

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**RESOLUTION E-3520
JANUARY 21, 1998**

RESOLUTION

RESOLUTION E-3520. PACIFIC GAS AND ELECTRIC COMPANY (PG&E) SEEKS COMMISSION APPROVAL OF ITS PLAN TO REFUND TO CUSTOMERS, ELECTRIC DISALLOWANCES ORDERED BY THE COMMISSION, UTILITY ELECTRIC GENERATION (UEG) DEPARTMENT PORTIONS OF GAS DISALLOWANCES ORDERED BY THE COMMISSION OR THE FEDERAL ENERGY REGULATORY COMMISSION (FERC), AND ELECTRIC AND UEG AMOUNTS RESULTING FROM THE SETTLEMENT OF REASONABLENESS DISPUTES AT THE COMMISSION OR FERC. THE TOTAL AMOUNT TO BE REFUNDED IS APPROXIMATELY \$61 MILLION. PG&E REQUESTS EXPEDITED TREATMENT SO REFUNDS CAN BEGIN FEBRUARY 1, 1998.

BY ADVICE LETTER 1729-E, FILED ON JANUARY 2, 1998.

SUMMARY

1. By Advice Letter (AL) 1729-E, dated January 2, 1998, Pacific Gas and Electric Company (PG&E) filed a proposed refund plan for amounts in its Electric Deferred Revenue Account (EDRA), in compliance with Decision No. (D.) 96-12-025. The total amount to be refunded is about \$61 million.
2. PG&E requests expedited approval of the refund plan to allow the refunds to be reflected in PG&E electric customers' February 1998 bills.
3. PG&E requests that the refunds be based on: a) an allocation of the refund first to customer classes in proportion to the revenues billed for each customer class during the period February 1997 through January 1998, and b) then an allocation to individual customers within the class based on average monthly energy usage for the period from February 1997 through January 1998, rather than the 1997 calendar-year usage, as ordered in D.96-12-025. PG&E also proposes an alternative refund allocation method. Concurrent with its AL filing, PG&E filed a Petition to Modify D.96-12-025 to permit PG&E to deviate by one month from the customer usage ordered in D.96-12-025.

4. PG&E's Petition also sought further clarification on how refunds should be allocated to the various customer classes.
5. Today, the Commission approved the PG&E Petition to Modify D.96-12-025 to allow the refunds to be based on: a) an allocation of the refund to customer classes in proportion to the revenues billed for each customer class during the period February 1997 through January 1998, and b) an allocation to individual customers within the class based on average monthly energy usage for the period from February 1997 through January 1998, rather than the 1997 calendar-year usage.
6. Protests were filed by the San Francisco Bay Area Rapid Transit District (BART) and the Sacramento Municipal Utility District (SMUD).
7. BART protested AL 1729-E on the grounds that one of PG&E's alternative refund allocation methods does not comply with D.96-12-025. PG&E's preferred refund allocation method would first allocate the refund to customer classes in proportion to the revenues received from each customer class, before allocating the class' refund based on average customer usage. D.96-12-025 ordered that refunds be based on average customer usage. BART requests that PG&E's refund plan be rejected.
8. SMUD protested AL 1729-E because PG&E's refund plan did not include the allocation of any of the refund to SMUD, a wholesale customer. PG&E's refund plan included only PG&E's retail customers. SMUD asserts that it purchased power in the 1988-90 period from PG&E based on the cost of natural gas, and that it deserves some of the refund. SMUD calculates its share of the refund to be \$6.59 million, but part of this amount is related to a disallowance ordered by the Commission under a reasonableness review settlement (the "\$67 million settlement") involving a post-1990 time period, where the UEG Department received a portion of the \$67 million settlement. SMUD requests that the PG&E advice letter be rejected, and that it be refiled to provide for recognition of PG&E's refund liability to SMUD. Alternatively, SMUD requests that an amount be reserved in the EDRA for later disposition to meet PG&E's refund liability to SMUD.
9. SMUD is unaware that the UEG portion of the "\$67 million settlement" was refunded to customers last year. In its protest, SMUD also requests that, if this is indeed the case, then amounts which should have been refunded to SMUD "...should be retroactively accounted for in the distribution of refunds still present in the EDRA account before any further distribution is made."
10. In reply to the SMUD protest, in contrast to PG&E's own advice letter filing, PG&E states that it believes that a "set-aside" of refund amounts for both the amount at issue with SMUD and the amounts that potentially may be claimed by other wholesale customers is necessary to "avoid an illegal outcome". The amounts which PG&E asserts are necessary to be set aside are \$6.6 million related to SMUD's complaint against PG&E, and another \$5 million for other wholesale customers who may file complaints

against PG&E. PG&E never sufficiently explains or provides any reason why an illegal outcome would result.

