ALJ/MSW/avs

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the actions of Pacific Gas and Electric Company, and its officers and employees for non-compliance with a Commission Decision.	Investigation 01-12-010 (Filed December 11, 2001)

(See Appendix A for list of appearances.)

OPINION REGARDING PROPOSAL FOR RESOLVING ALL ISSUES RAISED IN THIS PROCEEDING

Summary

To resolve the issues in this Order Instituting Investigation (OII) and related Order to Show Cause (OSC), Pacific Gas and Electric Company (PG&E) proposes to tender a Notice of Intent (NOI) for a test year 2003 General Rate Case (GRC) no later than April 15, 2002, and also to pay a penalty of $500 per day beginning on January 9, 2002 and continuing each day until it tenders its NOI. Should PG&E take the entire allowed time, up to and including April 15, 2002, the penalty would be for 96 days and would be in the sum of $48,000.

Commission staff recommends that the terms of PG&E's proposal for resolving this case be adopted. This decision approves PG&E's proposal and directs PG&E to complete the actions it has agreed to take. As all matters are resolved, this proceeding is closed.

Background

The Commission's December 11, 2001 order that established this proceeding fully describes the background and history of the Commission's

order, adopted in Decision (D.) 01-10-059, that PG&E tender its NOI for a test year 2003 GRC no later than November 14, 2001. We do not restate the entire background here.

PG&E failed to tender its NOI to the Commission by the close of business on November 14, 2001, and it failed to inform the Commission of its determination that it could not meet the November 14 deadline until after the close of business on that date. The Commission subsequently opened this OII and the accompanying OSC into the actions of PG&E and its officers and employees to determine whether they failed to comply with D.01-10-059, whether they should be held in contempt, and whether they should be subject to the penalties provided for in the Public Utilities Code.

A hearing was convened on December 19, 2001 as directed by OII/OSC. The hearing was immediately recessed and a prehearing conference was immediately convened so that procedures could be established for consideration of PG&E's proposal for resolving this proceeding.[1] The Administrative Law Judge (ALJ) directed PG&E to file a motion for adoption of its proposal and provided for expedited filing of staff's response to PG&E's motion. The ALJ also directed PG&E to serve its motion on parties in Application (A.) 97-12-020, Investigation (I.) 97-11-026, A.94-12-005, and I.95-02-015 (PG&E's test year 1999 GRC and related matters) as well as parties in this proceeding. Finally, the ALJ directed PG&E to provide notice in its motion that the Commission had before it a proposal for PG&E tendering an NOI for a test year 2003 GRC on or before April 15, 2002, and that comments limited to the appropriateness of the proposed NOI tender date could be filed on or before December 28, 2001.

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[1] PG&E first presented its proposal for resolving this proceeding at the prehearing conference. A copy is bound into the transcript. (Tr., p. 12.)

On December 20, 2001 PG&E filed its *Motion of Pacific Gas and Electric Company to Adopt Proposal to Resolve Issues,* which included the required notice of the proposed NOI tender date and notice of opportunity to comment on the proposed date. Commission staff filed a response in support of PG&E's motion on December 21, 2001. No party has filed comments on the appropriateness of the proposed NOI tender date.

PG&E's Proposal

Upon issuance of the OII/OSC, PG&E and staff representatives promptly met to discuss a potential resolution of the issues in this proceeding. The following proposal resulted from their discussions:

1. PG&E will tender an NOI for a test year 2003 GRC no later than April 15, 2002.
2. PG&E agrees to voluntarily pay a penalty of $500 per day that will begin to run on January 9, 2002, and will conclude on the day it tenders its NOI for the test year 2003 GRC. Should PG&E take the entire allowed time, up to and including April 15, 2002, the penalty will be for 96 days and will be in the sum of $48,000.
3. If PG&E tenders its NOI no later than April 15, 2002, the Commission agrees not to pursue any additional penalty or sanction beyond those identified in this proposal against PG&E, or any officer or employee of PG&E, for its failure to tender an NOI on November 14, 2001, as ordered in D.01-10-059. PG&E's agreement to pay a penalty here has no effect or precedential value on other issues or proceedings addressing penalties.
4. PG&E understands and recognizes that the Commission has the need, right, and authority to periodically review the costs of PG&E and all utilities that it regulates, and that the 2003 GRC is an appropriate vehicle to accomplish that goal.
5. PG&E recognizes that it failed to timely notify the Commission that it was not able to meet the

November 14, 2001, deadline set by the Commission in D.01-10-059. PG&E takes seriously its obligation to comply with the Commission's orders and regrets that it failed to provide a timely response to D.01-10-059.

6. The Commission and PG&E agree that the April 15, 2002, deadline for tendering the NOI for the 2003 GRC provides a reasonable and sufficient time for PG&E to comply with the Commission's order.
7. Commission staff will recommend that the Commission adopt the terms of PG&E's proposal at the Commission meeting scheduled for January 9, 2002.

