



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

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Application of Pacific Gas and Electric  
Company Proposing Cost of Service and  
Rates for Gas Transmission and Storage  
Services for the Period 2015 - 2017  
(U39G).

A.13-12-012  
(Filed December 19, 2013)

And Related Matter.

Investigation 14-06-016

**GAS TRANSMISSION NORTHWEST, LLC, CANADIAN ASSOCIATION OF  
PETROLEUM PRODUCERS AND THE CITY OF PALO ALTO'S  
APPLICATION FOR REHEARING OF DECISION 16-06-056**

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Pursuant to California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, Rule 16.1(a), Gas Transmission Northwest, LLC (“GTN”), the Canadian Association of Petroleum Producers (“CAPP”) and the City of Palo Alto (“the City”) (collectively the “Redwood Path Parties”) hereby submits their Application for Rehearing of Commission Decision (“D”)16-06-056, *Decision Authorizing Pacific Gas and Electric Company’s Revenue Requirement for Gas Transmission and Storage Services and Adopting Interim Rates*, dated June 23, 2016 (“Decision” or “D.16-06-056”).<sup>1</sup>

In this complex and multi-faceted case, the Commission was presented with numerous hotly contested issues. The Redwood Path Parties participated only as to a single issue: the appropriate rate design with regard to PG&E’s various backbone transmission system segments, particularly the Redwood and Baja Paths. The Redwood Path Parties support the Commission’s decision to continue upholding the longstanding policy to implement path-based rates for PG&E’s backbone transmission system. However, the Decision failed to take the additional—and required—step in its analysis to adopt an appropriate, current, and cost-based

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<sup>1</sup> D.16-06-056 was served on July 1, 2016. Pursuant to Rule 16.1(a), an application for rehearing must be filed within 30 days the Commission mails the decision. This Application for Rehearing is timely filed.

rate differential between the two transmission lines based on the record presented to it. The effect of this oversight is to implement a rate that does not reflect the policy that the Commission allegedly supports, namely, a cost-based, path-specific rate design. The Decision committed legal errors with regard to this limited but impactful issue. For this reason, the Redwood Path Parties strongly urges that rehearing be granted.

## I. INTRODUCTION

On December 19, 2013, Pacific Gas & Electric (“PG&E”) submitted its 2015 Gas Transmission and Storage (“GT&S”) Rate Case Application (the “Application”) seeking authorization from the Commission to dramatically increase gas transmission and storage rates, effective January 1, 2015.<sup>2</sup> This Application is the most recent in a long line of GT&S rate cases arising from a system redesign and comprehensive unbundling first implemented in 1998 and referred to as the Gas Accord.<sup>3</sup> In its Application, PG&E requested, among things, Commission authority to equalize rates on its “backbone” transmission paths.<sup>4</sup> This request constituted a departure from years of Commission precedent in Gas Accord cases enforcing a cost-based, path-specific rate design. The Decision rightfully upheld this precedent and rejected PG&E’s

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<sup>2</sup> See *Pacific Gas and Electric Company’s (U39G) 2015 Gas Transmission and Storage Rate Case Application*, filed December 19, 2013 (“Application”).

