DRAFT ALTERNATE OF COMMISSIONER PEEVEY

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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ENERGY DIVISION **RESOLUTION E-3801**

August 21, 2003

R E S O L U T I O N

Resolution E-3801. Pacific Gas and Electric Company submits tariff revisions to implement a flexible pricing option in accordance with Public Utilities Code Section 454.1. Approved with modifications.

By Advice Letter 2276-E Filed on August 26, 2002

SUMMARY

This Resolution approves with modifications PG&E's proposed tariff revisions to implement a flexible pricing option in accordance with Public Utilities (PU) Code Section 454.1. Specifically, it allows PG&E to offer, under certain conditions, discounts to retain or attract customers within their service territory when an irrigation district provides, or is seeking to provide, similar service at lower rates.

BACKGROUND

On September 30, 2000, Section 454.1 was added to the PU Code authorizing utilities to offer, subject to certain conditions, discounted rates to customers with loads over 20 kilowatts (kW) when those customers receive offers for electric service from an irrigation district at rates lower than the electric utility's tariffed rates. Specifically, it allows a utility to discount the non-commodity portion of its rate to such a customer as long as the resulting non-commodity rate exceeds the utility's marginal distribution cost of providing service to the customer.[1] It also allows the utility to recover any difference between tariffed and discounted rates from its remaining customers with loads over 20 kW, as long as the

[1] For customers located in the four-city area that PG&E proposed to sell to Modesto Irrigation District in 1997, the discounted non-commodity rate must exceed the marginal distribution cost of serving that customer by 20 percent.

discounting does not result in higher rates than otherwise would have occurred had the customer receiving the discount offer bypassed the utility's service. Finally, it prohibits the utility from discounting in Merced Irrigation District's boundaries (including the former Castle Air Force Base) until Merced Irrigation District serves 75 Megawatts (MW) of former utility customer load, with the exception that the utility can discount to the load of customers locating in that area after December 31, 2000.

To implement a flexible pricing option in accordance with the legislation, PG&E proposed a new Schedule E-31 – Uneconomic Distribution Bypass Deferral Rate in Phase 2 of its 1999 General Rate Case (GRC). In December 2000, the Commission suspended the case. Several important events occurred which further affected the processing of the proceeding. In November 2001, the parties were asked to file and serve comments on whether, when, and how to proceed with the Phase 2 matter. Absent any ruling or decision in that case, however, PG&E filed its proposed Schedule E-31 in Advice Letter 2276-E. In the filing PG&E also proposes an agreement form and the establishment of a memorandum account for revenue tracking and allocation.

NOTICE

Notice of Advice Letter 2276-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

PG&E's Advice Letter 2276-E was timely protested by Modesto Irrigation District (Modesto), Merced Irrigation District (Merced ID)/South San Joaquin Irrigation District (SSJID), and Aglet Consumer Alliance (Aglet)/The Utility Reform Network (TURN).

PG&E responded to the protests of Modesto, Merced ID/SSJID, and Aglet/TURN on September 23, 2002.

Modesto believes that Advice Letter 2276 is not entirely consistent with the statutory requirements of Section 454.1, and provides suggestions to bring the proposed tariff into compliance.

Merced ID and SSJID assert that the law requires that PG&E file an application rather than an advice letter to implement the rate discounting authority provided in Section 454.1 due to complicated rate issues. If the Commission determines that the advice letter is appropriate mechanism, however, Merced ID and SSJID identify several areas where they believe the advice letter diverges from the authorization provided in Section 454.1.

Aglet and TURN request that the Commission make detailed modifications to the advice letter to clarify certain matters and revise proposed tariff language.

DISCUSSION

Energy Division has reviewed Advice Letter 2276-E, the protests to the advice letter, and PG&E's response to the protests. Each issue is discussed and resolved below.

Application versus advice letter

Merced ID and SSJID assert that an application rather than an advice letter is necessary because they believe there are complicated rate issues involved with implementing the rate discounting authority provided in Section 454.1. PG&E responds that the proceeding where PG&E initially proposed Schedule E-31 has been suspended and the Commission has the discretion to approve the proposed tariffs via advice filing. We recently resolved this issue in Decision (D.) 03-01-012 concluding that because Schedule E-31 is designed to implement Section 454.1, its consideration can appropriately be handled as an advice letter.

Discount rates to attract existing irrigation district customers

Section 454.1(a) establishes three conditions that must be met before PG&E may offer a discounted rate: (i) the customer is located or planning to locate within its service area, (ii) the customer has a maximum peak demand in excess of 20 kW, and (iii) the customer receives a bona fide offer for electric service from an irrigation district at rates less than PG&E's tariffed rates. PG&E interprets that these parameters allow it the ability to offer discounted rates to customers within its service territory who are currently served, or might choose to be served by an irrigation district.

