

Decision **PROPOSED DECISION OF ALJ WONG** (Mailed 11/16/2012)

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

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.

Application 01-10-011  
(Filed October 9, 2001)

**DECISION REGARDING THE PETITION FOR MODIFICATION OF  
DECISION 03-12-061**

**1. Summary**

On June 4, 2012, a petition for modification of Decision (D.) 03-12-061 was filed by the Core Transport Agent Consortium, and Shell Energy North America (US), L.P. (collectively, the petitioners). The petition for modification seeks to modify D.03-12-061 to allow core transport agents to opt out of the allocation of Pacific Gas and Electric Company's (PG&E) interstate pipeline capacity holdings, held on behalf of core customers, when the underlying interstate pipeline contracts come up for renewal or when incremental capacity is added. The petitioners seek to opt out in order to minimize their exposure to stranded costs.

One of the arguments the petitioners make as to why they should be allowed to opt out of PG&E's interstate pipeline capacity holdings is that PG&E does not need to hold as much core capacity as required by D.04-09-022. In view of that, the petitioners filed a petition for modification of D.04-09-022 raising the same arguments as it did in its petition for modification of D.03-12-061.

D.04-09-022 established the requirement that PG&E hold between 962 and

1058 million cubic feet per day of interstate pipeline capacity for the core during the winter, and a minimum of 90% of the forecasted average demand during the summer months.

Although both petitions for modification concern interrelated issues, two separate decisions are needed since each petition for modification involves a separate proceeding. Accordingly, this decision only addresses the petition for modification of D.03-12-061. We anticipate considering a separate decision addressing the petition for modification of D.04-09-022 concurrently with this decision.

This decision denies the petition for modification of D.03-12-061 because the petitioners request for relief would cause us to revisit various elements of the Core Aggregation Transportation program, rather than modifying a discrete issue.

## **2. Background**

Decision (D.) 03-12-061 addressed and resolved issues concerning the continuation of the Gas Accord market structure and terms and conditions of service for Pacific Gas and Electric Company's (PG&E) natural gas transmission and storage system that was originally adopted in D.97-08-055 [73 CPUC2d 754].<sup>1</sup>

PG&E proposed in Application (A.) 01-10-011, which led to the adoption of D.03-12-061, that once participation in the Core Aggregation Transportation

---

<sup>1</sup> D.03-12-061 is the third decision addressing PG&E's current market structure for gas transmission and storage. The original decision on the Gas Accord was issued in D.97-08-055, followed by D.02-08-070, which extended the Gas Accord market structure to the end of 2003 for PG&E's gas transmission service, and to March 31, 2004 for PG&E's gas storage service. D.03-12-061 resolved PG&E's gas market structure, rates, and terms and conditions of service for 2004.

(CAT) program reached 10% or more of peak core loads, that core transport agents (CTAs) could no longer reject their pro rata assignments of core transmission and storage capacity.<sup>2</sup> The Commission agreed with PG&E and concluded in D.03-12-061 that once core participation in the CAT program reached 10%, that the CTAs would be required to take or pay for their pro rata share of the core interstate pipeline capacity. (D.03-12-061 at 434, 482, Conclusion of Law 97.)

In D.11-04-031, the latest decision addressing PG&E's gas transmission and storage, the Commission adopted the CTA settlement. Under that settlement, PG&E and a number of CTAs agreed to a three-year transition period to phase-in the full cost sharing requirement for the core capacity the CTAs elect not to use. Under the approved CTA settlement, the CTAs' obligation to take or pay for its pro rata share of core capacity will increase steadily beginning in April 2012 through April 2015.

On June 4, 2012, the Core Transport Agent Consortium, and Shell Energy North America (US), L.P. (collectively, the petitioners) filed their petition for modification of D.03-12-061, and their petition for modification of D.04-09-022. The Division of Ratepayer Advocates (DRA), and PG&E filed separate responses to both petitions. The petitioners filed a reply to the responses on July 20, 2012.

