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Decision 98-01-056 January 21, 1998

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

Order Instituting Rulemaking on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation.

R.94-04-031  
(Filed April 20, 1994)

Order Instituting Investigation on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation.

**ORIGINAL**  
I.94-04-032  
(Filed April 20, 1994)

**INTERIM OPINION  
ADDRESSING PACIFIC GAS AND ELECTRIC COMPANY'S  
PETITION TO MODIFY DECISION 96-12-025**

**Summary**

This decision grants, with modifications, Pacific Gas and Electric Company's (PG&E) Petition to Modify Decision (D.) 96-12-025, filed on January 2, 1998. At PG&E's request, we change the authorized calculation methodology PG&E may use to provide its customers a refund of the 1997 Electric Deferred Refund Account (EDRA) balance in order to allow customers to receive refunds in February 1998 without further delays. In addition, we adopt a calculation methodology that allocates the EDRA refund among customers based on average monthly usage according to a class average methodology, which allows customer classes with higher cost responsibilities to enjoy a greater proportional amount of the EDRA refunds.

**Background**

In D.96-12-025, issued on December 9, 1996, we stated:

"In conformance with PU Code § 453.5, it is reasonable to establish electric deferred refund accounts to record credits for electric disallowances ordered by this Commission, electric and UEG gas settled amounts resulting from reasonableness disputes, and fuel-related cost refunds

made to the utilities based on regulatory agency decisions, plus interest charges at conventional balancing account interest rates." (*Id.*, Conclusion of Law 2, mimeo. at 10.)

"PG&E, SCE, and SDG&E shall return refunds and disallowances, including appropriate interest to customers through an annual refund based on each customer's average monthly energy usage for each calendar-year period, and which shall be returned in accordance with a refund plan filed by advice letter on or before January 31 of the succeeding year." (*Id.*, Ordering Paragraph 4, mimeo. at 11.)

On January 2, 1998, PG&E filed Advice Letter 1729-E, which proposed to refund approximately \$61 million of its EDRA balance beginning February 1, 1998. Concurrently, PG&E filed its Petition to Modify D.96-12-025 and requested that the Petition be considered on an expedited basis with the refund plan delineated in Advice Letter 1729-E. On January 6, 1998, an Assigned Commissioner Ruling (ACR) was issued which shortened the time for responses to PG&E's petition and for protests to PG&E's advice letter. The ACR established that good cause existed for shortening the time period for responses, protests, and replies:

"A substantial amount of the refunds in PG&E's refund plan is PG&E's utility electric generation (UEG) department's share of the PG&E refunds resulting from our disallowance in D.94-03-050 of \$90,133,000 (plus interest) of Canadian gas costs imprudently incurred by PG&E during the period April 1, 1988 through December 31, 1990. In D.96-12-026 (December 9, 1996), we reiterated our intent, already expressed in D.96-09-042, that 'this disallowance be returned to customers in as expeditious a manner as possible.'"

Responses and protests were due by January 13 and PG&E's replies to the responses and protests were due by January 15, 1998.<sup>1</sup> The San Francisco Bay Area Rapid Transit District (BART) filed a response to PG&E's petition.<sup>2</sup> PG&E filed its reply on January 15.

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<sup>1</sup> Protests to Advice Letter 1729-E are addressed in Resolution E-3520.

<sup>2</sup> BART filed its response on January 16, requesting permission to file its response late because of confusion regarding the filing of protests and responses to the petition. BART properly

*Footnote continued on next page*

### **PG&E's Petition**

In D.97-02-052, we granted PG&E's request to calculate the 1997 refund based on each customer's average monthly usage for the 12-month period from March 1996 through February 1997, rather than based on average monthly usage for the calendar-year period, as required by D.96-12-025. This exemption was necessary because PG&E's first advice letter filing did not comply with the decision and the supplemental advice letter was filed too late to provide for expeditious refunds without a modification to the calculation methodology. We denied PG&E's request that it be permitted to base future EDRA refunds on each customer's average monthly energy usage for the 12-month period from March through February of the next year.

