



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

FILED

03-05-10

04:59 PM

Application of Pacific Gas and Electric Company to
Revise its Gas Rates and Tariffs to be Effective July 1,
2010 (U 39)

Application 09-05-026
(Filed May 29, 2009)

**REPLY BRIEF OF
CLEAN ENERGY FUELS CORPORATION**

Donald C. Liddell
DOUGLASS & LIDDELL
2928 2nd Avenue
San Diego, California 92103
Telephone: (619) 993-9096
Facsimile: (619) 296-4662
Email: liddell@energyattorney.com

Counsel for
CLEAN ENERGY FUELS CORPORATION

March 5, 2010

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY 1

II. PG&E INACCURATELY AND IRRESPONSIBLY ASSERTS THAT SOCALGAS AND SDG&E USED AN “INCREMENTAL COST” APPROACH IN SETTING THEIR RECENT COMMISSION ADOPTED COMPRESSION RATE ADDERS WHEN IN FACT THEY USED AN AVERAGE COST RATE SETTING APPROACH. 4

III. PG&E REPEATEDLY CONDEMNS CLEAN ENERGY’S PROPOSED AVERAGE COST APPROACH TO SETTING THE COMPRESSION COST COMPONENT OF THE G-NGV2 RATE, DESPITE THE FACT THAT THE APPROACH TAKEN IN PG&E’S COMPRESSION COST STUDY WAS AN AVERAGE COST APPROACH. 6

IV. PG&E’S CLAIM THAT IF ANYTHING ITS PROPOSED \$0.744 PER THERM COMPRESSION COST COMPONENT IS LOW RATHER THAN HIGH IS FALSE. 9

V. PG&E’S FALSE CLAIM THAT CLEAN ENERGY HAD A MOTIVE FOR SEEKING A G-NGV2 RATE THAT IS AS HIGH AS POSSIBLE IS CONTRADICTED BY CLEAN ENERGY’S TESTIMONY..... 10

VI. ONLY PG&E’S COSTS AND THROUGHPUT ARE RELEVANT IN DETERMINING THE PROPER COMPRESSION COST COMPONENT OF PG&E’S G-NGV2 RATE..... 11

VII. PG&E’S COMPARATIVE EXHIBIT 33 IS FUNDAMENTALLY MISLEADING AND SHOULD BE ASSIGNED NO WEIGHT BY THE COMMISSION. 12

VIII. THE COMMISSION’S DECISIONS ABOUT HOW TO HANDLE THE COSTS OF LINE 401 AND TO IMPLEMENT THE COMMUNITY CHOICE AGGREGATOR (CCA) PROGRAM HAVE NO APPLICABILITY WHATSOEVER TO THE DETERMINATION OF THE PROPER COMPRESSION RATE COMPONENT OF PG&E’S G-NGV2 RATE..... 13

IX. IN HIS OPENING BRIEF, PG&E’S ATTORNEY REPEATEDLY MISCHARACTERIZES THE TESTIMONY OF CLEAN ENERGY’S WITNESS. 14

X. CONCLUSION..... 17

TABLE OF AUTHORITIES

CPUC DECISIONS, DOCKETS AND RULINGS

Application 04-07-044 11

Decision 93-07-054..... 2

Decision 95-11-035..... 1

STATE STATUTES, CODES AND REGULATIONS

Public Utilities Code, Section 745.5 1

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

Application of Pacific Gas and Electric Company to
Revise its Gas Rates and Tariffs to be Effective July 1,
2010 (U 39)

Application 09-05-026
(Filed May 29, 2009)

**REPLY BRIEF OF
CLEAN ENERGY FUELS CORPORATION**

I. INTRODUCTION AND SUMMARY.

PG&E's proposed \$0.744 per therm compression cost component of its G-NGV2 rate is much too low to recover the fully allocated cost of service associated with owning and operating all 24 of PG&E's public access refueling stations as required by D.95-11-035. Rather, it represents a below cost "incentive rate" which would if approved be heavily cross-subsidized by PG&E's non-participating residential and commercial customers. By Clean Energy's estimation, based on PG&E's data, the compression cost component proposed by PG&E is about \$0.26 per therm too low.

The Commission lost its express discretion to establish special below cost incentive tariffs for the use of natural gas as a vehicle fuel with the expiration of Public Utilities Code (PU Code) Section 745.5 on January 1, 1997. (Exhibit 9, page 15). As was noted in Exhibit 9, pages 13-16, cross-subsidized utility public access refueling rates are also prohibited by D.95-11-035 (Findings of Fact Number 103 also repeated in Conclusions of Law Number 13). PG&E's proposed compression cost component in this proceeding would not even have passed muster with the provisions of Section 745.5 when they were in effect since PG&E's proposed compression cost component in this BCAP is cross-subsidized by PG&E's residential customers. Allowable incentive rates under Section 745.5 could not be cross-subsidized by residential customers. (Exhibit 9, pages 15-16).