---

<sup>2</sup> Prior to D.03-12-061, the CTAs were free to reject their pro rata share of core interstate pipeline capacity without any financial consequence, and PG&E's bundled core customers were responsible for any unused pipeline capacity. In D.03-12-061, the CTAs were also referred to as gas energy service providers or gas Electric Service Providers (esp).

### **3. Issue Presented**

The issue before us in this decision is whether the requirement in D.03-12-061, that CTAs are obligated to accept their pro rata share of the core transmission and storage capacity once the market share of the CTAs exceeds 10% of core load, should be changed. This requirement was adopted to eliminate the subsidy that remaining core ratepayers had paid prior to D.03-12-061 when the CTAs had the right to reject their pro rata share of the transmission and storage capacity without financial consequence.

The petitioners seek to reverse the Commission's resolution of this issue. The petitioners request that before PG&E renews existing pipeline capacity or acquires incremental pipeline capacity, that the CTAs be allowed to opt out of this core transmission capacity and to avoid paying for the released capacity. By modifying D.03-12-061 to allow the opt out, the CTAs could then elect not to participate in the renewal or acquisition of incremental capacity, and would avoid having to take or to pay the costs associated with that core interstate pipeline capacity.

### **4. Position of the Parties**

#### **4.1. Petitioners**

The petitioners contend that D.03-12-061 requires a CTA to "either (1) use and pay for its share of PG&E pipeline capacity holdings, or (2) not accept assignment of its share of PG&E's core pipeline capacity, but still pay for the stranded PG&E pipeline capacity." (Petition for Modification of D.03-12-061 at 7.) The petitioners request that D.03-12-061 be modified to allow the CTAs to be able to reject (i.e., opt out of) an allocation of PG&E's interstate transmission pipeline capacity before PG&E renews its core pipeline capacity or acquires additional pipeline capacity on behalf of the core.

The petitioners contend that its requested modification of D.03-12-061 “will not increase costs to bundled core customers because CTAs will be allowed to opt out of responsibility for capacity only when PG&E has the opportunity to release (or choose not to acquire) that capacity.” (Petition for Modification of D.03-12-061 at 11.) The petitioners contend that stranded costs will be avoided as a result of PG&E choosing to release capacity, rather than acquiring capacity.

The petitioners also seek to modify D.03-12-061 by including language that allows reductions in pipeline capacity to be considered in an integrated fashion. That is, a reduction opportunity on one pipeline could be viewed as an opportunity to reduce capacity on another pipeline.

In the unlikely event that a significant portion of existing CTA load returns to PG&E’s bundled core service, which results in PG&E’s bundled customers having to incur additional costs in order to secure additional pipeline capacity, the petitioners propose that D.03-12-061 be modified to provide for a cross over rate in the event the CTA was not already paying for a share of PG&E’s interstate pipeline capacity costs.

The petitioners’ request to modify D.03-12-061 is also tied to the petitioners’ argument that PG&E holds more interstate pipeline capacity than it needs to meet bundled core demand. The petitioners contend that this excess pipeline capacity is the result of D.04-09-022, which established the minimum and maximum amount of interstate pipeline capacity that PG&E, Southern California Gas Company, and San Diego Gas & Electric Company are to hold on behalf of core customers. Due to the difference in how the interstate pipeline capacity holdings were established for these three companies, as well as the decrease in PG&E’s core demand, the petitioners contend that PG&E now holds too much pipeline capacity. The petitioners estimate that PG&E holds interstate

pipeline capacity that is at least 141% of the core demand it actually serves. The petitioners contend that this artificially inflates PG&E's core procurement charge, and increases the amount the CTAs are required to pay under D.03-12-061.

According to the petitioners, reducing the amount of core capacity that PG&E is required to have has the potential to reduce core rates. As mentioned earlier, the petitioners filed a separate petition to modify D.04-09-022 to reduce PG&E's core interstate pipeline capacity holdings.

