

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

May 31, 2005

Agenda ID #4651
Ratesetting

TO: PARTIES OF RECORD IN APPLICATION 01-10-011

This is the draft decision of Administrative Law Judge (ALJ) Wong. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K.N MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:hl2

Attachment

Decision **DRAFT DECISION OF ALJ WONG** (Mailed 5/31/2005)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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. (U 39 G)

Application 01-10-011
(Filed October 8, 2001)

**OPINION REGARDING PETITION FOR MODIFICATION
OF DECISION 03-12-061****I. Summary**

Today's decision addresses the January 14, 2004 petition for modification of Decision (D.) 03-12-061, which was filed by Duke Energy North America and Duke Energy Trading and Marketing (Duke). D.03-12-061 addressed Pacific Gas and Electric Company's (PG&E) market structure for its natural gas transmission and storage operations for 2004.¹

Duke's petition for modification seeks to make certain clarifying changes to D.03-12-061 regarding the backbone-level rate. Due to the settlement agreement adopted in D.04-12-050, and our modification of D.03-12-061 in D.04-05-061, this decision determines that the clarifications which Duke seeks are no longer needed and denies Duke's petition for modification of D.03-12-061.

¹ Duke's petition for modification of D.03-12-061 was originally entitled a petition for clarification of D.03-12-061. The title of the document was changed by the Commission's Docket Office.

II. Background

D.03-12-061, among other things, approved the concept of a backbone-level rate. This backbone-level rate allows certain noncore customers to take gas transmission service from PG&E's backbone transmission system without having to pay any of the costs associated with PG&E's local transmission system. PG&E was ordered to file proposals for the backbone-level rate structure in its gas transmission and storage rate case application for 2005, which was to be filed on or before March 19, 2004.

Duke's petition for modification seeks to clarify various statements in D.03-12-061 about the eligibility criteria for the backbone-level rate. Responses to the petition for modification were filed by Calpine Corporation and the California Cogeneration Council (Calpine/CCC), Lodi Gas Storage, L.L.C. (LGS), PG&E, Sacramento Municipal Utility District (SMUD), and The Utility Reform Network (TURN). Duke filed a reply to the responses on February 23, 2004.

In accordance with Ordering Paragraphs 6.f. and 6.h. of D.03-12-061, PG&E filed Application (A.) 04-03-021 on March 19, 2004. Among other issues, that application addressed PG&E's backbone-level rate proposal. A settlement was subsequently reached in that application which resolved PG&E's gas transmission and storage issues for 2005 through 2007. That settlement was approved and adopted by the Commission in D.04-12-050.

III. Discussion

Duke's petition seeks to clarify the discussion in D.03-12-061 about the backbone-level rate. Duke contends that the decision "defines eligibility for the backbone-level rate in two discrete ways, one based on new or incremental load, and the other based on new customer-owned laterals connecting to PG&E's backbone transmission system." (Petition for Modification, p. 3.) Duke also

contends that the decision lacked sufficient rationale for the adoption of the backbone-level rate.

The responses of Calpine/CCC, LGS, PG&E and SMUD oppose Duke's petition for modification of D.03-12-061. TURN's response agrees with Duke that clarification of the decision is needed before PG&E files its backbone-level proposal.

Since Duke's petition for modification was filed, two events have occurred which impact the discussion of the backbone-level rate as originally set forth in D.03-12-061.

The first event was the approval and adoption of the settlement in D.04-12-050 regarding PG&E's market structure for its gas transmission and storage operations for 2005 through 2007 in A.04-03-021. Section 3.2 of the adopted settlement addresses the "Backbone Level End-Use Service." Sections 3.2. and 3.2.1. state in pertinent part:

3.2 Backbone Level End-Use Service

Backbone Level End-Use Service begins on the later of January 1, 2005, or the effective date of the tariff revisions required to implement this service. The eligibility criteria for this service are resolved for the term of this Settlement. ...

3.2.1 Backbone Level End-Use Service Eligibility Requirements

Backbone level end-use service eligibility is based on the criteria filed in PG&E's testimony in A.04-03-021.

