ANALYSIS

CALIFORNIA PUBLIC UTILITIES COMMISSION

AB 413 (Fuentes)
As Amended June 1, 2009

SUMMARY

This bill would make several changes that affect electric rates, including codifying eligibility for the California Alternate Rates for Energy (CARE) program, barring mandatory dynamic pricing for residential electric customers, and lifting the current cap on some residential electricity rates. This bill would also modify low-income energy efficiency (LIEE) programs and relax some statutory constraints on existing direct access arrangements, while removing any Commission discretion on the complete reopening of direct access.

CPUC POSITION AND SUPPORTING ARGUMENTS

OPPOSE UNLESS AMENDED. While the Commission supports the lifting of the AB 1x rate cap, it strongly opposes any limitation of its authority to implement dynamic pricing for residential electric customers. The dynamic pricing provisions of this bill would limit the benefits of advanced metering infrastructure and smart grid technology, as well as undermine the goals of the Energy Action Plan to shave peak demand.

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Dynamic Pricing (Time-Variant Pricing)

This bill would add proposed section 745 to the Public Utilities Code to prohibit the CPUC from employing mandatory dynamic pricing for residential customers and would allow the Commission to employ default time-variant pricing only after January 1, 2016. This provision would limit the benefits of advanced metering infrastructure and smart grid technology and undermine the goals of the Energy Action Plan. The CPUC finds this provision problematic and opposes it.

Dynamic pricing involves rate structures that reflect the cost of using energy at certain times of day. Dynamic pricing includes various forms of time variant pricing such as pre-determined time of use rates (TOU), real-time TOU and critical peak pricing. Time varying prices reduce consumption during periods of high demand and high rates and reduce the need to build costly peak capacity that is only used during a few hours during the year. Avoiding spikes in peak use through dynamic pricing avoids the need to build peak capacity and reduces overall cost of power. In addition, time varying rates can have other public policy benefits such as reduced greenhouse gas (GHG) emissions. In light of AB 32's GHG reduction goals, limiting the CPUC's ability to use innovative rate design options to encourage reductions in peak load usage, as well as overall energy use, is problematic. The CPUC would carefully consider the impacts of

dynamic pricing on customers, including low income customers, and the need for substantial customer education before adopting such rates.

Relaxing the AB 1X cap to allow the Commission to increase Non-CARE rates for up to 130% of baseline consumption

This bill allows the Commission to increase non-CARE residential Tier 1 and Tier 2 rates. The Commission supports this provision. Under AB1X for the past 8 years, the Commission has had to incorporate all the increases in residential cost of service into Tier 3, 4 and 5 rates, which has resulted in very high rates for those tiers. However, this bill's prescribed minimum and maximum band of 3-5% for Tier 1 and Tier 2 rates with a "CPI plus 1%" formula is problematic. Instead, it would be more appropriate to simply tie changes in these rates to corresponding changes in the CPI.

Under the AB1X rate cap, residential rates for tier 1 and tier 2 customers have effectively declined relative to other price and inflation measures. Since 2001, Consumer Price Index (CPI) and the Producer Price Index (PPI) for energy have increased respectively by 17% and 20.8%. During this time, the energy component of the CPI increased by 68.7%, and the Residential electricity component of CPI increased by 19.0%.

Based on 2009 sales forecasts, the rate increases allowed under this bill would allow the utilities to collect approximately $160-270 million more per year from usage at the tier 1 and tier 2 levels. This revenue would be used to avoid increases in rates for tiers 3-5 that would otherwise be necessary.

The language should also be modified to ensure that the 5% maximum rate increase does not apply to Time Of Use (TOU) pricing schedules, nor should it apply to a flat tier rate offered as an alternative under a default time-variant rate schedule.

This bill also requires that baseline residential rates for any utility cannot exceed 90% of that utility's system average rate. Comparison of each utility's system average rate to its baseline residential rates shows that this would not affect utilities rates for 2009. 2009 baseline rates are 80% (PG&E), 89% (SCE), and 77% (SDG&E). Additionally, this provision would not prevent 3-5% increases in baseline rates, as required under this bill.

Direct Access

This bill would prohibit the CPUC from allowing the reopening of direct access without express statutory authority and would maintain the current suspension of Direct Access. However, it will authorize the Commission to allow individual retail end-use customers who are either currently taking service from an electric service provider, or eligible to take service from an electric service provider under Commission rules, to acquire service for new accounts from an electric service provider. The CPUC supports relaxing the direct access suspension and would like to preserve the authority to re-open Direct Access when it is appropriate and permissible under current law.
Direct Access was originally implemented by the Commission on April 1, 1998, as an integral part of a comprehensive restructuring program to bring retail competition to California electric power markets. Under this competitive restructuring program,

implemented pursuant to Assembly Bill (AB) 1890, retail customers had the choice either to subscribe to traditional bundled utility service or to purchase electricity on a competitive basis from an electric service provider (ESP). A direct access customer receives distribution and transmission services from the utility, but purchases electricity directly through an independent ESP. Although the ESP supplies electricity to the direct access customer, the utility remains the electricity provider of last resort.

In 2001, after the Department of Water Resources (DWR) had contracted for power on behalf of the state's IOUs during the energy crisis, the Legislature suspended direct access in order to ensure that cost responsibility for the DWR procurement was assigned in a fair manner among retail electric customers and to ensure a stable customer base. Pursuant to the legislative mandate of AB1X, the CPUC suspended the right to enter into new contracts for direct access after September 20, 2001. A "standstill approach" was applied, permitting no new direct access contracts, but allowing pre-existing contracts to continue in effect.

The CPUC believes that the underlying concerns previously identified by the Commission and the Legislature as reasons for the suspension of direct access have been addressed in various Commission proceedings. For example, DWR bonds were issued at investment grade, and the Commission established non-bypassable charges for recovery of DWR bond costs. The Commission has also established cost recovery mechanisms for DWR to be reimbursed for its power costs from both bundled and direct access customers. California energy markets have become more stable and the Commission has adopted various policy reforms to eliminate the conditions that prompted the energy crisis of 2000-2001. In addition, the Commission has implemented its resource adequacy program pursuant to AB 380, and its Long Term Procurement Planning process pursuant to AB 57. The CPUC is currently examining options for relieving DWR of its responsibility as a power provider, potentially making it possible to resume direct access under current law. This bill would remove CPUC discretion in this area until express statutory authority is granted at some future point.

Low Income Energy Efficiency Programs related provisions

AB 413 proposes that to the extent practicable, the Low Income Energy Efficiency Program (LIEE) shall "*target energy efficiency and solar programs to upper-tier and multifamily customers in a manner that will result in long-term permanent reductions in electric usage by dwelling unit and develop programs that specifically target new construction by, and new and retrofit appliances for, nonprofit affordable housing providers*".

CPUC Decision 08-11-031 on utility budgets for low income programs emphasizes that "the IOU's must serve all eligible low income customers." The stated goal of the Low Income Energy Efficiency (LIEE) program is to 'improve the quality of life of the low income population'. Additionally, it should be noted that the CPUC is already pursuing multifamily property participation in low income energy efficiency program and the solar program.

For the 2009-2011 program cycle, the Commission has authorized the utilities to spend approximately $300 million per year for Low Income Energy Efficiency programs that

install a range of efficiency measures at no cost to the existing occupants. Multi-family dwellings are fully eligible to receive these services for eligible households meeting the income limits. A substantial number of those assisted are living in multi-family dwellings.

Multi-family properties are also currently eligible for solar incentives under the existing California Solar Initiative (CSI). Furthermore, under the CSI program, ten percent of the budget is set aside for low-income programs, and half of that budget is specifically for the Multi-family Affordable Solar Housing (MASH) program.

The IOUs and the CPUC face some barriers to maximize the participation of multi-family customers. Customers who reside in multi-family residences are often tenants and do not have the same incentives as owners to avail of energy efficiency or solar technologies.

AB 413 would further require the Commission and the electrical and gas corporations to make enhanced low-income energy efficiency programs available to eligible customers as practicable by December 31, 2014.

