Decision **PROPOSED DECISION OF ALJ BARNETT** **(Mailed 7/2/2012)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the ratemaking implications for Pacific Gas and Electric Company (PG&E) pursuant to the Commission's Alternative Plan of Reorganization under Chapter 11 of the Bankruptcy Code for PG&E, in the United States Bankruptcy Court, Northern District of California, San Francisco Division, In re Pacific Gas and Electric Company, Case No. 01-30923 DM.	Investigation 02-04-026 (Filed April 22, 2002; Petition Filed November 28, 2011)

DECISION GRANTING THE PETITION OF PACIFIC FOREST AND WATERSHED LANDS STEWARDSHIP COUNCIL AND THE GREENLINING INSTITUTE FOR MODIFICATION OF DECISION 03-12-035 TO CLARIFY LANGUAGE REGARDING ENVIRONMENTAL OPPORTUNITY

Summary

This decision grants the Joint Petition of Pacific Forest and Watershed Lands Stewardship Council and The Greenlining Institute for Modification of Decision 03-12-035.

Background

The Pacific Forest and Watershed Lands Stewardship Council (Stewardship Council) and The Greenlining Institute (collectively, the Petitioners) jointly filed this Petition for Modification of Decision 03-12-035 (Decision), issued on December 18, 2003.

In the Decision, the Commission created a $30 million ratepayer-funded initiative to provide underserved, urban youth with greater opportunities to

experience California's rich natural environment. By this petition, the Stewardship Council and The Greenlining Institute request the Commission clarify the decisional language regarding the permissible uses of these funds. Petitioners believe that, with the benefit of the knowledge gained through direct experience benefiting underserved youth, the decisional language now should be clarified consistent with the original intent of the youth initiative, in order to avoid the potential for a narrow and needlessly prescriptive interpretation of the uses to which these funds may be put. Directing that funds may be expended generally to provide greater resources to connect youth, particularly underserved youth, with the outdoors will allow the program to continue to serve the needs of underserved youth in the Pacific Gas and Electric Company (PG&E) service area and help ensure the continuation of this important work into the future.

The Decision arose from the Chapter 11 bankruptcy proceedings involving PG&E. In the Decision, we approved the proposed Settlement Agreement offered by PG&E, PG&E Corporation, and the Commission staff (Settlement). We found that the Settlement would allow PG&E to emerge from bankruptcy protection. Among other things, the Settlement established the Stewardship Council as an independent nonprofit foundation to implement a Land Conservation Commitment on PG&E's watershed lands.

In the Decision, one of our modifications to the Settlement was made at the request of Petitioner, The Greenlining Institute. We included a provision in the Settlement that required that an additional $30 million in PG&E ratepayer funds, payable over 10 years, be "dedicated to the Environmental Opportunity for

Urban Youth Program."[1] The Settlement itself did not specify how the funds were to be expended; however, the Decision expressed our expectation that these funds would be used "to provide a wilderness experience for urban youth, especially disadvantaged urban youth, and to acquire and maintain urban parks and recreation areas."[2] Pursuant to the Settlement, the Stewardship Council's governing board includes representatives of the Commission staff, the Division of Ratepayer Advocates, and three public appointees named by the Commission.[3] The Decision stated, "We will use our three appointments to the Stewardship Council to champion this $30 million allocation, among their other duties."[4]

Soon after convening and appointing a Youth Investment Committee, the Stewardship Council conducted a study of the barriers to connecting underserved youth with the outdoors, identifying where the greatest opportunities existed to directly improve the lives of disadvantaged young people by allowing them to experience the outdoors, parks, and nature.[5] Beginning in 2006, and continuing through to the present, the Stewardship

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[1] Decision (D.) 03-12-035, Appendix C, paragraph 17 (c).

[2] D.03-12-035 at 66.

[3] Other seats on the Stewardship Council's board are held by the California Natural Resources Agency, the State Water Resources Control Board, California Farm Bureau Federation, California Department of Fish and Game, California Forestry Association, California Hydropower Reform Coalition, Regional Council of Rural Counties, Central Valley Regional Water Quality Board, Association of California Water Agencies, the Trust for Public Land, PG&E, and a director appointed to represent Native American tribal interests. The USDA-Forest Service and the Bureau of Land Management share a non-voting advisory seat.

[4] D.03-12-035 at 67.

[5] *See* the declaration of Steve Hagler, attached to the petition.

Council's Youth Investment Program has benefited over 225,000 underserved youth living within the PG&E service territory. Over $4.5 million has been awarded in support of infrastructure projects to improve community parks and open spaces to make them more accessible, viable, and safe for children and youth. In addition, approximately $1 million has been expended annually in program grants and on initiatives designed to eliminate frequently cited barriers to connecting youth with the outdoors. The Youth Investment Program has been hailed as a success by stakeholders and is becoming a recognized leader in the field.

Discussion

The Decision included language that expressed our expectations at the time the Decision was written about how the Youth Program funds would be allocated by the Stewardship Council. The Petitioners believe that, with the benefit of knowledge gained through direct experience benefiting underserved youth, our original decisional language now appears too narrow and prescriptive regarding the permissible uses of the Youth Investment Program funds. The Petitioners now seek the Commission's concurrence that, based upon (a) the Stewardship Council's study of where the greatest needs and opportunities exist, and (b) the Stewardship Council's subsequent six years of grantmaking experience, it is in the public interest for Youth Investment Program funds to be expended generally to provide greater resources to connect children, youth, and young adults, particularly underserved youth, in the PG&E service territory to nature, parks, open spaces, and the outdoors. This requires no change to the Settlement, but only a clarification of the language in the Decision describing the intent of the program.

The Decision stated that $30 million would be allocated over a period of 10 years "to provide a wilderness experience for urban youth, especially disadvantaged urban youth, and to acquire and maintain urban parks and recreation areas."[6] The Decision directed that the acquisition of parks and recreation areas be "focused on creating an environment that will particularly serve the needs of urban low-income youth," and went on to state the Commission's expectation that "[o]f the $30 million . . . approximately 1/3 would be used to provide seed money that would establish a permanent program for young people who are least likely to enjoy the wonder of California's natural beauty" and that "[t]he 2/3 balance of the $30 million would be used to acquire urban parks and recreation areas for inner city youth."[7]

Beginning in 2005, the Stewardship Council's Youth Investment Committee developed a grantmaking plan based upon its studies of where the greatest needs and opportunities existed. At board meetings open to the public, the Stewardship Council board unanimously[8] endorsed a grantmaking plan which allocated a portion of the Youth Investment funds to program grants and initiatives designed to eliminate barriers to connecting youth with the outdoors. The Stewardship Council had concluded that the needs of underserved youth in California were not confined to narrowly defined, densely populated urban areas, and consequently made grants to reach underserved youth in large cities as well as smaller communities within PG&E's service area.

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[6] D.03-12-035 at 66.

[7] D.03-12-035 at 66-67.

[8] Pursuant to its bylaws, the Stewardship Council board makes all decisions by consensus.

In addition, the Stewardship Council concluded that the greatest opportunity to enhance recreation infrastructure lay not in purchasing parks and recreation facilities outright, but rather in making grants to cities, counties, and other agencies and organizations to allow them to construct, renovate, or enhance parks and other facilities within their communities. Focusing on grants that can be leveraged by the applying organizations, the Stewardship Council generally funds projects that are shovel-ready and can be completed in a reasonable time period. Awards have included the rehabilitation of playgrounds in neighborhoods lacking outdoor play space, ball fields, nature centers, urban community gardens, and local parks. The Council has so far awarded over $4.5 million in support of 33 infrastructure projects. In total, the Stewardship Council's Youth Investment Program has benefited more than 262,000 young people in underserved communities throughout the PG&E service area.

To continue this important work beyond the original 10-year initiative, in 2010 the Stewardship Council helped establish a new nonprofit charity under Internal Revenue Code Section 501(c)(3), called the Foundation for Youth Investment. The Stewardship Council has supported the Foundation for Youth Investment with in-kind contributions as well as monetary grants, and intends to make a substantial portion of its grant support subject to the Foundation for Youth Investment raising matching funds from other donors. The Stewardship Council sees this as a way of leveraging the initial investment in the Youth Program and fulfilling our expectation that a portion of the Youth Program funds would be used to provide "seed money that would establish a permanent program for young people who are least likely to enjoy the wonder of

California's natural beauty."[9] The Foundation for Youth Investment will account to the Stewardship Council for the use of any Youth Program funds it receives, and the Stewardship Council will remain accountable to the Commission for the disposition of such funds.

The success of the Youth Investment Program has validated the approach adopted by the Stewardship Council. The program has boosted the participation of underserved youth in quality programs that connect them to outdoor activities and enhanced recreation infrastructure all over the PG&E service area. Granting the petition will ensure ongoing benefits to the public that were not expressly considered at the time the original decisional language was written, but which are wholly consistent with the intent of Youth Investment Program initiative.

On May 30, 2012, the Stewardship Council responded to the Administrative Law Judge's (ALJ) Ruling requesting information regarding the expenditure of the $30 million ratepayer funded youth programs. That response is attached as Appendix A. The response (which we have not audited) supports the petition. It shows a going concern with assets, as of December 31, 2011, of $13,500,000 (*see* Appendix A at 4), having served over 262,000 youth (Appendix A at 3).

For the above-stated reasons, we modify D.03-12-035 by approving the changes to the decisional language at 66-67 of the Decision as set forth below. Granting this petition will help ensure that the Commission's original $30 million initiative will continue to fulfill its mission to connect underserved youth with nature and the outdoors, as originally intended.

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[9] D.03-12-035 at 66.

