BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA


Application 10-03-014
(Filed: March 22, 2010)

JOINT APPLICATION FOR REHEARING OF DECISION NO. 11-05-047 OF PACIFIC GAS AND ELECTRIC COMPANY, (39 M) SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) AND KERN COUNTY TAXPAYERS ASSOCIATION

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## TABLE OF CONTENTS

I. **THE DECISION ERRORS IN FINDING THAT THE COMMISSION CANNOT APPROVE PG&E’S PROPOSED CUSTOMER CHARGE**
   - THE DECISION’S FINDING OF AMBIGUITY IS CONTRARY TO THE USUAL AND ORDINARY MEANING OF SECTIONS 739.1(B)(2) AND 739.9(A) AND THUS CONSTITUTES LEGAL ERROR. ................................................................. 3
   - THE DECISION ERRORS IN FINDING THAT THE LEGISLATURE INTENDED SECTIONS 739(A) AND 739.1(B)(2) TO LIMIT CUSTOMER CHARGES. ................................................................. 5
   - BASIC PRINCIPLES OF STATUTORY CONSTRUCTION Dictate That “RATES CHARGED RESIDENTIAL CUSTOMERS FOR ELECTRICITY USAGE” Do Not Include Fixed Customer Charges. ................................................................. 8
   - THE DECISION ERRORS IN FINDING THAT EXCLUDING CUSTOMER CHARGES FROM THE SECTION 739.9(A) LIMITATIONS WOULD UNDERMINE THE LEGISLATIVE INTENT. .......... 12
   - THE DECISION ERRORS IN FINDING THAT EXCLUDING CUSTOMER CHARGES FROM “RATES CHARGED CUSTOMERS FOR ELECTRICITY USAGE” Is Inconsistent With Commission Precedent. ................................................................. 13

II. **THE DECISION ERRORS IN REJECTING PG&E’S PROPOSED CUSTOMER CHARGE ON POLICY GROUNDS**. ................................................................................................................................. 15

III. **CONCLUSION** ................................................................................................................................. 20
# TABLE OF AUTHORITIES

<table>
<thead>
<tr>
<th>Case</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FEDERAL CASES</strong></td>
<td></td>
</tr>
<tr>
<td>Jack Rondal Dillmon v. NTSB</td>
<td>17</td>
</tr>
<tr>
<td>Jicarilla Apache Nation v. United States Dep’t of the Interior</td>
<td>17</td>
</tr>
<tr>
<td>Motor Vehicle Manufacturers Ass’n of the United States, Inc. v. State Farm</td>
<td>17</td>
</tr>
<tr>
<td>Williams Gas Processing-Gulf Coast Co., L.P. v. Federal Energy Regulatory Commission</td>
<td>17</td>
</tr>
<tr>
<td><strong>CALIFORNIA CASES</strong></td>
<td></td>
</tr>
<tr>
<td>Dixon Arnett v. William J. Dal Cielo</td>
<td>8</td>
</tr>
<tr>
<td>California Manufacturers Ass’n v. Public Utilities Comm’n</td>
<td>10, 11</td>
</tr>
<tr>
<td>California Retail Portfolio Fund GmbH &amp; Co. v. Hopkins Real Estate Group</td>
<td>3, 10</td>
</tr>
<tr>
<td>City of Santa Monica v. Guillermo Gonzalez</td>
<td>10</td>
</tr>
<tr>
<td>City of Stockton v. Marina Towers LLC</td>
<td>17</td>
</tr>
<tr>
<td>James M. Moyer v. Workmen’s Comp. Appeals Bd.</td>
<td>8</td>
</tr>
<tr>
<td>People v. Lou Suriyan Sisuphan</td>
<td>10</td>
</tr>
<tr>
<td>Joey Wells v. One2One Learning Foundation</td>
<td>passim</td>
</tr>
<tr>
<td><strong>CALIFORNIA PUBLIC UTILITIES COMMISSION DECISIONS AND RESOLUTIONS</strong></td>
<td></td>
</tr>
<tr>
<td>Decision in Phase 1 On Whether A Corporation Or Person That Sells Electric Vehicle Charging Services To The Public Is A Public Utility, D.10-07-044 (July 29, 2010)</td>
<td>14, 15</td>
</tr>
</tbody>
</table>
### TABLE OF AUTHORITIES

(continued)

<table>
<thead>
<tr>
<th>Decision Determining The City of Cerritos’ Rights Under Assembly Bill 80, D.10-01-012 (Jan. 21, 2010)</th>
<th>6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision Regarding The Residential Electric Rate Adjustments Pursuant To Public Utilities Code Section 739.9, D.09-12-048 (Dec. 17, 2009)</td>
<td>8, 14</td>
</tr>
<tr>
<td>Decision Dismissing Complaint for Failure to State a Cause of Action, D.09-11-017, 2009 Cal. PUC LEXIS 574 (Nov. 20, 2009)</td>
<td>14</td>
</tr>
<tr>
<td>Interim Opinion: Marginal Costs Revenue Allocation and Rate Design (Phase 2), D.96-04-050, 1996 Cal. PUC LEXIS 270 (Apr. 10, 1996)</td>
<td>17, 19</td>
</tr>
<tr>
<td>PG&amp;E’s Application, Third Interim Opinion: Phase 2 Issues, D.93-06-087, 1993 Cal. PUC LEXIS 344 (June 23, 1993)</td>
<td>16</td>
</tr>
</tbody>
</table>

### CALIFORNIA STATUTES

<table>
<thead>
<tr>
<th>Statute</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assem. Bill No. 1X (2001-2002 1st Ex. Sess.)</td>
<td>6, 7, 12</td>
</tr>
<tr>
<td>Pub. Util. Code</td>
<td>9, 16</td>
</tr>
<tr>
<td>§ 382 (b)</td>
<td>9</td>
</tr>
<tr>
<td>§ 451</td>
<td>9, 16</td>
</tr>
<tr>
<td>§ 453.5</td>
<td>11</td>
</tr>
<tr>
<td>§ 739 (d) (2)</td>
<td>4</td>
</tr>
<tr>
<td>§ 739 (d) (3)</td>
<td>4</td>
</tr>
<tr>
<td>§ 739.1 (b) (2)</td>
<td>passim</td>
</tr>
<tr>
<td>§ 739.1 (g)</td>
<td>9</td>
</tr>
<tr>
<td>§ 739.7</td>
<td>8</td>
</tr>
<tr>
<td>§ 739.9 (a)</td>
<td>passim</td>
</tr>
<tr>
<td>§ 739.9 (b)</td>
<td>passim</td>
</tr>
<tr>
<td>§ 797.7</td>
<td>5</td>
</tr>
<tr>
<td>§ 1705</td>
<td>17, 18</td>
</tr>
<tr>
<td>Water Code § 80110 (e)</td>
<td>4</td>
</tr>
</tbody>
</table>
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric
Company To Revise Its Electric Marginal
Costs, Revenue Allocation, and Rate Design,
including Real Time Pricing, to Revise its
Customer Energy Statements, and to Seek
Recovery of Incremental Expenditures.

