Decision ______________

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Expedited Application of Pacific Gas and Electric Company (U 39 M) to (1) Issue, Sell and Deliver One or More Series of Its First and Refunding Mortgage Bonds, Debentures, Subordinated Deferrable Interest Debentures, Promissory Notes and/or Other Evidences of Indebtedness in Connection with Domestic or Euro-Market offerings, to Guarantee the Obligations of Others in Respect of the Issuance of Securities and to Arrange For Standby Letters of Credit as Performance Guarantees, the Total Aggregate Principal Amount of Such Issuances and Guarantees Not to Exceed $2 Billion; (2) Enter into One or More Interest Rate Caps, Collars and Swaps; (3) Issue Variable Rate Debt (Including Fixed Rate Debt Swapped to a Variable Rate) to Finance Balancing Account Undercollections; and (4) Obtain an Exemption from the Competitive Bidding Rule.	Application 00-10-029 (Filed October 18, 2000)

OPINION REGARDING THE PETITION TO MODIFY DECISION (D.) 01-01-062, D.01-02-050, D.01-06-074, D.02-03-025, AND D.03-02-061 FILED BY PACIFIC GAS AND ELECTRIC COMPANY

Summary

This decision extends Pacific Gas and Electric Company's (PG&E's) authority to pledge its gas customer accounts receivable ("accounts receivable") and core gas inventory ("core inventory") for the purpose of procuring core gas

supplies until the earlier of either November 1, 2004, or the time PG&E satisfies the other conditions adopted by this Commission in five previous decisions—D.01-01-062, D.01-02-050, D.01-06-074, D.02-03-025, and D.03-02-061.

Background

In the first of five previous decisions, D.01-01-062, the Commission granted PG&E authority under Pub. Util. Code § 851[1] to pledge its accounts receivable and core inventory[2] for the sole purpose of procuring core gas supplies. The authority granted by D.01-01-062 terminated the earlier of (i) 90 days after the effective date of the decision, or (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to at least BBB- by S&P or Baa3 by Moody's. In a second order, D.01-02-050, the Commission extended PG&E's authority to pledge its accounts receivable and core inventory until July 31, 2001. In a third, D.01-06-074, the Commission extended PG&E's authority until the earlier of (i) May 1, 2002, (ii) the effective date of a confirmed reorganization plan in PG&E's bankruptcy case, (iii) the closure or dismissal of PG&E's bankruptcy case, or (iv) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt. The fourth decision was D.02-03-025 that extended the authority until the earlier of (i) May 1, 2003, (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to at least BBB- by S&P or Baa3 by Moody's, (iii) the effective date of a Chapter 11 Plan of Reorganization for PG&E, or (iv) the dismissal or conversion of PG&E's Chapter 11 case. The last decision, D.03-02-061, extended the date until either May 1, 2004

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

[2] For purposes of this decision, "core inventory" is defined as gas designated for core customers that is held in storage fields and pipelines.

or the satisfaction of the other conditions, above. Given the nature of PG&E's finances, we believed that it was in the public interest to periodically reconsider PG&E's need for authority to pledge its gas accounts receivable and core inventory. The Commission issued these decisions in response to the precipitous decline in PG&E's financial condition, which culminated in PG&E filing for bankruptcy.

On January 15, 2004, PG&E jointly filed a *Petition for Modification of Decisions No. 01-01-062, 01-02-050, 01-06-074, 02-03-025 and 03-02-061 on an Expedited Basis* (Petition, or Petition to Modify) and a related *Motion*[3] to shorten response time and shorten comment on the proposed decision. PG&E acknowledges that the Commission has established regulatory mechanisms that enable PG&E to pay for gas purchases on a timely basis. PG&E also states that its status as a debtor in possession under federal bankruptcy law should not impede its ability to pay for future gas supplies.

PG&E represented in its last petition for modification[4] that suppliers were more willing to deal with PG&E because of this program and that the suppliers themselves have deteriorating credit ratings too. This was discussed in a sworn declaration from the Portfolio Manager of PG&E's Gas Procurement Department (Manager).[5] He stated that there were twelve fewer counter-parties available for transactions; that seven suppliers are the source of 75% of core gas requirements;

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[3] PG&E initially filed the Petition and Declaration on January 15, 2004 and subsequently re-filed the Petition, Declaration and the Motion on January 16, 2004.

[4] PG&E filed a *Petition for Modification of Decisions No. 01-01-062, 01-02-050, 01-06-074 and 02-03-025* on January 9, 2003.

[5] Declaration of Raymond X. Welch, dated January 9, 2003 (2003 Declaration).

and that 33% of all core gas purchased by PG&E was subject to the gas accounts receivable securitization. Consequently, the Manager believed at that time that PG&E's ability to obtain adequate supplies of core gas would be threatened if the Commission failed to extend PG&E's authority to pledge its gas accounts receivable. The primary basis for extending the authority in D.03-02-061 was the factual assertions contained in that 2003 Declaration.