In addition to proposing a prohibited below-cost, cross-subsidized compression rate component, PG&E, in developing its Compression Cost Study, also failed to comply with a

Commission requirement from D.93-07-054. As that decision noted at page 27: “The utility will be required to demonstrate that each element of its LEV program is not unfairly competitive with nonutility enterprises, and to discontinue the offending program element it, and when, it interferes with the development of a competitive market.” (D.93-07-054, page 27). Clean Energy believes that at a minimum this provision required PG&E to propose a compression cost component in its Compression Cost Study which would be sufficient to recover the fully allocated PG&E fixed and variable costs associated with providing public access refueling services. Had PG&E done so, they could presumably also have demonstrated in its Testimony that its proposed compression cost component would recover at forecast throughput the full PG&E cost of service associated with providing public access refueling services at all 24 of its stations which provide such service charging the G-NGV2 rate. Despite the cited provision of D.93-07-054, PG&E in its Compression Cost Study did neither of these two things.

In its Compression Cost Study, not only did PG&E make no effort to calculate a compression cost component which at forecast throughput would recover its fully allocated costs of providing public access refueling services, it also failed to demonstrate that its proposed compression cost component would fully recover its 24 station cost of service in providing public access refueling services. PG&E couldn’t do this because its proposed compression cost component is too low to fully recover its cost of service associated with providing third party refueling services.

When PG&E is competing directly on price with a non-utility enterprise (e.g., Clean Energy) at its public access refueling stations, below cost pricing under the GNGV-2 rate is the epitome of unfair competition. As Clean Energy’s Prepared Direct Testimony shows, (Exhibit 9, page 22) the difference between PG&E’s compression cost component proposal and Clean Energy’s is \$0.256 per therm.

In its Opening Brief, PG&E gives lip service to the Commission’s preexisting policies on the pricing of utility public access refueling services. PG&E says: “PG&E completely supports the Commission’s conclusion that NGV rates should be fully allocated and not subsidized by ratepayers.” (PG&E’s Opening Brief, page 5). The simple fact is that PG&E’s proposed compression cost component is not based on the fully allocated costs of providing public access refueling services at its 24 public access stations, and it will, if approved, be cross-subsidized by other non-participating PG&E customers.

PG&E's falsely claims a number of times during its cross examination of Clean Energy's witness and in its Opening Brief that its compression cost component was based on the same or similar methodology as was proposed by SoCalGas and SDG&E (the SEUs), and approved by the Commission in the SEUs two most recently concluded BCAPs. PG&E attempts to draw support for its proposal based on the claimed consistency of methodologies among the three utilities' proposals.

The simple fact is that the methodology PG&E employed in its Compression Cost Study is significantly different from the one SoCalGas and SDG&E (the SEUs) employed. Despite PG&E's claims to the contrary, the Commission has never approved a California utility compression cost component or adder that was based on the methodology which PG&E employed in developing its proposed \$0.744 per therm compression cost component in this BCAP.

PG&E's approach is different from the one used by SoCalGas and SDG&E in two important ways: (1) PG&E's approach did not disaggregate third party refueling costs from fleet refueling costs; and, (2) unlike the approach taken by the SEUs, PG&E's proposed compression cost component is entirely based on a sample of the costs and throughput at only 5 stations which have much higher per station throughput, and lower per therm compression costs, than the average PG&E public access refueling station.

In contrast, SoCalGas and SDG&E estimated the total costs (including fixed and variable costs) associated with providing public access refueling services for all of their public access refueling stations. Unlike PG&E, the SEUs did not base their compression rate adders on a small non-representative sample of their stations which exhibit significantly higher than average per station throughput. SoCalGas and SDG&E took all of their station costs and volumes associated with providing public access refueling services into account in the approach they used in setting their compression rate adders.

The only compression cost component proposed in this proceeding which will at forecast throughput recover, without requiring or generating any cross-subsidies from or to any other customer classes, PG&E's full cost of service associated with providing public access refueling services at all 24 of its public access refueling stations is the \$1.00 per therm amount recommended by Clean Energy and, therefore, Clean Energy's proposal should be adopted by the Commission in this proceeding.

II. PG&E INACCURATELY AND IRRESPONSIBLY ASSERTS THAT SOCALGAS AND SDG&E USED AN “INCREMENTAL COST” APPROACH IN SETTING THEIR RECENT COMMISSION ADOPTED COMPRESSION RATE ADDERS WHEN IN FACT THEY USED AN AVERAGE COST RATE SETTING APPROACH.

Exhibiting a reckless disregard for the truth and a serious failure to get its facts straight, PG&E makes a number of false assertions in its Opening Brief. For example, at page 3 of PG&E’s Opening Brief, it says:

“Thus, PG&E’s study was based upon an incremental cost allocation approach that allocated specific costs to the fleet and to third parties. PG&E’s approach was similar to the methodology that has been utilized by Southern California Gas Company (SoCalGas) and San Diego Gas & Electric (SDG&E) in their prior two cases involving this issue.”

In fact, PG&E’s study did not disaggregate its NGV refueling costs between those attributable to public access refueling and those attributable to fleet refueling.

