PVA/hkr 11/4/2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan. (U 39 E)	Application 00-11-056 (Filed November 22, 2000)
Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)

ADMINISTRATIVE LAW JUDGE'S RULING GRANTING MOTION TO STRIKE

The Alliance for Retail Energy Markets (AReM) filed a Motion to Strike portions of the testimony of Pacific Gas and Electric Company (PG&E).[1] Oral responses to the Motion were provided at the evidentiary hearing on October 29, 2003. This ruling grants the Motion to Strike, with some limitations.

AReM's Motion argued that PG&E's testimony addressing the Direct Access Indifference Amount and Direct Access Indifference Rate went beyond

[1] The full caption of the motion is: *Motion of the Alliance for Retail Energy Markets to Strike Testimony of Pacific Gas and Electric Company*, and it is dated October 27, 2003.

the scope of the present phase of this proceeding, and should either be addressed in the Commission's Direct Access proceeding (Rulemaking (R.) 02-01-011), or in the second phase of this proceeding (addressing the permanent allocation methodology for 2004). AReM made several arguments as to why it would be more appropriate for the Direct Access issues addressed in PG&E's testimony to be addressed elsewhere, including statements of the Administrative Law Judge (ALJ) at the October 2 Prehearing Conference (PHC). AReM's arguments are generally well founded.

San Diego Gas & Electric Company, Southern California Edison Company (SCE) and The Utility Reform Network generally supported AReM's Motion. PG&E opposed the Motion, but also argued in the alternative that if the Motion to Strike was granted, that certain pieces not be stricken, that one additional piece of testimony be received into evidence, and that the subject matter of the Motion to Strike be addressed in the already scheduled next phase of this proceeding. SCE also indicated that, even thought it generally agreed with the Motion, certain material identified in the Motion should not be stricken.

With the exception of the specific exclusions identified by PG&E (but not SCE), AReM's Motion is granted. The following table identifies the material to be stricken from PG&E's testimony:

Page #	**Line #**	**Description**
i-ii.		Table of Contents references to Chapter 3
ii.		Table of Contents reference to Chapter 5, section D
ii-iii.		Table of Contents reference to Chapter 6, sections C, D, E and F
1-3	1-3	"Chapter 3 – Determination of the Indifference Amount . . . to the Related Indifference Rate."
1-6	22-25	"8. Adopt the 2004 Direct Access . . . in Chapter 3 and Chapter 6."
1-6	26-27	"9. Adopt an Indifference Rate . . . as described in Chapter3."
1-7	13-15	"14. Adopt revisions . . . Chapter 5."
1-7	16-17	". . . both DA and . . . ."

2-3	Footnote, 6th -8th lines	"The uncapped responsibility of DA customers for 2004 DWR power charge revenue requirement is calculated in Chapter 6."
3-1 to 3-5		Entire Chapter 3
5-1	11-13	"Revisions to Direct Access Shortfall Account . . . Non-core customers."
5-1	26-28	"Section D includes a description of . . . in Decision 03-07-030."
5-3	15-34	Section D in its entirety
5-4	15-16	"and the core and noncore subaccounts of the DASA for the DWR power charge"
6.1	11-12	"The 2004 DWR power charge rate owed by DA customers before the DA Cost Responsibility Surcharge (CRS) cap is applied."
6-1	18	"DA and bundled"
6-2 to 6-8	10 21	Sections C, E and F in their entirety.
6-9	3-4	" . . . both DA and . . . ."

PG&E requested that if AReM's Motion were to be granted, that an additional piece of testimony, identified as exhibit 04-15, be admitted. PG&E argued that that additional testimony was the minimum necessary to complete PG&E's showing if AReM's Motion was granted. Because of the pendency of AReM's Motion, PG&E's exhibits 04-11, 04-12, 04-13, 04-14, 04-15, and 04-16 were not admitted into evidence. With the resolution of the Motion, these exhibits are now admitted, with the exception of the parts identified above.

Several parties indicated that they would support addressing the issues raised in PG&E's testimony in the phase of this proceeding that will look at the permanent allocation methodology for 2004. To date, however, Direct Access issues have primarily been addressed in ALJ Pulsifer's proceeding on Direct Access, R.02-01-011. This ruling does not determine where the Direct Access issues raised by PG&E will be addressed, other than to note that it will most likely be in either R.02-01-011 or the next phase of this proceeding. Parties may raise the issue as appropriate at the PHC for the next phase of this proceeding, which is scheduled for November 20, 2003.

IT IS RULED that:

1. The Alliance for Retail Energy Markets' Motion to Strike is granted, with the exclusions identified by Pacific Gas and Electric Company (PG&E), as described above.

2. With the exception of those parts stricken by this ruling, PG&E's exhibits 04-11, 04-12, 04-13, 04-14, 04-15, and 04-16 are admitted.

3. At the Prehearing Conference on November 20, 2003, parties may raise the issue of where the Commission should address outstanding Direct Access issues such as those raised by the stricken portions of PG&E's testimony.

Dated November 4, 2003, at San Francisco, California.

/s/ PETER V. ALLEN

Peter V. Allen
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Motion to Strike on all parties of record in this proceeding or their attorneys of record.

Dated November 4, 2003, at San Francisco, California.

/s/ KE HUANG
Ke Huang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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