<sup>3</sup> See D.97-08-055, *Application of Pacific Gas and Electric Company (U39G) for an Order Pursuant to Section 1005.5(b) of the Public Utilities Code to Increase the Maximum Cost Specified in PG&E’s Certificate of Public Convenience and Necessity to Construct the California Portion of the Expansion of its Natural Gas Pipeline; and Related Matters*, 1997 Cal. PUC LEXIS 763 (“D.97-08-055, 1997 Cal. PUC LEXIS 763”); D.02-08-070, *Application of Pacific Gas and Electric Company Proposing a Market Structure and Rules for the Northern California Natural Gas Industry for the Period Beginning January 1, 2003 as Required by Commission Decision 01-09-016. (U39G)*, 2002 Cal. PUC LEXIS 518 (“D.02-08-070, 2002 Cal. PUC LEXIS 518”); D.03-12-061, *Application of Pacific Gas and Electric Company Proposing a Market Structure and Rules for the Northern California Natural Gas Industry for the Period Beginning January 1, 2003 as Required by Commission Decision 01-09-016. (U39G)*, 2001 Cal. PUC LEXIS 1279 (“D.03-12-061, 2001 Cal. PUC LEXIS 1279”); D.04-12-050, *Application of Pacific Gas and Electric Company Proposing Cost of Service and Rates for Gas Transmission and Storage Services for 2005 and Backbone Level Service and Rates Starting January 1, 2005, as Required by Commission Decision 03-12-061*, 2004 Cal. PUC LEXIS 579 (“D.04-12-050, 2004 Cal. PUC LEXIS 579”); D.11-04-031, *Application of Pacific Gas and Electric Company Proposing Cost of Service and Rates for Gas Transmission and Storage Services for the Period 2011-2014. (U39G)*, 2011 Cal. PUC LEXIS 252 (“D.11-04-031, 2011 Cal. PUC LEXIS 252”).

<sup>4</sup> Application, p. 15.

request to equalize backbone rates.

The Decision was properly grounded in its finding that PG&E had not carried its burden of proof to show that a change in rate design was justified. However, at the conclusion of its discussion on backbone rates, the Decision adopts, in one solitary sentence without any explanation or supporting analysis, an arbitrary rate differential of \$0.04 per Dth.<sup>5</sup> Rather than reviewing the updated record in this Proceeding and adopting a rate differential that is truly reflective of current costs, the final Decision without explanation simply carried-over the existing rate differential—first established *nearly seven years ago* through a confidential and non-precedential settlement—that was supported by no party in this matter.<sup>6</sup> Reliance on this settlement agreement is inappropriate under Commission Rule 12.5, and even PG&E’s witness recognized as much during hearings.<sup>7</sup>

Accordingly, the outdated and non-precedential rate differential of \$0.04 per Dth is unjustified and unsupported by the record, and the Commission erred in adopting it. Moreover, the impact of this Decision is far more akin to the rate-design PG&E requested (equalization) but which the Decision rejected on policy grounds. The Commission should grant rehearing to rectify this contradictory and unsupported outcome.

## **II. BACKGROUND**

The PG&E natural gas system has historically operated under the “Gas Accord” rate structure and cost allocation principles that were continually approved and which continued unchanged in several Commission Decisions since at least 1998. The Commission’s closely related incremental rate design policies date from 1988, more than 25 years ago.<sup>8</sup> These

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<sup>5</sup> Decision, p. 306.

<sup>6</sup> D.11-04-031, 2011 Cal. PUC LEXIS 252, Appendix A, \*\*127-128, Sections 9.1 (“The parties agree that the rate provisions reflected in this section are for purposes of settlement of this proceeding only and are not to be considered precedential for any future proceeding.”), 9.1.3, Path Rate Differentials; *see also* Commission Rules of Practice and Procedure 12.5; Reporter’s Transcript (“RT”) 3271:14-23 (Christopher/PG&E).

<sup>7</sup> RT 3271-72 (Christopher/PG&E); Commission Rules Practice & Procedure Rule 12.5.

<sup>8</sup> *See e.g.*, D.97-08-055, 1997 Cal. PUC LEXIS 763; D.02-08-070, 2002 Cal. PUC LEXIS 518; D.03-12-

principles that costs should follow causation were reaffirmed in 2003 in the only prior GT&S rate case where all issues were reviewed and litigated through to a detailed Commission decision.<sup>9</sup>

This background is fully addressed by R. Thomas Beach in his testimony on behalf of the Redwood Path Parties<sup>10</sup> and by Mark Pinney on behalf of the Canadian Association of Petroleum Producers (“CAPP”).<sup>11</sup> Of note, Mr. Beach explains the inequity in PG&E’s proposal to suddenly disrupt years of traditional cost-based rate-making, the lack of proffered evidence to justify any such disruption, and the adverse impacts which this change will cause.<sup>12</sup>