Application 10-03-014
(Filed: March 22, 2010)

(U 39 M)

JOINT APPLICATION FOR REHEARING OF DECISION NO.
11-05-047 OF PACIFIC GAS AND ELECTRIC COMPANY,
(U 39 ) SOUTHERN CALIFORNIA EDISON COMPANY (U 338-
E), SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) AND
KERN COUNTY TAXPAYERS ASSOCIATION

Pacific Gas and Electric Company (“PG&E”), Southern California Edison Company
(“SCE”), San Diego Gas & Electric Company (“SDG&E”) and Kern County Taxpayers
Association (“KernTax”) (collectively the “Moving Parties”) jointly move pursuant to Rule 16.1
for rehearing of Decision No. 11-05-047 (the “Decision”) on the grounds that it erroneously
finds that PG&E’s proposed customer charge is both unlawful and contrary to public policy. As
discussed more fully below, the first error stems from the Decision’s focus on the word “rates” in
isolation, rather than in the context the Legislature used it, i.e., “rates charged residential
customers for electricity usage.” (Emphasis added). The second error is the Decision’s
rejection of the proposed customer charge on policy grounds, primarily undue bill impacts, citing
an increase of approximately ten percent in monthly bills for low-income customers who use
only the baseline allowance, without (a) acknowledging that adopting a reasonable fixed
customer charge is sound ratemaking policy, (b) reconciling the fact that low-use and low-
income customers have been shielded from rate increases for approximately twenty years, and

1 SDG&E is not yet a party to this proceeding but is filing a motion to intervene today.
(c) giving due consideration to whether, if bill impacts are truly undue under PG&E’s proposal, they can be mitigated to achieve a reasonable level. 2

The errors in the Decision’s policy analysis are highlighted by the fact that, consistent with long-standing Commission precedent, several commissioners have suggested that they believe adopting a reasonable customer charge is good policy. 3 The Alternate Proposed Decision of President Peevey (“APD”) identified sound public policy bases for approving the customer charge and would have addressed adverse bill impacts by phasing in the proposed customer charge. 4 The Decision, unlike the APD, did not address the option of phasing-in the charge, but instead erroneously made a policy finding that is contrary to Commission precedent and neither supported by necessary findings nor by the record. Even if the Commission ultimately were to decide not to grant rehearing on its authority to implement a customer charge under Senate Bill (“SB”) 695, the Commission should find that sound public policy supports the implementation of a residential customer charge provided that the implementation of such a charge is allowed by law and provided that any undue bill impacts are mitigated.

I. THE DECISION ERRS IN FINDING THAT THE COMMISSION CANNOT APPROVE PG&E’S PROPOSED CUSTOMER CHARGE.

As the Decision notes, the key legal issue concerning the proposed customer charge is “whether the imposition of a fixed customer charge is included within the Sec. 739.1(b)(2) and 739.9(a) annual rate limitations applicable to electric usage up to 130 percent of baseline.” Decision at 24. The Decision correctly states the basic legal standard for statutory interpretation: “The words of the statute are a starting point … [And] they should be given the meaning they

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2 For example, by approving a customer charge at a lower level, or phasing the charge in over time.

3 See Transcript of the relevant portion of the May 26, 2011 Commission meeting and remarks of President Peevey (attached hereto as Appendix B); Alternate Proposed Decision of President Peevey (“APD”) at 27-29 (finding the customer charge to be supported by sound public policy); and Concurrence of Commissioner Timothy Alan Simon at p. 3 (“I want to be clear that I do not oppose fixed customer charges of this nature … I remain open to the use of customer charges in the future if they do not run afoul of our statutory requirements under SB 695”).

4 PG&E accepted this revision.
bear in ordinary use. If the language is clear and unambiguous there is no need for construction nor is it necessary to resort to indicia of the intent of the Legislature.” Decision at 25 (alteration in original, emphasis added). Where the Decision errs is in the next step in the analysis, stating that “[t]he key words of the statute in dispute involve the meaning of ‘rates’ as used in Sec. 739.9(a).” Decision at 25. By considering the meaning of the term “rates” in a vacuum, rather than in its statutory context, “rates charged residential customers for electricity usage,” the Commission finds ambiguity where there is none and relies on inapposite precedent. The Decision then compounds this error by erroneously finding that imposition of a customer charge would be contrary to the Legislature’s intent, avoiding the maxim that every word in a statute must be given meaning and instead finding that giving meaning to the Legislature’s words would somehow violate its intent.

A. The Decision’s Finding of Ambiguity Is Contrary To The Usual And Ordinary Meaning Of Sections 739.1(b)(2) And 739.9(a) And Thus Constitutes Legal Error.

The best place to look to determine the Legislature’s intent is the words it chose to use:

Our task is to discern the Legislature’s intent. The statutory language itself is the most reliable indicator, so we start with the statute's words, assigning them their usual and ordinary meanings, and construing them in context. If the words themselves are not ambiguous, we presume the Legislature meant what it said, and the statute’s plain meaning governs.


See also California Retail Portfolio Fund GmbH & Co. v. Hopkins Real Estate Group (2011) 193 Cal. App. 4th 849, 855 (“to ascertain the intent of the Legislature … we first look to the words of the statute and try to give effect to the usual, ordinary import of the language, at the same time not rendering any language mere surplusage”).

The first question is thus whether “rates charged residential customers for electricity usage” in Sections 739.9(a) and 739.1(b)(2) has a usual and ordinary meaning. If it does, the analysis ends and the Commission must apply that meaning. No one can credibly deny that “electricity usage” means the usage of electricity, or electricity consumption. “[R]ates charged
residential customers for electricity usage” thus plainly means one thing: the rates the utility charges customers to use electricity.\(^5\)

The next question is whether the proposed customer charge fits that plain definition. It does not, as the Decision itself all but acknowledges. The Decision recognizes that the customer charge “covers functions that do not vary with usage,” that “a fixed customer charge cannot be avoided by a customer’s reducing usage or being more energy efficient,” and that “the customer charge is not a volume-based billing determinant.” Decision at pp. 30, 32-33. In other words, the customer charge applies even if there is no electricity usage by the customer. Clearly if the customer charge is independent of electric usage it is not a “rate charged customers for electricity usage.”

Moreover, it is clear that the Legislature knew and understood the difference between fixed charges and usage rates. For example, Water Code Section 80110(e), directly repealed by SB 695, referred to “charges … for existing baseline quantities or usage.” (Emphasis added). In order to avoid rendering “or usage” surplusage, the phrase “charges … for existing baseline quantities” must mean something different than “charges … for usage,” which further supports the conclusion that a customer charge is properly excluded from “rates charged for usage” in Section 739.9(a).\(^6\) See also Pub. Util. Code § 739(d)(3) (distinguishing between fixed and volumetric charges).\(^7\)

Despite the usual and ordinary meaning of the words the Legislature chose – the “most reliable indicator” of the Legislature’s intent (Wells, 49 Cal.4\(^{th}\) at 1190), the Decision finds ambiguity because, in the context of determining a reasonable differential between baseline and

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\(^5\) That this was the Legislature’s intended meaning of “rates charged residential customers for electricity usage” in subsection (a) is reinforced by subsection (b) where the Legislature saw fit to expressly add to the phrase “rates charged residential customers for electricity usage” the additional phrase “including any customer charge revenues.” See Section C, below.