“The Commission should reject Clean Energy’s position because, in addition to being wrong, it is both disingenuous and overreaching. Clean Energy’s witness initially testified that the Commission had developed a special policy of only using an average cost methodology for NGV rates and also initially testified that he had never heard of an NGV case that had ever applied an incremental methodology. It turned out that Clean Energy and its witness personally had actively participated in a SoCalGas/SDG&E NGV case and had supported the adoption of an incremental NGV rate.” (PG&E Opening Brief, page 3).

This statement is false. In the process leading up to Resolution G-3380 which in 2005 sharply raised SoCalGas’ and SDG&E’s compression rate adders, Clean Energy supported an average cost rate setting methodology as is shown in the Attachments to SoCalGas’ Advice Letter 3475-A (Attachment C) and SDG&E’s Advice Letter 1510-G-B (Attachment B). After reviewing the calculations shown in these Attachments, which were approved by Commission Resolution G-3380, it became clear that the Resolution’s reference to estimating the utilities’ “incremental cost” (at Resolution G-3380, page 5) of providing compressed natural gas service was simply a reference to the fact that the proposed rates applied to third party refueling services and were based on those costs and forecast throughput which are in addition to, or “incremental” to the costs of providing fleet refueling services and the associated fleet refueling volumes.

Referring to the recently concluded SoCalGas/SDG&E BCAPs, PG&E’s Attorney asserts:

“Thus, the Commission specifically approved the use of the incremental allocation methodology in the context of NGV rates. The incremental methodology was appropriate because the utility NGV stations were built for the primary purpose of serving the utility fleet. For this reason more of the costs, particularly capital costs, needed to be assigned to fleet use as opposed to third-party use.” (PG&E’s Opening Brief, page 7).

PG&E has repeatedly claimed that all of the fixed costs of its public access stations should be allocated to the fleet since the stations were originally built largely for fleet refueling purposes. PG&E falsely attributes this viewpoint to the SEUs. If the SEUs had believed this, no doubt their proposed compression rate adders wouldn’t have included the fixed station costs assigned to third party refueling that in fact they included.

This PG&E reference to G-3380 is false and misleading. First of all, the Commission in Resolution G-3380 approved an average cost methodology in setting SoCalGas’ and SDG&E’s compression rate adders. There is no reference in the recently concluded SoCalGas and SDG&E BCAP proceeding to a belief on the part of the SEUs that the fixed costs associated with public access refueling should all be assigned to fleet, instead of both to fleet and third party use. This assertion is what PG&E has repeatedly said it believes, but attributing the same belief to SoCalGas and SDG&E is false and misleading. In developing their compression rate adders, the SEUs assigned what they believed was an appropriate share of the fixed station costs to third party refueling.

“As the Commission has already determined, an incremental allocation methodology is appropriate for determining NGV rates. The rationale for approving an incremental allocation methodology in G-3380 is equally applicable in this case.” (PG&E’s Opening Brief, page 7).

This statement is a product of PG&E’s imagination. As was noted previously, Resolution G-3380 relied on an average cost rate setting methodology in approving SoCalGas’ and SDG&E’s increased compression rate adders. In addition, in their recently concluded BCAP, SoCalGas and SDG&E proposed and the Commission approved an average cost methodology in setting the SEUs’ compression rate adder. (Exhibit 25, Table 25, page 47).

“As has been discussed, PG&E assessed the use of its stations and determined that a substantial portion of the costs were attributable only to PG&E’s fleet and thus should be excluded from the third party rate allocation. SoCalGas and SDG&E have made a similar determination and similarly have utilized an incremental allocation methodology in developing their NGV rates.” (PG&E’s Opening Brief, page 13).

For the reasons explained above, this statement by PG&E is simply inaccurate and false.

“This point is best illustrated by examining the 2005 advice letter filings made by those utilities in support of their proposed NGV rate that was adopted by the Commission in Resolution G-3380 (PG&E, Ex. 32). Both utilities asserted that they had relied on the analysis prepared for their prior withdrawn BCAP. That analysis (PG&E Ex. 30) was an incremental analysis that utilized only the costs associated with third-party use and excluded costs attributable to fleet use. Further both utilities asserted in their Advice Letters that they were presenting fully allocated costs. The Commission accepted this incremental methodology and approved the proposed rate.” (Opening Brief, page 13).

“In the 2009 SoCal/SDG&E BCAP, those utilities developed a new rate using the same incremental methodology. That rate was recently approved by the Commission (D.09-11-006). PG&E used this same method and through its study developed a rate that is similar to but somewhat higher than the new SoCal/SDG&E rate.” [PG&E Opening Brief, page 13].

The Commission did not adopt a rate-setting approach in Resolution G-3380 which was based on incremental costs, nor did it approve a rate-setting approach based on an incremental cost rate-setting methodology in the recently concluded SEU BCAP proceeding; it adopted in both the Resolution and the BCAP an approach to calculating the SEUs compression rate adder that was based on average costs.

