

Decision **DRAFT DECISION OF ALJ WONG** (Mailed 5/5/2004)

**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 9, 2001)

**OPINION REGARDING THE SMALL COGENERATION  
CONSORTIUM'S PETITION TO MODIFY DECISION 03-12-061**

**I. Summary**

On February 27, 2004, the Small Cogeneration Consortium (SCC) filed a petition to modify Decision (D.) 03-12-061, the decision which addressed the gas market structure for Pacific Gas and Electric Company (PG&E) for 2004 and 2005.

Today's decision grants SCC's petition to modify D.03-12-061 by modifying the paragraph that addresses an electric generation customer's procurement of gas from a third-party supplier.

**II. Background**

The SCC is an ad hoc group made up of small distributed generation customers, manufacturers, consulting engineers, and installers. According to SCC's petition, its members did not participate in this proceeding prior to the filing of its petition because they were unaware of the existence of this proceeding, or its implications. SCC also states that the specific issue it seeks to

modify was not an issue until after the final decision was adopted by the Commission.

SCC seeks to modify D.03-12-061 in two ways. First, D.03-12-061 imposed the requirement that electric generation customers procure their own gas from a third-party supplier. (D.03-12-061, p. 372.) PG&E reflected that requirement in Advice Letter 2514-G, which it filed on January 20, 2004.

SCC's second concern "with the decision and PG&E's Advice Letter ... is PG&E's new requirement that all future projects install separate gas metering." (SCC Petition, p. 5.)

PG&E was the only party to file a response to SCC's petition. PG&E's response was filed on March 29, 2004.

### **III. Positions of the Parties**

#### **A. SCC**

SCC seeks to modify the following paragraph which appears at page 372 of D.03-12-061:

"We will eliminate the 250,000 therm cutoff from PG&E's proposal, but retain the proposed requirement that these customers obtain their gas from a third-party supplier."

SCC contends that this new requirement for self-procurement is a dramatic departure from past practice and a harmful change for small cogeneration customers. SCC points out that small cogenerators use between 30,000 to 150,000 therms of gas per year. Due to their small size and gas usage, these "small users typically lack the legal staff, rate expertise, and sophistication needed to arrange and protect their interests in complex third-party gas procurement transactions," and that "the low volumes are most likely going to

be too small to be of much interest to third-party gas marketers.” (SCC Petition, pp. 3-4.)

SCC asserts that if the self-procurement requirement is not modified, that “small DG [distributed generation] users would be hit with high fees, transaction costs, and risks arranging their own procurement deals.” Since such a requirement will be a burden on small DG projects, existing and future small users will forego the electric generation rate and revert to a full core service rate schedule. SCC contends that this “is not what the SCC members thought was going to happen, nor what the SCC members suggest the Commission intends.” (SCC Petition, p. 4.)

SCC recommends that the language adopted in D.03-12-061 be replaced with the following:

“We will eliminate the 250,000 therm cutoff from PG&E’s proposal, and retain the right for customers that are otherwise core to receive core procurement under their otherwise applicable retail rate schedule (unless they elect core aggregation services). However, if a small DG user’s electric generation usage exceeds 250,000 therm per year, it shall be required to obtain their gas from a third-party supplier.” (SCC Petition, p. 5.)

The second concern of SCC “with the decision and PG&E’s Advice Letter ... is PG&E’s new requirement that all future projects install separate gas metering.” (SCC Petition, p. 5.) SCC’s petition, however, does not reference the language in D.03-12-061 or the PG&E Advice Letter where such a requirement appears.

## **B. PG&E**

PG&E agrees with SCC’s petition that the Commission should permit small cogenerators, i.e., those with a rated generation capacity of less than

500 kW and total gas usage of 250,000 therms per year or less, the option of purchasing their gas supplies from PG&E as core customers.

Under PG&E's G-COG tariff, small cogenerators are able to obtain cogeneration gas transportation rates, and are permitted to purchase their natural gas supplies from PG&E as core customers. D.03-12-061 alters the status quo by requiring small cogenerators to obtain their gas from third-party suppliers.

PG&E asserts that SCC's petition, and the protests to PG&E's Advice Letter 2514-G, make it clear "that these small cogeneration customers highly value the natural gas procurement services PG&E has provided them over the years," and "that most of these small cogeneration systems would never have been installed (and would not be economical), but for the discounted gas transportation rate." (PG&E Response, p. 3.)

PG&E points out that many of these small cogeneration systems have been installed at health clubs, schools, retirement homes, office buildings, and similar facilities. These customers have traditionally been classified as core customers because of their size, or their need for hot water or heating. PG&E asserts that "Most of these customers would be unwilling or unable to curtail gas use, and they also lack the resources or desire to negotiate gas supply contracts with third party suppliers." (PG&E Response, p. 3.)

For the reasons listed above, PG&E supports SCC's petition to eliminate the self-procurement requirement imposed by D.03-12-061, and that smaller cogeneration be given the option of taking core procurement service. PG&E also recommends that SCC's proposed change be slightly modified as follows, to

reflect the current noncore definition for electric generation contained in D.03-12-008:<sup>1</sup>

“We will eliminate the 250,000 therm cutoff from PG&E’s proposal, and retain the right for customers that are otherwise core to receive core procurement under their otherwise applicable retail rate schedule (unless they elect core aggregation services). However, if a small DG user’s electric generation has a rated generation capacity of five-hundred kilowatts (500 kW) or larger, or with annual usage that exceeds 250,000 therms per year it shall be required to obtain their [sic] gas from a noncore third-party supplier.”

If the above language change is adopted, PG&E states that it will “provide all small cogeneration customers that fall below the size limit the option to elect core procurement service in conjunction with noncore transportation service under schedule G-EG.” (PG&E Response, p. 5.)

With respect to SCC’s second concern concerning the separate metering requirement, PG&E states that it eliminated this requirement in PG&E’s Advice Letter 2514-G-A, which was filed after SCC filed its petition, and after Advice Letter 2514-G was filed. As a result, PG&E states that SCC’s request to eliminate the separate metering requirement can be dismissed as moot. PG&E also states in its response that SCC has authorized PG&E to represent that SCC agrees that this issue has been resolved and need not be considered further by the Commission.

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<sup>1</sup> PG&E states at pages 2 and 5 of its response that SCC has authorized PG&E to represent that SCC agrees with PG&E’s additional language modifications.

**IV. Discussion**

We first note that although SCC was not a party to this proceeding, Rule 47 of the Commission's Rules of Practice and Procedure provides that the "petitioner will become a party to the proceeding for the purpose of resolving the petition" if the petition states "specifically how the petitioner is affected by the decision and why the petitioner did not participate in the proceeding earlier." SCC included that information in its petition, and SCC shall be considered a party for the purpose of resolving its petition.

The first modification that SCC seeks is to modify the requirement that all electric generation customers, including small cogeneration, obtain their gas from a third-party supplier. PG&E agrees with SCC's proposed modification, with some slight changes that SCC agrees with. No other party expressed interest in this issue.

SCC's reasoning for modifying the self-procurement requirement is to lessen the administrative and financial burden on small cogenerators. If the self-procurement requirement is retained, SCC warns that the cost of procuring gas for these small cogenerators will outweigh the benefit of the lower transportation rate.

After considering the concerns of SCC, and PG&E's support of SCC's request, SCC's petition should be granted, and the following paragraph that appears at page 372 of D.03-12-061 should be modified:

"We have considered PG&E's proposal, and the concerns of DGS. We will eliminate the 250,000 therm cutoff from PG&E's proposal, but retain the proposed requirement that these customers obtain their gas from a third-party supplier."

The paragraph should be modified as follows, and adopted:

“We have considered PG&E’s proposal, and the concerns of DGS. We will eliminate the 250,000 therm cutoff from PG&E’s proposal, and retain the right for customers that are otherwise core to receive core procurement under their otherwise applicable retail rate schedule (unless they elect core aggregation services). However, if a small DG user’s electric generation has a rated generation capacity of five-hundred kilowatts (500 kW) or larger, or with annual usage that exceeds 250,000 therms per year, it shall be required to obtain its gas from a noncore third-party supplier.”

The second issue that SCC is concerned about is the separate metering requirement. The separate metering recommendation was part of PG&E’s proposal for a single electric generation class that it made in this proceeding. Under its proposal, PG&E had recommended “that all customers who qualify for the electric generation rate have a separate PG&E meter installed to measure gas use of the electric generation facilities, and that those facilities be monitored on a regular basis.” (D.03-12-061, pp. 246-248.) D.03-12-061 adopted PG&E’s proposal for a single electric generation customer class, as revised by the discussion in the decision. (D.03-12-061, pp. 375-376.) As part of the discussion, we stated that “Instead of PG&E’s proposed method of measuring usage, the method set forth in SoCalGas’ [Southern California Gas Company] Schedule GT-F tariff in Special Conditions 19 through 22 shall be used.” (D.03-12-061, pp. 374, 458, COL 76.) Special Condition 22 of SoCalGas’ Schedule GT-F provides: “All electric generation customers receiving service at the electric generation transmission rate shall be separately metered unless it can be demonstrated that a separate meter is not economically feasible.” (See Ex. 6, p. 48, Att. RTB-4.)

PG&E’s Advice Letter 2514-G did not include the exception to the separate metering requirement, i.e., that a separate meter is not required if it can be

demonstrated that it is not economically feasible. On March 5, 2004, PG&E filed Advice Letter 2514-G-A to reflect the Commission's Energy Division request that:

“PG&E insert language into the Meter Requirement section of revised Schedule G-EG to clarify that, ‘All electric generation load served under this schedule shall be separately metered using a PG&E-owned and installed gas meter, unless it can be demonstrated that it is not economically feasible....’ ” (PG&E Advice Letter 2514-G-A, p. 1, original emphasis.)

Since PG&E made this change to Schedule G-EG, which became effective on April 1, 2004, the second concern that SCC raised in its petition to modify D.03-12-061 is now moot and no further Commission action is needed.

#### **V. Comments on Draft Decision**

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with § 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments on the draft decision were due on May 25, 2004. No timely comments were filed.

On May 28, 2004, the East Bay Municipal Utility District (EBMUD) submitted for filing a motion for leave to intervene in this proceeding, and a motion for leave to file its comments to the draft decision three days out-of-time. A copy of EBMUD's comments was attached to the latter motion. EBMUD requests that the draft decision be changed to adopt SCC's original replacement language.

On June 3, 2004, PG&E filed a response in opposition to the two motions of EBMUD. PG&E's pleading also included its response to EBMUD's comments to the draft decision.

According to EBMUD's motions, it operates a cogenerator plant that has a combined generation capacity of 6,450 kW. The cogenerator's primary fuel is

methane gas, which it captures from EBMUD's wastewater operations. EBMUD has historically purchased gas from PG&E when it needs additional gas to operate the cogenerator. EBMUD states that the "quantities of gas purchased by EBMUD from PG&E are small enough to qualify the facility as 'core' because gas consumption is less than 250,000 Therms per year." (EBMUD Opening Comments, p. 1.) EBMUD seeks to intervene because it has a direct and substantial interest in this issue as a core gas customer of PG&E with a cogeneration capacity in excess of 500 kW. If the draft decision is adopted, EBMUD will have to purchase its gas from a third-party supplier.

EBMUD states in its motion for leave to file late at page 2 that "after the mailing of the Judge's draft decision on May 5, EBMUD was made aware of the draft decision and the recommendations respecting the eligibility of small cogeneration customers to purchase gas from PG&E's core portfolio." In the declaration in support of the motion to file late, EBMUD's Wastewater Department Director states that he became aware of the draft decision on or about May 27, 2004, at which time it was too late to file timely comments.