The petitioners also contend that the issue of excess interstate pipeline capacity and the opt out issue should not be deferred to the next gas transmission and storage application which is expected to be filed in February 2014, or to a future cost allocation proceeding. The petitioners assert that resolving these issues now can help to reduce core rates, and reduce stranded costs.

#### **4.2. Division of Ratepayer Advocates**

DRA recommends that the petition for modification of D.03-12-061, as well as the petition for modification of D.04-09-022, be denied. DRA contends that the "petition is without merit and should be denied because it is not supported by the record and fails to provide facts, data and analysis for the very assertions that form the basis of the proposed modification." (DRA Response at 2.) DRA recommends that the petition be denied, and that the issues raised by the petitioners be addressed in PG&E's next gas transmission and storage rate case application, which is expected to be filed in February 2014.

One of the arguments that the petitioners make is that PG&E holds interstate capacity that is equal to at least 141% of the core demand it actually serves, and that this excess pipeline capacity artificially inflates PG&E's core procurement charges. DRA contends that the petitioners have not provided "any information on PG&E's historical and forecast average daily core demand and

the corresponding amount of core demand served by the CTAs to support this assertion.” (DRA Response at 4.) DRA contends that the facts about the pattern and level of PG&E’s average daily core demand must be demonstrated before any decision is modified. Since D.04-09-022 envisioned that the capacity ranges adopted in that decision would be revisited, DRA recommends that the issues raised by the petitioners should be addressed in PG&E’s February 2014 application addressing its gas transmission and storage operations.

#### **4.3. PG&E**

PG&E opposes the petition for modification of D.03-12-061, and the petition for modification of D.04-09-022.

PG&E contends that the petitioners seek to eliminate, or opt out of, the requirement in D.03-12-061 that CTAs “assume financial responsibility for a pro rata share of all long-term interstate pipeline capacity held for core customers by PG&E under Commission-approved contracts.” (PG&E Response at 1.) PG&E points out that since the petition for modification of D.03-12-061 is tied to the petition for modification of D.04-09-022, the long-term capacity commitments established in D.04-09-022 would be reduced as a result.

PG&E contends that the petitioners have failed to justify why the requirement in D.03-12-061, of the CTAs assuming cost responsibility for interstate capacity costs, should be eliminated. PG&E further contends that the petitioners have failed to consider how the core capacity holdings in D.04-09-022 benefit long-term supply reliability, gas price stability, and contract flexibility. PG&E contends that if the cost responsibility requirement in D.03-12-061 is eliminated, and the capacity planning range for PG&E is modified in D.04-09-022, that this “may reduce the reliability of supply for all customers, core and noncore, on PG&E’s system.” (PG&E Response at 10.)

PG&E also contends that the petitioners failed to justify the late submission of their petition, and the petition should be summarily dismissed pursuant to Rule 16.4(d)<sup>3</sup> of the Commission's Rules of Practice and Procedure. Two of the reasons cited by the petitioners as to why the petition was filed more than one year after D.03-12-061 was issued were because of the decrease in PG&E's bundled core portfolio demand, and the CTA market share exceeding 10%. However, PG&E contends that the petitioners knew of these circumstances since at least August 2010 when the CTA settlement was being developed.

PG&E also notes that the School Project for Utility Rate Reduction (SPURR) and ABAG Publicly Owned Energy Resources (ABAG Power) did not oppose "PG&E's proposal to impose a mandatory assignment of transportation capacity and storage once the core aggregation program exceeds ten percent of the core market." (PG&E Response at 5; D.03-12-061 at 424.) PG&E points out that SPURR and ABAG Power are part of the Core Transport Agent Consortium which filed the petition.

PG&E contends that as a result of the adoption of the CTA settlement in D.11-04-031, the CTAs were successful in modifying D.03-12-061 by delaying the CTA's full cost responsibility until April 2015 through the use of a three-year transition period. PG&E asserts that the petitioners should be expected to honor the terms and conditions of the adopted CTA settlement.