Mr. Beach’s testimony identifies the key feature of the Gas Accord and PG&E’s backbone system: adoption of path-specific rates. Path specific rates reflect the capital costs directly associated with each path. Historically, the Redwood Path (particularly Line 401) rates were higher than those of its competing path, the Baja Path (Line 300), because Line 401 was newly constructed as part of the 1993 expansion project and its costs had not yet depreciated. For core customers, Line 400, the pre-existing Redwood Path, was treated as separate and incremental to the expansion Line 401.<sup>13</sup> Now that the costs of Line 401 have significantly depreciated, PG&E suddenly supports a partial and discriminatory “rolling-in” of the Redwood and Baja costs to create *two* “postage-stamp” rates applicable to core and noncore customers on

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061, 2001 Cal. PUC LEXIS 1279; D.04-12-050, 2004 Cal. PUC LEXIS 579; D.11-04-031, 2011 Cal. PUC LEXIS 252.

<sup>9</sup> See A.01-10-011; D.03-12-061, 2001 Cal. PUC LEXIS 1279.

<sup>10</sup> Ex. No. Calpine, CAPP, GTN, Palo Alto - 1, *Prepared Direct Testimony of R. Thomas Beach on behalf of Calpine Corporation, the Canadian Association of Petroleum Producers, Gas Transmission Northwest, and the City of Palo Alto*, dated August 11, 2014 (“Beach Direct”), pp. 3-7.

<sup>11</sup> Ex. No. CAPP - 1, *Prepared Rebuttal Testimony of Mark Pinney on behalf of The Canadian Association of Petroleum Producers*, dated September 15, 2014 (“Pinney Rebuttal”), pp. 2-7.

<sup>12</sup> See, e.g., Ex. No. Calpine, CAPP, GTN, Palo Alto - 1, Beach Direct, p. 17 (“PG&E’s rolled-in rate proposal would combine the now-low costs of Line 401 capacity while the increasingly expensive Line 300 capacity, thus shifting the burden of these new Line 300 costs to large noncore customers and shippers on the Redwood path—the same group that has borne the impact of high incremental Line 401 rates since 1993.”).

<sup>13</sup> *Ibid.*

two different paths, among other things.

The Decision rightfully rejected PG&E's proposal as it would have represented a departure from longstanding Commission precedent that would be manifestly unfair to the parties and would send the wrong signal to consumers and prospective investors in California's infrastructure. However, the Decision inappropriately carries-over the same rate differential that was established by a confidential settlement dated August 20, 2010 in the prior Gas Accord V proceeding, which began in 2009.<sup>14</sup> The effect of this action is much closer to the rate equalization requested by PG&E—and rejected by the Commission—than it is to continuing the traditional cost-based rate.<sup>15</sup> More importantly, however, the adopted rate differential is outdated, entirely unsupported by testimony in the proceeding or by analysis in the Decision.

### III. STANDARD OF REVIEW

The purpose of an application for rehearing is to alert the Commission to legal errors so that the Commission may correct its errors expeditiously.<sup>16</sup> A party may submit an application for rehearing setting forth the grounds on which the applicant considers the Commission's decision to be unlawful or erroneous.<sup>17</sup> The Commission may grant rehearing on those matters if "sufficient reason is made to appear"<sup>18</sup> and, in particular, if it finds "that the original order or decision or any part thereof is in any respect unjust or unwarranted, or should be

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<sup>14</sup> D.11-04-031, 2011 Cal. PUC LEXIS 252, Appendix A, \*\*105, 127-128, Sections 9.1 ("The parties agree that the rate provisions reflected in this section are for purposes of settlement of this proceeding only and are not to be considered precedential for any future proceeding."), 9.1.3, Path Rate Differentials; *see also* Commission Rules of Practice and Procedure 12.5; Reporter's Transcript ("RT") 3271:14-23 (Christopher/PG&E).