III. PG&E REPEATEDLY CONDEMNS CLEAN ENERGY’S PROPOSED AVERAGE COST APPROACH TO SETTING THE COMPRESSION COST COMPONENT OF THE G-NGV2 RATE, DESPITE THE FACT THAT THE APPROACH TAKEN IN PG&E’S COMPRESSION COST STUDY WAS AN AVERAGE COST APPROACH.

According to PG&E:

“The fundamental difference between PG&E’s and Clean Energy’s approach to calculating the appropriate compression cost component has to do with the cost allocation methodology used. PG&E determined that an incremental approach was appropriate while Clean Energy asserted that an average cost, rolled-in method was required (PG&E, Jones, TR 80, Line 9 to Line 17; CEF, Mitchell, TR 191, Lines 9 to 19). (PG&E’s Opening Brief, page 3).

In its cross examination of Clean Energy’s witness and in its opening brief, PG&E describes the approach taken in its Compression Cost Study to estimating its \$0.744 per therm proposed compression cost component as an “incremental cost” approach but in fact PG&E used an average cost approach. “Mr. Jones states, quote: PG&E chose the estimate, the incremental costs *using the average cost* [emphasis added] of a sample of the five NGV stations that had a

large share of public usage and relatively high throughput, end quote. (Transcript, page 248 lines 7-11)”

At page 183, lines 8-9 of the Transcript, PG&E’s Attorney summarizes the approach taken by PG&E with its 5 station sample as follows: “It was an average cost analysis [emphasis added], including all O&M and Capital.” On page 186 of the Transcript, PG&E asks: “And do you agree with me that PG&E’s analysis was an embedded cost average cost analysis?” (Lines 10-11). In his Rebuttal Testimony, PG&E’s witness said that: “PG&E chose to estimate the incremental costs using the average costs of a sample of five PG&E stations that had a large share of public usage and relatively high throughput. (Exhibit 4, page 3, lines 22-24). At a minimum, it is very odd to use average cost measures as the basis for estimating incremental costs.

The data in Tables 4-12, 4-13 and 4-14 of PG&E’s Testimony (Exhibit 1), shows that PG&E first calculated the total cost of service, including all of the fixed and variable costs of providing third party and fleet refueling services at the 5 stations PG&E chose to include in its Compression Cost Study and then divided the total cost of service at those stations by forecast throughput for the 5, including both third party and fleet refueling volumes. Unambiguously, this is an average cost methodology.

It is exactly the same methodology as the one Clean Energy employed in developing its \$1.00 per therm recommended compression cost component, except for the fact that Clean Energy’s recommended \$1.00 per therm compression cost component is based on the estimated total cost of service at all 24 of PG&E’s public access refueling stations which provide refueling service under the G-NGV2 rate. In contrast, as explained in Exhibit 9, pages 9-13, PG&E’s recommended compression cost component was based on the average unit cost of a small, non-representative sample of 5 high volume stations.

Both PG&E’s and Clean Energy’s methodologies rely on the assumption that the unit cost of fleet and third party refueling are the same. To describe the approach that PG&E took as one based on “incremental costs” is highly misleading. PG&E did not segregate third party refueling costs from fleet refueling costs in its Compression Cost Study, so PG&E’s approach is not an “incremental” one in the sense that it was only based on third party refueling costs and throughput. In contrast, SoCalGas and SDG&E did make this segregation and based their

compression rate adder on fully allocated third party refueling costs divided by forecast third party refueling throughput for all of their public access stations.

The costs which were relied on in developing PG&E's proposed compression cost component were not the "incremental costs," (i.e., variable costs) but the fully allocated costs including 100 percent of both fixed and variable costs associated with providing both third party and fleet refueling at the five stations in PG&E's sample.

The main difference between Clean Energy's, SoCalGas' and SDG&E's rate setting approach is that PG&E calculated its average per therm compression cost recommendation based on a biased sample of only 5 stations which exhibit significantly higher than PG&E's average per station volumes. Unlike SoCalGas and SDG&E, PG&E did not develop disaggregated data separating third party from fleet refueling costs. As a result, Clean Energy was forced to develop its recommended compression cost component based on PG&E's cost data which included both third party and fleet refueling costs. In contrast to PG&E, Clean Energy included the estimated total cost of service data for all 24 of PG&E's public access refueling stations that provide third party refueling services under the G-NGV2 rate.

In light of the fact that PG&E's Compression Cost Study was based on an average cost methodology using the fully allocated costs (including all fixed and variable costs of the 5 PG&E stations), it is indeed ironic that PG&E devotes so much attention in its cross examination of Clean Energy's witness and in its Opening Brief to attacking the average cost approach to setting the G-NGV2 compression cost component recommended by Clean Energy. PG&E's proposed \$0.744/therm compression cost component is itself the result of an average cost approach.

PG&E's mistaken and confused assumption that the Commission has not and should not approve a compression cost component or compression rate adders calculated based on an average cost methodology is as effective an argument against its own proposal as it is a valid argument for not accepting Clean Energy's proposal.