\(^6\) All references to “Section” are to the California Public Utilities Code unless otherwise specified.

\(^7\) To the extent that the Decision prohibits PG&E from adopting a customer charge under any circumstances, the Decision errs by finding that SB 695 implicitly repealed Section 739(d)(3).
non-baseline rates or determining the affordability of the baseline usage block, the Commission’s historic usage of the term “baseline rates” includes customer charges. Decision at 25, 28, 29. Yet Sections 739.9(a) and 739.1(b)(2) do not use the term “baseline rates” nor do they address the differential between baseline and non-baseline rates. Had the Legislature used language that limited increases to “baseline rates,” rather than “rates charged residential customers for electricity usage up to 130 percent of the baseline quantities,” there would be no ambiguity – it would have been clear that the statutory limit in Section 739.9(a) also covers fixed customer charges. The Legislature did not, though. Rather, it carefully chose the words “rates charged residential customers for electricity usage,” words that have a plain, ordinary, well-understood meaning. The Commission need look no further than these words to divine the Legislature’s intent and to interpret Sections 739.1(b)(2) and 739.9(a). Indeed, by looking beyond the unambiguous words of the statute and failing to properly apply the statute the Commission committed legal error and failed to proceed in a manner required by law.

B. The Decision Errs In Finding That The Legislature Intended Sections 739(a) And 739.1(b)(2) To Limit Customer Charges.

Even if one concludes that Sections 739.9(a) and 739.1(b)(2) are ambiguous, which they are not, the Decision errs in finding that excluding fixed customer charges from the limit on increases on “rates charged residential customers for electricity usage” is contrary to the legislative intent as revealed by the legislative history (Decision at 26, 28) and therefore constitutes an action contrary to law and an abuse of discretion.

First and foremost, nothing in the legislative history quoted by the Decision even mentions the concept of fixed customer charges. There is thus no express statement as to what

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8 In fact, the Decision considers this very issue in rejecting TURN’s contention that the ratio between the Tier 2 volumetric rate and the composite baseline rate - the Tier 1 rate including the customer charge revenues – must be at least 10 percent in order to comply with Sec. 797.7. Decision at pp 31 to 32.

9 While Section 739.9(b) uses the phrase “including any customer charge revenues” after the phrase “rates charged residential customers for residential usage,” as discussed in Section I.C, below, the absence of parallel language in Section 739.9(a) leads to the conclusion that its omission in Section 739.9(a) is deliberate.
the Legislature intended with respect to such charges (other than the words of the statute). The only statement in the legislative history that the Decision finds relevant is the following: “by restricting rate increases to an annual narrow range and controlling the increase within relatively small parameters, SB 695 is intended to minimize spikes in electricity rates and provide relative stability and predictability.” Decision at 25-26 (quoting Assem. Com. On Appropriations Analysis of SB 695 (2009-2010 Reg. Sess.) Aug. 19, 2009, at pp. 2-3). But there is nothing inconsistent between this statement and the fact that “rates charged residential customers for electricity usage” means volumetric rates and does not apply to fixed customer charges.

Rate “spikes” are generally associated with increases made to volumetric rates due to commodity cost or revenue requirement increases. This is highlighted by a more complete reading of the legislative history cited by the Decision. The Assembly Appropriations Committee analysis (as well as the Senate Floor analysis and Assembly Committee on Utilities and Commerce analysis) puts this in context as follows:

Because rates in the lowest tiers are still capped [under AB 1X], increased \textit{costs such as rising fuel prices and legislatively mandated and PUC-created programs}, are disproportionately borne by customers whose electricity usage falls in the upper tiers. \textit{… It is uncertain when the DWR will retire the ABX1 bond debt or fully recover its costs}. \textit{At that time, however, the lower-tiered rates are expected to skyrocket to provide less of a spread between the 130\% of baseline and the higher tiers}. By restricting rate increases to an annual narrow range and controlling the increase within relatively small parameters, SB 695 is intended to minimize spikes in electricity rates and provide relative stability and predictability. (Assem. Com. On Appropriations Analysis of S.B. 695 (2009-10 Reg.Sess.) Aug. 19, 2009, pp. 2-4.)

Thus, the “spikes” in rates that the legislative history demonstrates were intended to be avoided by SB 695 were the spikes that would be caused by reflecting increased revenue requirements, such as those for fuel and purchased power costs or the costs of Commission-
mandated programs, in the volumetric rates for Tiers 1 and 2, which had previously been capped under AB 1X. In contrast, a customer charge does not increase when increased fuel and purchased power prices are reflected in rates and, even if it were increased by the same percentage as a usage rate, it would not cause the type of spike in bills that the Legislature sought to avoid through the enactment of SB 695.

Customers typically experience spikes in their bills when they increase usage under steeply tiered rates because incremental usage in the higher-priced upper tiers creates a spike in their bills. The record is clear that the problem is even worse for customers with more usage in the upper tiers, especially in hot areas like Bakersfield. (PG&E, Keane, Tr. 244 to 246; KernTaxpayers, Turnipseed, Ex, 30, pages 14 to 15.) Fixed customer charges that collect revenues from all customers result in reduced upper-tier volumetric rates, thus mitigating spikes caused by volumetric commodity rates and promoting “stability and predictability.” (PG&E, Keane, Ex. 2, page 1-8, lines 27 to 32; Id. page 1-9, lines 1 to 24 (“It is very important for customers to have bills which do not vary widely from month to month. PG&E’s proposed $3.00 customer charge not only more closely aligns PG&E’s rates with its costs, but it importantly reduces month-to-month bill volatility, by reducing the Tier 3 rate by approximately 2 cents per kWh below what it would otherwise be.”))

Thus the legislative history cited by the Decision, if anything, supports the conclusion that fixed customer charges are not subject to the limitations it imposed on “rates charged residential customers for electricity usage.” The intent stated in the Assembly Appropriations Committee analysis to minimize rate spikes certainly should not be misread as a justification for ignoring the usual and ordinary meaning of the actual words the Legislature chose to adopt, or rendering those words meaningless, as Sections I.A and I.C demonstrate the Decision does.¹¹ Nor does the legislative history quoted by the Decision provide a reason to protect PG&E’s low-

¹¹ In this regard, by supplying additional words in Section 739.9(a), the Decision’s erroneous interpretation would allow SCE to increase its existing non-CARE residential customer charge by as much as five percent per year and its Tier 1 and Tier 2 volumetric rates under SB 695 for each year through 2018, while PG&E cannot implement a customer charge and increase its Tier 1 and Tier 2 volumetric rates. Decision at p. 23
usage customers from a customer charge under SB 695 while leaving the higher-usage customers disproportionately tied to greater instability and spikes in their bills as they were under AB 1X. Indeed, the Decision’s use of the quoted legislative language misapplies the record, is contrary to the evidence and constitutes an abuse of discretion.

PG&E’s proposed customer charge is consistent with the intent of SB 695, as noted in Decision (D.) 09-12-048, “… to bring the overall disparities among the various rate tiers into a more equitable relationship,” and with the requirement of Section 739.7 to provide an appropriate gradual differential between rates for the respective blocks of usage. Moreover, as explained in Section I.D, below, the Legislature’s intent to reduce spikes and promote stability was to be accomplished by both subsections (a) and (b) of Section 739.9, not just subsection (a). It is subsection (b), not subsection (a), which implements this intent with regard to customer charges.

C. Basic Principles Of Statutory Construction Dictate That “Rates Charged Residential Customers For Electricity Usage” Do Not Include Fixed Customer Charges.

“It is a maxim of statutory construction that ‘Courts should give meaning to every word of a statute if possible, and should avoid a construction making any word surplusage.’” Arnett v. Dal Cielo (1996) 14 Cal.4th 4, 22. See also Moyer v. Workmen’s Comp. Appeals Bd. (1973) 10 Cal.3d 222, 230-231 (“significance should be given to every word, phrase, sentence or part of an act in pursuance of the legislative purpose; a construction making some words surplusage is to be avoided”). In addition, inclusion of language in one section of a statute and its omission in another is generally regarded as deliberate, especially when both provisions are enacted concurrently. See Wells, 39 Cal.4th at 1190.

Section 739.9(a) refers to “rates charged residential customers for electricity usage,” and never uses the term “customer charge.” Section 739.9(b), on the other hand, refers to “rates charged residential customers for electricity usage, including any customer charge revenues.” (Emphasis added). If, as the Decision finds, “rates charged residential customers for electricity
usage” as stated in part (a) implicitly includes customer charges because it incorporates the Commission’s longstanding recognition that customer charges “are an integral component of baseline rates,” it would have been unnecessary to explicitly add “including any customer charge revenues” to subsection (b). The Decision’s interpretation thus violates both of these basic maxims of statutory construction because putting the words “including any customer charge revenues” in subsection (b) could not be regarded as deliberate and the words are also rendered meaningless surplusage.

The Decision’s interpretation also defies common sense. Obviously the Legislature intended to mean something different in subsection (b) when it added the words “including any customer charge revenues” than it meant when it did not use those words in subsection (a). If the Legislature meant subsection (a) to also address customer charges, it would have either used the additional words “including any customer charge revenues” in subsection (a) as well, or would have left them out of subsection (b) on the understanding that “rates charges customers for electricity usage” somehow necessarily includes customer charges. The fact that the Legislature deliberately chose to add “including any customer charge revenues” to subsection (b), and not to subsection (a), demonstrates that the Legislature intended the limitations established by subsection (b) to apply to customer charges, and did not intend the limitations established by subsection (a) to apply to customer charges. Again, the “statutory language itself is the most reliable indicator” of the Legislature’s intent. Wells, 39 Cal.4th at 1190.

The Decision reasons that the word “including” is a word of expansion, not limitation, and that if customer charges were not inherently included in rates the Legislature would have

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12 Decision at 29.

13 As discussed in Section I.D, below, an interpretation that the Commission can authorize PG&E to implement a customer charge does not render all other words of Sections 739.9(a) and 739.1(b)(2) meaningless (as DRA has asserted) or defeat the intent of SB 695 by permitting an unlimited customer charge increase. Any customer charge is capped at a maximum value by Section 739.9(b). Moreover, the Commission clearly retains the authority under Sections 451, 739(d)(2), 739.1(g) and 382(b) to limit the customer charge to a level below the maximum permitted under Section 739.9(b). The Decision itself illustrates this point by concluding no increase should be permitted even assuming an increase would not be prohibited by Section 739.9(a).
used “in addition to” instead of “including.” Decision at 30-31. However, the Decision provides no credible explanation of why the words of expansion were explicitly needed in subsection (b) if customer charges are implicitly included in subsection (a) as they are no more of a necessary element in (b) than they would be in (a) if (a) was also intended to limit customer charge increases. That “in addition to” might have been a clearer way to word the statute does not change the fact that the Legislature used the phrase “including any customer charge revenues” in subsection (b), and did not do so in subsection (a), and that it clearly did so deliberately in order to give different meaning to subsection (b).

The Decision circumvents this basic rule of statutory construction by citing a California Supreme Court decision for the proposition that “statutory construction based upon alleged surplusage of words within a statute which defies common sense, or leads to mischief or absurdity, is to be avoided.” Decision at 28. The first problem with this analysis is that the California Supreme Court said no such thing. Rather, in the cited case, the Court stated: “Interpretative constructions which render some words surplusage, defy common sense, or lead to mischief or absurdity, are to be avoided.” California Manufacturers Ass ’n v. Public Utilities Commission (1979) 24 Cal.3d 836, 844. The Court never stated, or even suggested, that statutory construction based on surplusage should be “avoided” or that avoiding “mischief or absurdity” trumps avoiding surplusage. On the contrary, the law is clear that “to ascertain the intent of the Legislature … we first look to the words of the statute and try to give effect to the usual, ordinary important of the language, at the same time not rendering any language surplusage.” California Retail Portfolio Fund GmbH & Co. KG, 2011 WL 989014 at *3. Accordingly, analysis based on Legislative history cannot be used to render words surplusage. Rather, the actual “statutory language is usually the most reliable indicator of legislative intent.” City of Santa Monica v. Gonzalez (2008) 43 Cal.4th 905, 919. Legislative history is only relevant if statutory construction that avoids surplusage still leaves the statutory language ambiguous. People v. Sisuphan (2010) 181 Cal. App. 4th 800, 806. Even then, no rule of law allows the Commission to use legislative history to render statutory words surplusage.
The second problem with the Decision’s analysis is that interpreting “rates charged residential customers for electricity usage” as meaning volumetric rates, and excluding fixed customer charges does not “def[y] common sense, or lead[ ] to mischief or absurdity.” On the contrary, as demonstrated above, common sense dictates that a fixed customer charge that is admittedly independent of electricity usage is not a rate “for electricity usage,” and common sense dictates that the Legislature used different words in subsections (a) and (b) because it intended that they have different meanings.

The Decision nonetheless concludes that “accepting PG&E’s ‘surplusage’ argument would produce an interpretation at odds with the express legislative intent.” Decision at 28. This analysis again suffers from two fatal flaws. First, as discussed above, the Legislature never expressed any intent with regard to customer charges (other than the words it used in the statute itself). Rather, the legislative history includes references to concerns regarding rate “spikes,” “stability” and “predictability.” As demonstrated above, authorizing PG&E’s proposed customer charge would promote stability and predictability, would reduce the type of spikes cited in the legislative history, i.e., spikes caused by increases in volumetric rates. The Decision thus commits a fundamental legal error by finding that the Legislature did not intend to use the words it used and finding that it did not intend them to mean what they ordinarily mean, all because the legislative history references an intent to “minimize spikes in electricity rates and provide relative stability and predictability,” which a customer charge actually does, as the evidence indicates.