Despite our finding that PG&E did not present sufficient justification to support this authorization for future years, PG&E now makes a similar request. PG&E explains that in order to determine the 1997 EDRA refund, the utility developed computer code that determined refund amounts by analyzing the usage for the 12 months prior to the month that the refund was to be initiated. Up until this point, PG&E has not had sufficient time and resources to install and operationally test the refund code that would now be used to make the 1998 EDRA refund, due to the anticipated onset of electric restructuring and direct access. Now that implementation of aspects of restructuring has been delayed, PG&E can install and test the existing refund code and can commence refunds with the first bills of February 1998. However, PG&E maintains that due to the limitations of this refund code and its billing system, the 1998 refunds must be based on customer usage from February 1997 through January 1998.

PG&E claims that customers are not harmed by deferring the EDRA refunds until February 1998, based on the 12-month period ending January 1998 rather than calendar year 1997. PG&E outlines approximately \$61 million in refunds and disallowances and interest which have accumulated in the EDRA during 1997, but

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served its response on January 13 and no party is prejudiced by the delay in filing. We grant this motion.

originate from events that took place prior to calendar year 1997. PG&E contends that because these refunds are related to events occurring prior to 1997, a refund based on calendar-year 1997 data has no more validity than a refund based on the 12 months of data ending January 1998.

on each customer's average monthly energy usage and requests that we authorize a particular methodology. Using the class average method, PG&E would first allocate the total refund among customer classes in proportion to the revenue billed for each class and then within each class allocate the refund to each customer based on average monthly usage. Alternatively, PG&E could develop the refunds using a system average method and, in this case, would allocate the total refund based on a systemwide per- kilowatt-hour refund rate that applies to all customer classes. PG&E prefers the former approach because the allocation of refunds will be consistent with the allocation of cost responsibility. Those customers with higher cost responsibilities and thus higher rates would receive a commensurately greater proportion of the refund.

#### **BART's Response and PG&E's Reply**

BART recommends that PG&E's petition be denied for both procedural and substantive reasons. BART states that PG&E's petition should be rejected on procedural grounds because it does not comply with Rules 47(b) and (d) of our Rules of Practice and Procedure. BART claims that PG&E does not assert any new or changed facts which are pertinent to D.96-12-025, as required by Rule 47(b). Rule 47(d) requires that petitions for modification be filed and served within one year of the effective date of the decision proposed to be modified. D.96-12-025 was effective on December 9, 1996. If more than one year has elapsed, our rules require that the petition explain why it could not have been presented sooner. BART asks that we summarily deny PG&E's petition because these procedural requirements have not been met.

More substantively, BART maintains that PG&E's petition should be denied because it penalizes customers who do not currently purchase energy from PG&E. BART argues that the class average allocation method unfairly bases refunds upon

revenues billed to customers. BART contends that this approach is inequitable and could discourage direct access, because it favors customers and customer classes that purchase energy from PG&E, while penalizing those customers that buy energy from Energy Service Providers (ESP). BART believes this inequity is exacerbated because there is no relationship between current billed revenues and past overcharges.

In its reply, PG&E maintains that it has met its procedural obligations in filing this petition. PG&E explains that it would be impossible to make a 1998 EDRA refund based on 12 months of 1997 data because the necessary programming is not in place. PG&E is sympathetic to BART's concerns regarding the class average refund methodology, because BART's refund would not reflect the fact that during the period of the disallowance, they were a bundled service customer of PG&E and have only recently begun taking a portion of their power supply from non-PG&E sources. PG&E proposes that since BART would otherwise have taken bundled service under PG&E's electric rate schedule E-20, the Commission could provide BART with a refund based on the refund rate calculated for that customer group, which could then be applied to the sum of BART's bundled service and delivery-only service kilowatt hours.