11. BART's protest is denied. As noted above, in a separate decision on PG&E's Petition for Modification of D.96-12-025, we adopted the PG&E preferred refund allocation method.

12. SMUD's protest is denied. We do not take a position as to whether or not SMUD deserves a refund from PG&E related to PG&E's Canadian gas purchases. It is not within the jurisdiction of this Commission to order a refund of amounts related to wholesale power contracts regulated by the FERC. In addition, SMUD should have raised its concern that it receive some of the refund when we first ordered that the disallowed amounts be refunded to PG&E's retail customers. The only issue for us to resolve here is whether the refund plan proposed in AL 1729-E is in compliance with Commission decisions. In addition, some of the amount which SMUD requests be set aside is related to refunds which were made last year.

13. We also reject PG&E's suggestion that a set aside be made for amounts not only related to SMUD's complaint against PG&E, but also for potential complaints by other wholesale customers. The time is long since past when PG&E and these other wholesale customers should be arguing that some of the refunds be potentially allocated to them. To make such a proposal in a response to a protest to its own proposed refund plan is both untimely and procedurally improper. In addition, some of the amounts which PG&E proposes be set aside include refunds which were made last year. Finally, the methods of calculation of the amounts proposed to be set aside have not been adequately supported by PG&E, and there has been insufficient opportunity to examine these amounts by Energy Division or other parties.

14. This resolution approves the PG&E refund plan filed with AL1729-E on January 2, 1998 using the allocation method preferred by PG&E in its January 2, 1998 filing.

BACKGROUND

1. The amounts in PG&E's EDRA largely result from a disallowance ordered by the Commission in D.94-03-050. In that decision, the Commission found PG&E unreasonable for its Canadian gas purchases for the years 1988 through 1990, and ordered that "Pacific Gas and Electric Company (PG&E) is denied recovery of \$90,133,000 plus interest in Canadian gas costs incurred during the period April 1, 1998 through December 31, 1990 on the basis of imprudence."

2. On December 21, 1994, PG&E filed with the U.S. District Court, Northern District of California ("federal court") a complaint seeking injunctive and declaratory relief based upon PG&E's arguments that D.94-03-050 is preempted under the Natural Gas Act and violates the dormant Commerce Clause.

3. In D.96-02-074, the Commission found that the core portion of the refund should be made, as a one-time refund in core customers' March 1996 bill, based on therms billed over the March 1995 through January 1996 period. PG&E's lawsuit against the Commission was still pending, but PG&E made the refund to core customers, and core customer received their refunds on their March 1996 bills.
4. In D.96-09-042, the Commission ordered the refund of the disallowed 1988-90 dollars allocated to the PG&E UEG Department, non-UEG core elect customers, and core transport customers. In that decision, we approved a PG&E-proposed refund plan for UEG customers whereby the refund would be made by crediting the Energy Cost Adjustment Clause (ECAC) balancing account. Such refunds typically go only to current retail customers. No specific allowance was made for an allocation of the refund to wholesale customers.
5. No party filed an Application for Rehearing of D.96-09-042.
6. PG&E's Gas Accord was signed on August 21, 1996. The Gas Accord stated that "The UEG's portion of the 1988-90 disallowance ordered by Decision 94-03-050 will be credited directly to the ECAC balancing account and will not be refunded to electric customers directly. This treatment will not have an effect on PG&E's electric rate freeze, and will be subject to the same provisions as other ECAC balances."
7. The Gas Accord also would have credited another amount (\$3.7 million related to the Transwestern Pipeline capacity reservation by the UEG) to the ECAC balancing account.
8. In D.96-12-025, the Commission established the EDRA for the three major California electric utilities to ensure that disallowances and certain refunds would be credited to electric customers directly rather than be used simply as an offset to electric transition costs. The Commission ordered that refunds be made through an annual refund, be based on each customer's average monthly electric usage for the prior calendar-year period, and be returned in accordance with a refund plan filed by advice letter on or before January 31 of the succeeding year. The Commission specifically noted that the refund methodology would be that adopted in D.96-02-071. In D.96-02-071, the customers eligible for refunds were retail customers.
9. In D.96-12-026, the Commission modified D.96-09-042 and ordered the PG&E electric department to book the refund, related to the 1988-90 disallowance, received from the gas department plus interest to the EDRA, not the ECAC balancing account.
10. Pursuant to D.96-12-025, on January 10, 1997, PG&E filed AL 1644-E, which included a proposed refund plan for its EDRA balance. PG&E's proposed refund plan failed to include the dollars related to the 1988-90 disallowance allocated to the UEG Department.