Second, even if authorizing the customer charge could somehow be found to be “at odds” with the stated legislative intent, this would not rise to the level of “absurdity” that the California Supreme Court has held should be avoided. In California Manufacturer’s Association, for example, the Court held that the Commission’s interpretation of Public Utilities Code Section 453.5 would allow the Commission “by a simple ipse dixit, to avoid the statute in every case,” thus rendering the statute “entirely superfluous.” Id. at 847. This is the type of absurdity – completely nullifying a statute or obtaining a result so impractical as to be unworkable – that the
Court has counseled against allowing. PG&E’s and SCE’s interpretation of SB 695 does not come close to rendering the statute superfluous or causing “mischief” or “absurdity.” Rather, under the Moving Parties’ interpretation, subsection (a) prevents spikes in lower tier rates by limiting the volumetric rates and subsection (b) adds the additional protection that the combined Tier 1 rate and customer charge, *i.e.*, the composite baseline rate, is no more than 90 percent of the system average rate. The Legislative Digest parallels and supports this conclusion, stating that the repeal of AB 1X “will be subject to the limitation that the rates charged residential customers for electricity usage up to the baseline quantities, including any customer charge revenues, not exceed 90 percent of the system average rate.” Because the Legislative Digest refers clearly and directly to the words of subsection (b) as the limit on customer charges following the repeal of AB 1X, it confirms that limit imposed by the Decision is contrary to the statutes and legislative intent. The Commission has failed to act in a manner required by law and its actions are not supported by substantial evidence in light of the whole record.

**D. The Decision Errs In Finding That Excluding Customer Charges From The Section 739.9(a) Limitations Would Undermine The Legislative Intent.**

The Decision further rationalizes its conclusion by stating that “merely imposing limits on volumetric tiers would have little meaning if a fixed customer charge could be imposed without regard to such limits, and thereby undermine the intended overall rate stability.” Decision at 26. This statement commits further legal error by ignoring the limits the Legislature explicitly imposed on customer charges in Section 739.9(b), and the fact that the Legislature’s stated intent concerned the entire statute, not just subsection (a). Moreover, as discussed above in Section I.C, this conclusion ignores other statutory provisions that the Commission could properly use to limit a customer charge to a level beneath the maximum permitted under Section 739.9(b).\(^{14}\)

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\(^{14}\) See note 13, *supra.*
Subsection (b) limits the combination of Tier 1 volumetric and customer charges to no more than 90% of the system average rate, which PG&E’s proposal meets. Thus, the Decision’s suggestion that unlimited increases to a customer charge could be imposed on customers without regard to limits imposed by SB 695 is plainly and completely wrong, because Section 739.9(b) limits the combined effect of a customer charge and the usage rate. The Legislature, by its deliberate choice of words, struck a balance between subsections (a) and (b), under which limited annual increases to the Tier 1 and Tier 2 volumetric rates are permitted under subsection (a), with the volumetric rate plus the customer charge subject to an additional limit expressed in subsection (b). To the extent the Commission believes the Legislature should have done more, it is not interpreting the statute, but substituting its judgment for that of the Legislature.

E. The Decision Errs In Finding That Excluding Customer Charges From “Rates Charged Customers For Electricity Usage” Is Inconsistent With Commission Precedent.

Finally, the Decision errs in finding that interpreting “rates charged customers for electricity usage” as meaning volumetric rates, and not fixed customer charges, “contradict[s] the Commission’s longstanding recognition that customer charges are an integral component of baseline rates.” Decision at 29. The Legislature’s words must be construed “in context.” Wells, 39 Cal.4th at 1190. The Legislature did not use the term “baseline rates” in SB 695 and the precedent the Decision cites does not use the term “electricity usage.” Recognizing that customer charges are not “rates charged customers for electricity usage” does not mean that customer charges are not part of “baseline rates” for determining affordability or looking at the differential between baseline and non-baseline rates and thus does not “contradict” Commission precedent. Words have meaning, and different words can mean different things without contradiction.

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For SCE, the existing customer charge of only 88 cents per month combined with the Tier 1 rate is at the limit imposed by Section 739.9(b) in 2011.
The only prior Commission decision that interpreted the meaning of Section 739.9(a) was D.09-12-048, which authorized SCE, PG&E and SDG&E to increase their non-CARE Tier 1 and 2 volumetric rates under Section 739.9(a). In that decision, the Commission did not analyze the increase Section 739.9(a) allowed to “baseline rates,” but rather to “Tiers 1 and 2 rates.” Id. at 15. If, as D.11-05-047 now holds, Section 739.9(a) authorizes a three to five percent increase in the composite baseline rate, including the customer charge, then, in the case of SCE, who in 2009 was not proposing to increase its customer charge, a three percent increase to the Tier 1 rate would not have amounted to a three percent increase to the composite baseline rate. In other words, by keeping its customer charge flat, SCE would have been authorized under Section 739.9(a) to raise its Tier1 volumetric rate more than three percent, as long as the composite baseline rate did not go up more than three percent. Yet the Commission suggested no such thing, and analyzed only whether to apply the lower or upper of the three to five percent increase to the Tier 1 and Tier 2 volumetric rates. At a minimum, D.09-12-048 demonstrates that the “long-standing precedent” applied in the Decision was not applied to D.09-12-048, which applied Section 739.9(a) only to the volumetric Tier 1 and Tier 2 rates.

If the Commission needs to look to extrinsic evidence for the meaning of the words the Legislature used (which, given the lack of ambiguity, is unnecessary and improper), it should not look at how the term “rates” has been defined in a vacuum, or the definition of terms like “baseline rates” not used in the statute, but rather how “rates for usage” or “usage rates” have been defined. Such an analysis reveals that the term “usage rate” has been commonly used by the Commission and always means a volumetric rate. For example, in D.09-11-017, the Commission noted that “SoCalGas’ tier system of baseline and non-baseline usage rate schedules used to bill residential customers takes into account the variations in consumption of gas during the winter period … and the summer period.” 2009 Cal. PUC LEXIS 574 at *3. The Commission clearly used the term “usage rate” in reference to SoCalGas’ volumetric rate, not its customer charge (which did not vary seasonally). In D.10-07-044, the Commission stated that “Rate design can include volumetric charges (dollar per kilowatt-hour), demand charges (based
on peak usage during a specified time period), and fixed charges.” D.10-07-044, p. 27. Similarly, in D.06-03-025, the Commission found reasonable a Verizon interoffice rate design, “which involves fixed and usage-based charges.” D.06-03-025, Conclusion of Law 45, p. 154. Commission precedent thus clearly distinguishes between “usage” rates and fixed charges. The Decision arbitrarily relies on decisions that included customer charges within the term “baseline rates” without any consideration of these prior decisions that clearly distinguished and excluded fixed customer charges from “usage” rates.

