's exposure to three months for undercharges resulting from PG&E's failure to deliver a bill. PG&E also proposes in its AL new Rule 17.3.
2. TURN protested AL 2581-G/2568-E on November 4, 2004. TURN states that the Commission should reject AL 2581-G/2568-E and consider billing and collection matters in a comprehensive investigation; TURN proposes modifications to AL 2581-G/2568-E if the Commission addresses the AL. PG&E responded to TURN's protest on November 12, 2004.
3. Failure to issue bills should be treated as billing errors. This is consistent with existing CPUC policy, tariffs, and requirements, including the requirements of D.86-06-035.
4. Failure to issue a bill or estimating a bill due to changes to a billing system should be treated as a billing error for purposes of applying gas or electric Rule 17.1. This is consistent with existing CPUC policy, tariffs, and requirements, including the requirements of D.86-06-035.
5. Rule 17.2 addressing unauthorized use does not apply if billing error has occurred.
6. Unless they result from inaccessible roads, the customer, the customer's agent, other occupant, animal, or physical condition of the property preventing access to PG&E's facilities on the customer's premise, other causes within control of the customer, or a natural or man-made disaster such as a fire, earthquake, flood, or severe storms, the issuance of estimated bills should be considered "billing error" for the purposes of applying gas and electric Rule 17.1.
7. The phrase "unusual conditions" in Rule 9C is overly broad and vague and should be deleted.
8. On estimated bills, PG&E should include a message that identifies the reason for requiring that the bill be estimated. When the meter reader codes a message in the field, the estimated bill should reflect the same reason coded

by the meter reader. This will notify the customer of the reason that the meter could not be read as scheduled.

9. PG&E's proposed Rule 17.3 is overly broad and vague.
10. The tariff changes to gas and electric Rules 9C, 17, 17.1, and 17.2 required by this resolution are consistent with existing CPUC policy, tariffs, and requirements, including the requirements of D.86-06-035.
11. PG&E should file a report in A.02-11-017, et. al, explaining the reasons for the large number of delayed and estimated bills over the past five years and a plan for reducing the number of these bills. PG&E's report should also contain its good faith estimate of the numbers of customers affected by delayed and estimated bills and the associated dollar amounts over the past five years, i.e., calendar years 2000 through 2004.
12. TURN's request to consider issues raised by PG&E's past billing practices in a formal investigation is subject to a future ruling in A.02-11-017, et. al.
13. TURN's protest that failure to issue a timely and accurate bill whether due to reliance on estimated meter reads or other delays constitutes billing error is granted in part as described in the Discussion section of this resolution.
14. TURN's protest that extended reliance on an estimated bill constitutes billing error as tariffs are currently written is granted in part as described in the Discussion section of this resolution.
15. TURN's protest that Rule 17.1 should not exclude from billing error "causes beyond the reasonable control of the utility" is granted.
16. TURN's protest that PG&E's proposed Rule 17.3 be rejected is granted.
17. TURN's protest regarding PG&E's assertion that bills rendered prior to the effective date of AL 2581-G/2568-E are not subject to the tariffs proposed in the AL, is denied without prejudice. This matter may be among the issues considered by the Commission if it investigates PG&E's past billing practices.

THEREFORE IT IS ORDERED THAT:

1. The tariff changes proposed by PG&E in AL 2581-G/2568-E are approved with modifications. The tariff changes approved by this Order are consistent with existing CPUC policy, tariffs, and requirements, including the requirements of D.86-06-035. Within 7 days PG&E shall supplement AL 2581-G/2568-E to make the tariff changes required by this resolution. The supplemental advice letter shall replace the original advice letter in its entirety and shall be effective today subject to Energy Division determining that it complies with this Order. The tariff changes that PG&E shall make are as follows:

- a. Add the following language to gas and electric Rule 17.1:

“Billing error shall also include failure to deliver a gas, electric, or combined commodity bill, actual or estimated, in a timely manner in accordance with Rule 9A. Failure to issue a bill due to a natural or man-made disaster such as a fire, earthquake, flood, or severe storms shall not be considered billing error for purposes of this Rule.”

- b. Modify gas and electric Rule 9C so that they read as follows:

“If for reasons beyond the meter reading entity’s control, the customer’s meter cannot be read on the scheduled reading date, or if for any reason accurate usage data are not available, PG&E will bill the customer for estimated consumption during the billing period. Estimated consumption for this purpose will be calculated considering the customer’s prior usage, PG&E’s experience with other customers of the same class in that area, and the general characteristics of the customer’s operations.

Unless estimated bills result from inaccessible roads, the customer, the customer’s agent, other occupant, animal or physical condition of the property preventing access to PG&E’s facilities on the customer’s premise, other causes within control of the customer, or a natural or man-made disaster such as a fire, earthquake, flood, or severe storms, the issuance of estimated bills shall be considered “billing error” for the purposes of applying Rule 17.1.”

- c. Add the following to gas and electric Rule 17.B.5:

“Unless estimated bills result from inaccessible roads, the customer, the customer’s agent, other occupant, animal or physical condition of the property preventing access to PG&E’s facilities on the customer’s premise, other causes within control of the customer, or a natural or man-made disaster such as a fire, earthquake, flood, or severe storms, the issuance of

estimated bills shall be considered "billing error" for the purposes of applying Rule 17.1."

- d. Modify gas Rule 17.2.A.5 and electric Rule 17.2.A.6 so that they read as follows:

"Using PG&E service without compensation to PG&E in violation of applicable tariffs and/or statutes, except for meter and billing errors as defined under Rules 17 and 17.1. If it is found that a meter or billing error has occurred, those tariffs, and not Rule 17.2, shall apply. Examples of using PG&E service without compensation include, but are not limited to, the customer, its agent, or other occupant reconnecting service after it has been discontinued in accordance with Rule 11."

- e. Modify the first sentence of the paragraph immediately following gas Rule 17.2.A.5, and modify the first sentence of the paragraph immediately following electric Rule 17.2.A.6 such that they read as follows:

"Where PG&E determines there has been unauthorized use, PG&E shall have the legal right to recover, from the person who benefited from such unauthorized use, the estimated undercharges for the full period of that person's unauthorized use. "

- 2. Within 15 days PG&E shall file a report in A.02-11-017, et. al., explaining the reasons for the large number of delayed and estimated bills over the past five years and a plan for reducing the number of these bills. PG&E's report shall also contain its good faith estimate of the numbers of customers affected by delayed and estimated bills and the associated dollar amounts over the last five years, i.e., calendar years 2000 through 2004. PG&E's past billing practices may be reviewed in A.02-11-017, et. al., pending a ruling on TURN's motion in that application. If this review is undertaken it may include consideration of whether PG&E should be ordered to make refunds on, or adjustments to, previously rendered bills, as well as any other issues specified by the assigned Commissioner and ALJ in their disposition of TURN's pending motion in A.02-11-017, et. al.
- 3. On estimated bills, PG&E shall include a message that identifies the reason for requiring that the bill be estimated. When the meter reader coded a message in the field, the estimated bill shall reflect the same reason coded by the meter reader. If PG&E requires an extension of time to comply with this requirement, it shall make a request for an extension of time by letter to the Executive Director within 10 days of today's date. The request for extension

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shall otherwise be submitted in accordance with the requirements of Rule 48(b) of the Commission's Rules of Practice and Procedure.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on January 13, 2005, the following Commissioners voting favorably thereon:

STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners