Decision **DRAFT DECISION OF ALJ THOMAS** **(Mailed 7/17/03)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Bill E. Clarkson and Frances C. Slate, dba Silk Purse Properties Complainants, vs. Pacific Gas and Electric Company, Defendant.	Case 01-11-022 (Filed November 7, 2001)

OPINION DISMISSING COMPLAINT WITHOUT PREJUDICE

1. Summary

Complainants, electricity customers of Pacific Gas and Electric Company (PG&E), challenge the "baseline" energy usage level set for the common area of their 38-unit apartment building at 1 Excelsior Court in Oakland, California. They seek an increase in the common area baseline allocation from 7.7 kilowatt hours (kWh) per day to 117.8 kWh per day.

We dismiss the complaint without prejudice, because pending Commission Rulemaking (R.) 01-05-047 is addressing the "common area" baseline levels for all customers in Complainants' position.

2. Background

A customer's allotted baseline quantity of electricity affects the rates the customer pays for each increment of electricity. In May 2001, the Commission

increased rates and created a multi-tiered electricity rate structure in Decision (D.) 01-05-064, but exempted usage within 130% of the baseline quantity. Usage in excess of that quantity suddenly carried a hefty price tag for all customers.

In PG&E's territory, multi-dwelling units such as apartment buildings were treated anomalously for purposes of the common area baseline quantity allocation. The common areas of such buildings were given a baseline quantity that was the same as the quantity of an individual residential unit. Because the common areas of these large buildings often had quite heavy usage, the baseline quantities were quickly met and exceeded, resulting in high bills for building owners and, in some cases, their tenants.

In R.01-05-047, the Commission commenced (and continues to conduct) a comprehensive examination of its baseline provisions, including those related to multi-dwelling unit common areas. Faced with the dilemma presented by PG&E's approach to common area customers, the Commission opted to mitigate the harshest aspects of the common area issue early in the proceeding before addressing other issues.

In January 2003, the Commission evaluated and approved in D.03-01-037 an unopposed settlement proposal by several parties, including PG&E, the Commission's Office of Ratepayer Advocates, and several multi-dwelling unit owners and trade organizations, to reform PG&E's common area baseline policies. As we stated in that decision, "The residential tiered rate structure adopted for PG&E in D.01-05-064 has a disproportionate effect on larger-usage common area accounts, compared to other residential customers." The approved settlement gave PG&E's common area electric accounts, including Complainants, the option of moving to commercial rate schedules rather than continuing to pay residential rates. The early approval of the settlement did not rule out additional

Commission action on the baseline rules applicable to common areas, and the Commission soon will issue another decision in R.01-05-047 addressing common areas and several other unrelated baseline issues.

Complainants, who filed their complaint before the settlement was proposed and who were a signatory to the settlement, allege they own a 5-story, 38-unit apartment building in Oakland. They claim the building's common area amenities (elevator, ventilators, central hot water heating, laundry facilities, security system and lighting) are all billed to the "house electric meter." They further claim that the baseline quantity for that meter represents only 5% of the average usage, and that as a result they pay the highest tiered electricity rate (for usage over 300% of baseline) for 95% of their usage. They claim they cannot pass these obligations onto tenants due to Oakland rent control requirements.

Complainants propose a change in their baseline amount: "Complainant requests baseline adjustment based on either 50-60% of average use per household served (38 units @ 7.7 kWh's each) or 50-60% of average consumption per PG&E energy audit dated 7/4/01." They do not seek refunds and do not request a hearing.

Other than challenging PG&E's approach to common area baseline quantities, complainants make no claim against PG&E. Complainants raise no issues not being considered in R.01-05-047.

3. Discussion

Where an individual complaint makes allegations that the Commission is addressing for all ratepayers in a rulemaking, it is appropriate to dismiss the complaint without prejudice until the Commission establishes general rules. In this way, we preserve scarce Commission resources and avoid inconsistent results. By dismissing Complainants' claim without prejudice, we provide

them the opportunity to refile their complaint if, after the Commission resolves general baseline issues, Complainants have additional actionable claims that distinguish them from other ratepayers. Thus, Complainants are in no way harmed by this dismissal.

4. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Sarah R. Thomas is the assigned Administrative Law Judge (ALJ) in this proceeding.

5. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were received on _____.

Findings of Fact

1. The Commission is currently considering changes to baseline quantities in R.01-05-047.
2. Complainants raise no issues not being considered in R.01-05-047.

Conclusion of Law

The complaint should be dismissed without prejudice so that the Commission has the opportunity to address baseline common area issues generally before addressing this individual complaint.

O R D E R

IT IS ORDERED that:

1. The complaint of Bill E. Clarkson and Frances C. Slate, dba Silk Purse Properties against Pacific Gas and Electric Company is dismissed without prejudice to their right to refile it if, after the Commission resolves all issues in Rulemaking 01-05-047, Complainants have additional actionable claims that distinguish them from other ratepayers.
2. Case 01-11-022 is closed.

This order is effective today.

Dated _____, at San Francisco, California.