PG&E has admitted that by including lower volume stations in addition to the 5 high volume stations it chose to include in its Compression Cost Study, the resulting compression cost component would be higher than the one it proposed.

"Limiting the sample to high public usage was important because including the low throughput stations would severely distort the rate in an upward direction since the costs would be severely biased by costs to serve PG&E' NGV fleet.

(PG&E, Ex. 4, Appendix, para. 13, lines 1-4).” (PG&E’s Opening Brief, page 10).

IV. PG&E’S CLAIM THAT IF ANYTHING ITS PROPOSED \$0.744 PER THERM COMPRESSION COST COMPONENT IS LOW RATHER THAN HIGH IS FALSE.

PG&E repeatedly falsely claims that, if anything, its \$0.744 per therm compression cost component is too high.

In PG&E’s Rebuttal Testimony (Exhibit 4, page 5, lines 12-15) its witness says: “At one point PG&E considered using only the Folsom Street station to conduct the compression cost study since the high public throughput of this station provides the most representative estimate of the cost of providing refueling services to the public” “The estimated cost of compression at the Folsom Street stations is \$0.45 per therm for the test period.” (Exhibit 4, page 5, line 20).

At page 9 of Exhibit 4, PG&E’s witness says:

“The capital infrastructure was developed to the serve (sic) PG&E’s fleet and should be excluded when such a broad scope calculation is performed. If PG&E stopped providing service to the public, the entire infrastructure cost would remain as rate base assigned to fleet operations. As such, a compression cost component calculation encompassing all 24 stations could be made that considers only the operations cost. The resulting compression rate component is \$0.63 per therm. This computed charge is within several cents of the charge reached by settlement (sic) with Clean Energy in the previous Biennial Cost Allocation Proceeding (BCAP), extrapolated to the test period.”

To argue that the compression cost component for all 24 of PG&E public access stations should be set based on the compression cost estimated for its single highest volume station is so outlandish that Clean Energy is surprised that PG&E would have the temerity to even suggest it. As an alternative, to suggest that the G-NGV2 rate charged at all 24 of PG&E’s public access stations should just recover the distribution operating expense associated with those stations, and exclude all of the capital-related expense arising from the fixed station costs, and all of such other costs as administrative and general (A&G) expenses, uncollectibles, franchise requirements, and taxes also reveals sheer audacity on PG&E’s part. As Table 4-14 at page 4-34 of Exhibit 1 shows, PG&E believed in its Compression Cost Study that all of these additional costs should be recovered in the G-NGV2 rate. By leaving these costs out, the resulting compression cost component definitely is not based on PG&E’s fully allocated costs.

These two alternative compression rate component proposals would require an even greater cross-subsidy from PG&E's core residential and commercial customers than its proposed \$0.744 per therm number requires.

V. **PG&E'S FALSE CLAIM THAT CLEAN ENERGY HAD A MOTIVE FOR SEEKING A G-NGV2 RATE THAT IS AS HIGH AS POSSIBLE IS CONTRADICTED BY CLEAN ENERGY'S TESTIMONY.**

In PG&E's Opening Brief, PG&E's attorney falsely asserts:

"Clean Energy is obviously motivated to push PG&E's rate as high as possible so it in turn can raise its rate." (PG&E's Opening Brief, page 4).

In Clean Energy's Prepared Direct Testimony (Exhibit 9, lines 2-14) in discussing the alternative approaches that Clean Energy had considered in developing its recommended compression cost component, its witness explained:

"One approach that Clean Energy considered was to extrapolate from the per station cost of service for the 5 stations included in PG&E's Compression Cost Study to an estimate of the total cost of service by multiplying the average cost of service per station for the 5 by 24 to obtain an estimate of the total cost of service for all 24 stations, then dividing that amount by the total throughput forecast for the 24 stations. This approach relies on the assumption that the average annual cost of service for the 5 stations is equal to the average cost of service of the remaining 19. This approach results in a compression cost component of \$1.173 per therm. Clean Energy rejected this approach because the estimated aggregate cost of service would be based on such a small sample of the costs of PG&E's public access stations. With this approach, Clean Energy would be estimating the total cost of service for all 24 stations based on a sample, like PG&E's sample, which only included cost information for 20.8 per cent of the stations. We also believe, based on Clean Energy's experience, that it is likely that the average cost of service for the 5 is somewhat higher than the average cost of service for the remaining 19 stations."

The fact is that in developing its own analysis, Clean Energy considered and rejected an approach which would have resulted in a compression cost component \$0.173 per therm higher than the one it actually proposed. The approach was rejected by Clean Energy because it believed the resulting compression cost component amount was biased to the high side just as Clean Energy believes PG&E's \$0.744 per therm proposal is heavily biased to the low side.

VI. ONLY PG&E'S COSTS AND THROUGHPUT ARE RELEVANT IN DETERMINING THE PROPER COMPRESSION COST COMPONENT OF PG&E'S G-NGV2 RATE.