Merced, SSJID, and Modesto argue that PG&E should not be able to offer Schedule E-31 to *existing* irrigation district customers. Merced and SSJID argue that the contractual relationship between existing irrigation district customers and irrigation districts is well beyond the bona fide offer stage. Further, they argue that granting the utilities the ability to offer discounted rates to all existing irrigation districts' customers, would have the potential to eliminate irrigation districts' ability to provide electric service which they argue would be contrary to the Legislature's intent in adopting Section 454.1.

In response, PG&E states that it should be able to make a discounted rate offer to a customer served by an irrigation district if that customer's fixed term contract with the irrigation district is due to expire and the customer receives a new proposal for continued service from the irrigation district at rates less than PG&E's tariffed rates.

We agree with PG&E that it should be allowed to attract a customer's load by offering a discounted offer to compete with an irrigation district's renewal offer. Subject to the criteria set forth, Section 454.1 provides utilities with discounting authority to compete with irrigation districts. Nothing in the legislation prohibits the utility from making a discounted offer to compete with an irrigation district's bona fide offer designed to persuade the customer to sign a new contract for irrigation district service. We do, however, believe the language in the tariff should be clarified to state that PG&E may offer discounted rates to customers currently served by an irrigation district only in situations where their contract with the irrigation district is due to expire and they receive a bona fide offer for continued service from that irrigation district at rates less than PG&E's tariffed rates. This language clarification will prevent PG&E from offering discounted rates to existing irrigation district customers who are not actively in the process of renegotiating contracts.

Territory section language

Modesto suggests the description language in the Territory section of Schedule E-31 stating that the tariff applies "…everywhere that PG&E supplies electric distribution service" be subject to the proviso that "...where an irrigation district electric service option exists." While PG&E believes that the additional suggested change is unnecessary because it believes the circumstances under which Schedule E-31 may be offered is clear in the Applicability section, PG&E does not object to the clarifying language. We believe Modesto's proposed

additional clarifying language is consistent with the Applicability section of the tariff and should be included.

Discounted rates to customers within Merced ID's Boundaries

PG&E believes that language in Section 454.1 allows it to offer discounted rates to customers locating in Merced ID's electric service territory after December 31, 2000 *before* Merced serves 75 MW of former PG&E load. Merced ID disagrees with that interpretation. It believes the legislation was intended to ensure PG&E could not offer discounted rates to new customers within Merced ID's boundaries (including Castle Air Force Base) until *after* Merced ID serves 75 MW of former PG&E load. It asserts this approach was designed to reflect and acknowledge irrigation districts' longstanding authority to provide electric service and compete with public utilities.

Subdivision (b)(1) of Section 454.1 provides that utilities' ability to discount rates *does not* apply to a cumulative 75 MW (as calculated by the Energy Commission) of load served by the Merced ID if the load is located within Merced ID's boundaries as they existed on December 20, 1995, together with the territory of Castle Air Force Base which was located outside the district on that date. Subdivision (c), however, provides that utilities' ability to discount rates *does* apply to the load of customers that move within these same boundaries after December 31, 2000, and that such load shall be excluded from the calculation of the 75 MW. A plain reading of the statute language supports PG&E's interpretation. Subdivision (a) establishes a general rule that an electrical corporation may offer below-tariff rates to customers that receive a bona fide offer from an irrigation district. Subdivision (b)(1) carves out from the general rule 75 MW of Merced ID load. Subdivision (c) then creates an exception to the exception, placing back under the purview of the general rule:

> load of customers that move to the areas described in [subsection (b)(1)] after December 31, 2000 . . . **such load shall be excluded from the calculation of the 75 megawatts in subdivision (b)**.[2]

[2] PU Code Section 454.1(c).

The statute, on its face, requires that the discounting option be available to load that moved within the areas described in subdivision (b)(1) after December 31, 2000 ("new load"). Thus, while up to 75 MW of pre-December 31, 2000 load within the areas described in subdivision (b)(1) ("old load") is not subject to Section 454.1(a), PG&E is not obliged to wait for Merced ID to serve that 75 MW of "old load" before PG&E can offer to serve "new load." "New load" is immediately "fair game."

Demonstration of bona fide offer

The Eligibility section of PG&E's proposed Schedule E-31 states that *existing* PG&E customers must (1) have at least 20 kW demand at their premises on PG&E's system, (2) demonstrate to PG&E's satisfaction, by providing required documentation, their willingness and ability to receive service from an irrigation district, and (3) sign an affidavit stating that the availability of Schedule E-31 is a material factor in their decision to remain with PG&E instead of taking service from an irrigation district. With respect to *new* PG&E customers, PG&E requires that they (1) have at least 20 kW demand at their premises that is currently served by, or could be served by, an irrigation district, and (2) sign an affidavit stating that the availability of Schedule E-31 is a material factor in their decision to take service from PG&E.

