BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Establishment of a Public Purpose Program Surcharge Pursuant to Assembly Bill (AB) 1002.	Rulemaking __-__-___

ORDER INSTITUTING RULEMAKING

I. Summary

In this order we initiate a proceeding to determine the broad policy issues pertaining to the natural gas surcharge to fund public purpose programs, as authorized by Assembly Bill (AB) 1002 (Stats. 2000, Ch. 932) and to adopt a long-term framework for implementing AB 1002.

II. Background

AB 1002, effective January 1, 2001, adds Article 10, §§ 850 *et seq.* to the Public Utilities' Code.[1] The statute directs the Commission to establish a gas surcharge to fund public purpose programs such as low-income customer assistance, energy efficiency, and public interest research and development.[2] Revenues from the surcharge will be collected by each of California's natural gas utility companies and will be remitted to the State Board of Equalization (BOE). Customers who are not served by a utility company will pay the surcharge directly to the BOE. The BOE will transmit all surcharge payments to the State

[1] All statutory references are to the Public Utilities Code, unless otherwise noted.

Treasurer to be deposited in the Gas Consumption Surcharge Fund (Fund). Monies in the Fund are continuously appropriated to the Commission or an entity designated by the Commission to administer public purpose programs.

AB 1002 also specifies that the public purpose program charge is in addition to the other charges for gas commodity and transportation service, with the surcharge shown as a separate line item on the bills of utility customers effective July 1, 2001. (§ 890 (i).)

On December 21, 2000, we issued Resolution G-3303, which adopted 2001 surcharge rates for the service territories of the natural gas utilities under our jurisdiction. We based surcharge rates on embedded costs of public purpose programs in utility rates for the three major gas utilities, Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SoCalGas) and San Diego Gas and Electric Company (SDG&E), and applied "a default rate "to smaller gas utilities in the State that have limited or no public purpose programs and for those customers on interstate pipelines not directly served by the utilities. In Resolution G-3303, we established a surcharge payment and collection mechanism through the BOE, and announced that we would begin a rulemaking proceeding after January 1, 2001 to address the broader provisions of AB 1002. We also initiated two related rulemakings, Rulemaking (R.) 01-08-027, and R.01-08-028 to address major public purpose program issues for low-income and energy efficiency programs respectively.

On December 11, 2001, we issued Resolution G-3329 adopting surcharge rates for jurisdictional gas utilities for 2002. In response to utility comments

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[2] In Decision (D.) 97-06-108 we stated our intent to pursue legislation that would require all end-use gas customers to pay a surcharge to fund public purpose programs.

regarding potential undercollections as a result of increased public purpose program costs. We also increased many surcharge rates above those in Resolution G-3303.

Rule 6(c)(2) of our Rules of Practice and Procedure provides that the Order Instituting Rulemaking (OIR) "shall preliminarily determine the category and need for hearing, and shall attach a preliminary scoping memo."

In Section III below, we outline the issues we expect to address in the course of this rulemaking, including a schedule.

III. Preliminary Scoping Memo

We divide this proceeding into two parts: Gas Surcharge Determination and Program Administration. In each of the two areas, we provide an outline of our plan and pose a number of questions for parties to answer in their comments. Based on the utilities' submission of the requested accounting information, our assessment of public purpose programs in R.01-08-027 and R.01-08-028, and parties' comments, we plan to develop mechanisms for future surcharge rates, necessary accounting and documentation procedures, and other steps to implement AB 1002.

1. Gas Surcharge Determination

In order to set future annual surcharge rates, we require jurisdictional gas utilities to update their surcharge rates through advice letters submitted to the Commission by September 30 of each preceding year. The advice letters will estimate public purpose program requirements, and estimated gas usage by customer classes, including California Alternative Rates for Energy (CARE) customers. The advice letters must include current and estimated balances in the appropriate gas surcharge accounts and the most recently adopted public purpose program costs, or estimates of public purpose program costs, in calculating the gas surcharge for the next calendar year.