11. On January 15, 1997, the Energy Division sent PG&E a letter which stated that the Energy Division had determined that AL 1644-B was not in compliance with D.96-12-025. The letter also recommended that PG&E take certain actions in order to comply with that decision.
12. On January 22, 1997, PG&E filed AL 1644-E-A, which proposed a refund plan which included the UEG portion of the 1988-90 disallowance.
13. On February 19, 1997, the Commission issued Resolution E-3480, which conditionally adopted the PG&E refund plan proposed in AL 1644-E-A, but ordered that PG&E delete an adjustment it had made to the refund amount for an "AER applicable amount".
14. The refund plan adopted with Resolution E-3480 allowed PG&E to base the refund on customer energy usage for the period March 1996 through February 1997, rather than 1996 calendar-year usage. This deviation from D.96-12-025 was granted in a decision issued on the same day, D.97-02-052. It was necessary to base the refund on usage from March 1996 through February 1997 rather than the 1996 calendar-year, because PG&E's computer system is capable of keeping only 13 months of customer-usage data in its on-line billing system.
15. On February 24, 1997, PG&E then filed AL 1644-E-B in compliance with Resolution E-3480.
16. On February 26, 1997, PG&E was granted an injunction issued by the federal court which prohibited the refund of the UEG portion of the 1988-90 disallowance until the propriety of the disallowance order could be adjudicated.
17. On February 28, 1997, PG&E filed AL 1644-E-C which submitted another revised refund plan in accordance with the injunction issued by the federal court, to reflect the exclusion of the UEG portion of the 1988-90 disallowance from the total refund amount. AL 1644-E-C went into effect on its own motion.
18. On March 20, 1997, the San Francisco Bay Area Rapid Transit District (BART) filed an Application for Rehearing or Modification of Resolution E-3480 (A.97-03-041). BART asserted that Resolution E-3480 had erroneously rejected BART's protest of AL 1644-E, and had adopted a refund plan which was not in compliance with D.96-12-025.
19. In AL 1644-E, PG&E had calculated the refund amount by first allocating the amount to be refunded to each customer class in proportion to the revenues collected from each class for the period March 1996 through February 1997. PG&E then distributed the class allocations to customers based upon each customer's March 1996 through February 1997 electric usage. BART asserted that this method was not in compliance with D.96-12-025 since D.96-12-025 simply ordered that usage should be the basis for the refund amount.

A refund plan based strictly on energy usage increased BART's refund amount by about \$32,000.

20. PG&E and BART settled this issue in the fall of 1997, and BART sent a letter to the ALJ withdrawing its application. The parties also agreed that the settlement was not precedential.

21. On August 1, 1997, the Commission issued D.97-08-055 which adopted the PG&E Gas Accord. As part of the Gas Accord, PG&E agreed that it would permanently forego recovering from its ratepayers any of the disallowance ordered by D.94-03-050, notwithstanding the outcome of its lawsuit in federal court. D.97-08-055 specifically ordered that "The approval of the Gas Accord is based, in part, upon PG&E's representations and commitments to forego recovery of the disallowed amounts ordered by D.94-03-050 and to forego its federal district court challenge to D.94-03-050 (in N.D. Cal. Civil No. 94-4381)."

22. On November 21, 1997, the federal court vacated the preliminary injunction and dismissed with prejudice the federal court proceeding that PG&E had brought against the Commission.