II. THE DECISION ERRS IN REJECTING PG&E’S PROPOSED CUSTOMER CHARGE ON POLICY GROUNDS.

PG&E’s proposed customer charge is supported by sound public policy. The Decision itself acknowledges that a “fixed customer charge would more closely reflect cost causation and would more closely align PG&E’s retail rates with costs.” Decision at 32. The decision also acknowledges that PG&E incurs fixed costs that do not vary with usage, and that the proposed customer charge would recover only a fraction of those costs. Decision at 32-33. Nonetheless, the Decision concludes that even if Section 739.9(a) did not prohibit the implementation of PG&E’s proposed customer charge, the Commission would still reject the proposed customer charge because of the bill impacts on low-usage and low-income customers and because the customer charge cannot be avoided by reducing usage. Decision at 33-34, 84. These are not valid bases upon which to reject the customer charge and the Decision ignores compelling policy reasons for adopting the customer charge.

First, the fact that a customer charge cannot be avoided is precisely why the Commission should adopt one for PG&E, as it has already done for SCE. As the Decision acknowledges, the purpose of the charge is to recover just a fraction of costs that PG&E incurs to serve the customer regardless of the customer’s electricity usage. Decision at 32-33. Customers should not be able to avoid paying for costs that the utility cannot avoid incurring on their behalf. This is precisely why, as the APD noted, the monthly customer charge charged by 18 of the top 20 utilities exceeds PG&E’s proposed $3.00 customer charge. (APD at 28.) Clearly a customer
charge is a widely used ratemaking tool that many regulators, including the Commission, have already found appropriate from policy standpoint, both for the residential and other customer classes.

The Decision also errs by arbitrarily applying this “cannot be avoided” standard to PG&E’s proposed residential customer charge to conclude the outcome is unjust or unreasonable under Section 451 when nearly all nonresidential customers pay a customer charge that “cannot be avoided,” SCE’s residential customers pay an “unavoidable” customer charge, and the Commission has previously held all such unavoidable customer charges to be reasonable, and indeed has repeatedly approved such charges for all other customer classes. In fact, it is the Decision that is out of step with the Commission policy with respect to the adoption of fixed charges for customers that are designed to recover fixed customer-related costs. Contrary to the implication of Finding of Fact 13, customer charges are not designed to send a price signal to promote energy conservation. There is no difference between a residential customer charge and a customer charge for any nonresidential customer. Moreover, while the customer charge cannot itself be avoided, customers can avoid its bill impact by reducing usage. A CARE customer with usage only in Tier 1 would need to reduce usage by just one kilowatt-hour per day to offset the customer charge. CARE customers with usage into Tiers 2 and 3 would have to reduce usage even less. Low-income customers have the potential to save on average 160 kWh per year through PG&E’s free energy efficiency program. Decision at p. 41. This alone would go a long way to mitigate the bill impact of the customer charge.

In addition, the Decision departs, without explanation, from the Commission’s longstanding policy to apply a customer charge to residential customers subject only to customer acceptance concerns – concerns that were not raised in the Decision. Almost twenty years ago the Commission noted that a “modest customer charge is an appropriate step to take towards rationalizing rates to their underlying cost components,” and stated: “We remain committed to our oft-stated support for a customer charge on the basis of well-established ratemaking principles.” D.93-06-087, 1993 Cal. PUC LEXIS 344, *71. The Commission adopted a fixed
customer charges for SCE’s residential customers in D.96-04-050, and has approved customer charges on the basis that they are consistent with cost-based rates and not contrary to the promotion of conservation. Customer charges are in the public interest and all customers are better off in the long term with the customer charge because it encourages consumers to make decisions based on the real price signals. While implementation of this policy that favors residential customer charges may have been suspended during the years of rate freeze and rate caps, the Commission has not previously determined that a residential customer charge violates its policy because it cannot be avoided. Certainly the Commission is free to change its policy, but doing so without explanation is arbitrary and capricious and thus an abuse of discretion.\[16\] Moreover, the Decision compounds this legal error by failing to make the factual findings required by Section 1705 and legal conclusions to justify this change to the Commission’s long-standing precedent.

With regard to the bill impacts of the proposed customer charge, it would cost non-CARE customers a mere ten cents a day and CARE customers just eight cents a day – amounts which, as discussed above, can be mitigated by reducing usage.\[17\] President Peevey’s comments at the Commission’s meeting put this into perspective:

> I want to take a moment and put this request into some perspective for us as we go forward. Today, here in this city, the San Francisco Public Utilities Commission has a fixed charge for water that ranges from $7.00 to $8.60 per month whether you use a drop


\[17\] It is true that a customer with no usage cannot avoid this cost, but the same is true with PG&E’s current minimum bill, which is higher than the proposed customer charge ($3.00 for CARE customers and $4.50 for non-CARE customers). *See Ex. 1 (PG&E-8) at Appendices C-1 and C-9.*
of water or not; East Bay MUD has approximately a $12.00 per month charge; SMUD has a fixed charge of $7.20 a month that is going up; Los Angeles Department of Water and Power has a minimum charge up to $10.00 per month; Burbank Electricity, $4.79 per month; Burbank Water, $9.66 per month; Anaheim Electric $3.21 a month; Anaheim Water, $5.00; Pasadena, another municipal, $5.60; Pasadena Water, $17.50; Palo Alto Natural Gas, $5.25; Palo Alto Water, $5.00; even Edison has a customer charge. So, just to recap, despite the histrionics attached to this issue by some, customer charges are not a new concept. I know there are people wedded to this that think that all hell will break loose, but that is just not the reality, and those that so many people seem to respect and like in the municipal field have these charges, I never hear a ripple about them.18

PG&E’s proposed $2.40/$3.00 per month CARE/non-CARE customer charges are thus modest both in real terms and relative to fixed charges imposed by other utilities in the State. The Decision provides no basis, and lacks factual findings required by Section 1705, to conclude that PG&E’s proposed customer charges are unjust or unreasonable because bill impacts of about 10 percent for low-usage customers present “undue risk of rate shock.” (Decision, mimeo at p. 85, Conclusion of Law 11.) The Commission has approved and found reasonable increases of larger magnitude to baseline rates for low-income gas customers. For example in 2005 and in 2008 the Commission approved increases to PG&E’s CARE gas baseline rates of this magnitude.19 Thus, the Decision’s conclusion again departs from recent Commission precedent without explanation and thus constitutes an abuse of discretion.

The Decision’s conclusion also ignores the important historical context of PG&E’s rates. CARE rates have been essentially frozen for twenty years, and the average CARE rate today, adjusted for inflation, is 46 percent lower than it was in 1991. Even including PG&E’s proposed CARE customer charge with the CARE Tier 3 rate and the reduction in baseline allowances, the

18 A copy of the relevant pages of the transcript of the Commission’s May 26, 2011 meeting is attached hereto as Appendix B.