3.2.1.1. The load must be new or incremental to PG&E's system (i.e., a new or repowered electric generation unit, a new process, or production line, or other new gas-consuming equipment which is

substantially stand-alone in nature) on or after March 1, 1998, and:

- a. Is by itself of sufficient size to qualify for noncore service; and
 - b. Has separate PG&E metering, or other separate metering acceptable to PG&E.
- 3.2.1.2 The load must never have been physically connected to PG&E's local transmission or distribution system.
- 3.2.1.3 The lateral pipeline that delivers gas to the Customer's premise must be directly connected to PG&E's Backbone Transmission System, and must be either:
- a. 100 percent owned by, or fully under the operational control of, the end-use Customer or its affiliate, provided that:
 - i. The affiliate is wholly-owned and/or controlled by the Customer or a common parent of the Customer and the affiliate, and
 - ii. The lateral is used exclusively by the Customer and/or its wholly-owned or commonly-controlled affiliates; or
 - b. Owned by PG&E, but paid for in advance by the end-use Customer pursuant to:
 - i. An approved pro-forma agreement, such as Agreement to Perform Tariff Schedule Related Work (Form # 62-4527), Agreement for Installation or Allocation of Special Facilities (Form # 79-255), or Distribution

- and Service Extension Agreement,
Cost Summary (Form # 79-1004),
or
- ii. A negotiated agreement under the exceptional case provisions under PG&E's gas Rules 15 or 16, which is subsequently approved by the CPUC.

Duke, along with the other parties who filed responses to Duke's petition for modification, signed the settlement and filed a joint motion to approve the settlement. (See D.04-12-050, p. 2, fn. 2.) By signing the settlement, Duke and these other parties acquiesced in the eligibility criteria for the backbone-level rate as set forth in Section 3.2. of the settlement. Since these criteria clarify the points that Duke raises in its petition for modification of D.03-12-061, there is no longer a need to clarify the decision.

The second event which impacts Duke's petition was the applications for rehearing of D.03-12-061 that Duke and the Northern California Generation Coalition filed. Both rehearing applications raised the issue about the eligibility criteria for the backbone-level rate. In D.04-05-061, which addressed the rehearing applications, we stated:

"Upon review, we recognize that the decision does not clearly set forth the eligibility requirements. Rather than attempting to clarify these requirements in the instant decision, we have decided to address these eligibility issues in PG&E's application to implement rates pursuant to this decision (A.04-03-021), which was filed on March 19, 2004. In order to mitigate stranded costs, we continue to support the policy of limiting eligibility for backbone level rate to new or incremental load that has been developed since March 1998. However, we view this requirement as a guidepost for future proceedings. We will reconsider the specific eligibility requirements in A.04-03-021,

including (1) whether a later cut-off date is appropriate, (2) whether the backbone rate will be limited to customer-owned laterals, and (3) whether the laterals must have been constructed after 1998.” (D.04-05-061, pp. 9-10.)

D.04-05-061 also modified the discussion language in D.03-12-061 regarding the backbone-level rate, and directed that such a rate would be effective in 2005.

Since the Commission decided in D.04-05-061 that the specifics of the backbone-level rate should be resolved in A.04-03-021, and that the rate should become effective in 2005, there is no need to clarify D.03-12-061.

Accordingly, based on the settlement adopted in D.04-12-050 and the modification to the backbone-level rate discussion in D.03-12-061 as changed by D.04-05-061, Duke’s petition for modification of D.03-12-061 should be denied.

Since there are no other outstanding issues to address in this application, this proceeding should be closed.

IV. Comments on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Interested parties may file comments and reply comments in accordance with Rule 77.7(b).

V. 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 approved the concept of a backbone-level rate, and directed PG&E to file its proposals for a backbone-level rate structure in its March 19, 2004 filing.

2. Duke's petition for modification seeks to clarify various statements in D.03-12-061 about the eligibility criteria for the backbone-level rate.

3. The adoption of the settlement in D.04-12-050 contains eligibility criteria for the backbone-level rate.

4. Duke, and the other parties who responded to Duke's petition for modification, are signatories to the settlement and acquiesced in the eligibility criteria for the backbone-level rate.

5. D.04-05-061 decided that the specifics of the backbone-level rate should be resolved in A.04-03-021.

6. D.04-05-061 modified the discussion language in D.03-12-061 regarding the backbone-level rate.

Conclusions of Law

1. The eligibility criteria contained in the settlement clarifies the points that Duke raises in its petition for modification of D.03-12-061.

2. Based on the settlement adopted in D.04-12-050, and the modification to the backbone-level rate discussion in D.03-12-061 as changed by D.04-05-061, Duke's petition for modification should be denied.

3. A.01-10-011 should be closed.

O R D E R

IT IS ORDERED that:

1. For the reasons stated in the text of this decision, the January 14, 2004 “Petition of Duke Energy North America and Duke Energy Trading and Marketing for Clarification of Decision 03-12-061” is denied.

2. Application 01-10-011 is closed.

This order is effective today.

Dated _____, at San Francisco, California.