<sup>15</sup> PG&E's request for partial equalization essentially seeks a \$0.00 per Dth differential between the Redwood and Baja path rates, and even if the Commission were to take that request and split the difference between equalization (\$0.00 per Dth) and the current rate differential reflected in this Proceeding's testimony (\$0.182 per Dth), the median result would be \$0.091 per Dth, which is still *more than double* the outdated amount of \$0.04 per Dth that is proposed by the PD and APD.

<sup>16</sup> Rules of Practice and Procedure 16.1(c).

<sup>17</sup> *Id.*; *see also* Pub. Util. Code § 1732.

<sup>18</sup> Pub. Util. Code § 1731(b)(1).

changed.”<sup>19</sup>

Sufficient reason is present to grant rehearing because the Decision is flawed in ways that would render it subject to reversal on a petition for writ of review. Under Public Utilities Code section 1757(a), a decision by the Commission may be set aside when (1) the Commission has acted without, or in excess of, its powers or jurisdiction, (2) the Commission has not proceeded in the manner required by law, (3) the decision is not supported by the findings, (4) the findings in the decision of the Commission are not supported by substantial evidence in light of the whole record, (5) the decision was procured by fraud or an abuse of discretion, or (6) the decision violates any right of the petitioner under the Constitution of the United States or the California Constitution.

Here, the Commission’s cursory adoption of an outdated, non-precedential rate differential is not only unsupported by *substantial* evidence in the record, but it is not supported by *any* evidence in the record. Moreover, the finding is unaccompanied by any supporting discussion or justification from the Commission in the Decision. Therefore, in authoring the Decision, the Commission failed to proceed in a manner required by law, and portions of the Decision are not supported by the findings. A limited rehearing should be granted so that this portion of the Decision containing error may be changed.

#### **IV. ARGUMENT**

The Decision appropriately continued the Commission’s longstanding policy supporting path-based rates for PG&E’s backbone transmission system. The Decision also appropriately found that PG&E failed to show, through either supporting analysis, compelling precedent, or justifying policy arguments, that a partial rate equalization of backbone rates was justified. However, the Decision failed to take the additional *and necessary* step in its analysis to implement an appropriate and current rate differential between the two backbone lines based on the record.

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<sup>19</sup> Pub. Util. Code § 1736.

**A. The Commission Inappropriately Relies on a Non-Precedential Settlement Agreement and Fails to Comply With Its Statutory Obligation To Establish Just And Reasonable Rates Based On The Record Presented.**

The Commission has not proceeded in a manner required by law because it failed to uphold its statutory obligation to determine rates for a public utility that are just and reasonable. Public Utilities Code section 728 provides that if, after a hearing, the Commission finds the rates requested by a utility to be “insufficient, unlawful, unjust, unreasonable, discriminatory, or preferential, the Commission shall determine and fix, by order, the just, reasonable, or sufficient rates . . . to be thereafter observed and enforced.” The Commission’s fixing of rates is a legislative act and the standard is that of reasonableness.<sup>20</sup> The Commission may choose its own criteria or method of arriving at its decision, even if irregular. A reviewing court will provide a strong presumption of correctness to the findings and conclusions of the Commission, as long as unreasonableness is not “clearly established”.<sup>21</sup>

While it is within the Commission’s discretion to determine the material factors for rate setting, Public Utilities Code section 1705 requires the Commission “to state what those factors are and *to make findings on material issues that ensue therefrom.*”<sup>22</sup> These findings “afford a rational basis for judicial review and assist the reviewing court to ascertain the principles relied upon by the Commission and to determine whether it acted arbitrarily, as well as assist parties to know why the case was lost and to prepare for rehearing or review, assist others planning activities involving similar questions, and serve to help the commission avoid careless or arbitrary action.”<sup>23</sup>

It was within the Commission’s power to reject the PG&E proposal and impose rates based on the criteria of its choosing as long as the Commission clearly explains the factors it uses for rate setting and the findings that logically follow from these factors. But here, the

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<sup>20</sup> *Pacific Tel. & Tel. Co. v. Public Utilities Comm.* (1965) 62 Cal.2d 634, 647.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Id.* at p. 648, quoting *Motor Transport Co. v. Public Utilities Comm.* (1963) 59 Cal.2d 270, 275 (emphasis added).