In *The California Long-term Energy Efficiency Strategic Plan* (hereafter *The Plan*), the Commission outlined its long-term vision for the LIEE Program, stating that '[b]y 2020, 100% of eligible and willing customers will have received all cost effective Low income energy efficiency measures.'

This stated goal of the CPUC to reach 100% of the eligible and willing LIEE customers by 2020 is already consistent with the bill's goal to reach as many eligible customers as practicable by December 31, 2014. Additionally, in the CSI decision (D.07-11-045), the CPUC already determined that 'low income incentive applicants should obtain an energy audit and enroll in LIEE, if eligible, and have all feasible LIEE measures installed or be on the waiting list for installation prior to receiving solar incentives.'

To accomplish these ambitious goals for low income customers, in its November 2008 decision on the low income budget applications of Investor Owned Utilities (D. 08-11-031), the CPUC has already provided substantial budget increases to provide LIEE measures for 25% of all eligible and willing customers in the 2009-11 period.

Staff believes that changing the LIEE implementation period from the already stated timelines may actually delay implementation as annual budgets will need to be increased to meet AB 413's proposed deadlines. These changes may also lead to increased program costs and consumer rates to accommodate the higher budgets which are charged as a surcharge on customer's rates.

AB 413 would also require the Commission and electrical and gas corporations to make all reasonable efforts to coordinate ratepayer-funded programs with other energy conservation and efficiency programs.

In CPUC Decision, 08-11-031, the IOUs are required to begin leveraging their low-income energy efficiency programs with other federal, state, and local programs. Specifically, the Commission envisioned the creation of local government partnerships and the leveraging of the Low Income Energy Efficiency Program with the federally

funded LIHEAP (Low Income Heating Assistance Program) and WAP (Weatherization Assistance Program).

In March, 2009, the CPUC signed a Memorandum of Understanding with the Department of Community Services and Development (CSD) to coordinate the two programs. Since the funding for LIHEAP and WAP is expected to increase several fold pursuant to the American Recovery and Reinvestment Act, the partnership between the CPUC and the CSD has taken on a heightened importance. The Commission and CSD plan to organize meetings with stakeholders and workshops with parties in the near future.

CARE Eligibility, Recovery of CARE Costs and Changes in CARE Rates

The Commission's authority in determining income eligibility for CARE assistance and in determining the contribution of various classes of customers towards CARE costs should be preserved. This authority is needed so that the Commission may make appropriate changes in response to changing economic conditions in a timely manner.

In several decisions, the Commission has reiterated its intent to provide a 20% discount on the overall bill for CARE customers. In principle, CARE rates for each tier should be set at no higher than 80% of the corresponding non-CARE tiers. CARE rates should have the same number of tiers as the non-CARE rates with each tier discounted at 20% of the non-CARE rate. CARE and non-CARE rates should have the same rate adjustment formula over time to ensure that these rates stay in line over time while providing the appropriate discount to CARE customers.

In general, the CPUC prefers not to have rate design issues handled in statute because it unnecessarily complicates rational rate design and the ability to respond to cost changes over time. It also prevents the CPUC from making proactive adjustments to respond to economic conditions. More detail on the background of the issue and the merits of the CPUC's recommended position is provided below.

A. Codifying CARE income eligibility and recovery of CARE costs:

Under the current CPUC rules, residential customers with income at or below 200% of the federal poverty guideline are eligible for CARE rates. The cost of the CARE programs under the Commission's current rules is recovered on an equal cents per kwh and equal cents per therm basis from specified customer classes. Section 739.1(b)(1) of this bill will codify the existing income eligibility at 200% of the federal poverty guidelines and the equal cents recovery in statute which will limit the Commission's flexibility in the future to make changes to the income eligibility as well as the recovery mechanism.

In addition, this section of the bill prescribes that cost of low income assistance programs "shall be recovered ….from all classes of customers that were subject to the surcharge that funded the program on January 1, 2008." It is not clear whether this section of the bill is trying to ensure that none of the classes of customers that pay these costs now are exempted from these costs in the future or whether it is trying to ensure that no customer classes that were not paying as of January 1, 2008 can be made to contribute to the low income program costs. In any case, the Commission

would prefer to retain its ratemaking authority in this area to assign cost recovery at its discretion.