### **Discussion**

Due to the pressing needs of electric restructuring, we are somewhat sympathetic to PG&E's additional request to modify the time period on which customer refunds are based. PG&E makes this request for the 1998 EDRA refund only. This modification is reasonable to ensure that the full EDRA refund is made in as expeditious a manner as possible. We note that the approximately \$61 million described in PG&E's petition accumulates interest through December 1997. The EDRA refund should include a calculation for interest accumulated through January 1998, so that ratepayers are not harmed by the delay. We fully expect that the requirements of D.96-12-025 and D.97-02-052 will be met in future years and that PG&E will base the annual EDRA refund on customer usage data accumulated for the last calendar year.

BART is the only party that filed a response to this petition. We will not deny PG&E's petition based on BART's procedural objections. PG&E did not file the petition

to modify within the year specified in Rule 47(d), but PG&E has adequately justified the delay in filing this petition because of the exigencies of electric restructuring.

As the only customer in PG&E's "railway" class, and the only customer allowed to make its own electricity purchases in 1997, BART is a unique customer. In fact, the revenues received for this class are low in large part because PG&E does not receive revenues from BART for electricity purchases. Section 701.8 ensures that BART has the opportunity to reduce its electricity cost through the purchase of federal preference power, which PG&E delivers through its transmission and distribution lines.<sup>3</sup> BART has the opportunity to benefit from these procurement opportunities and should not now be granted a larger refund simply because this arrangement disadvantages it relative to refunds for other customers. We reject both BART's and PG&E's proposed remedies.

The refund period is not the same time period associated with the PG&E disallowances at issue. In D.96-12-025, we determined that the "electric deferred refund accounts will appropriately remedy the inequity of using specific refunds and disallowances to which current customers would otherwise have been entitled to offset transition costs." (*Id.*, mimeo. at p. 5.) Section 453.5 orders that the Commission require "public utilities to pay refunds to all current utility customers, and when practical, to prior customers, on an equitable pro rata basis." We determined in D.96-12-025 that it was appropriate to establish the EDRA accounts and to base the refunds on current customer average monthly usage. As we explained in Resolution E-3480, it would not be practical to require that the utilities go back to previous years' records to determine previous customers and usage so that refunds could be based on the time period in question for the disallowances. PG&E has filed two petitions to modify D.96-12-025 to seeking authority to modify the calendar-year requirement because of the limitations of their own billing system. Given these limitations, basing the refunds on customer usage

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<sup>3</sup> All statutory references are to the Public Utilities Code.

in the time period of the disallowances would result in an impossibility and the refunds could not be returned to ratepayers.

We are not persuaded by BART's points regarding direct access. Direct access customers will procure their electricity from ESPs, rather than from the utilities. Because we expect that utility fuel purchases will soon be based on procurement from the Power Exchange, we expect fewer disallowances associated with fuel purchases. We are not convinced that the allocation of EDRA refunds will influence customers' decision-making in determining whether or not to participate in direct access.

We have approved both the class average and the system average method of allocating refunds in the past. In Resolution E-3480, we authorized PG&E to refund the 1996 EDRA amount using the class average method.<sup>4</sup> In response to Resolution G-3019, PG&E calculated a refund to customers using this method. Conversely, in D.96-02-071, we authorized Southern California Edison Company (Edison) to refund its 1995 year-end ECAC balancing account overcollection using the system average rate method. (D.96-02-071, mimeo. at p. 32.) In Advice Letter 1280-E, Edison proposes to refund its 1997 EDRA balance using the system average rate method.

In general, fuel-related costs are allocated fairly evenly among customer classes. Fuel-related costs which have been previously recorded in the Energy Cost Adjustment Clause (ECAC) account tend to be allocated across customers on a cents-per-kilowatt-hour basis. Base rate costs tend to be allocated to customer classes using marginal cost rate design, resulting in an allocation which is not evenly distributed.