We must also determine how to implement § 898, which provides as follows:

> Notwithstanding § 890, a municipality, district, or public agency that offers in published tariffs home weatherization services, rate assistance for low-income customers, or programs similar to those described in subdivision (a) of § 890, shall not be required to collect a surcharge pursuant to this article from customers within its service territory. A municipality, district or public agency shall be required to collect a surcharge pursuant of this article from customers served by the municipality, district, or public agency outside of its service territory unless the commission determines that the entity offers those customers services similar to those offered by gas utilities as described in subdivision (a) of §890.

In order to fully implement AB 1002 and develop the required procedures, we direct natural gas public utilities under our jurisdiction (respondents) to file and serve certain information regarding public purpose programs. The required cost information will include currently authorized public purpose program annual dollars as well as balancing and memorandum account information, including administrative costs by program. This information is for calendar year 2001. Cost information shall also include estimates of public purpose costs, by program, for the year 2002. Utilities shall also submit a calculation of the proposed surcharge, including total dollars and gas volumes, by customer class for both CARE and non-CARE customers. The calculation of the proposed surcharge shall include gas volumes exempt from the surcharge by customer class. We also direct respondents to provide us with information listing all 2001 research and development projects funded through the natural gas surcharge and the amounts for each project. The respondents to

this proceeding are PG&E, SoCal Gas, SDG&E, Avista Utilities, Alpine Natural Gas Operating Company, Southern California Edison Company, Southwest Gas Corporation, West Coast Gas Company and Mountain Utilities. We invite municipal utilities, districts, and public agencies to comment on our proposals. All comments must be filed and served no later than 30 days after the effective date of this order.

In addition to commenting on our proposal for calculating and updating surcharge rates, respondents shall, and other parties may, file and serve comments on the questions listed below:

1. How has your utility implemented the requirement express in Section 890 referring to " . . . funding for those programs shall be removed from the rates of gas utilities?"
2. What monthly accounting and billing mechanism is your utility currently using to implement the natural gas surcharge?
3. What treatment is appropriate for the balances in existing utility balancing and memorandum accounts pertaining to public purpose programs?
4. What other procedures might be used instead of the annual surcharge procedure described above for calculating the surcharge rates?
5. Is it permissible under AB 1002 to set statewide surcharge rates?
6. Is it desirable to set statewide surcharge rates?
7. If statewide rates are adopted, how should the Commission determine these rates?
8. How should the difference between actual program costs incurred during the year be reconciled with annual revenues collected from the surcharge?
9. Should the surcharge rate be adjusted during the year, and if so, how should this occur?

10. CARE is based on a discount to rates and therefore varies with each utility's rate as well as the number of low income customers in each utility's territory. Does this present any problems in setting the surcharge rate?
11. Pursuant to § 890 (d), the Commission must determine the annual funding required for public purpose programs. What is the appropriate level of funding for public purpose programs for large and small gas utilities, and how is this determined?
12. Is balancing account treatment appropriate for gas surcharge program costs and revenues?
13. Are there any consumers of natural gas in California who are not located in any of the utility service territories? If so, how should the surcharge be calculated for these customers?
14. How should the Fund be allocated among the utilities or program administrators?
15. What limitations should apply on annual allocations to utilities or program administrators from the Fund. (*i.e.* annual surcharge collections exceed program costs.)
16. How should the Fund be allocated among low-income energy efficiency, general energy efficiency, and public interest research and development programs?
17. Have utilities identified consumption that is exempt from AB 1002, and what are these amounts? What process should be adopted to continually identify exempt consumption?
18. How should BOE be alerted to non-utility customers, such as interstate gas pipeline customers, who should be making surcharge payments?
19. How should the surcharge appear on customer bills?
20. For those utilities with electric and gas public purpose programs, how are electric and gas administrative program costs allocated to electric and gas programs?