19 While the gas rate varies from month to month, PG&E’s CARE baseline rate for gas increased from $0.877 per therm on January 1, 2005 to $1.313 per therm on November 1, 2005 – an increase far in excess of 10 percent. See PG&E Advice No. 2600-G and 2760-G.
average CARE rate in nominal terms would only be slightly above where it was in 1991. (Decision, mimeo, at p. 16.) Moreover, as the Decision notes, from 2001 to 2010, the gap between Tiers 2 and 3 expanded from five cents to fifteen cents. Decision at 7. In this context, the modest bill impacts that would result from the customer charge are simply a reduction in the subsidy that low-usage and low-income customers have enjoyed for a decade or more at the expense of other customers, and cannot be found to be “undue.”

The Decision is correct that the customer charge would reduce the CARE subsidy and suggests that this is another reason to reject the customer charge without any evidence or findings as to why reduction of the CARE subsidy should be avoided. Decision at pp. 34-35. The record shows that the CARE subsidy has exploded far higher than the statutory level. The Commission requires a twenty percent CARE discount. Over the years PG&E’s average CARE discount had risen to approximately 50 percent. (Ex. 1 (PG&E-8), pp. 3-16 to 3-17.) Even with the proposed customer charge, the average CARE discount would still be forty-one percent. (See Ex. 1 (PG&E-8), p. 3-16 and APD at 37.)

Even if the record in this proceeding supported a conclusion that implementing a $2.40 or $3.00 per month residential customer charge would have undue bill impacts on low-usage customers, the Decision also failed to consider any of the typical mitigation measures that the Commission traditionally applies when faced with potentially undue bill impacts and thus constituted an abuse of discretion. Such measures include reducing or phasing-in new charges as would have been required by the APD.20 However, the Decision does not examine these options to determine whether the bill impacts of a phased-in and/or reduced customer charge would be of such magnitude as to outweigh the fundamental cost-of-service principle and policy. Thus, the Commission should modify the Decision to add language and to confirm the Commission’s policy that favors the implementation of a residential customer charge provided that such charges

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20 See e.g. D.96-04-050, page 116, where the Commission authorized the phase in of SCE’s residential customer charge from $1.00 per month to $2.00 per month.
can be implemented or increased under relevant statutory restrictions, and can be reconciled with bill impacts based on the factual evidence presented in a particular proceeding.

In fact, based on the APD, the Concurrence of Commissioner Simon and the oral comments at the Commission’s May 26, 2011 meeting, it appears that a majority of the Commission believes that, assuming a customer charge is lawful, it is also generally good policy to adopt one, set at a reasonable level. It thus appears that the Decision does not accurately reflect the fundamental view of the reasonableness of a customer charge that is held by a majority of Commissioners. Even if the Commission continues to find that the proposed customer charge is unlawful, it should correct this error and modify the Decision to find that phasing PG&E’s proposed customer charge over three years, as the APD would have done, reasonably mitigates any undue bill impacts and that, if lawful, adopting such a customer charge would be consistent with sound ratemaking policy. Not only would this reflect an accurate record and conform to long-standing precedent, it would clarify that the Commission supports the proposed customer charge on policy grounds.

III. CONCLUSION

As demonstrated above, the Commission has the authority under SB 695 to approve PG&E’s proposed customer charge. The Legislature’s carefully chosen words, “rates charged residential customers for electricity usage,” have a plain and usual meaning, and that plain and usual meaning is usage rates, or volumetric rates. A customer charge that is independent of and does not vary with usage is not a “rate charged residential customers for electricity usage.” Because PG&E’s proposed customer charge also complies with Section 739.9(b), in that the composite baseline rate would not exceed ninety percent of the system average rate, it is lawful. Moreover, PG&E’s proposed customer charge is consistent with the Legislature’s stated intent. PG&E’s proposed customer charge is also modest and supported by sound public policy, and the Commission has already adopted such a charge for SCE. The Moving Parties therefore requests that the Commission grant rehearing and:
(1) determine that the Commission has the authority under SB 695 and other relevant statutory provisions to permit PG&E to implement a customer charge, as well as

(2) revise the erroneous conclusions and findings that the customer charge should also be rejected based on policy grounds, instead finding that a customer charge phased in over three years is just and reasonable.

Appendix A to this Application contains suggested changes to the Decision’s Findings of Fact, Conclusions of Law and Ordering Paragraphs.

Respectfully submitted,

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PG&E suggests the following changes to the Decision:

DISCUSSION

PG&E suggests replacing the customer charge discussion on pages 23-35 with the discussion from the Alternative Proposed Decision of President Peevey at pages 25-33.

FINDINGS OF FACT

PG&E requests the following changes to the findings of fact to make them consistent with the Commission’s policy analysis:

12. Although PG&E incurs fixed costs to service each customer account, current residential rate design recovers those fixed costs entirely through volumetric rates based on usage. Therefore, the fixed costs of serving low-usage customers are subsidized by high-usage customers.

13. PG&E’s proposal to apply a fixed customer charge would more closely match rate design with costs of service, increasing bills for low-usage customers and decreasing bills for high-usage customers.

14. Shifting revenue recovery from a volumetric rate to a fixed customer charge produces a bill impact that cannot be avoided by changing usage patterns or being more energy efficient. A customer charge thus offers no price signal to be more energy efficient. Approving the proposed residential fixed customer charges will not dampen the incentive for customers to be energy efficient in view of the magnitude of the tier differentials that will remain applicable to usage levels.

15. PG&E’s proposed $2.40 monthly customer charge for CARE customers reflects a 20 percent discount off of the $3.00 customer charge proposed for non-CARE customers, consistent with the required discount applicable to CARE rates.

16. PG&E’s customer charge would have the greatest percentage impact on customers that use the least energy. Imposing a customer charge on CARE rate schedules would raise energy bills for vulnerable customers that are least economically able to afford the
increased charge but whose rates have not increased significantly in twenty years.

4§17. A CARE customer using only baseline amounts in climate zone T would see an increase greater than 10 percent in their monthly bill as a result of the customer charge. A non-CARE customer using only baseline amounts in climate zone T would see an increase of almost 10 percent as a result of the customer charge.

18. Customers can avoid the bill impact of the customer charge by reducing usage one kilowatt-hour per day or less.

19. Phasing the customer charge in over a three year period will reduce bill impacts and ensure that the customer charge does not cause a rate spike for low-usage and low-income customers.

CONCLUSIONS OF LAW

PG&E requests the following changes to the Conclusions of Law:

6. The usual and ordinary meaning of the phrase “rates charged residential customers for electricity usage” in §§ 739.1(b)(2) and 739.9(a) is usage or volumetric rates.

7. Based on accepted standards of statutory construction, a fixed customer charge is not included in baseline rate limitations on “rates charged residential customers for electricity usage up to 130 percent of the baseline quantities” as prescribed in §§ 739.1(b)(2) and 739.9(a).

9. Because there is no ambiguity in §§ 739.1(b)(2) and 739.9(a), there is no need to consider the legislative history.

10. The language in § 739(d)(3) indicates that the Legislature was aware of customer charges and distinguished such fixed charges from volumetric usage based charges or rates.