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<sup>4</sup> We note that on March 20, 1997, BART filed an application for rehearing of Resolution E-3480. BART disputed PG&E's use of the class average allocation method, because BART's proportionate contribution to PG&E's revenues from March 1996 to February 1997 was lower than it was during the years that were subject to refund and because D.96-12-025 required that refunds be based on each customer's average monthly energy usage. PG&E and BART subsequently settled this dispute and both parties agreed that the settlement did not set precedent for the outcome of future refund plans. The application for rehearing was withdrawn by letter dated October 3, 1997.

Rather than making distinctions between fuel and base rate costs for the purpose of EDRA refunds, we agree that it is reasonable to calculate the refund using the class average refund methodology so that those customers with higher cost responsibilities, on an aggregate basis, enjoy a proportionally greater share of the refund. EDRA refunds should be calculated in this manner in the future for PG&E, and we will thus modify D.96-12-025.

#### **Findings of Fact**

1. Due to the limitations of PG&E's refund code and billing system, the 1998 EDRA refunds must be based on customer usage from February 1997 through January 1998.
2. Those customers with higher cost responsibilities on an aggregate basis should receive a commensurately greater proportion of the EDRA refund.

#### **Conclusions of Law**

1. Consistent with D.96-12-025 and §453.5, it is reasonable to distribute EDRA refunds to current customers, because it is not practicable to return such refunds to prior customers based on the limitations of PG&E's billing system.
2. It is reasonable to modify D.96-12-025 to allow PG&E to calculate its refund of the EDRA balance at December 31, 1997 based on each customer's average monthly energy usage for the 12-month period from February 1997 through January 1998.
3. It is reasonable to modify D.96-12-025 to allow PG&E to apply the class average methodology in calculating EDRA refunds. PG&E should calculate annual EDRA refunds by first allocating the total annual amount to be refunded to each customer class in proportion to revenues billed for each customer class for the calendar-year period and then within each customer class, calculating individual refunds based on each customer's average monthly energy usage for the same period.
4. This order should be effective today, so that the EDRA refunds can be implemented in an expeditious manner.



**INTERIM ORDER**

**IT IS ORDERED that**

1. Pacific Gas and Electric Company's Petition to Modify Decision (D.) 96-12-025, filed on January 2, 1998, is granted with modifications, as set forth in this decision.
2. Ordering Paragraph 4 of D.96-12-025 is modified to read:

"PG&E, SCE, and SDG&E shall return refunds and disallowances, including appropriate interest, to customers through an annual refund based on each customer's average monthly energy usage for each calendar-year period, and which shall be returned in accordance with a refund plan filed by advice letter on or before January 31 of the succeeding year. PG&E shall calculate the EDRA refund according to class average, by first allocating the total annual amount to be refunded to each customer class in proportion to revenues billed for each customer class for the calendar-year period and then within each customer class, calculating individual refunds based on each customer's average monthly energy usage for the same period. For good cause shown, PG&E shall calculate its 1998 refund of the EDRA balance by first allocating the total 1998 EDRA amount to be refunded to each customer class in proportion to revenues billed for each customer class during the period February 1997 through January 1998, and then within each customer class, calculate individual refunds based on each customer's average monthly energy usage for the period February 1997 through January 1998."

This order is effective today.

Dated January 21, 1998, at San Francisco, California.

P. GREGORY CONLON  
President  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEPPER  
RICHARD A. BILAS  
Commissioners

I will file a concurrence.

/s/ JESSIE J. KNIGHT, JR.  
Commissioner

R. 94-04-031 / I. 94-04-032

D. 98-01-056

**Commissioner Jessie J. Knight, Jr., Concurring:**

I am in support of this order which adopts a methodology to allocate the long awaited refund due to PG&E's retail electric customers from the utility's electric department's portion of the 1988-90 gas disallowance.

Although supporting this order, I am sympathetic to the protest of the Bay Area Rapid Transit District (BART) that claims that the refund methodology known as the "class average method" penalizes customers who do not currently purchase energy from PG&E. The refund methodology used in this order fails to establish a link between current purchases and 1988-90 overcharges. It was for this very reason that I voted against D.96-12-025 which established the Electric Deferred Refund Account (EDRA) as well as D.96-12-026 which transferred the gas disallowance balance to the EDRA to effectuate the refund. These two decisions are the foundations upon which this order rests. I voted against the two original decisions because I considered the refund merely a lump-sum rate reduction to current ratepayers rather than repayment of past overcharges.