Merced ID and SSJID assert that PG&E's proposed language ignores the eligibility requirements mandated by Section 454.1 because it does not base the eligibility for discounted rates on the customer receiving a bona fide offer for electric service from an irrigation district at rates less than PG&E's tariff. In response, PG&E states that the "required documentation" language was intended to include the customer's bona fide offer from the irrigation district and does not object to adding more specific language regarding this requirement. We agree with Merced ID and SSJID that the tariff language should more closely conform to the requirements of Section 454.1. Accordingly, PG&E should delete all of its proposed eligibility criteria except for the 20 kW demand criteria and add that customers must demonstrate that they have received a bona fide offer from an irrigation district at rates less the PG&E's tariffed rates, and sign an affidavit to that effect.

Term of discounted rates

PG&E proposes that discounted rates shall have a term of five years *or* be designed to match the term of the irrigation district's competing offer. Merced ID and SSJID believe that this approach makes sense when an irrigation district offer is for a period of more than five years but believe it would provide the utility with an unfair advantage when an irrigation district is for a period of less than five years. They suggest that we require PG&E to revise Schedule E-31 to provide that the utility rate discount period may not exceed the term of the competing irrigation district offer. Similarly, Modesto argues that PG&E's offer should have the same term length as that proposed in the irrigations district's bona fide offer. If the irrigation district's bona fide offer contains no term, it suggests PG&E could be free to propose its own term but not to exceed five years.

Aglet and TURN oppose PG&E' s proposed five year minimum term and assert that there is no reason for any minimum discount duration (except perhaps 30 days for administrative convenience) as PG&E might use a five-year minimum to protect its opportunity to build new facilities in growing areas where irrigation districts might otherwise offer competition for distribution service.

PG&E clarified in its response to the protests that in general it plans to match the contract term offered by the irrigation districts but in some instances it plans to offer a five-year term when the irrigation district term offer is shorter. PG&E argues that there are more restrictions under Schedule E-31 than those imposed upon irrigation districts, and that limiting PG&E to the contract term offered by an irrigation district allows the irrigation district to offer a series of short-term contracts, thus making the restrictions a customer faces under service with PG&E an incentive to simply turn to the irrigation district.

We are not persuaded by PG&E's arguments. We agree with Merced ID, SSJID and Modesto that the most equitable approach would be to limit the term of the authorized utility discount to the term of the competing irrigation district offer. We also agree with Modesto that a five-year term limit could be established in instances when the irrigation district offer contains no term. Although this does not eliminate Aglet/TURN's concern it should minimize it, as the five-year option will only apply in instances when the irrigation district's offer does not

include a term. It is reasonable to allow PG&E discretion to establish a term in those instances. To minimize transaction costs, PG&E should also be granted the discretion to establish up to a one-year term in instances where the irrigation district's offer carries a term of six months or less. Accordingly, PG&E should substitute the following language for its proposed Discount Period: "The Agreement established by this tariff has a discount period that matches the term of the irrigation district's bona fide offer. In the event the irrigation district's bona fide offer contains no term, the Agreement may have a term not to exceed five years. In the event the irrigation district's bona fide offer contains a term of six months or less, the Agreement may have a term not to exceed one year."

Exclusion of non-bypassable charges from the discount

In addition to the cost of the commodity, PG&E's proposes to exclude from its offered discount the non-bypassable charges that the customer would pay were it to depart and take service from an irrigation district. Modesto states that Section 454.1 specifically requires exclusion of the cost of commodity but addresses no other cost exclusions. Modesto suggests specific text revisions to the Rates section of Schedule E-31 to eliminate language that excludes non-bypassable charges owed by the customer, as well as applicable taxes and surcharges.

In response, PG&E states that its proposal to exclude non-bypassable charges from the discount is not precluded by Section 454.1. It points out that Section 454.1 allows but does not require discounting of all portions of the rate except the commodity. We agree with PG&E that the legislation does not require discounting; it merely provides the electric utilities with the opportunity to discount its non-commodity rates. Specifically, it states that an electric utility "may discount its non-commodity rates". Thus, PG&E has the discretion whether or not it may discount non-bypassable charges.

Inclusion of all non-bypassable charges in the calculation of the non-commodity rate

PG&E's proposed tariff provides that in calculating the non-commodity portion of the rate, it will include "all applicable out–of-pocket competitive transition and other non-by-passable charges that the customer is currently paying, or would be obligated to and would itself pay PG&E and/or the irrigation district." Modesto argues that Section 454.1 contains no language that would permit the

inclusion of either out-of-pocket competitive transition or other non-bypassable charges.

PG&E interprets "non-commodity" to include essentially everything except the cost of generation. In other words, "commodity" is synonymous with "generation". We believe this literal interpretation is reasonable. Arguably, there are costs that are related to the cost of generation but such costs are not currently included in the generation rate.

Non-bypassable charges in the calculation of the commodity rate

Modesto claims PG&E fails to address the manner in which non-bypassable charges and surcharges relating to the commodity itself are to be addressed in determining the commodity component of the rate. As discussed above, PG&E includes these charges in its calculation of the non-commodity rate, thus it does not include them in determining commodity rate.

