

## PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

San Francisco, California  
Date: August 8, 2002  
Resolution No. M-4808  
Agenda #937

**RESOLUTION****COMMISSION FINDING REGARDING  
EXTRAORDINARY CIRCUMSTANCES  
JUSTIFY EXPEDITED CONTRACTING****INTRODUCTION AND SUMMARY**

Section 632 of the Public Utilities Code allows the Commission to enter into contracts for consultant and advisory services “on an expedited basis,” when justified by extraordinary circumstances. The statute provides an exception that allows the Commission to deviate from procedures otherwise required for Commission contracts for consultant or advisory services, including, among other things, competitive bidding, posting the request for proposals or qualifications and ratification of any agreement by the Department of General Services Office of Legal Services. This resolution finds that extraordinary circumstances exist relating to the PG&E bankruptcy proceeding that justify expedited contracting with UBS Warburg, LLC, a company that will provide the Commission with financial and advisory services in support of its alternate Plan of Reorganization, designed to protect the public interest of the State of California and the interests of California ratepayers in the PG&E bankruptcy proceeding.

**BACKGROUND**

The Commission is representing the public interest and the interests of California ratepayers in Pacific Gas and Electric Company’s (PG&E) currently pending bankruptcy proceeding (Pacific Gas and Electric Company (Debtor), United States Bankruptcy Court, Northern District of California, San Francisco Division, Case No. 01 30923 DM). PG&E’s bankruptcy raises issues for the Commission as a creditor, but more importantly, the Commission is participating in that proceeding because any reorganization plan approved in the bankruptcy proceeding will have long-term consequences for California ratepayers. PG&E’s Plan of Reorganization specifies that the utility seeks to reorganize in a way designed to

preempt or avoid myriad applicable state laws and regulations. In order to move forward with its alternate Plan of Reorganization, which will best protect the interests of ratepayers and citizens alike, the Commission needs expert consultant financial advisory services to assure creditors of the viability of the Commission's reorganization plan and to help establish the feasibility of the plan at confirmation hearings in bankruptcy court. Those services include arranging for and providing the financing needed to consummate the Commission's plan. The Commission does not have this type of expertise, and therefore must seek outside consultant services to provide them.

Initially, The Commission interviewed a number of potential firms and selected UBS Warburg, LLC, for a number of reasons, including its size, reputation, expertise, familiarity with the debt and equity markets in California and the cost of the services it would provide. The terms of the initial agreement between the CPUC and UBS Warburg provided that payment would be made from the Debtor's bankruptcy estate, with the CPUC agreeing to attempt to secure state funding to pay UBS Warburg in the event such efforts failed. Under those circumstances, where payment with state funds was no more than a contingent possibility, the agreement was a not state contract subject to state procurement and approval rules. However, on July 22, 2002 the Bankruptcy Court denied the Commission's motion for an order approving a mechanism for funding the provision of consultant and advisory services by UBS Warburg, LLC from the Debtor's bankruptcy estate at this stage of the bankruptcy proceeding. The Court indicated, however, that UBS may be entitled to compensation if it confers a substantial benefit on the estate.

## **DISCUSSION**

The issuance of this resolution finding that extraordinary circumstances justify expedited contracting is necessary because the Commission must adhere to deadlines imposed by the bankruptcy court with regard to the Commission's proposed alternate Plan of Reorganization. The Commission must move forward with its arrangements for obtaining consultant and advisory services for its alternate Plan of Reorganization. The court's denial of the Commission's motion for an order approving a mechanism for funding the provision of consultant and advisory services has created an extraordinary situation where the Commission must contract on an expedited basis to secure financial advisory services in support of its Plan of Reorganization. Although the Commission and UBS Warburg still expect funds from the bankruptcy estate to ultimately pay for UBS Warburg's fees and services, the proposed new agreement provides for the Commission to pay UBS Warburg's actual out-of-pocket consultant expenses for providing analytical and expert advice to the Commission in support of its alternate Plan of Reorganization.

It is now possible that UBS Warburg would be paid with state funds, so the agreement will be treated as a state contract, subject to rules governing competitive bidding, posting on the state contract register, and ratification by the State Department of General Services, Office of Legal Services. Such requirements, while important for ensuring the integrity of the contracting process and wise expenditures of state funds, in this case are inconsistent with the deadlines that have been set by bankruptcy court, including the onset of discovery, the disclosure of fact witnesses by August 15, 2002, the submission of expert testimony in support of the Commission's Plan by September 20, 2002, and confirmation hearings on the Commission's Plan of Reorganization commencing November 12, 2002.

Under these circumstances, where it is impossible to comply with state contracting rules which may take up to three to four months and still meet the bankruptcy court imposed deadlines discussed above, the Commission finds that expedited contracting authority under Public Utilities Code Section 632 is justified due to the presence of extraordinary circumstances, in order for the Commission to represent the interests of ratepayers and the citizens of California in support of the Commission's alternate Plan of Reorganization.

### **COMMENTS**

As a general rule, Public Utilities Code § 311(g)(1) requires that certain Commission decisions including some resolutions be served on "parties" and subject to public review and comment at least 30 days before the Commission acts. Because this resolution involves the approval of a contract, rather than a decision in the course of a proceeding involving "parties," there are no parties upon which to serve this resolution, and the application of Public Utilities Code § 311(g)(1) in this context is uncertain. (See, cf., Rule 77.7, subdivision (d) of the Commission's Rules of Practice and Procedure.) Nevertheless this resolution finds extraordinary circumstances exist requiring prompt action that would justify waiving any applicable Section 311(g) requirements. As a result, a calendar notice describing this resolution was in any event published in the Commission's daily calendar indicating that the Commission would waive the comment period on this resolution. The July 22, 2002 denial by the Bankruptcy Court of the Commission's motion for an order approving a mechanism for funding the provision of consultant and advisory services by UBS Warburg, LLC created an unforeseen emergency within the scope of Public Utilities Code § 311, as clarified in Rule 81 and Rule 77.7(f) of the Commission's Rules of Practice and Procedure. The Commission may also waive the 30-day review and comment period pursuant to Public Utilities Code § 311(g)(2) in these circumstances.

**FINDINGS OF FACT**

1. The Commission must have financial advisory services in order to advance its alternate Plan of Reorganization in the PG&E bankruptcy proceeding.
2. The July 22, 2002 denial by the Bankruptcy Court of the Commission's motion for an order approving a mechanism for funding the provision of consultant and advisory services by UBS Warburg, LLC requires the Commission to move forward with other arrangements for obtaining consultant and advisory services for its alternate Plan of Reorganization in bankruptcy.
3. It is not feasible for the Commission to bid competitively for financial advisory services and comply with other state contracting requirements and also comply with the bankruptcy court deadlines, where the hearing on confirmation of the Commission's Plan of Reorganization commences on November 12, 2002.

**CONCLUSIONS OF LAW**

1. Extraordinary circumstances justify expedited contracting with UBS Warburg, LLC, for financial and advisory services related to the Commission's alternate Plan of Reorganization in the PG&E bankruptcy proceeding.

**ORDER**

1. The Executive Director may enter into a contract with UBS Warburg, for financial and advisory services related to the Commission's alternate Plan of Reorganization in bankruptcy, using expedited contracting procedures, pursuant to Section 632 of the Public Utilities Code.

I certify that this resolution was adopted by the Public Utilities Commission at its regular meeting of August 8, 2002, and that the following Commissioners approved it.

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WESLEY M. FRANKLIN  
Executive Director