Despite my sympathy for BART on its latest protest and my dissent on prior orders, I must respect and accept the *fait accompli* of the framework that the majority of the Commission voted in December 1996 to establish the EDRA and to base the refund of any monies in this account, including the PG&E gas disallowance, on each retail customer's average monthly electric usage for the prior calendar year period rather than 1988-90 usage. Even though I was in the minority on this vote, I do not find it appropriate to design a special fix for BART at this juncture as PG&E has suggested in its reply to BART's protest. I consider it a dangerous precedent to deviate from a prior order to accommodate the needs of one customer. There are likely many customers whose current usage bears no relationship to their usage in 1988-90, or whose refund may be impacted by the use of the class average method instead of the system average method, even if BART is the most notable and vocal of these customers. Also, I understand that the usage records from the 1988-90 period are no longer available for the Commission to ascertain this fact. Although I agree with BART that the adopted methodology

Commission to ascertain this fact. Although I agree with BART that the adopted methodology has flaws, I am not comfortable endorsing a deviation that helps one customer alone, especially without knowing the extent to which other customers, large or small, may also be negatively impacted by shifts in usage from 1988 to the present.

I am comfortable with the judge's decision which weighed the advantages of using the class average method against the disadvantages noted by BART. Although a different methodology, namely the system average method, could have been used here to BART's advantage, the decision notes distinct disadvantages to other customers from that method.

In summary, I support the reasoning of the judge's decision because I believe it preserves the integrity of the Commission's December 1996 decision.

Dated January 21, 1998 at San Francisco, California.

/s/ Jessie J. Knight, Jr.  
Jessie J. Knight, Jr.  
Commissioner

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

Order Instituting Rulemaking on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation.

Rulemaking 94-04-031  
(Filed April 20, 1994)

Order Instituting Investigation on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation.

Investigation 94-04-032  
(Filed April 20, 1994)

**ADMINISTRATIVE LAW JUDGE'S RULING**

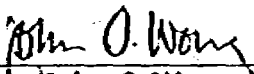
In a letter dated December 30, 1997, PacifiCorp requested permission to modify the bill insert that was ordered to be served on PacifiCorp's customers in Decision (D.) 97-08-063. PacifiCorp seeks to modify the bill insert due to the reference in the bill insert that direct access will be available beginning January 1, 1998, and the delay in the startup of the Independent System Operator (ISO) and the Power Exchange (PX). The Executive Director of the Commission granted PacifiCorp an extension of time to serve the bill insert ordered in D.97-08-063 until a ruling providing further guidance about the bill insert was issued. This ruling provides that guidance.

In D.97-12-131, the Commission ordered that a bill insert be included in the bills of all electric utility customers informing them of the delay in direct access. Since PacifiCorp has not mailed the bill insert ordered in D.97-08-063, this bill insert should be combined with the bill insert that was ordered in D.97-12-131. Appendix A of this ruling reflects the combination of both bill inserts. Appendix A also reflects the Commission's decision that the 10% rate reduction mandated by Assembly Bill 1890 applies to PacifiCorp's customers as well. (See D.97-12-093.) PacifiCorp shall use Appendix A of this ruling to satisfy the bill insert requirements of D.97-08-063 and D.97-12-131.

Therefore, IT IS RULED that:

1. To satisfy the bill insert requirements of Decision (D.) 97-08-063 and D.97-12-131, PacifiCorp shall use the bill insert language that appears in Appendix A of this ruling.
2. Prior to disseminating the bill insert to its customers, PacifiCorp shall provide Valerie Beck of the Energy Division with a camera-ready copy of the bill insert, who shall approve the camera-ready copy before the bill inserts are reproduced and mailed to PacifiCorp's customers.
3. PacifiCorp shall include this bill insert in its monthly billing cycle as soon as possible.