Methodology for determining the commodity price

Modesto requests PG&E to define the methodology for determining the commodity price both for PG&E and the irrigation districts. Modesto points out that at the time Section 454.1 was enacted, the California Power Exchange (PX) provided a transparent day-ahead commodity price reference. Now that the PX is no longer functioning and there is no successor, there is no recognized proxy for the PX reference price. There is also no longer a price transparency with regard to the commodity component of its pricing because Modesto has since re-bundled its rates.

PG&E responds that although its proposed tariff was developed when the PX was still functioning, the mechanics of the discount do not reference and are in no way dependent upon the existence of the PX. The language describing the estimation of the competitors' average non-commodity rate anticipates that PG&E might have to estimate the irrigation district's commodity cost from available market information. PG&E suggests that, to the extent, the parties desire an "objective" metric, PG&E would use whatever the Commission determines as the appropriate basis for the post-PX direct access credit in Application (A.) 98-07-003. We decline to adopt this suggestion because PG&E is proposing a bottoms-up billing methodology in that proceeding which if adopted would eliminate the credit in the future. A better alternative would be

for PG&E to use the generation rate component in its own tariff as a proxy for what the irrigation district would pay for its generation. This generation rate shall exclude surcharges adopted by D.01-01-018 and D.01-03-082 (as implemented by D.01-05-064). Although we exclude these surcharges from the proxy, PG&E may not discount them, because they are commodity-related costs.

Floor price calculation

Modesto alleges that PG&E provides for a floor price markedly different than that specified in Section 454.1. It states that Section 454.1 provides a floor of the amount equal to the "distribution marginal cost of serving that customer" while PG&E's proposed floor is equal to "PG&E's total distribution planning area-specific, marginal transmission and distribution cost". PG&E responds that its proposal to base the floor price on area-specific marginal costs is designed to utilize the best estimates available of the distribution marginal cost of serving the customer (including any transmission voltage wires required to deliver distribution service to customers).

Section 454.1 states that the utility "may not discount its non-commodity rates below its distribution marginal cost of serving that customer". Because PG&E's proposed floor calculation yields a higher price than that required by the legislation, it does not violate the requirement. We believe PG&E's proposed calculation is more conservative than required and appropriate for limiting discounts to the non-commodity portion of PG&E's rates (which also includes transmission).

Firewall provisions

Modesto, Aglet and TURN argue that PG&E's proposed tariffs fail to include the firewall provisions mandated by Section 454.1. Specifically, Section 454.1 provides "…there shall be a firewall preventing the reallocation of such differences resulting from discounting to residential customers or to commercial customers with maximum peak demands not in excess of 20 kilowatts." PG&E agrees to modify Section CK.2 of the Preliminary Statement to include language clarifying that the memorandum account does not apply to residential and small

commercial customers per Section 454.1's firewall language[3]. PG&E's proposed changes satisfy Modesto and Aglet/TURN's concerns and should be incorporated into the final tariffs.

Direct access language

Modesto asserts that Schedule E-31 does not accurately reflect the suspension of direct access. PG&E responds that although it was suspended, customers who entered into direct access arrangements prior to the suspension date would not be precluded from taking service on Schedule E-31 if they meet the other eligibility requirements. We agree with PG&E. Accordingly, no changes to the tariffs are necessary.

Workshop

Modesto suggests that the Energy Division convene a workshop in which PG&E and the irrigation districts can explore implementation of the provisions of Section 454.1. While PG&E is concerned about additional delay in Commission approval of Schedule E-31, it is amenable to meeting with the protesting parties and the Energy Division staff to further discuss any disputed issues. Although appreciative of Modesto's suggestion and PG&E's willingness to meet, it is not necessary to convene a workshop or meeting at this time. A draft of this Resolution was mailed to all parties for comment giving parties an opportunity to provide further discussion regarding the characterization and/or outcome of the issues.

References to "uneconomic bypass"

Aglet and TURN protest references to "uneconomic bypass" in PG&E's advice letter and proposed tariffs. They assert that the term is undefined and may be subject to dispute. Because there is no citation to the term in Section 454.1, they

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[3] PG&E proposes some other minor changes to this section as well. Specifically, debit entry 5.b in Part CK of the Preliminary Statement should be deleted in its entirety, current items 5.c and 5.d should be renumbered to 5.b and 5.c, and the word "credit" should be deleted from new item 5.c, which will provide for all interest entries to the account.

state there is no need to use the term in the tariffs to implement the legislation. We agree that the tariff language should more accurately reflect the legislative language. Accordingly, PG&E should remove all such references from its proposed tariffs. In particular, PG&E should remove the word "uneconomic" from the titles of the proposed Preliminary Statement (and accordingly modify the acronym used throughout) and Schedule E-31. Further, in Section CK.1 of the Preliminary Statement, PG&E should remove "uneconomically" from the expression "otherwise would uneconomically bypass PG&E's system" and revise the phrase "who receive offers for electric service from an irrigation district" to "who have received bona fide offers for electric service from irrigation districts at rates less than PG&E's tariffed rates."