<sup>23</sup> *Id.* at p. 648, quoting *Motor Transport Co. supra*, 59 Cal.2d 270, 274-275.

Commission neglected to provide any “criteria” to justify the backbone transmission system rate differential of \$0.04 per Dth between the Redwood and Baja Paths. There is no accompanying analysis to support this rate; indeed, the rate is contrary to the testimony and record. Moreover, this rate differential was agreed to through a “black box” settlement nearly seven years ago, which the parties agreed would have no precedential value, an agreement which PG&E recognized during cross-examination in this proceeding, and which was not proposed affirmatively by any party in this proceeding.<sup>24</sup> Commission Rule 12.5 specifically states that settlement agreements adopted by the Commission are binding on the parties *in that proceeding* but *do not* carry precedential value in future proceedings, unless the Commission expressly provides otherwise. Here, even PG&E recognized that the settlement agreement from the prior Gas Accord was not precedential for this proceeding.<sup>25</sup>

By relying on this dated rate differential, the Decision creates a massive subsidy by Redwood Path shippers of those who ship on the Baja Path. Using the information on costs submitted in this current proceeding and applying the adopted rate design, the traditional cost-based backbone rate would result in a rate differential of \$0.182 per Dth between the Redwood and Baja path rates. The Decision’s failure to review the current record and devise an updated rate differential constitutes legal error and is grounds for rehearing. A reviewing court would recognize this error as an arbitrary or careless action by the Commission. The small, fixed rate differential adopted by the Decision is outdated and inappropriately founded on confidential negotiations and a non-precedential settlement, is unsupported by any record evidence in this case, and is contrary to the Decision’s own reasoning and analysis.

**B. The Commission Abuses Its Discretion By Establishing a Rate Differential for Backbone Transmission Service That Is Inconsistent With The Policy And Precedent It Confirms In Its Decision.**

The Decision appropriately and thoroughly rejects PG&E’s request to depart from

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<sup>24</sup> TR 3271-72 (Christopher/PG&E).

<sup>25</sup> *Id.*

longstanding Commission policy that supports a cost-based, path-specific rate design. However, the rate differential adopted by the Decision is directly contrary to this policy, and has an effect that is much closer to PG&E's request to equalize rates (*i.e.*, adopt a \$0.00 per Dth differential) than it is to the traditional cost-based, path-specific rate design that the Decision fully supports on policy and precedential grounds (*i.e.*, adopt a \$0.182 per Dth differential). In doing so, the Decision creates an arbitrary and discriminatory subsidization by one customer class of another.

The Redwood Path Parties provided detailed analysis and testimony that showed how using the backbone rate design that the Decision ultimately adopts creates a rate differential of \$0.182 per Dth (with the Baja Path rate higher). This is the undisputed result of the implementation of the adopted rate design based on the costs presented by PG&E in its rate filing.<sup>26</sup> While the Decision did not approve the full cost request of PG&E, any subsequent calculation from the resultant approved amount results in a rate differential many times larger than the \$0.04 per Dth that was adopted. The Office of Ratepayer Advocates ("ORA") also supported path-specific backbone rates.<sup>27</sup> In its litigation proposal, ORA recommended a price differential between Core Redwood and Baja transmission rates in TY 2015 of \$0.1843 per Dth, and an estimated \$0.1162 per Dth cost-based price differential between the Noncore Redwood