Since the petition for modification of D.03-12-061 would affect the interstate capacity holdings that were established in D.04-09-022, PG&E also makes several arguments as to why D.04-09-022 should not be modified. Those

---

<sup>3</sup> All references to Rules are to the Commission's Rules of Practice and Procedure.

arguments are described in the other decision addressing the petition for modification of D.04-09-022.

## **5. Discussion**

The first issue to address is whether the petition for modification of D.03-12-061 adequately explained why the petition was not filed within one year of the effective date of the decision. If the petitioners failed to do so, the Commission may summarily deny the petition. (See Rules of Practice and Procedure, Rule 16.4.(d).)

The petitioners explained that the “issues giving rise to this Petition presented themselves only recently in light of the substantial decrease in PG&E’s bundled core portfolio demand, the increase in interstate pipeline capacity available in California, the increase in CTA market share on PG&E’s system, and the recent Gas Accord V Settlement.” (Petition for Modification of D.03-12-061 at 4.) Attached to the petition was a declaration which explained that: in the past six years, PG&E’s average daily core demand had decreased to below 800 million cubic feet per day (MMcfd), with the recorded average daily core demand averaging 782 MMcfd from 2006-2010; there has been an increase in interstate pipeline capacity available to serve California since 2001; and the CTA market share on PG&E’s system has increased from zero in 1991 to about 13% as of June 2012. The petition also acknowledged that D.11-04-031 adopted the CTA settlement which “modified the pipeline cost responsibility provision adopted” in that decision. (Petition for Modification of D.03-12-061 at 6.)

The lower core demand did not occur until the 2006 to 2010 timeframe, and the 10% trigger, as established by D.03-12-061, was not reached until around 2010. In addition, the CTA settlement, which the petitioners and PG&E agree modified the CTA’s cost responsibility for their pro rata share of core interstate

pipeline capacity, was not issued until April 2011. Based on all of those circumstances, we agree with the petitioners that they have adequately explained why the petition was not filed sooner. Thus, we proceed to address the merits of the petition to modify D.03-12-061.

In deciding whether a petition for modification of a decision should be granted, we first address the extent to which a decision can be modified. Rule 16.4.(a) provides that a petition for modification can request “the Commission to make changes to an issued decision.” Rule 16.4.(b) provides that the petition “must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision.” In addition, any factual allegations need to be supported, and allegations “of new or changed facts must be supported by an appropriate declaration or affidavit.”

Although the petitioners have provided the information required by Rule 16.4, a closer examination of the proposed changes that the petitioners seek to make to D.03-12-061 reveal that they seek to reverse the conclusion that was reached about requiring CTAs to accept cost sharing responsibility for their pro rata share of the core interstate pipeline capacity. D.03-12-061 adopted “PG&E’s proposal to make it mandatory for gas ESPs serving core customers to accept a pro rata share of core transmission and storage capacity once the CAT program serves ten percent of peak core loads.” (D.03-12-061 at 434, 482, Conclusion of Law 97.) Instead of modifying the adoption of this mandatory requirement, the petitioners request that this outcome be reversed and that the Commission not adopt what PG&E had proposed in A.01-10-011. In the words of PG&E, such a result would “place 100 percent of the burden of ensuring reliability for all northern California core customers, including CTA customers,

on the bundled core portfolio of the default core supplier.” (PG&E Response at 10.)