In several places in its cross examination of Clean Energy's witness and in its Opening Brief, PG&E suggests that its compression cost component be based on the compression rate adder put in place by the Commission for SoCalGas. For example, on cross examination, PG&E asks the following question of Clean Energy's witness.

“Q. And using your logic in the last BCAP that PG&E is comparable to SoCal, we can justify a rate more in the range of what SoCal's rate is, correct? (TR 330, line 28 and 331 lines 1-2)

PG&E's Opening Brief also says: “It should be noted that Clean Energy's witness admitted [in his Prepared Direct Testimony in PG&E's last BCAP, Exhibit 21] that it was appropriate to compare a SoCal rate with a PG&E rate because the facilities on the two systems are similar (CEF, Mitchell, TR 323, Line 4 to Line 21). Thus, if anything, PG&E's proposed rate is high, not low as contended by Clean Energy” (Opening Brief, pages 13-14).

It is important to note that in PG&E's last BCAP (A.04-07-044) PG&E did not provide any cost data whatsoever measuring the current costs it incurred in providing third party refueling services. In the absence of any current PG&E cost information, Clean Energy's testimony, perhaps prophetically, said:

“If PG&E fails to provide in this proceeding additional information sufficient to establish convincingly what a fully cost-based compression rate would be, based on current costs and realistic assumptions about throughput, and to revise its requested compression rate component accordingly, we believe that the Commission should set PG&E's internal compression rate component at \$0.86854 per therm. This is the \$0.75 per therm level requested by SoCalGas and SDG&E, plus PG&E's requested rate component to pay for State and Federal fuel taxes. While admittedly this is an imperfect remedy, in the absence of a credible showing that would conclusively identify what a fully cost-based compression rate level for PG&E would be, we believe our recommendation is the next best option. We don't believe, however, that this recommendation for a next best option can be anything other than a temporary measure because of the possibility that PG&E's current actual internal compression costs are currently in excess of \$0.75 per therm. As long as PG&E continues to provide compression services at public access stations, we believe Commission policy and state law require PG&E to charge a rate that fully recovers its actual costs of providing the service.” (Exhibit 21, page 11, lines 3-17).

The suggestion by Clean Energy in its Exhibit 21 in PG&E's previous BCAP, that absent any reliable data measuring the then current PG&E costs associated with providing public access refueling services that PG&E's compression cost component should be set based on SoCal's compression rate adder was strongly opposed by PG&E. PG&E's Rebuttal Testimony [entitled "Natural Gas Vehicle (NGV) Rates] of its witness Shaun E. Halverson argued that PG&E's compression cost component under no circumstances should be based on SoCalGas' Commission approved compression rate adder. Commenting on the difficulty of comparing the compression cost components of different utilities on an "apples to apples" basis Ms. Halverson asked:

Q 26 "Aren't costs of providing G-NGV2 compression services similar for all utilities and non-regulated companies in California?"

A 26 No. There are many reasons that the rates for a utilities (sic) or a non-regulated company may be higher or lower than the rates for another utility, such as PG&E. A few reasons include the age and related depreciation of the station facilities, financing costs, and tax structure. In addition, the stations many not provide similar services or serve similar types of customers. Throughput and load growth can also affect rates." (Rebuttal Testimony of Shaun E. Halverson, pages 4-15 and 4-16, starting at line 33 on page 4-14 and continuing through line 6 on page 4-15).

VII. PG&E'S COMPARATIVE EXHIBIT 33 IS FUNDAMENTALLY MISLEADING AND SHOULD BE ASSIGNED NO WEIGHT BY THE COMMISSION.

Based on the data in Exhibit 33, PG&E says: "Another possibility might be to use the SoCal rate, because as the Clean Energy witness acknowledged, the facilities at the two utilities are comparable." (CEF, Mitchell, TR 331, Lines 7 to 10). (PG&E's Opening Brief, page 14).

In suggesting that somehow, PG&E's compression cost component of the G-NGV2 rate should be the same or about the same as the compression rate adder adopted for SoCalGas and SDG&E by the Commission in their recently completed BCAP proceedings, PG&E completely ignores both of the two main variables which go in to setting a rate: (1) the first factor is the total cost that the rate is intended to recover; (2) the second is the forecast volumes which will recover those costs at the approved rate being charged for the service. PG&E's Exhibit 33 compares rate results without making any effort to establish the comparability for those variables which directly determine rate levels for different utilities, especially differences in costs and

throughput. For example, PG&E doesn't bother to also display the per station volumes that are experienced by PG&E and the SEUs.

There are a number of differences between the characteristics of SoCalGas' and PG&E's public access refueling stations, as explained by PG&E's witness Shaun E. Halverson, which would explain differences in the level of their compression rates. Importantly, in fact, there are significant differences between the per station annual throughput of PG&E's public access refueling stations in contrast to SoCalGas' per station throughput. For example, SoCalGas' per public access station forecast of throughput is 32 percent higher than PG&E's. SoCalGas' per station throughput at its 11 public access refueling stations that SoCalGas currently owns and operates is 134,944 therms per year. In contrast, PG&E's per public access refueling station throughput for its 24 public access stations is 102,292 therms per year.