PG&E's unlimited discretion

Although residential and small commercial customers should not be affected by PG&E's proposed discounts, Aglet and TURN are not comfortable with the unlimited discretion that PG&E requests concerning which customers will receive discount offers. They recommend that the Commission explicitly require PG&E to make a showing in each Revenue Adjustment Proceeding (RAP) in support of the discounts it offers or declines. In response, PG&E states that it is not opposed to providing supporting data for discounts offered under Schedule E-31 in each annual RAP but it opposes providing information on discounts that it or the customer ultimately decline. We agree that a showing in the RAP is necessary to review discounted rate contracts but believe such a showing is not necessary for those offers which do not ultimately result in a signed agreement.

Potential Lump Sum Charges

Aglet and TURN object to the provision in Schedule E-31 which allows for potential additional lump sum charges in the event the discounted rate is less than a floor price based on marginal costs. They believe such a provision risks allegations of retroactive ratemaking. If the Commission adopts higher marginal costs, they assert that PG&E should be required to adjust discounted rates accordingly. PG&E responds that the need for a lump sum payment by the customer is generally only triggered if the Commission adopts new marginal cost values that exceed previously adopted levels, causing the discounted rate paid by the customer to now be below the new, higher floor price. It states that this is a historically Commission-endorsed approach which ensures that over the course of the year revenues at least equal the amount associated with the floor

price. Moreover, it points out that customers know of the possibility of a lump sum adjustment with they sign the contract, and they also have the option to have their discount adjusted downwards so annual lump sum adjustments are no longer required. We agree with PG&E that this provision is consistent with our past practices and that the obligations are clearly laid out in the contract that is signed by the customer so there is no need to adopt Aglet and TURN's proposal on a mandatory basis.

Minor revisions

Aglet and TURN propose several minor revisions to that tariffs as follows:

a. Section CK.5.c of the Preliminary Statement should be modified to replace "marginal cost" with "distribution marginal cost" to comport with Section 454.1(a). PG&E disagrees. It states that the language in the statute pertains to the marginal cost floor for discounting, not the ratemaking treatment of incremental contribution to margin resulting from Schedule E-31 being used to attract customers. It believes Aglet/TURN's proposal to use the difference between the revenue received under Schedule E-31 (which includes commodity revenue) and the distribution marginal cost (which does not) overstates the actual margin received. PG&E believes its proposal, on the other hand, correctly subtracts the entire marginal cost (including the marginal cost of generation) from the entire revenues to calculate actual margin received. It states that if the Commission decided consistency with the statue requires the use of distribution marginal cost only in the calculation, then revenue must be redefined to include only non-commodity revenue. We agree with PG&E's arguments here. For the reasons cited, PG&E should not be required to modify its proposed language.
b. "20 kW demand" should be changed to "20 kW peak demand" in the Eligibility section of Schedule E-31, to be consistent with Section 454.1. PG&E agrees to this change, and it should be modified accordingly.
c. Absent a showing of good cause, language in Schedule E-31 should be eliminated which requires delivery of electricity to the discount customer through PG&E's system. They state that customers should have the option to take service from more than one provider. PG&E responds that its proposed language is standard in all of its discounted contracts, and that it does not prohibit customers from obtaining generation from whatever source they wish but only prohibits customers from taking non-PG&E

distribution service. It notes that that is precisely the point of Schedule E-31: retaining customers on, or attracting them to, PG&E's distribution system, in order to keep distribution rates lower than they would otherwise be for the benefit of PG&E's other customers. PG&E has demonstrated good cause for retention of the language.

d. Eliminate text in the Disqualification section of Schedule E-31 to remove reference to uneconomic bypass. As specifically recommended, PG&E opposes the change because it believes the modification leads to a nonsensical phrase. Although we do not agree with Aglet/TURN's specific suggested change, we think the sentence could be edited in such a way to address their concerns. The first sentence of the section should be modified to read "PG&E may, at its sole discretion, disqualify a customer from obtaining the discount under this schedule if: (1) the discounted rate does not exceed the distribution marginal costs of providing service to that customer; or (2) a customer….".

COMMENTS

PU Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the Energy Division draft of this resolution was neither waived nor reduced. Accordingly, the draft Energy Division resolution was mailed to parties for comments on February 11, 2003. PG&E and Modesto filed comments on February 24th and Merced ID/SSJID filed comments on February 26th. PG&E replied to comments on March 5th.

On March 18th, a draft alternate resolution was distributed for comment pursuant to PU Code Sections 311(e) and 311(g) and Rule 77.7 of the Commission's Rules of Practice and Procedures. The draft alternate differs from the draft Energy Division resolution that was distributed for comment on February 11th only with regard to the methodology for determining the commodity price. Accordingly, parties were instructed not to repeat the comments they submitted previously on other topics unless additional information had arisen and/or the parties stated position had been modified. The parties were informed that their previously filed comments would be considered and reflected into the draft alternate resolution. Merced ID/SSJID filed comments on the draft alternate resolution on March 25th. PG&E and Modesto filed comments on March 26th. No replies to

comments were filed. A revised version of the draft alternate resolution was redistributed for comment on June 17th. The revised version added a sentence prohibiting PG&E from discounting commodity related surcharges. Merced ID/SSJID and PG&E submitted comments on the revised draft alternate resolution on June 23rd and June 24th, respectively. On July 1st, Merced/SSJID and Modesto filed comments in reply to PG&E's comments. All comments are addressed below by topic.