23. PG&E filed AL 1729-E on January 2, 1998 to comply with D.96-12-025. With that AL, PG&E proposes a refund plan for amounts in its EDRA at the end of 1997.

24. The total 1997 year-end EDRA balance, including estimated interest through December 31, 1997, is estimated to be \$60,972,744. Of that amount, about \$54 million is directly related to the 1988-90 disallowance. The proposed refund plan will complete the refund of all of the 1988-90 disallowance to PG&E customers, except for a small (0.25%) contingency amount.

25. In addition to the UEG portion of the 1988-90 disallowance, amounts in PG&E's EDRA include:

- a) remaining Phase III C issues in A.91-04-003 associated with the 1988-90 disallowance (\$4.1 million),
- b) certain leftover amounts related to the "\$67 million settlement" (\$1.5 million),
- c) a UEG refund from the PGT 1994 rate case at FERC (\$1.1 million), and
- d) a disallowance related to economy energy sales in the 1993 reasonableness review (\$0.6 million).

These amounts total \$7.3 million.

20. The first amount, \$4.1 million, reflects a settled disallowance amount agreed upon in the Gas Accord, described on pgs. 66 and 67 of the Gas Accord. This disallowance is related to the reservation costs paid by the UEG Department for firm interstate transportation capacity on the Transwestern pipeline through December 31, 1995, plus interest.

21. The second amount (\$1.5 million) is related to leftover "contingency amounts" from the EDRA refunds made last year.
22. The third amount (\$1.1 million) is related to a refund resulting from a FERC Settlement in Docket Nos. RP94-149-000, RP94-145-000, and RP95-141-000 which was approved on September 11, 1996. This amount represents payments made to PGT for service rendered from September 1, 1994 through September 30, 1996, which were in excess of the final rates established in RP94-149-000.
23. The fourth amount (\$0.6 million) is related to a disallowance we ordered in D.97-08-061 related to generation of Diablo Canyon during hydro spill conditions and economy energy sales.
24. In its refund plan, PG&E proposes two alternative methods for allocating the refund to customers, discussed below.
25. On January 2, 1998, PG&E filed a Petition to Modify D.96-12-025. PG&E requests that the Commission modify D.96-12-025 to order PG&E to: a) allocate 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 b) within each customer class, calculate individual customer refunds based on each customer's average monthly energy usage for the period February 1997 through January 1998.

NOTICE

1. Public notice of AL 1729-E was made by publication in the Commission calendar, and by PG&E mailing copies of the filing to the mailing list attached to the AL.

PROTESTS

1. On January 6, 1998, Commissioner Conlon issued a ruling which shortened the protest and reply period for AL 1729-E. Protests were due on January 13, 1998, and replies to any protests were due on January 15, 1998.
2. Timely protests were filed by BART and SMUD on January 13, 1998.
3. BART protested AL 1729-E because one of PG&E's alternative refund allocation proposals is not in compliance with D.96-12-025, and this allocation method results in a lower refund for BART. PG&E's preferred allocation method (the "class average" method) would : a) first allocate 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 b) within each customer class, calculate individual customer refunds based on each customer's average monthly energy usage for the period February 1997 through January 1998.

4. BART asserts that this allocation method is not in compliance with D.96-12-025, since D.96-12-025 ordered that refunds be "...based on each customer's average monthly energy usage for each calendar-year period..."

5. BART also asserts that PG&E's preferred allocation method would be harmful to customers who choose direct access.

6. SMUD protested AL 1729-E because PG&E has not proposed to allocate any of the refund to SMUD, while SMUD had made power purchases from PG&E during the 1988 to 1992 period, i.e. the period when PG&E made the unreasonable Canadian gas purchases.

7. SMUD asserts that its wholesale power contracts under which SMUD purchases power from PG&E, which were regulated by the Federal Energy Regulatory Commission (FERC), "...consistently called for that power to be priced at the cost of PG&E's natural gas."

8. SMUD asserts that "the refundable EDRA accounts include moneys that are rightfully attributable to service to PG&E's wholesale electric customers", one of which is SMUD.