PG&E has again filed a 2004 Declaration by the same Manager[6] asserting that the securitization has been effective but there is a concern that a "gap" in coverage could occur where PG&E will need to buy gas while still in bankruptcy for future delivery after emerging from bankruptcy. In the past year, 2003, 14 suppliers either relied upon the security interest in receivables or at least required it as a condition of selling gas to PG&E despite the ongoing protection offered by the Bankruptcy Court and the fact that PG&E has continuously paid its bills in full and on time.

PG&E proposes that after emerging from bankruptcy, or earlier if possible, it will rely on letters of credit, but gas purchases that must be made in March 2004 for April delivery are not eligible for securitization under D.03-02-061 because accounts receivable after April 1 cannot be used for credit security. PG&E's concern is that it might not have letters of credit available in time to replace the account receivable security for March purchases delivered in April and later months. PG&E's authority in D.04-01-024 to finance its emergence from bankruptcy included the use of its gas and electric accounts receivables to help it secure access to the commercial paper market. It hopes to switch to letters of

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[6] Declaration of Raymond X. Welch, dated January 8, 2004 (2004 Declaration).

credit for gas purchases in a timely fashion even before it emerges from bankruptcy to allow it to include the gas accounts receivable in this more general financing pool.[7]

Responses to Petition

The Office of Ratepayer Advocates (ORA) responded to PG&E's petition on January 23, 2004 and supported PG&E's request for an extension. By Ruling dated January 16, 2004, the Administrative Law Judge (ALJ) shortened the time to respond to PG&E's Petition, and also asked the Parties to comment on whether the authority should be extended to November 1, 2004 (three months more than PG&E's request), in order to avoid a further extension request, in the unanticipated event that PG&E's emergence from Bankruptcy is delayed. ORA supported the longer extension too. ORA did not object to reducing the comment period under Pub. Util. Code § 311(g).

The Utility Reform Network (TURN), responded on January 26, 2004 and supported both PG&E's request and the alternative November 1, 2004 sunset. TURN did not object to reducing the comment period.

Financial Condition of Suppliers

Several gas suppliers and large gas users supported PG&E's previous 2003 Petition.

Dynegy Marketing and Trade (Dynegy), Duke Energy North America and Duke Energy Trading and Marketing (Duke Energy) jointly served a response

[7] See the description and discussion in the Petition at pages 3 and 4.

supporting the 2003 Petition. Standard and Poor's has rated Dynegy[8] CCC+ since November 26, 2002. Standard and Poor's has rated Duke[9] at BBB, down from A- a year ago. Mirant Americas Development, Inc. (Mirant)[10] is currently rated as a D by Standard and Poor's, down from a BB rating a year ago. BP Energy Company (BP Energy)[11] with an AA+ rating has not seen a rating decline in the past year. This shows the precarious nature of the energy industry even today as PG&E is emerging from bankruptcy. The market is not robust and many suppliers may be riskier now than PG&E was with the protection of the Bankruptcy Court and now, with the stable financial package in the Confirmed Plan of Reorganization discussed below, PG&E should continue to be a "safe" and financial sound customer.

Discussion

Events have moved forward positively for PG&E since the granting of the last extension in D.03-02-061. On December 18, 2003, the Commission issued D.03-12-035 *Modifying the Proposed Settlement Agreement of PG&E, PG&E*

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[8] Dynegy Marketing and Trade is not separately rated from its parent, Dynegy Inc.; its parent is rated CCC+.

[9] Duke Energy North America is not separately rated from its parent, Duke Capital Corp. Duke Capital's current rating is BBB (assigned June 1, 2003), and one year ago the rating was A- (assigned August 14, 2002).

[10] Mirant Americas Development is not separately rated, but its marketing affiliate Mirant Americas Energy Marketing is rated D (assigned July 15, 2003), and one year ago was rated BB (assigned 10/21/2002).

[11] BP Energy Inc. is not separately rated from its parent, BP plc, which is rated AA+ by Standard & Poors (assigned January 5, 1999).

Corporation and the Commission Staff, and Approving the Modified Settlement Agreement in I.02-04-026. On December 22, 2003, the United States Bankruptcy Court, Northern District of California, issued an *Order Confirming Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for PG&E Proposed by PG&E, PG&E Corporation and the Official Committee of Unsecured Creditors Dated July 31, 2003, As Modified.* Also, on December 24, 2003, the Commission issued D.03-12-058 in Investigation 02-07-015 granting authorization for the financing to implement the plan of reorganization resulting from the Settlement Agreement, as modified by D.03-12-035.