If the petition to modify D.03-12-061 were to be considered, that would cause us to rethink the various elements of the CAT program because: CTAs would no longer be required to pay for their pro rata share of the released core interstate pipeline capacity; PG&E’s bundled core customers might be obligated to continue subsidizing the CTAs’ share of the core capacity; and PG&E’s core interstate pipeline capacity requirements would need to be studied. Also, the opt out and cross over rate language, that the petitioners request be made to D.03-12-061, was never proposed or considered in the proceeding which led to the adoption of that decision. In fact, SPURR and ABAG Power, who are also members of one of the petitioners (the Core Transport Agent Consortium), did not oppose PG&E’s proposal in A.01-10-011 to require the CTAs to assume financial responsibility for their pro rata share of the core interstate pipeline capacity. In addition, by reversing the CTA cost sharing requirement adopted in D.03-12-061, that may affect the transition payment schedule that was agreed to in the CTA settlement and adopted in D.11-04-031.<sup>4</sup>

We also note that the CTA settlement contains a provision for the release and sale of the capacity that the CTAs reject. That is also a consideration in deciding whether the petition should be granted or denied because the CTAs receive a credit or a debit associated with the sale of this excess capacity.

Since the petition would cause us to rethink various elements of the CAT program, and its effects on the CTAs and core customers, a more comprehensive

---

<sup>4</sup> PG&E and the petitioner acknowledge that the transition payment schedule in the CTA settlement modified the cost sharing requirement in D.03-12-061.

approach to examining these issues is needed. To modify D.03-12-061 without a full understanding of the implications of the changes the petitioners have requested, and the opportunity for all interested parties to provide input, would not be in the interests of the Commission or PG&E's core customers.

Accordingly, the petition for modification of D.03-12-061 should be denied.

The petitioners had an opportunity to raise this cost sharing requirement in PG&E's gas transmission and storage application in 2010, or when the CTA settlement was being negotiated in that proceeding, but did not do so. The next gas transmission and storage application filing of PG&E is the appropriate vehicle for the petitioners to raise the CTA opt out and cost responsibility issues.

## **6. Comments on Proposed Decision**

The proposed decision of Administrative Law Judge (ALJ) John S. Wong in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Opening comments on the proposed decision were filed by the petitioners. Reply comments were filed by DRA and PG&E. All of the comments have been considered, and appropriate changes have been made to this decision.

## **7. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and John S. Wong is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. D.03-12-061 adopted PG&E's proposal in A.01-10-011 that once core participation in the CAT program reached 10%, that the CTAs would be required to take or pay for their pro rata share of the core interstate pipeline capacity.

2. D.11-04-031 adopted the CTA settlement, which provides for a three-year transition period to phase-in the full cost sharing requirement for the core capacity the CTAs elect not to use.

3. The petitioners have adequately explained why their petition for modification of D.03-12-061 was not filed sooner.

4. The petitioners' proposed changes to D.03-12-061 would reverse the conclusion requiring CTAs to accept cost sharing responsibility for their pro rata share of the core interstate pipeline capacity.

5. If the petition for modification of D.03-12-061 were to be considered, this would cause us to rethink various elements of the CAT program.

6. The opt out and cross over rate language was never proposed or considered in the proceeding which led to the adoption of D.03-12-061.

7. SPURR and ABAG Power did not oppose PG&E's cost sharing proposal in the proceeding which led to the adoption of D.03-12-061.

8. Reversal of the CTA cost sharing requirement that was adopted in D.03-12-061 may affect the CTA transition payment schedule that was agreed to in D.11-04-031.

9. Without a full understanding of the implications of the changes the petitioners have requested, and the opportunity for all interested parties to provide input, modifying D.03-12-061 would not be in the interests of the Commission or PG&E's core customers.

10. The petitioners had the opportunity to raise the cost sharing requirement in PG&E's gas transmission and storage application in 2010, but did not do so.

11. The next gas transmission and storage application filing of PG&E is the appropriate vehicle for the petitioners to raise the CTA opt out and cost responsibility issues.

**Conclusions of Law**

1. The petition for modification of D.03-12-061 should be denied.
2. The issues raised in the petition for modification of D.03-12-061 may be raised in PG&E's next gas transmission and storage application.

**O R D E R**

**IT IS ORDERED** that:

1. The June 4, 2012 "Petition of the Core Transport Agent Consortium and Shell Energy North America (US), L.P. for Modification of Decision 03-12-061" is denied.
2. Application 01-10-011 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.