9. SMUD asserts that it is due \$6.59 million to meet PG&E's refund obligations to SMUD.

10. SMUD indicates that it is not requesting that the Commission hold up all distribution of the EDRA funds. It is requesting that "the Commission either reject the Advice Letter subject to correction and refile, or that the Commission issue a resolution of this Advice Letter ordering PG&E to reserve in the EDRA accounts sufficient funds to make proportionate refunds to SMUD and any wholesale customers in a similar position to SMUD."

11. In a footnote on page 3 of its protest, SMUD appears to be unaware that refund of the UEG portion of the "\$67 million settlement" was made in 1997. SMUD also requests that to the extent this refund has been made, "...the excess refunds under that settlement paid to retail customers, representing amounts which should have been accounted for as refunds to wholesale customers including SMUD, should be retroactively accounted for in the distribution of refunds still present in the EDRA account before any further distribution is made."

12. PG&E filed a timely response to both BART and SMUD on January 15, 1998. In its response to BART, PG&E states that it "...believes its preferred refund methodology fully complies with the guidelines set forth in D.96-12-025 and has sought clarification from the Commission on this point in its Petition to Modify."

13. Assuming that the class average refund allocation method is used, PG&E further states that it believes that BART's equity concerns regarding the refund method can be

addressed if BART were provided with a refund commensurate with that received by customers under electric rate schedule E-20, i.e. large light and power customers.

14. Finally, PG&E states that since the Commission has delayed the implementation of direct access beyond the proposed period used as a basis for the refund, it is not possible for a direct access customer to be harmed by PG&E's proposed allocation method.

15. In response to SMUD, PG&E agrees with SMUD that an amount of \$6.6 million should be set aside from the proposed refund plan amounts to allow for the possibility that FERC may order PG&E to make a refund to SMUD related to the 1988-90 disallowance. PG&E also believes that an additional \$5 million should be set aside to allow for the possibility that other wholesale customers may file complaints at FERC, and FERC may also order PG&E to make refunds to those customers.

DISCUSSION

1. On January 2, 1998, PG&E filed AL 1729-E in compliance with D.96-12-025 and D.97-08-055. AL 1729-E submits a refund plan which includes the balance with interest in PG&E's EDRA.
2. The amounts in the EDRA largely stem from a disallowance we ordered in D.94-03-050, but also include other relatively smaller amounts.
3. PG&E had agreed, as part of the Gas Accord, that it would permanently forego recovery of any the disallowed amounts. In D.97-08-055, we adopted the Gas Accord based, in part, on PG&E following through with that commitment.
4. The federal court has vacated the lawsuit which PG&E brought against us, and PG&E is including the remaining portion of the 1988-90 disallowance (which has not already been refunded to customers) in its proposed refund plan.
5. In D.96-12-025, we ordered the subject utilities to base refunds on each customer's average monthly energy usage for the prior calendar year. On January 2, 1998, PG&E filed a Petition to Modify D.96-12-025, which requested that the Commission allow PG&E to base the proposed EDRA refund on billing data from February 1997 through January 1998.
6. PG&E's Petition also sought further clarification on how refunds should be allocated to the various customer classes. PG&E states in its AL 1729-E that it can make the allocation of the refund in at least two ways: a) under what may be referred to as the "class average" allocation method, it can first allocate the total refund to customer classes in proportion to the revenue billed for each customer class, and then within each class allocate the refund based on each customer's average monthly energy usage for a twelve-month period, or b) it can allocate the total refund based on a system-wide per kilowatt-

hour refund rate that applies to all customer classes. The latter method may be referred to as the "system average rate" method.

7. PG&E indicates that it favors the first methodology, based on the rationale that the allocation of refunds should be consistent with the allocation of costs to the established customer classes. PG&E asserts that "this is the traditional method for disbursement of refunds to customers and the Commission has on several occasions approved refund plans following these principles."

8. AL 1729-E presented the two alternative refund plans, one based on the class average method and the other plan based on the system average rate method.

9. In another order, we granted PG&E's Petition today. Our decision allows PG&E to: a) allocate 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 b) within each customer class, calculate individual customer refunds based on each customer's average monthly energy usage for the period February 1997 through January 1998.