21. What cost components for each program should be used in the calculation of the surcharge and eligible for recovery from the Fund?
22. How should administrative costs of utilities or program administrators be compensated?
23. Is there a need for workshops and what are potential workshop issues?
24. Are there additional surcharge issues that the Commission should consider?

2. Program Administration

We will address two program administration issues in this proceeding: a) research and development and b) cash flow. The administrative structure for the low-income energy efficiency and CARE programs is defined by law. These programs therefore remain the responsibility of PG&E, SoCalGas and SDG&E to administer for their natural gas customers. (*See, e.g.,* Senate Bill 2 of the Second Extraordinary Session (Stats. 2001, Ch. 11, amending §§ 382, 739.1, and 2790 and adding §§ 382.1 and 386 to the Pub. Util. Code).)

Any issues or changes related to the low-income energy efficiency and CARE programs or administrative structure, will be addressed in our rulemaking on proposed policies and programs governing low-income assistance programs (R.01-08-027). Similarly, we will address administration and program design of energy efficiency programs in our recently issued rulemaking on energy efficiency programs (R.01-08-028).

3. Research and Development

For administration of research and development activities "not adequately provided by the competitive and regulated markets,"[3] we must

[3] *See* § 890 (a).

determine whether the gas surcharge funds should continue to be collected by and allocated to the utilities for research and development activities or whether an alternative mechanism should be identified. For example, electric public goods charge research and development funding is required by § 381 (f) to be allocated to the California Energy Commission (CEC) for funding the Public Interest Energy Research (PIER) grant program. AB 1002, however, does not specify that gas surcharge funds must similarly be remanded to the CEC. Therefore, we request parties' comments and suggestions on appropriate treatment for gas surcharge funds collected for research and development purposes.

We request comments from respondents and other parties on the following issues related to the development and design of research and development programs paid for by the gas surcharge:

1. Based on the information requested from respondents, are current utility gas surcharge research and development activities appropriate?
2. Are there additional gas research and development programs that the Commission should consider?
3. How should the Commission determine if research and development is not adequately provided by the competitive regulated markets?
4. How should the Commission evaluate and approve appropriate gas research and development projects including establishing annual budgets?

4. Cash Flow Procedures

The implementation of AB 1002 involves the gas utilities, program administrators, the BOE, the Treasurer, the Controller and the Commission. In order that surcharge funds are continuously appropriated, procedures must provide adequate direction to all entities. Proposed procedures are described

below. We request comments from respondents and parties on both the proposed procedures and the related questions.

Under our proposed procedures, program administrators will file payment documentation with the Energy Division requesting disbursement of surcharge funds for public purpose program payments. The Commission (or its delegate) will authorize payments from the Fund by notifying the State Controller. Payments will be made on an as-needed basis, but no more often than quarterly.

Commission staff will coordinate with the BOE, Controller's Office, gas utilities, and program administrators to monitor funding levels; develop reporting mechanisms; work with small utilities and non-utility customers on developing public purpose programs; review and audit gas surcharge accounts; and develop the information necessary for the Commission to adopt and track gas surcharge payments and accounts.

In addition to comments on the proposed procedures, we request comments from respondents and parties on the following related program administration issues:

1. What type of documentation should be provided to the Commission by program administrators for public purpose payment requests?
2. How often should program administrators be reimbursed for program costs?
3. How should interest and carrying costs be considered in the surcharge accounts?
4. How should audits of the various gas surcharge accounts be conducted and reported?
5. Are there additional program administration issues we should address?

IV. Category of Proceeding

This rulemaking is preliminarily determined to be quasi-legislative, as that term is defined in Rule 5 (d). We anticipate that hearings may be required.[4] Any person filing a response to this OIR shall state in the response any objections to the Order regarding the category, need for hearing, and preliminary scoping memo.