Dated January 26, 1998, at San Francisco, California.

  
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John S. Wong  
Administrative Law Judge

## APPENDIX A

Page 1

# A MESSAGE FROM THE CALIFORNIA PUBLIC UTILITIES COMMISSION

## IMPORTANT CHANGES IN CALIFORNIA'S ELECTRIC INDUSTRY

You will soon be able to buy electricity from your present utility or from another electric service provider. The choice will be yours.

The implementation of customer choice of which electric service provider you can purchase electricity from was recently delayed from January 1, 1998. The computer systems that are necessary for customer choice, which are operated by the Power Exchange (PX) and the Independent System Operator (ISO), have not been completed and tested. The Federal Energy Regulatory Commission requires adequate testing of these systems prior to commencement of operation. The electric service providers are not allowed to operate until the PX and the ISO systems are functional. Until the full implementation of customer choice, the local utility distribution company will continue to provide and bill customers in its service territory for electricity.

In the meantime, customers may still compare offers, choose their electric service provider, and submit the necessary information to make such a change. Customer requests to change electric service providers will be processed, and will take effect when the implementation of customer choice begins, which the ISO and PX indicate will be no later than March 31, 1998.

Effective January 1, 1998, residential and small business customers receive a 10 percent rate reduction, which is shown as a credit on your bill. You receive this price reduction whether you choose another service provider or remain with your present utility.

*Why change the industry? More Choices, Lower Rates...* The California Public Utilities Commission (CPUC) has determined that allowing other electric service providers to compete with your present utility will give customers more choices and flexibility in electric service. It is expected that competition will help lower the price of electricity to consumers. The California Legislature also recognized the benefits of these changes and passed a bill signed by the Governor in September 1996, which supports these changes. Additional legislation in 1997 provides further consumer benefits and consumer protections.

The California Legislature has directed electric utilities to create a Customer Education Program to educate consumers about the changes taking place in the electric industry. Consumers will see and hear television, radio and print advertisements, and receive informational materials in the mail as part of this state-mandated education plan. A toll-free telephone number is available to answer your questions and provide you with written information about the upcoming changes in the electric industry and electric service choices. All of these educational materials and messages are approved by the CPUC, and clearly indicate authorization by the CPUC.

For more information, call 1-800-XXX-XXXX (toll free telephone number of PacifiCorp's Customer Call Center)

## APPENDIX A

Page 2

Consumers can also expect the electric utilities and other electric service providers to advertise the products and services that they offer. These advertisements are separate and distinct from the state-mandated Customer Education Program.

### How Does This Affect Me?

*Consumer Choice...* It is expected that beginning no later than March 31, 1998, you may continue to buy electricity from your present utility or you may buy electricity from another electric service provider. The choice is yours. If you choose to do nothing, you will continue to be served by your current utility.

Regardless of who you buy your electricity from, your present utility will deliver power to your home or business. Electric service providers who intend to sell electricity to residential and small business customers are required by law to register with the CPUC. You can check to see if an electric service provider has registered with the CPUC by calling 1-800 555-7809 or by visiting the Commission's Web site at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

*More Consumer Benefits...* Another benefit of these changes is a reduction in the electricity price for residential and small commercial customers. Legislation provides for a 10% rate reduction, which is shown as a credit on your bill for usage beginning January 1, 1998. You will receive the price reduction regardless if you remain with your present utility or choose another electric service provider. Also, no later than June 1, 1998, your bill will itemize the cost of each component of your electric service, such as charges for energy, transmission and distribution services.

Some electric service providers may offer electricity at prices set on an hourly basis. This option will require a meter capable of measuring electricity by the hour, and will allow you to lower your bill by shifting your electricity usage from a time period when electricity is more expensive to a time when electricity is less expensive. Or, you can save money by simply conserving electricity during time periods when electricity is more expensive.