10. With the modifications granted in our decision granting PG&E's Petition, PG&E's refund plan is in compliance with D.96-12-025, and follows through with their Gas Accord commitment to forego recovery of the disallowance we ordered in D.94-03-050.

11. Since our decision granting PG&E's Petition orders allocation of the refund based on the class average method, BART's protest is moot.

12. In its reply to BART's protest, PG&E's suggested that BART's equity concerns could be addressed under a class average refund allocation method if BART received a refund commensurate with that received by large light and power customers. We may have considered such a suggestion had it been made in PG&E's advice letter, but this suggestion is made too late to provide any parties the opportunity to respond.

13. In its protest, SMUD asserts that neither the Commission decisions ordering the 1988-90 disallowance, nor the decision accepting the \$67 million settlement, nor the decision ordering the refund from the PG&E Gas Department to the UEG Department, nor the decisions ordering the UEG Department to make the refunds indicated that SMUD was any less entitled to a refund of the overcharges than were PG&E's retail customers.

14. The wholesale power contracts under which PG&E sold power to SMUD in the 1988-90 time frame are regulated by the FERC. SMUD has filed a complaint before FERC against PG&E seeking a FERC order for the appropriate refund. FERC has not yet issued such an order. We cannot predict what FERC will order.

15. SMUD appears to be unaware that the refund related to the UEG portion of the \$67 million settlement was made last year, although they were on the mailing list for the advice letters proposing the refund. However, SMUD also requests that, if this was the case, we adjust the current EDRA refund to account for the amount which SMUD would have received from the refund of the \$67 million settlement.

16. While we do not take a position as to whether or not SMUD may deserve compensation from PG&E related to PG&E's unreasonable Canadian gas purchases, it was not within our jurisdiction to order a refund of amounts related to wholesale power contracts regulated by FERC. Our decision, D.96-09-042, adopted a PG&E-proposed refund plan and ordered that the UEG refund be credited to the ECAC balancing account. This refund would not have gone to wholesale customers.

17. Again, in our decision ordering that the EDRA be established, D.96-12-025, we stated that the EDRA refund plans should be use the refund methodology established in D.96-02-071. The methodology established in D.96-02-071 indicated that a Southern California Edison ECAC overcollection was to be made specifically to retail customers.

18. When the refund of the UEG portion of the \$67 million settlement was made last year, as ordered in Resolution E-3480, the refund was made to retail customers.

19. Until SMUD filed its protest of AL 1729-E, it had not expressed its concerns to the Commission in response to D.96-09-042, D.96-12-025, or AL 1644-E or the supplements to AL 1644-E, or Resolution E-3480. SMUD was on the mailing list for AL 1644-E and its supplements.

20. It is well past the time and procedurally improper to now argue, in a protest to an advice letter, that SMUD and other wholesale customers should be receiving, or allocated in reserve, a share of this refund, approved for retail customers. An advice letter, not to mention a protest to an advice letter, is not the proper vehicle for modifying a Commission decision. (See, for example, D.88-10-047, 1988, slip op, pg. 1) The only issue for the Commission to decide in this resolution is whether PG&E's proposed refund plan is in compliance with Commission orders.

21. Likewise for PG&E, prior to its January 15, 1998 reply to SMUD, PG&E has never proposed that wholesale customers should receive a portion of the refund, or that any amount be set aside for amounts which the FERC may order be refunded to SMUD or other wholesale customers related to the disallowance at issue, and PG&E has never raised this issue in any petition for modification or application for rehearing of the decisions and resolution which adopted a refund methodology which directed the UEG refund to retail customers. Again, it is well past the time and procedurally improper to now argue, in a reply to a protest to its own proposed refund plan, that SMUD and other wholesale customers should be allocated a set aside or receiving a share of this refund. An advice letter, not to mention a reply to a protest to an advice letter, is not the proper vehicle for modifying a Commission decision. The only issue for the Commission to

decide in this resolution is whether PG&E's proposed refund plan is in compliance with Commission orders. Making an allocation to wholesale customers a portion of the refund, or setting aside in reserve a portion of the refund for wholesale customers, would not be in compliance with existing Commission orders.