The Commission has good reason to expect that PG&E will emerge from bankruptcy shortly and that its need to pledge natural gas account receivables will end. Until that time, gas suppliers may continue demanding the maximum security for gas sales to PG&E. Accordingly, we are persuaded by PG&E that it needs an extension of time beyond May 1, 2004, to pledge its gas accounts receivable and core inventory for the purpose of procuring core gas supplies. The ALJ Ruling asked parties whether they objected to a precautionary extension even further to November 1, 2004 to avoid any last minute problems if for unanticipated reasons the bankruptcy emergence was delayed. No one objected and we see no reason to chance a further last-minute extension.

For these reasons, we will modify D.03-02-061 to extend PG&E's authority to pledge its gas accounts receivable and core inventory for the sole purpose of procuring core gas supplies until the earlier of (i) November 1, 2004, (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to BBB- by S&P or Baa3 by Moody's, (iii) the effective date of a Chapter 11 Plan of Reorganization for PG&E, or (iv) the dismissal or conversion of PG&E's

Chapter 11 case. In all other respects, D.03-02-061, D.02-03-025, D.01-06-074, D.01-02-050, and D.01-01-062 remain in full force and effect.

By Ruling parties were asked to comment on whether the extension, if granted, should be until November 1, 2004, i.e., for six rather than three months, in the event of any unanticipated delay in implementing PG&E's reorganization under bankruptcy. This later date could avoid the necessity for another short extension.

Procedural Matters

Notice of PG&E's Petition appeared in the Commission's Daily Calendar on January 20, 2004. Pursuant to a ruling issued by ALJ Long on January 16, 2004, responses to PG&E's Petition were due on January 26, 2004, and PG&E's response on January 30, 2004. The ALJ's Ruling solicited comments on the motion shortening the comment period on the draft decision. The parties expressed no opposition to such shortening of time. Furthermore, there appears to be no opposition to approving PG&E's petition. Therefore, comments on the draft decision are waived pursuant to § 311(g)(2).

Assignment of Proceeding

Carl Wood is the Assigned Commissioner and Douglas M. Long is the assigned ALJ in this proceeding. Notice of the Petition appeared in the Commission's Daily Calendar on January 20, 2004.

Findings of Fact

1. D.03-02-061 extended PG&E's authority to pledge its accounts receivable and core inventory until the earlier of (i) May 1, 2004, (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to BBB- by S&P or Baa3 by Moody's, (iii) the effective date of a Chapter 11 Plan for PG&E, or (iv) the dismissal or conversion of PG&E's Chapter 11 case.

2. PG&E represents in its 2004 Declaration that it needs an extension of its authority to pledge its accounts receivable and core inventory in order to maintain its ability to procure adequate supplies of gas to meet the needs of its core customers.

3. PG&E represents that as long as it is in bankruptcy, many gas suppliers will not sell gas to PG&E without a security interest in PG&E's gas accounts receivable and core inventory.

4. PG&E is expected to emerge from bankruptcy as a result of the United States Bankruptcy Court, Northern District of California order on December 22, 2003 that confirmed a plan of reorganization.

Conclusions of Law

1. It is in the public interest to extend beyond May 1, 2004, PG&E's authority under § 851 to pledge its accounts receivable and core inventory for the sole purpose of procuring gas supplies to meet the needs of its core customers.

2. PG&E's authority to pledge its accounts receivable and core inventory should be extended to the earlier of (i) November 1, 2004, (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to BBB- by S&P or Baa3 by Moody's, (iii) the effective date of a Chapter 11 Plan of Reorganization for PG&E, or (iv) the dismissal or conversion of PG&E's Chapter 11 case.

3. The following order should be effective immediately to help ensure PG&E's uninterrupted ability to procure sufficient supplies of gas to meet the needs of its core customers.

O R D E R

IT IS ORDERED that:

1. Pursuant to Pub. Util. Code § 851, Pacific Gas and Electric Company (PG&E) is authorized to pledge its gas customer accounts receivable and core gas inventory, subject to PG&E's Mortgage, for the sole purpose of procuring gas for PG&E's core customers, including flowing gas supplies and storage gas.

2. The authority granted to PG&E in Ordering Paragraph 1 shall terminate the earlier of (i) November 1, 2004, (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to BBB- by Standard & Poor's or Baa3 by Moody's Investor Services, Inc., (iii) the effective date of a Chapter 11 Plan of Reorganization for PG&E, or (iv) the dismissal or conversion of PG&E's Chapter 11 case.

3. PG&E's petition to modify Decision (D.) 01-01-062, D.01-02-050, D.01-06-074, D.02-03-025, and D.03-02-061 filed on January 15, 2004, is granted and denied to the extent set forth in the previous ordering paragraphs. In all other respects, these decisions remain in full force and effect.

4. Application 00-10-029 is closed.

This order is effective today.

Dated ____________________________, at San Francisco, California.