Although PG&E and staff negotiated and agreed upon the foregoing proposal, it is not presented to the Commission as a formal settlement proposal. Instead, it is a proposal by PG&E for resolution of the issues in this proceeding, and staff recommends that the Commission approve it.

Discussion

PG&E's proposal for resolution of this proceeding is supported by staff and is not contested by any party. While it is not presented to us as a formal settlement, we nevertheless find it reasonable to evaluate the proposal under the criteria set forth in Rule 51.1(e) of the Rules of Practice and Procedure for consideration of settlements.[2] As explained below, we determine that PG&E's proposal satisfies these criteria.

Reasonable in Light of the Whole Record

The record in this proceeding is minimal. It consists of the OII/OSC itself; PG&E's December 14, 2001 filing pursuant to Ordering Paragraph 4 of the OII/OSC identifying officers and employees who decided that PG&E would not tender its NOI on November 14, 2001; the transcript of the hearing and

[2] The rule provides that "[t]he Commission will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest."

prehearing conference of December 19, 2001, which incorporates a written copy of PG&E's proposal; PG&E's motion for approval of its proposal; and staff's response to the motion. No other pleadings have been filed, no testimony has been served, and no evidence has been admitted. The record essentially consists of the Commission's provision of notice to PG&E and its officers and employees that they could be subject to penalties for PG&E's noncompliance with a previous Commission order, a description of that noncompliance, PG&E's identification of the responsible officers, and a description of PG&E's proposal for resolving the issues this proceeding.

PG&E recognizes that it failed to timely notify the Commission of its determination that it was not able to meet the deadline set by D.01-10-059 for tendering its NOI, and the company states that it regrets this failure. PG&E's agreement to voluntarily pay a penalty, its agreement to comply (albeit belatedly) with the previous Commission order, are all reasonable in light of the whole record before the Commission. We are satisfied that PG&E's recognition of its failure to timely notify us of its inability to comply with D.01-10-059 and its agreement to pay a penalty of up to $48,000 provide an adequate remedy for any fault that might reasonably be ascribed to PG&E, and do so without the need for litigation.

Consistent With Law

PG&E acknowledges the Commission's legal authority, and its proposal for resolving this proceeding is consistent with and furthers the Commission's legal right and authority to review PG&E's costs. PG&E's tendering of an NOI for a GRC is consistent with the law, and the penalty is within the range of what the Commission has the legal authority to impose. Nothing in the proposal is inconsistent with the law.

In the Public Interest

The proposal provides increased certainty to the public and participants in PG&E's GRC of when the NOI will be tendered. Absent the adoption of the proposal, there is an existing Commission order requiring PG&E to tender its NOI on November 14, 2001 that PG&E has not complied with, and it is uncertain when the NOI would be tendered. If the OII/OSC were to be litigated, that uncertainty would remain until such time as the litigation was resolved. Adopting PG&E's proposal also conserves the human and financial resources of both PG&E and the Commission by eliminating litigation.

There is no guarantee that litigation of the issues presented in the OII/OSC would result in either a significantly higher penalty or a significantly earlier tendering of the NOI, and in fact litigation would likely delay the tendering of an NOI beyond the date contained in PG&E's proposal. In D.01-10-059, the Commission has endorsed an expedited schedule for PG&E's 2003 GRC as being in the public interest. Accordingly, adopting PG&E's proposal is more consistent with the public interest than litigation.

The proposal gives PG&E a monetary incentive to tender its NOI as soon as possible, thereby furthering the public interest in an expedited review of PG&E's costs. Further, in the event that PG&E fails to comply with its commitment and obligation to tender the NOI for a 2003 GRC on or before April 15, 2001, nothing in the proposal prohibits the Commission from pursuing any appropriate sanctions against PG&E for such failure.[3]

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[3] We place PG&E on notice that should it delay the tender of its NOI beyond April 15, 2002 without good cause, we may impose additional and more substantive penalties as provided by law. Pub. Util. Code Section 2107 provides for a penalty of not less than $500, nor more than $20,000 for each offense, and Section 2108 provides that each day's continuing violation is a separate offense.

Finally, the proposal is in the public interest because PG&E explicitly understands and recognizes that the Commission has the need, right, and authority to periodically review the costs of PG&E and all utilities that it regulates, and that the 2003 GRC is an appropriate vehicle to accomplish that goal.

Other Matters

The proposal for resolving this proceeding provides that PG&E will pay a penalty of $500 per day for each day beginning January 9, 2001 and continuing each day thereafter. However, the proposal does not address specific requirements pertaining to the penalty. We will order PG&E to pay accumulated daily fines no less frequently than monthly, on a calendar month basis. Payment shall be made to the Public Utilities Commission, for deposit in the General Fund of the State of California, not later than the tenth day of each month following a month during which accumulated penalties have accrued. Thus, for example, if PG&E has not tendered its NOI for a 2003 test year by January 31, 2002, it shall pay, not later than February 10, 2002, a penalty of $500 for each day between January 9 and January 31, 2002 inclusive of those dates.