22. The amounts which both PG&E and SMUD propose for a set-aside are partly related to Canadian gas purchases made after 1990. The UEG has already refunded the settled disallowance amounts related the \$67 million settlement last year, as indicated by AL 1644-E-C. To adjust the current EDRA amount to account for the refund SMUD, or other wholesale customers, would have received last year is totally inappropriate. SMUD was on the mailing list for all of the advice letters which PG&E filed concerning the EDRA refund last year, and therefore should have been aware that such refunds were being made. It is now well past the time to argue that current ratepayers should receive less of a refund, due to this possible error. In addition, no wholesale customer other than SMUD has even protested the refund plans included with ALs 1644-E or AL 1729-E. Finally, the two refunds are related to different time periods of PG&E purchases. It would be improper to adjust one refund to make up an alleged error in a previous refund.

23. Finally, there has been virtually no opportunity for any parties other than SMUD and PG&E to examine the methods by which both PG&E and SMUD have calculated the set aside amounts. It would be improper on our part to now order that any specific, unexamined amount be set aside from the proposed refund amounts.

FINDINGS

1. PG&E filed AL 1729-E on January 2, 1998 requesting approval of its proposed EDRA refund plan.
2. The proposed refund plan requires modification of D.96-12-025 to allow PG&E to base the 1997 EDRA refund on February 1997 through January 1998 energy usage, and to make the refund in customers' February 1998 bills.
3. We have granted PG&E a modification of D.96-12-025 to allow PG&E to base the 1997 EDRA refund on February 1997 through January 1998 energy usage, and to make the refund in customers' February 1998 bills.
4. We have also clarified that PG&E may use its preferred refund allocation method, the class average method, in making the EDRA refund.
5. With the granted modification (s), the refund plan submitted with PG&E AL 1729-E, using the class average allocation method, complies with the Commission's orders in D.96-12-025.
6. PG&E's refund plan, filed on January 2, 1998, based on the class average allocation method should be approved.

7. BART's protest should be denied because PG&E's Petition for Modification to allow PG&E to use the class average refund allocation method was granted, by order, today.

8. We should not accept PG&E's suggestion, in its reply to BART's protest, that BART receive a refund commensurate with large light and power customers under a class average refund allocation method. PG&E's suggestion is made too late to provide any other parties an opportunity to respond.

9. SMUD's protest should be denied. While we do not take a position as to whether or not SMUD should receive compensation from PG&E for PG&E's unreasonable Canadian gas purchases, we do not have jurisdiction to order refunds of amounts related to wholesale power contracts regulated by the FERC. The UEG refund plans related to the 1988-90 disallowance and the \$67 million settlement allocated the refunds only among retail customers. SMUD had not expressed its concern related to these refund plans until it filed its protest to AL 1729-E. These concerns are untimely, and a protest to an advice letter is not the proper procedural vehicle to modify a Commission decision.

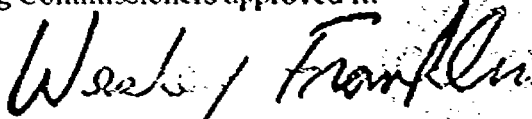
10. The amounts which SMUD requests that we set in reserve in the EDRA are partly related to a refund which was made last year. SMUD was noticed of the refunds being made last year, since it was on the mailing list for that refund plan. SMUD did not express any concerns about that refund plan. SMUD's request to modify the current refund plan to account for amounts it now tells us it deserves from a previous refund is untimely and improper.

11. PG&E's suggestion to set aside \$11.6 million in the EDRA for its potential liability to wholesale customers is similarly untimely and improper.

THEREFORE, IT IS ORDERED THAT:

1. The refund plan proposed in PG&E AL 1729-E, filed on January 2, 1998, is approved, using the class average allocation method.
2. PG&E shall refund to its retail electric customers the EDRA amounts, including interest through the date of the refund, in customers' February 1998 bills.
3. The protests of BART and SMUD are denied.
4. PG&E's suggestion to set aside in the EDRA \$11.6 million to account for its potential liability to wholesale customers for refunds which FERC may order, related to the Canadian gas disallowance, is rejected.
5. This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on January 21, 1998. The following Commissioners approved it:


WESLEY FRANKLIN
Executive Director

P. Gregory Conlon, President
Jessie J. Knight, Jr.
Henry M. Duque
Josiah L. Neeper
Richard A. Bilas
Commissioners