Parties and Service List

In addition to the named respondents, we will serve the OIR on parties to several proceedings: R.01-08-027 *et al.*, and R.01-08-028 *et al.*, and our service list for Resolution G-3329. Within 15 days from the date of mailing of this order, any person or representative of an entity interested in monitoring or participating in this rulemaking should send a request to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, California 94102 or ALJ_Process@cpuc.ca.gov., asking that his or her name be placed on the service list. The Process Office thereafter will create a service list and distribute it to all parties in this proceeding. This initial service list shall also be posted on the Commission's web site www.cpuc.ca.gov. as soon as is practicable.

We also intend to utilize the Electronic Service Protocols set forth in Appendix A to this OIR. Any party requiring paper service of documents in this proceeding should so note that requirement in their request to be added to the service list.

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[4] As defined in Rule 8(f)(2), formal hearings in quasi-legislative proceedings include hearings at which testimony is offered on legislative facts, *i.e.*, general facts that help the Commission decide questions of law, policy, and discretion, but do not include hearings at which testimony is offered on adjudicative facts. Adjudicative facts answer questions such as who did what, where, when, how, why, and with what motive or intent.

V. Schedule

Respondents shall, and interested parties may, file and serve comments on the issues delineated herein no later than 30 days from the effective date of this order. Respondents and interested parties may file reply comments 15 days after the filing of comments. After reviewing the comments and reply comments, we intend to determine whether evidentiary or formal legislative hearings are required, and identify whether any other issues should be addressed. In their comments and reply comments, respondents and interested parties should indicate whether they believe that evidentiary hearings are necessary and identify any material disputed factual issues to be addressed at such hearings.

Consistent with rule 6(e), we expect this proceeding to be concluded within 18 months.

VI. Public Advisor

Any party interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor's Office in San Francisco at (415) 703-2074, (866) 836-7875 (TTY-toll free) or (415) 703-5282 (TYY), or in Los Angeles at (213) 649-4782, or send an e-mail to public.advisor@cpuc.ca.gov.

VII. Ex Parte Communications

This proceeding is subject to Rule 7, which specifies standards for engaging in ex parte communications and the reporting of such communications. Pursuant to Rules 7(a)(4) and 7(d), ex parte communications will be allowed in this proceeding without any restrictions or reporting requirements until the assigned Commissioner makes an appealable determination of category as provided for in Rules 6(c)(2) and 6.4. Following the Commissioner's determination, the applicable ex parte communication and reporting

requirements shall depend on such determination unless and until the Commission modifies the determination pursuant to Rule 6.4 or 6.5.

Therefore, **IT IS ORDERED** that:

1. A rulemaking is instituted on the Commission's own motion to Establish a Gas Surcharge to Fund Specified Public Purpose Programs pursuant to Assembly Bill 1002. (Stats. 2000, Ch. 932.)

2. Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas Electric Company, Avista Utilities, Alpine Natural Gas Operating Company, Southern California Edison Company, Southwest Gas Corporation, West Coast Gas Company, and Mountain Utilities are named as Respondents to this proceeding.

3. The Executive Director shall cause the Order Instituting Rulemaking (OIR) to be served on Respondents, The State Board of Equalization, The State Treasurer's Office, The State Controller's Office, and the parties to the following existing Commission proceedings: Rulemaking (R.) 01-08-027 and R.01-08-028, and the service list utilized in Resolution G-3329.

4. Within 15 days from the date of mailing of this order, any person or representative of an entity interested in monitoring or participating in the rulemaking shall send a request to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, 94102 or e-mail ALJ_Process@cpuc.ca.gov., asking that his or her name be placed on the service list.

5. The category of this rulemaking is preliminarily determined to be "quasi-legislative" as that term is defined in Rule 5(d) of the Commission's Rules of Practice and Procedure.

6. Any person filing a response to the OIR shall state in the response any objections to the Order regarding the category, need for hearing, and preliminary

scoping memo. At or after the prehearing conference if one is held, the assigned Commissioner will rule on the category, need for hearing and scoping memo.