Term of discounted rates

PG&E requests that in instances where the irrigation district's offer carries a term of six months or less, PG&E be granted the discretion to offer Schedule E-31 for a *one-year* term. It requests this change because it claims that an irrigation district could successfully induce a PG&E customer to bypass using a series of short-term contracts by virtue of the fact that the customer's PG&E alternative would require entering a series of cumbersome iterative contracts with attendant affidavits. PG&E believes its requested change would minimize transactions costs and better carry out the intent of the statute and tariff.

We do not know that PG&E's contracts are any more (or any less) cumbersome than those which would be offered by the irrigation district, and we are not convinced that the statute reflects any legislative intent regarding this issue. Therefore we do not grant PG&E's request on either those two bases. We do, however, seek to minimize transactions costs whenever possible. To that end, we have modified the discussion and findings of this resolution to allow PG&E to offer a one-year term in the event an irrigation district's bona fide offer contains a term of six months or less.

Modifications to Part CK of the Preliminary Statement

PG&E requests clarification regarding the interest calculation specified in the memorandum account proposed in Part CK of the Preliminary Statement. PG&E points out that the draft resolution acknowledged that it had proposed some minor changes to the memorandum account but was inconclusive regarding whether the changes were acceptable. It asserts the revisions are necessary to ensure consistency with the interest calculations applicable to other balancing accounts, and will enhance administrative efficiency by requiring only one calculation on net balances, rather than separate interest calculations on two balances. Although the draft resolution was silent on the details, we intended

that all of PG&E's proposed memorandum account changes referenced in this section be incorporated into the tariffs. Accordingly, the discussion and findings of this resolution have been modified to incorporate PG&E's specific changes.

Discount rates to attract existing irrigation district customers

In their comments, Merced ID and SSJID argue that PG&E should only be allowed to offer discounted rates to existing irrigation district customers when those customers have received a contract renewal offer from the irrigation district at rates different than those in their existing contract. In other words, PG&E should not be allowed to offer discounts to existing irrigation customers who opt to extend the term of their existing contracts without modification of rate terms. Merced ID and SSJID believe a change in the rate terms of the existing contract would have to be the subject of negotiation between an existing customer and an irrigation district before Section 454.1 would apply. We disagree and reaffirm our discussion and findings in the draft resolution that PG&E should be allowed to attract a customer's load by offering a discounted offer to compete with an irrigation district's renewal offer, regardless of whether this offer changes the rate terms of a prior contract. As PG&E states in response to Merced ID/SSJID's comments, the fact that the irrigation district's new offer is the same rate as the old one is irrelevant. The point is the existing contract is due to expire and the irrigation district's "renewal" offer constitutes a bona fide offer designed to persuade the customer to sign a new contract for irrigation district service. Per Section 454.1, PG&E should be allowed to make a competitive counter offer.

Discounted rates to customers within Merced ID's Boundaries

Merced ID and SSJID reiterated their request stated in their protest that PG&E not be allowed to offer discounted rates to new customers within Merced ID's Boundaries (together with Castle Air Force Base) until Merced ID serves 75 MW of load. Without repeating their earlier arguments, they additionally state that Section 454.1 was intended to prevent or minimize any cost shifting. Applying the draft resolutions' interpretation in the case of a new customer, they assert would tilt the playing field in PG&E's favor with respect to cost shifting. Although legislative intent may be used when a statute is vague or ambiguous, this is not the case here. As stated in the draft Resolution the statutory language is clear and we will not ignore a plain reading of that statute. Merced ID and SSJID did not discuss the relevant statutory language in their comments, and we

see no way to square their proffered statutory interpretation with the statutory language.

Workshop

Modesto, Merced ID, and SSJID believe that a workshop is necessary to further discuss, explore and clarify implementation details of Schedule E-31. Accordingly, they request that the draft resolution be revised to provide for the scheduling of a workshop. The notion of a workshop was discussed and rejected in the draft resolution but these parties don't believe all implementation details were resolved by the draft resolution and argue that a workshop would provide them an opportunity to further discuss implementation details. Specifically, Merced ID/SSJID and Modesto suggest that the workshops could provide a forum to describe how discounts will be offered under Schedule E-31, explain how non-bypassable charges are excluded from the rate discounts and incorporated in non-commodity rates, explain how the irrigation district's offered rate is exchanged and confirmed, describe the process to be used for the parties to obtain confirming information for the proper discounting calculations, and demonstrate how the floor price is calculated. They suggest that these issues could be addressed by sharing sample calculations in a workshop. The Energy Division previously sought and reviewed such information and recommends implementation. Convening a workshop for the purpose of additional information sharing would unduly delay the implementation of the Section 454.1.