We expect PG&E's full compliance with this order as well as its cooperation with our staff in the discharge of the company's duties and obligations created by this order. Provided that PG&E tenders its NOI for a 2003 GRC no later than April 15, 2002, we do not intend to pursue any additional penalty or sanction, beyond those identified in PG&E's proposal, against PG&E, or any officer or employee of PG&E, for its failure to tender an NOI on November 14, 2001 as ordered in D.01-10-059.

We will close this proceeding by this order. Should PG&E fail to comply with the terms of this order, we may reopen this proceeding or initiate a new proceeding as we determine to be appropriate.

Draft Decision

The OII/OSC designated this an adjudicatory proceeding, and there have been no appeals of such designation. However, we have determined that PG&E's uncontested proposal for resolving this proceeding is reasonable and should be adopted. No evidence has been taken, and we decide this matter on the record of this proceeding, which record is described herein. Further hearings are not required. Therefore, the procedures for adjudicatory proceedings enumerated in Pub. Util. Code Section 1701.2(a) and Rule 8.2 of the Rules of Practice and Procedure are not invoked, and it is not necessary for the presiding officer to issue a presiding officer's decision prior to, or in lieu of, our consideration of the matter.

At the prehearing conference, all parties stipulated to a waiver of comment on the draft decision. In accordance with Pub. Util. Code Section 311(g)(2), we issue our decision today without having received such comment.

Findings of Fact

1. PG&E failed to tender its NOI for a 2003 GRC by November 14, 2001 as ordered by D.01-10-059.

2. PG&E failed to inform the Commission until after the close of business on November 14, 2001 of its determination that it was impossible to prepare a fully developed NOI 2003 GRC showing in only twenty days.

3. PG&E proposes to tender an NOI for a test year 2003 GRC no later than April 15, 2002.

4. PG&E agrees to voluntarily pay a penalty of $500 per day beginning on January 9, 2002 and continuing each day until it tenders its NOI for the test year 2003 GRC. Should PG&E take the entire allowed time, up to and including April 15, 2002, the penalty would be for 96 days and would be in the sum of $48,000.

5. PG&E agrees that an April 15, 2002 deadline for tendering the NOI for the 2003 GRC provides a reasonable and sufficient time to comply with the Commission's order in D.01-10-059 to tender the NOI; and in approving PG&E's proposal for resolving this proceeding, the Commission accepts PG&E's determination that a deadline of April 15, 2002 provides reasonable and sufficient time for said compliance.

6. PG&E explicitly understands and recognizes that the Commission has the need, right, and authority to periodically review the costs of PG&E and all utilities that it regulates, and that the 2003 GRC is an appropriate vehicle to accomplish that goal.

7. PG&E explicitly recognizes that it failed to timely notify the Commission that it was not able to meet the November 14, 2001 deadline set by the Commission in D.01-10-059. PG&E acknowledges and states that it takes seriously its obligation to comply with the Commission's orders and regrets that it failed to provide a timely response to D.01-10-059.

8. Commission staff supports PG&E's proposal for resolving all issues in this proceeding, and no other party has stated any opposition to the proposal.

9. Parties in A.97-12-020 et al. and in this proceeding were notified of PG&E's proposal to tender its NOI for a test year 2003 GRC not later than April 15, 2002, and were provided with an opportunity to comment on the appropriateness of that latest date. No party has stated any opposition to this proposal.

10. All parties have stipulated to a waiver of review of and comment on the draft decision.

Conclusions of Law

1. PG&E's proposal for resolving all issues in this proceeding is reasonable in light of the whole record, consistent with law, and in the public interest. It should therefore be adopted as set forth in the following order.

2. PG&E's agreement to pay a penalty here has no effect or precedential value on other issues or proceedings addressing penalties.

3. Further hearings in this matter are not necessary, and the issuance of a presiding officer's decision is unnecessary.

4. Based on the stipulation of all parties, review of and comment on the draft decision should be waived.

5. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The *Motion of Pacific Gas and Electric Company [(PG&E)] to Adopt Proposal to Resolve Issues* is granted as set forth herein.

2. PG&E shall tender a Notice of Intent (NOI) for a test year 2003 general rate case no later than April 15, 2002.

3. PG&E shall pay a penalty of $500 per day beginning on January 9, 2002 and continuing each day until it tenders its NOI for the test year 2003 GRC, payable to the California Public Utilities Commission for deposit to the General Fund. Should PG&E take the entire time allowed under Ordering Paragraph 2, up to and including April 15, 2002, the penalty would be for 96 days and would be in the sum of $48,000. PG&E shall pay accumulated daily penalties on a monthly basis as set forth in the foregoing discussion. PG&E is placed on notice that should it fail to comply with this Order, additional and more substantial penalties may be imposed by the Commission as provided under law.

4. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

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(END OF APPENDIX A)