The original language with the changes are:

In order to ensure that environmental benefits of a substantial nature are realized by PG&E's urban ratepayers, our modified Settlement Agreement will augment the $70 million devoted to environment activities by $30 million. These additional funds shall be expended to provide ~~a wilderness experience for urban youth, especially disadvantaged urban youth, and to acquire and maintain urban parks and recreation areas. We direct that the acquisition of such parks and recreation areas be focused on creating an environment that~~ greater resources to connect children, youth, and young adults in the PG&E service territory to nature, parks, open spaces, and the outdoors, and will particularly serve the needs of ~~urban low income~~ underserved youth. Of the $30 million, to be expended in ~~equal~~ installments over 10 years or more, we will expect ~~approximately 1/3~~ that a reasonable portion of the funds, as approved by the Stewardship Council board, would be used to provide seed money that would establish a permanent program for young people who are least likely to enjoy the wonder of California's natural beauty. ~~This program would allow disadvantaged, inner city youth to experience the environment in nature's own setting. The program would select young citizens in an urban setting, and provide the means to visit these watershed lands for a week or two. While there, they would be exposed to living in the outdoors and see how the actions of man interact with animal and plant life, both favorably and unfavorably. The 2/3 balance of the $30 million would be used to acquire urban parks and recreation areas for inner city youth."~~

The changed language now will read as follows:

In order to ensure that environmental benefits of a substantial nature are realized by PG&E's urban ratepayers, our modified Settlement Agreement will augment the $70 million devoted to environment activities by $30 million. These additional funds shall be expended to provide greater resources to connect children, youth, and young adults in the PG&E service territory to nature, parks, open spaces, and the

> outdoors, and will particularly serve the needs of underserved youth. Of the $30 million, to be expended in installments over 10 years or more, we will expect that a reasonable portion of the funds, as approved by the Stewardship Council board, would be used to provide seed money that would establish a permanent program for young people who are least likely to enjoy the wonder of California's natural beauty.

Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Barnett in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed by the Stewardship Council which support the proposed decision with a minor clarification, which has been adopted.

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Robert Barnett is the assigned ALJ in this proceeding.

Findings of Fact

1. In D.03-12-035, the Commission created a $30 million ratepayer-funded initiative to provide underserved, urban youth with greater opportunities to experience California's rich natural environment.

2. D.03-12-035 established the Stewardship Council as an independent nonprofit foundation to implement a Land Conservation Commitment on PG&E's watershed lands.

3. D.03-12-035 included language about how the $30 million would be allocated by the Stewardship Council.

4. With the benefit of knowledge gained through direct experience benefiting underserved youth, the original decisional language now appears too narrow and prescriptive regarding the permissible uses of the $30 million.

5. The opportunity to enhance recreation infrastructure is not always in purchasing parks and recreation facilities outright, but rather in making grants to cities, counties, and other agencies and organizations to allow them to construct, renovate, or enhance parks and other facilities within their communities.

6. Broadening the language in D.03-12-035 in regard to the $30 million environmental fund as set forth in the petition will ensure ongoing benefits to the public that were not expressly considered at the time the original decisional language was written, but which are wholly consistent with the intent of the decision.

7. Granting this petition will help ensure that the Commission's original $30 million initiative will continue to fulfill its mission to connect underserved youth with nature and the outdoors, as originally intended by the Commission.

Conclusions of Law

1. The petition should be granted.

2. The language on pages 66-67 of D.03-12-035 should be modified by removing the paragraph that starts "In order to ensure . . . ," and inserting the following:

> In order to ensure that environmental benefits of a substantial nature are realized by PG&E's urban ratepayers, our modified Settlement Agreement will augment the $70 million devoted to environment activities by $30 million. These additional funds shall be expended to provide greater resources to connect children, youth, and young adults in the PG&E service territory to nature, parks, open spaces, and the outdoors, and will particularly serve the needs of underserved youth. Of the $30 million, to be expended in installments over 10 years or more, we will expect that a reasonable portion of the funds, as approved by the Stewardship Council board, would be used to provide seed money that would establish a permanent program for young people who are least likely to enjoy the wonder of California's natural beauty.

O R D E R

IT IS ORDERED that:

1. The November 28, 2011 Joint Petition of Forest and Watershed Lands Stewardship Council and The Greenlining Institute for Modification of Decision 03-12-035 is granted to the extent set forth in the ordering paragraph below.

2. Decision 03-12-035, pages 66-67 is modified by removing the paragraph that starts "In order to ensure . . . ," and inserting the following:

> In order to ensure that environmental benefits of a substantial nature are realized by PG&E's urban ratepayers, our modified Settlement Agreement will augment the $70 million devoted to environment activities by $30 million. These additional funds shall be expended to provide greater resources to connect children, youth, and young adults in the PG&E service territory to nature, parks, open spaces, and the outdoors, and will particularly serve the needs of underserved youth. Of the $30 million, to be expended in installments over 10 years or more, we will expect that a reasonable portion of the funds, as approved by the Stewardship Council board, would be used to provide seed money that would establish a permanent program for young people who are least likely to enjoy the wonder of California's natural beauty.

3. Investigation 02-04-026 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

I0204026 APPENDIX A Barnett