Review in the RAP

Modesto alleges that the annual showing in each RAP is inadequate to ensure compliance with Section 454.1 and recommends that we require PG&E to provide documentary support, including copies of the executed contract, evidencing the discounting calculations used by PG&E, prior to the effective date of any discounted rate. It states that this is necessary to verify that there exists sufficient basis for the rate offered, and that any deviation from this Resolution and from Section 454.1 can be detected and corrected. We decline to adopt this recommendation. The annual RAP showing requirement will provide ample opportunity for the parties to address any lingering questions regarding PG&E's implementation details.

Methodology for determining the commodity price

The draft Energy Division resolution allowed PG&E to estimate the generation cost component from available market information pending resolution of the issue in the post-PX direct access credit in A.98-07-003. The draft alternate resolution instead specified that PG&E should use the generation component in its tariffs as a proxy for what the irrigation district would pay for its own generation. PG&E finds the methodology set forth in the draft alternate resolution acceptable. Merced/SSJID support the alternate methodology because they believe it affords all parties needed price transparency and certainty with respect to which components of PG&E's rates are subject to discount, allows for comparison of PG&E's and irrigation districts' non-commodity rate components, is consistent with Section 454.1, and goes farther toward effecting the Legislature's intent in adopting Section 454.1. Modesto also supports the alternate methodology for purposes of Section 454.1 but notes it may be an inappropriate proxy for an irrigation district's generation cost in some other instances. This resolution maintains the language offered in the draft alternate resolution.

An additional sentence was also added to the draft alternate resolution prohibiting PG&E from discounting the surcharges adopted in D.01-01-018 and D.01-03-082 because they are commodity-related. Merced ID/SSJID and Modesto believe that these surcharges are appropriately characterized as commodity-related surcharges, and that PU Code Section 454.1 does not authorize the investor-owned utilities to discount commodity-related rates. PG&E, on the other hand, maintains that these surcharges are used to recover charges it collects on behalf of the California Department of Water Resources (DWR) which are separate and distinct from its own commodity charges. PG&E asserts neither law nor policy should lead the Commission to prohibit it from discounting the DWR charges from customers who would otherwise be able to avoid paying such charges should they choose to take service from a competing irrigation district. PG&E asserts that although PU Code Section 454.1 authorizes an electric utility to discount its non-commodity rates, it nowhere requires that all commodity-related costs be similarly excluded. Furthermore, irrespective of whether the DWR charges are "commodity" charges within the meaning of PU Code Section 454.1, PG&E believes that the Commission has ample independent authority under PU Code Section 378 and its general ratemaking powers to authorize PG&E to discount DWR charges that a customer could otherwise avoid. Although this may be true, we find the request for such authorization

should by made by a separate formal application. PU Code Section 454.1 is clear that PG&E may discount non-commodity rates, but it does not address discounting commodity-related rates. For purposes of implementing the statute via this resolution on PG&E's advice letter, we maintain the language prohibiting PG&E from discounting the surcharges.

FINDINGS

1. PG&E filed Advice Letter 2276-E requesting Commission authorization to implement a flexible pricing option in accordance with Section 454.1 by proposing tariff changes and a new Schedule E-31.
2. Protests were received from Modesto, Merced ID/SSJID, and Aglet/TURN.
3. As concluded in D. 03-01-012, consideration of PG&E's proposed Schedule E-31 can appropriately be handled as an advice letter since it is designed to implement Section 454.1.
4. Nothing in Section 454.1 prohibits a utility from making a discounted offer to compete with an irrigation district's bona fide offer designed to persuade a customer to sign a new contract for irrigation district service.
5. PG&E should be allowed to offer discounted rates to a customer served by an irrigation district only if that customer's fixed term contract with the irrigation district is due to expire and the customer receives a bona fide offer for continued service from the irrigation district at rates less than PG&E's tariffed rates.
6. PG&E should not offer discounted rates to existing irrigation district customers who are not actively in the process of renegotiating contracts.
7. Modesto's proposed additional clarifying language to the Territory section of Schedule E-31 is consistent with the Applicability section of the tariff and should be included. Accordingly, the description language in the Territory section of Schedule E-31 stating that the tariff applies "…everywhere that PG&E supplies electric distribution service" should be subject to the proviso "...where an irrigation district electric service option exists."
8. A plain reading of Section 454.1 language supports PG&E's interpretation that it may offer discounted rates to customers locating in Merced ID's electric service territory (including Castle Air Force Base) after December 31, 2000 *before* Merced serves 75 MW of former PG&E load but that load shall be excluded from the calculation of the 75 MW.
9. PG&E should revise the Eligibility section of Schedule E-31 to more closely conform to the requirements of Section 454.1. Accordingly, PG&E should

retain the 20 kW demand criteria but add that customers must demonstrate that they have received a bona fide offer from an irrigation district at rates less the PG&E's tariffed rates, and sign an affidavit to that effect.