We have already seen in Warren Mitchell's Prepared Direct Testimony (Exhibit 9, pages 12-13) the sensitivity of the per therm compression cost component of PG&E's G-NGV2 rate to higher or lower levels of throughput per station. As the Testimony states: "To demonstrate this point, if you remove just one of the 5 stations PG&E included in its compression cost study, the 'SF Downtown' station on Folsom Street and calculate the compression cost component using PG&E's data for the remaining 4 stations, the resulting compression cost component increases by \$0.1865 per therm, or 25 percent, from \$0.744 per therm to \$0.93 per therm. The average per-station throughput in 2010 for the remaining 4 public access stations in its sample is 168,808 therms, or still 1.4 times the average throughput for all the remaining 19 stations." (Exhibit 9, page 12, lines 20-22 and page 13, lines 1-4).

This suggests that the reason, all other considerations being equal, why PG&E's compression cost component should be significantly higher than SoCalGas' is explained, among other reasons, by the fact that SoCalGas' per station volumes are so much higher than PG&E's.

VIII. THE COMMISSION'S DECISIONS ABOUT HOW TO HANDLE THE COSTS OF LINE 401 AND TO IMPLEMENT THE COMMUNITY CHOICE AGGREGATOR (CCA) PROGRAM HAVE NO APPLICABILITY WHATSOEVER TO THE DETERMINATION OF THE PROPER COMPRESSION RATE COMPONENT OF PG&E'S G-NGV2 RATE.

In his cross examination of Warren Mitchell, and again, In PG&E's Opening Brief, PG&E's attorney cites two separate Commission decisions and a Resolution in which he asserts that the Commission approved an "incremental cost" approach to cost recovery and rate design.

One case involved PG&E's pipeline expansion resulting from the construction of PG&E's transmission line 401; the other case involved services to be provided by PG&E to Community Choice Aggregators (CCAs). (PG&E Opening Brief, page 5).

It is unclear to Clean Energy how PG&E can possibly believe that the two cases it cites have any specific relevance whatsoever to the question of what the appropriate compression cost component of PG&E's G-NGV2 rate should be as will be determined in this proceeding.

The third Commission action PG&E refers to in its Opening Brief (page, Resolution G-3380 is directly relevant, but as Clean Energy explained in its Opening Brief, PG&E completely misinterprets what it stands for. PG&E's says Resolution G-3380 endorsed an "incremental cost" approach to setting utility compression rates for NGV refueling services at the utilities public access stations.

As was noted in Clean Energy's Opening Brief, (page 19-20) PG&E's characterization of Resolution G-3380 as supporting an incremental rather than average cost approach to setting SoCalGas and SDG&E's compression rate adders is based on a misinterpretation of the Resolution and the Advice Letter filings which preceded the Resolution.

IX. IN HIS OPENING BRIEF, PG&E'S ATTORNEY REPEATEDLY MISCHARACTERIZES THE TESTIMONY OF CLEAN ENERGY'S WITNESS.

At page 20 of PG&E's Opening Brief, PG&E's Attorney says:

"At p. 18, Line 10 of CEF EX. 9, the witness contended that 'PG&E consistently declined to provide ...aggregate cost of service data . . .'. However, the witness admitted that he had left out some salient facts. ***First he admitted that there had been some serious discovery disputes between Clean Energy and PG&E, and that nothing had been mentioned about that in his testimony.*** [Emphasis added]. (CEF, Mitchell, TR 219, Line 23 to 220, line 11). (PG&E Opening Brief, page 20)."

At page 17, of Exhibit 9, Clean Energy's Prepared Direct Testimony Clean Energy's witness said:

"During ***an ongoing discovery dispute*** [emphasis added], Clean Energy offered a compromise approach, saying it would be willing instead to accept data for a 10 station sample where the stations included in the sample were the ones which had annual throughput that was numerically closest to the average throughput at each of its 24 stations."

In PG&E's Opening Brief, (page 20) its Attorney again cites to the Transcript in saying:

“In CEF, Ex. 9 at p.9, Lines 8 to 11, he [Clean Energy's witness) accused PG&E of not developing a study for four years in spite of its agreement to do so in the 2005 BCAP Settlement. In the end he admitted that the study began in 2005 immediately after the Commission BCAP decision. (CEF, Mitchell, TR 218, Line 28 to TR 219 Line 16)”

“The effort undertaken by PG&E was quite laborious, taking approximately eight weeks over a two-year time period.” “As it was, studying five stations turned out to be a huge amount of effort. (Ex. 4, Appendix, para. 14). (PG&E Opening Brief, page 12).

There were 188 weeks between the time of the Commission decision in PG&E last BCAP until the time when PG&E filed its 2009 BCAP Application in late May of 2009. According to PG&E's Opening Brief, out of the 188 weeks that were available, PG&E used only 8 weeks, or 4.2 percent of that period of time, to work on its Compression Cost Study. The Commission can decide whether or not that represents a “huge amount of effort” in light of the provisions of the Settlement Agreement that PG&E reached with Clean Energy in PG&E's last BCAP.