*Safe and Reliable Electric Service...* The CPUC will continue to ensure that you receive safe and reliable electric service. Electricity will continue to be delivered by your present utility, regardless of whether power is purchased from the utility or another electric service provider.

To learn more about how the electric industry is changing, consumers may visit the CPUC Web site at [www.cpuc.ca.gov](http://www.cpuc.ca.gov). Or, you may call PacifiCorp at \_\_\_\_\_ (toll free telephone number of PacifiCorp's Customer Call Center)

For more information, call 1-800-XXX-XXXX (toll free telephone number of PacifiCorp's Customer Call Center)

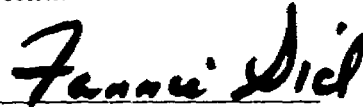
(END OF APPENDIX A)

R.94-04-031, I.94-04-032 JSW/sid

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day, served a true copy of the original attached Administrative Law Judge's Ruling on all parties of record in this proceeding or their attorneys of record.

Dated January 26, 1998, at San Francisco, California.



Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.



R. 94-04-031 / I. 94-04-032  
D. 98-01-056

**Commissioner Jessie J. Knight, Jr., Concurring:**

I am in support of this order which adopts a methodology to allocate the long awaited refund due to PG&E's retail electric customers from the utility's electric department's portion of the 1988-90 gas disallowance.

Although supporting this order, I am sympathetic to the protest of the Bay Area Rapid Transit District (BART) that claims that the refund methodology known as the "class average method" penalizes customers who do not currently purchase energy from PG&E. The refund methodology used in this order fails to establish a link between current purchases and 1988-90 overcharges. It was for this very reason that I voted against D.96-12-025 which established the Electric Deferred Refund Account (EDRA) as well as D.96-12-026 which transferred the gas disallowance balance to the EDRA to effectuate the refund. These two decisions are the foundations upon which this order rests. I voted against the two original decisions because I considered the refund merely a lump-sum rate reduction to current ratepayers rather than repayment of past overcharges.

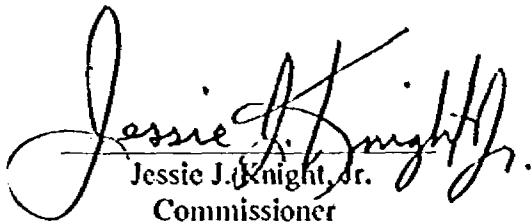
Despite my sympathy for BART on its latest protest and my dissent on prior orders, I must respect and accept the fait accompli of the framework that the majority of the Commission voted in December 1996 to establish the EDRA and to base the refund of any monies in this account, including the PG&E gas disallowance, on each retail customer's average monthly electric usage for the prior calendar year period rather than 1988-90 usage. Even though I was in the minority on this vote, I do not find it appropriate to design a special fix for BART at this juncture as PG&E has suggested in its reply to BART's protest. I consider it a dangerous precedent to deviate from a prior order to accommodate the needs of one customer. There are likely many customers whose current usage bears no relationship to their usage in 1988-90, or whose refund may be impacted by the use of the class average method instead of the system average method, even if BART is the most notable and vocal of these customers. Also, I understand that the usage records from the 1988-90 period are no longer available for the Commission to ascertain this fact. Although I agree with BART that the adopted methodology

Commission to ascertain this fact. Although I agree with BART that the adopted methodology has flaws, I am not comfortable endorsing a deviation that helps one customer alone, especially without knowing the extent to which other customers, large or small, may also be negatively impacted by shifts in usage from 1988 to the present.

I am comfortable with the judge's decision which weighed the advantages of using the class average method against the disadvantages noted by BART. Although a different methodology, namely the system average method, could have been used here to BART's advantage, the decision notes distinct disadvantages to other customers from that method.

In summary, I support the reasoning of the judge's decision because I believe it preserves the integrity of the Commission's December 1996 decision.

Dated January 21, 1998 at San Francisco, California.

  
Jessie J. Knight, Jr.  
Commissioner