10. To create equity, PG&E should revise Schedule E-31 to provide that the utility rate discount period may not exceed the term of the competing irrigation district offer; a five-year term limit should be established in instances when the irrigation district offer contains no term. To minimize transactions costs, PG&E should be granted the discretion to establish up to a one-year term in instances where the irrigation district's offer carries a term of six months or less. PG&E should substitute the following language for its proposed Discount Period: "The Agreement established by this tariff has a discount period that matches the term of the irrigation district's bona fide offer. In the event the irrigation district's bona fide offer contains no term, the Agreement may have a term not to exceed five years. In the event the irrigation district's bona fide offer contains a term of six months or less, the Agreement may have a term not to exceed one year."
11. Section 454.1 does not require discounting of all non-commodity portions of the rate thus PG&E has the discretion to exclude from its offered discount the non-bypassable charges that the customer would pay were it to depart and take service from an irrigation district.
12. PG&E may include "all applicable out–of-pocket competitive transition and other non-by-passable charges that the customer is currently paying, or would be obligated to and would itself pay PG&E and/or the irrigation district" in its calculation of the non-commodity rate.
13. In determining the commodity price, PG&E should use the generation rate component in its own tariff as a proxy for what the irrigation district would pay for its generation. This generation rate shall exclude surcharges adopted by D.01-01-018 and D.01-03-082 (as implemented by D.01-05-064). Although we exclude these surcharges from the proxy, PG&E may not discount them, because they are commodity-related costs. PG&E may seek authority to discount DWR charges by separate formal application.
14. Because PG&E's proposed floor price calculation yields a higher amount than that required by Section 454.1, it does not violate the floor requirement.
15. PG&E's proposed floor price calculation is more conservative than required and appropriate for limiting discounts to the non-commodity portion of PG&E's rates (which also includes transmission).
16. PG&E should modify Part CK of the Preliminary Statement to include language in Section 2 clarifying that the memorandum account does not apply to residential and small commercial customers according to Section

454.1's firewall provisions, delete in its entirety debit entry b in Section 5, renumber current items 5.c and 5.d to 5.b and 5.c, and delete the word "credit" from new item 5.c.

17. No changes to PG&E's proposed tariffs are necessary to reflect the suspension of direct access.
18. Because a draft of this Resolution was mailed to all parties for comment giving them an opportunity to provide further discussion regarding the characterization and/or outcome of the issues, a workshop to explore implementation of the provisions of Section 454.1 is not necessary.
19. To more accurately reflect Section 454.1 language, PG&E should remove all references to "uneconomic bypass" from its proposed tariffs. In particular, PG&E should remove the word "uneconomic" from the titles of the proposed Preliminary Statement (and accordingly modify the acronym used throughout) and Schedule E-31. Further, in Section CK.1 of the Preliminary Statement, remove "uneconomically" from the expression "otherwise would uneconomically bypass PG&E's system" and revise the phrase "who receive offers for electric service from an irrigation district" to "who have received bona fide offers for electric service from irrigation districts at rates less than PG&E's tariffed rates."
20. PG&E should provide supporting data necessary to review discounted rate contracts offered under Schedule E-31 in each annual RAP but it need not present information on discount offers which do not ultimately result in a signed agreement.
21. PG&E's proposed provision, which allows for potential additional lump sum charges in the event the discounted rate is less than a floor price based on marginal costs, is consistent with Commission past practices. Furthermore, since the provision obligations are clearly laid out in the contract that is signed by the customer, there is no need to adopt Aglet/TURN's proposal on a mandatory basis.
22. PG&E should make the minor revisions to the tariffs proposed by TURN/Aglet to the extent they were adopted and/or modified in the Discussion section of this Resolution.
23. The protests of Modesto, Merced ID/SSJID, and Aglet/TURN are granted in part and denied in part based on the specific discussion of the issues in this Resolution.
24. PG&E should modify its proposed tariffs to reflect the Discussion and Findings in this Resolution, and file a supplemental advice letter within ten days.

25. Following verification of compliance by the Energy Division, the supplement should be effective on the date filed.

THEREFORE IT IS ORDERED THAT:

1. PG&E's Advice Letter 2276-E requesting Commission authorization for proposed tariff revisions to implement a flexible pricing option in accordance with Section 454.1 is approved with modifications.

2. If PG&E concurs with the modifications, PG&E shall file a supplemental advice letter within ten days to modify its proposed tariffs to reflect the Discussion and Findings in this Resolution.

3. Following verification of compliance by the Energy Division, the supplemental advice letter will be effective upon the date filed.

4. If PG&E declines to accept the revisions by the Resolution, Advice Letter 2276-E is denied.

5. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on August 21, 2003; the following Commissioners voting favorably thereon:

_____
WILLIAM AHERN
Executive Director