7. Respondents shall, and interested parties may, file and serve comments on the surcharge and program administration issues identified in this OIR no later than 30 days from the effective date of this Order.

8. Respondents and interested parties may file and serve reply comments no later than 15 days after the filing of comments.

9. All parties shall abide by the electronic service protocols attached as Appendix A hereto.

10. This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

APPENDIX A

ELECTRONIC SERVICE PROTOCOLS
(Page 1)

VIII. Party Status in Commission Proceedings

These electronic service protocols are applicable to all "appearances." In accordance with Commission practice, by entering an appearance at a prehearing conference or by other appropriate means, an interested party or protestant gains "party" status. A party to a Commission proceeding has certain rights that non-parties (those in "state service" and "information only" service categories) do not have. For example, a party has the right to participate in evidentiary hearings, file comments on a proposed decision, and appeal a final decision. A party also has the ability to consent to waive or reduce a comment period, and to challenge the assignment of an Administrative Law Judge (ALJ). Non-parties do not have these rights, even though they are included on the service list for the proceeding and receive copies of some or all documents.

IX. Service of Documents by Electronic Mail

For the purposes of this proceeding, all appearances shall serve documents by electronic mail, and in turn, shall accept service by electronic mail.

Usual Commission practice requires appearances to serve documents not only on all other appearances but also on all non-parties in the state service category of the service list. For the purposes of this proceeding, appearances shall serve the information only category as well since electronic service minimizes the financial burden that broader service might otherwise entail.

X. Notice of Availability

If a document, including attachments, exceeds 75 pages, parties may serve a Notice of Availability in lieu of all or part of the document, in accordance with Rule 2.3(c) of the Commission's Rules of Practice and Procedure.

XI. Filing of Documents

These electronic service protocols govern service of documents only, and do not change the rules regarding the tendering of documents for filing. Documents for filing must be tendered in paper form, as described in Rule 2, *et seq.*, of the Commission's Rules of Practice and Procedure. Moreover, all filings shall be served in hard copy (as well as e-mail) on the assigned ALJ.

Attachment A

ELECTRONIC SERVICE PROTOCOLS
(Page 2)

XII. Electronic Service Standards

As an aid to review of documents served electronically, appearances should follow these procedures:

Merge into a single electronic file the entire document to be served (*e.g.* title page, table of contents, text, attachments, service list).

Attach the document file to an electronic note.

In the subject line of the note, identify the proceeding number; the party sending the document; and the abbreviated title of the document.

Within the body of the note, identify the word processing program used to create the document. (Commission experience indicates that most recipients can open readily documents sent in Microsoft Word or PDF formats

If the electronic mail is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall immediately arrange for alternative service (paper mail shall be the default, unless another means is mutually agreed upon).

Obtaining Up-to-Date Electronic Mail Addresses
The current service lists for active proceedings are available on the Commission's web page, www.cpuc.ca.gov. To obtain an up-to-date service list of e-mail addresses:

Choose "Proceedings" then "Service Lists."

- Scroll through the "Index of Service Lists" to the number for this proceeding.
- To view and copy the electronic addresses for a service list, download the comma-delimited file, and copy the column containing the electronic addresses.

Attachment A

ELECTRONIC SERVICE PROTOCOLS
(Page 3)

The Commission's Process Office periodically updates service lists to correct errors or to make changes at the request of parties and non-parties on the list. Appearances should copy the current service list from the web page (or obtain paper copy from the Process Office) before serving a document.

Pagination Discrepancies in Documents Served Electronically
Differences among word-processing software can cause pagination differences between documents served electronically and print outs of the original. (If documents are served electronically in PDF format, these differences do not occur.) For the purposes of reference and/or citation in cross-examination and briefing, all parties should use the pagination found in the original document.

(END OF ATTACHMENT A)