On cross examination, PG&E's Attorney draws the attention of Clean Energy's witness to his Prepared Direct Testimony in Exhibit 9:

“Q. And referring you, please, to page 9, line 8, you state, quote:

Unfortunately, despite having almost four years from the time of the Commission's Decision in PG&E's last BCAP adopting the settlement agreement until the time it filed its current BCAP Application and Testimony to develop a study, PG&E chose not to do so.” (Transcript, page 217 – line 5)

“Q. “Do you see that?”

A “Yes I do.”

Q. So again, you are trying to be disparaging of PG&E, correct?

A. I don't feel that PG&E performed in an effective manner to provide the information that was needed to meet the conditions of the settlement.

Q. I am directing your attention specifically to this statement you made about when it started its study. You are accusing PG&E of not starting the study for four years, correct.

A. Not a satisfactory study.”

Q. You didn't say anything about a satisfactory study in that sentence. ***You say starting the study, correct*** [emphasis added]?

In fact, contrary to PG&E's Attorney's characterization, Clean Energy's Prepared Direct Testimony said nothing about when PG&E started its study. What the Testimony said was that PG&E had four years in which to conduct a study which was responsive to the provisions of the Settlement with Clean Energy and clear Commission policy and failed to do so.

At Page 220 of the Transcript, line 9, PG&E's Attorney asks:

Q. There is nothing in your testimony about the motion to compel or the disputes, right?

At page 17 of Exhibit 9, it says:

“During an ongoing discovery dispute, Clean Energy offered a compromise approach, saying it would be willing instead to accept data for a 10 station sample where the stations included in the sample were the ones which had annual throughput that was numerically closest to the average throughput at each of the 24 stations. Clean Energy believes that if the rate is to be set based on a sample of stations, the sample needs to be closely representative of the average PG&E public access refueling station.” (Lines 6-11)

At page 11 of its Opening Brief, citing to Transcript page 197, line 4 through page 201 line 18, PG&E's Attorney asserts: “Clean Energy's witness agreed that PG&E had picked a representative sample of stations and had used a proper methodology for its study.”

Any objective and fair-minded person who reads the Transcript pages starting at page 196 when this line of cross examination began will quickly realize that PG&E's Attorney's characterization of the witnesses' testimony is at best a gross overstatement and distorted.

X. CONCLUSION.

For the reasons explained in this Reply Brief, in addition to those explained in Clean Energy's Opening Brief, the results of PG&E's Compression Cost Study should be disregarded and Clean Energy's proposed \$1.00 per therm compression cost component of the G-NGV2 rate should be adopted by the Commission.

Respectfully submitted,



Donald C. Liddell
DOUGLASS & LIDDELL
2928 2nd Avenue
San Diego, California 92103
Telephone: (619) 993-9096
Facsimile: (619) 296-4662
Email: liddell@energyattorney.com

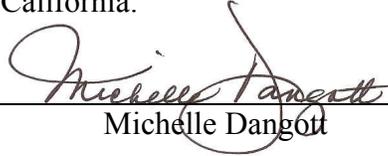
Counsel for the
CLEAN ENERGY FUELS CORPORATION

March 5, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of *Reply Brief of Clean Energy Fuels Corporation* on all parties of record in proceeding *A.09-05-026* by serving an electronic copy on their email addresses of record and by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is not available.

Executed on March 5, 2010, at Woodland Hills, California.


Michelle Dangott

SERVICE LIST – A.09-05-026

bcragg@goodinmacbride.com
bill@jbsenergy.com
bmcc@mccarthy.com
cassandra.sweet@dowjones.com
cem@newsdata.com
cpe@cpuc.ca.gov
CPUCCASES@pge.com
dk@utilitycostmanagement.com
douglass@energyattorney.com
ek@a-klaw.com
epoole@adplaw.com
filings@a-klaw.com
francesca.ciliberti@elpaso.com
JerryL@abag.ca.gov
jlsalazar@semprautilities.com
jmrb@pge.com
jnm@cpuc.ca.gov
jsw@cpuc.ca.gov
karla.dailey@cityofpaloalto.org
KEL3@pge.com
ken@in-houseenergy.com
lhj2@pge.com
liddell@energyattorney.com
marcel@turn.org
mdm8@pge.com
mflorio@turn.org
mrw@mrwassoc.com
npedersen@hanmor.com
nsuetake@turn.org
pk@utilitycostmanagement.com
psp@cpuc.ca.gov
pzs@cpuc.ca.gov
ralphdennis@insightbb.com
ram@cpuc.ca.gov
ray.welch@navigantconsulting.com
RegRelCPUCCases@pge.com
rhd@cpuc.ca.gov
rmccann@umich.edu
rob@clfp.com
sas@a-klaw.com
service@spurr.org
sls@a-klaw.com
stoflet@comcast.com
tomb@crossborderenergy.com
wmc@a-klaw.com
WMLb@pge.com