B. Allowing statutorily prescribed changes in CARE rates:

The bill would remove the cap on residential CARE rates for usage up to 130% of baseline and allow for some rate increases. These rate increases are necessary because, in their absence, all cost increases have to be paid for by increasing rates for usage above 130% of baseline. In the absence of these CARE rate increases, when CARE costs increase, all other customers must pay a larger share of these costs. The Commission supports removing the cap on CARE rates, as well as the need to limit increases to keep the financial burden on CARE customers as low as possible. However, the increases in these rates should use the same inflation indexing formula as non-CARE rates to maintain a consistent 20% discount for CARE rates with respect to non-CARE rates.

1. History of CARE Discount: Historically, the Commission has examined the issue of appropriate level of CARE discount in its own proceedings, balancing the needs of CARE eligible low income customers and the impact of the discount on other customers that pay for these programs. The Commission increased the CARE discount from 15% to 20% (D. 01-06-010) in June 2001 for PG&E, SDG&E, SCE and SoCalGas. The Commission later specifically exempted CARE customers from some costs resulting from the 2000-01 Energy Crisis. These exemptions have resulted in increasing the CARE discount above 20% over time.

By freezing CARE rates, and non-CARE residential rates for up to 130% of the baseline (which covers Tier 1 and Tier 2 consumption) at February, 2001 levels, AB1X has had the unintended consequence of increasing the discount for low income customers with high electric consumption. As an illustration, the following table shows CARE discount for customers at various consumption levels:

PG&E--Current Levels of CARE Discount

Residential Consumption level	CARE rate	Non-CARE rate	Discount
Tier 1: Baseline Usage	$0.08316	$0.11531	27.9%
Tier 2: 101% - 130% of Baseline	$0.09563	$0.13109	27.1%
Tier 3: 131% - 200% of Baseline	$0.09563	$0.25974	63.2%
Tier 4: 201% - 300% of Baseline	$0.09563	$0.37866	74.7%
Tier 5: Over 300% of Baseline	$0.09563	$0.44098	78.3%

As the above table shows, the CARE discount for PG&E for high consumption levels has increased to over 70%. This was not the intent but has been the result. Preserving the existing structural imbalance in statute would lead to a growing problem over time.

2. It is important to carefully balance the low income customer assistance and the impact on customer classes that pay for such assistance: The Commission and the

legislature must carefully consider and balance the competing needs of customers. This is especially important in the current time of economic hardship for middle class customers and businesses. The Commission should have the flexibility to set the discount levels and costs borne by other customers by balancing all affected customer classes.

3. Low income assistance should be in the form of a prescribed CARE discount from regular residential rates and not as a stand alone or arbitrarily determined CARE rate: Residential CARE rates should have the same tiered structure as regular rates, but should get a discount off of each tier rate for non-CARE customers. Accordingly, CARE rates should have the same 1, 2, 3, 4 and 5 tiers as non-CARE customers with the rate for each tier discounted by 20%. This will preserve the incentive to conserve energy for CARE customers.

4. CARE rates should be subject to similar adjustment over time to reflect cost of service increases: This bill would allow CARE rates for usage up to 130% of baseline to be increased by *"the annual percentage increase in benefits under the CalWORKS program"*, not to exceed 3% per year. Because the bill provides for a different rate of increase for non-CARE customers over time, it will result in CARE and non-CARE rates following very different trajectories over time without regard to cost of service and increasing the size of the CARE discount over time.

CARE Tier 1 and Tier 2 rates should be subject to the same adjustment for changes in cost of service as the non-CARE Tier 1 and Tier 2 rates to keep CARE and non-CARE rates in line over time. The Commission feels that it would be more appropriate to limit Tier 1 and Tier 2 price changes for both CARE and non-CARE by the annual percentage change in the Consumer Price Index from the prior year plus 1 percent but the increase should not be more than 5 percent per year. Using a single inflation measure would also reduce the administrative complexity of rate increases.

LEGISLATIVE HISTORY

- SB 695 (Kehoe) is virtually identical to AB 413.

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Date completed: June 23, 2009