11. The inclusion of language in one section of a statute and its omission in another section is generally regarded as deliberate, especially when both provisions are enacted concurrently.
12. Since § 739.9(a) excludes any mention of a fixed customer charge while § 739.9(b) expressly includes mention of such a fixed charge, it is reasonable to infer that the Legislature did not intend that fixed customer charges be included in the formula limiting rates for electricity usage as prescribed in § 739.9(a).

13. If the phrase “rates for electricity usage” in § 739.9(a) were interpreted to necessarily include customer charges, there would have been no need for the Legislature to add the phrase “including any customer charge revenues” to “rates for electricity usage” as identified in § 739.9(b). Such an interpretation would render these added words “surplusage.”

14. It is a maxim of statutory construction that courts should give meaning to every word of a statute if possible, to avoid a construction making any word surplusage.”

15. A legislative intent behind SB 695 is to avoid rate shock due to legislatively mandated and CPUC created programs, and resulting rate spikes, which are paid for in volumetric rates.

16. A customer charge is a fixed rate, rather than a volumetric rate, and authorizing the customer charge here is consistent with the Legislative intent behind SB 695.

7. Any ambiguity in statutory language limiting rate increases for baseline usage should be interpreted in a manner consistent with the legislative intent to avoid rate shock and promote rate stability.

8. Consistent with legislative intent, the rate restrictions in §§ 739.1(b)(2) and 739.9(a) should be interpreted as including fixed customer charges as an unavoidable rate element for usage within baseline.

9. Compliance with the inverted rate structure requirement of § 739.7 is accomplished based on a comparison of the baseline rate (Tier 1) to the average of all non-baseline rates.

10. Although the Commission is prohibited under §§ 739.1(b)(2) and 739.9(a) from approving PG&E’s residential customer charge proposal, the proposed customer charge is modest and does not conflict with relevant ratemaking principles intended to protect
customers against undue rate shock.

119. PG&E’s proposal for a fixed customer charge should be denied approved on policy grounds in view of the undue risk of rate shock, particularly for low-income and/or low-usage customers.
ORDERING PARAGRAPHS

PG&E requests the following changes to the Ordering Paragraphs:

4. Pacific Gas and Electric Company’s request to implement a fixed customer charge is hereby denied. Pacific Gas and Electric Company is authorized to implement a fixed customer charge in the amount of $0.80 per month applicable to California Alternate Rates for Energy residential customers and in the amount of $1.00 per month applicable to non-California Alternate Rates for Energy residential customers for 2011. Pacific Gas and Electric Company is authorized to increase the fixed monthly customer charge applicable to California Alternate Rates for Energy customers by $0.80 each year in 2012 and 2013. Pacific Gas and Electric Company is authorized to increase the fixed monthly customer charge applicable to non-California Alternate Rates for Energy residential customers by $1.00 each year in 2012 and 2013.

5. Concurrently with implementation of the approved residential fixed customer charges, Pacific Gas and Electric Company shall revise its currently effective minimum charge of $4.50 per month (for Schedule E-1) and $3.60 per month (for Schedule EL-1) to reflect a zero minimum charge.
APPENDIX B

* Transcript of oral remarks of President Peevey at May 26, 2011 Commission meeting (transcribed by PG&E)

* Transcript of oral remarks of Commissioner Simon at May 26, 2011 Commission meeting (transcribed by PG&E)

* Transcript of oral remarks of Commissioner Ferron at May 26, 2011 Commission meeting (transcribed by PG&E)
EXCERPT FROM REMARKS OF PRESIDENT PEEVEY

The ALJ's proposed decision denies PG&E's proposal to implement a residential fixed customer charge of $3.00 and $2.40. This denial is based on the legal conclusion that implementing such fixed charges in conjunction with increases in usage-based rates in Tiers I and 2 would exceed the limits permitted under state law - Public Utilities Code Sections 739.1(b) (2) and 739.9 (a). Our General Counsel concurs in this conclusion. Accordingly, on advice of counsel and consistent with the thoughtful letter urging the same outcome from Joe Como of DRA, I am withdrawing my alternate.

However, I do want to make a simple point about customer service charges, given the histrionics that have surrounded this issue. Customer service charges are not a new concept. In fact, this Commission has approved them in California for every other PG&E customer class but for residential customers. PG&E in this application is seeking to implement a fixed charge that tops out at $3.00 per month three years from now.

I want to take a moment and put this request into some perspective for us as we go forward. Today, here in this city, the San Francisco Public Utilities Commission has a fixed charge for water that ranges from $7.00 to $8.60 per month whether you use a drop of water or not; East Bay MUD has approximately a $12.00 per month charge; SMUD has a fixed charge of $7.20 a month that is going up; Los Angeles Department of Water and Power has a minimum charge up to $10.00 per month; Burbank Electricity, $4.79 per month; Burbank Water, $9.66 per month; Anaheim Electric $3.21 a month; Anaheim Water, $5.00; Pasadena, another municipal, $5.60; Pasadena Water, $17.50; Palo Alto Natural Gas, $5.25; Palo Alto Water, $5.00; even Edison has a customer charge.

So, just to recap, despite the histrionics attached to this issue by some, customer charges are not a new concept. I know there are people wedded to this that think that all hell will break loose, but that is just not the reality, and those that so many people
seem to respect and like in the municipal field have these charges, I never hear a ripple about them.

EXEMPLARY FROM REMARKS OF COMMISSIONER SIMON

I want to be clear that I do not oppose customer charges of this nature in general and note that they are legal forms of rates under statute. For example, Southern California Edison's rate structure includes a smaller customer charge to recover a portion of its fixed costs. I also want to commend President Peevey for listing the litany or the collection of munis that also have fixed charges of this nature. I remain open to the use of customer charges in the future provided that they do not disproportionally overburden low income consumers and do not run afoul of our statutory requirements under Senate Bill 695.

EXEMPLARY FROM REMARKS OF COMMISSIONER FERRON

As a new student of the ratemaking design, I understand that aligning the design of rates with the cost of service often will imply a fixed customer charge. I thank President Peevey for raising that issue and for pointing out that there are many instances of fixed customer charges across the state and across the country. I think in future rate design hearings, we need to look very seriously at the fixed customer charge which as an important part of rate design while ensuring that we take into consideration the total costs that’s borne by lower income and lower energy users. I’m glad to support the proposed decision and I’d like to thank to those involved.
CERTIFICATE OF SERVICE BY HAND DELIVERY OR ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department, PO Box 7442, San Francisco, CA 94120.

On the 1st day of July, 2011, I served a true copy of:

JOINT APPLICATION FOR REHEARING OF DECISION NO. 11-05-047 OF PACIFIC GAS AND ELECTRIC COMPANY, SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) AND KERN COUNTY TAXPAYERS ASSOCIATION

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for A.10-03-014 with an e-mail address.

[XX] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service list for A.10-03-014 without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 1st day of July, 2011, at San Francisco, California.

/s/
MARY SPEARMAN
# Parties

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