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<sup>26</sup> Ex. No. Calpine, CAPP, GTN and Palo Alto - 1, Beach Direct, p. 14. The Commission's Energy Division issued workpapers in conjunction with the PD and APD using PG&E's rate models which calculate path-specific backbone rates using the standard Gas Accord path-specific rate design, before the final step that PG&E proposed of equalizing Redwood and Baja rates. As a result, these workpapers for the rates contained in the PD and APD include all of the calculations needed to derive a cost-based rate differential using the standard, traditional Gas Accord path-specific rate structure that is based on the overall level of backbone revenue requirements proposed in the PD and APD. All that required is to eliminate the final rate equalization step and to make a minor adjustment to the system average load factor. *See* the backbone rate model for backbone rates with the \$850 MM disallowance, "2015GTS-BB\_RM\_Errata\_Feb24\_2015\_EnergyDivision\_PD\_Revised\_LB.xlsm." The traditional path-specific rates are calculated at the tab "CALC\_Trad\_Rates\_W\_LT\_Surcharge," at cells C20 (traditional 2016 Noncore Redwood Rate of \$0.3787 per Dth) and C25 (traditional 2016 Baja rate of \$0.5534 per Dth). The difference is about \$0.175 per Dth. This calculation needs to be adjusted to use the different system average load factor that results from using path-specific instead of equalized rates. When the system average load factor is adjusted, the Baja/Redwood rate differential increases to \$0.182 per Dth (the Redwood rate is \$0.394 per Dth and the Baja rate is \$0.576 per Dth). This calculation could be easily revised using the backbone revenue requirements adopted in the Decision.

<sup>27</sup> *Office of Ratepayer Advocates Opening Brief*, filed April 29, 2015 ("ORA Opening Brief"), p. 153.

and Baja transmission rates.<sup>28</sup>

The \$0.04 per Dth differential subsequently adopted by the Decision is based on several flaws. GTN requested the workpapers that the Decision relied on, including PG&E's models for calculating backbone rates, and a review of these materials reveals several misguided assumptions. For example, the PG&E backbone rate model assumes that fixed differential rates will be adopted, and thus calculates the system average load factor using this fixed differential. This distorts rates because the system average load factor will differ under standard, path-specific rates (which are continued by the Decision), because the load factor calculation includes throughput adjustments to reflect rate premiums and discounts, as well as to consider disproportionate backbone path usage. These adjustments depend on the design of the underlying backbone rates.

As previously stated, using the more appropriate method of calculation, the rate differential between the Baja and Redwood paths should be more than four times higher (\$0.182 per Dth for noncore customers in 2016) than the rate adopted in the Decision, and the traditional rate differential will continue to grow in 2017 and onwards, further distancing itself from the 2010 confidential settlement rate that is improperly utilized by the Decision. Moreover, even if the Commission were to find that PG&E and the Redwood Path Parties had made equally compelling policy arguments (which it did not), and thus decided to 'split-the-difference' between PG&E's requested equalization (i.e., a \$0.00 per Dth) and the standard Gas Accord backbone rate structure proposed by the Redwood Path Parties and others (\$0.182 per Dth), the median result would be \$0.091 per Dth, which is still more than twice the inappropriate amount adopted in the Decision. In fact, the Decision completely supports the policy arguments of the Redwood Path Parties in favor of cost-based, path-specific rates.

The low rate differential proposed in the Decision is unsupported by record testimony, contrary to the corresponding logic and reasoning on which the Decision relies,

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<sup>28</sup> Decision, p. 299; ORA Opening Brief, p. 153; Ex. No. ORA-41, Ch. 10, ORA's Gas System Operations, Chapter 10, with Errata - Clean Version, p. 62.

creates a massive rate subsidy by one customer class of another class, and ultimately constitutes an abuse of the Commission's discretion. This Decision should be revisited to accurately reflect the current, path-based shipping costs and to align with the historic Commission policies of cost-based rate design that are espoused and adopted in the final Decision

**V. CONCLUSION**

The Redwood Path Parties strongly urges the Commission to grant limited rehearing in this matter.

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