PG&E is opposed to both of EBMUD's motions. PG&E contends that "EBMUD was made aware of the Gas Accord II-2004 Decision, the implementation of the new rate schedule G-EG, and its impact on EBMUD's service" in February 2004, as evidenced by Exhibits 1 and 2 of PG&E's declaration. PG&E also states that its billing and metering records show that "at least two of the utility district's generators have in the past consumed in excess of 250,000 therms per year." (PG&E Response, pp. 2-3.)

PG&E is opposed to changing the draft decision as suggested by EBMUD because it is contrary to what PG&E and the SCC resolved, and because EBMUD's outcome would be contrary to D.03-12-008.

We will grant EBMUD's motion for leave to intervene in this proceeding for the purpose of participating in SCC's petition to modify D.03-12-061. We also grant EBMUD's motion for leave to file its comments to the draft decision three days late. The Docket Office shall file EBMUD's comments to the draft decision as of May 28, 2004.

Having considered EBMUD's comments to the draft decision, and PG&E's response, we are not persuaded that the decision should be changed as EBMUD suggests. The modified language adopted in today's decision is consistent with what we did in D.03-12-008. In that decision, we granted PG&E's application defining the terms upon which noncore customers could take core gas service. Those terms were incorporated in PG&E's Rule 12.E.1.a. That tariff provision states in pertinent part:

"In accordance with ... Decision 03-12-008, dated December 4, 2003, transfers of noncore Customers to core service are prohibited for customers who are defined as Electric Generation (including gas-fired cogeneration), Enhanced Oil Recovery (EOR), and Refinery, with historical or potential annual gas use exceeding 250,000 therms per year. ... Electric Generation or Cogeneration Customers with generation capacity of five-hundred kilowatt (500 kW) or larger will be prohibited from core service."

## **VI. Assignment of Proceeding**

Loretta M. Lynch is the assigned Commissioner, and John S. Wong is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. SCC seeks to modify D.03-12-061 by modifying the requirement that electric generation customers procure their own gas from a third-party supplier,

and the requirement in PG&E's Advice Letter 2514-G that separate gas meters be installed.

2. PG&E was the only party that filed a response to SCC's petition.

3. SCC has authorized PG&E to represent that SCC agrees with PG&E's additional language modifications to the paragraph which SCC seeks to modify.

4. The concerns of SCC, and PG&E's support of SCC's petition to modify the self-procurement requirement, justify modifying the paragraph that appears at page 372 of D.03-12-061.

5. PG&E's Advice Letter 2514-G did not include the "economically feasible" language which D.03-12-061 specified should be used.

6. PG&E's Advice Letter 2514-G-A included the "economically feasible" language as part of Schedule G-EG, which went into effect on April 1, 2004.

### **Conclusions of Law**

1. SCC shall be considered a party to this proceeding for the purpose of resolving its petition.

2. SCC's petition to modify the self-procurement requirement should be granted.

3. The paragraph that appears at page 372 of D.03-12-061 should be modified as suggested by PG&E, and adopted.

4. Since PG&E included the "economically feasible" language as part of Schedule G-EG, the second concern that SCC raised in its petition is now moot and no further Commission action is needed.

5. The two motions of EBMUD that were submitted to the Docket Office on May 28, 2004 should be granted, and the comments to the draft decision should be filed as of that date.

**O R D E R**

**IT IS ORDERED** that:

1. The February 27, 2004 petition of the Small Cogeneration Consortium (SCC) to modify Decision (D.) 03-12-061 is granted as set forth below:

- a. The following paragraph that appears at page 372 of D.03-12-061 shall be deleted:

“We have considered PG&E’s proposal, and the concerns of DGS. We will eliminate the 250,000 therm cutoff from PG&E’s proposal, but retain the proposed requirement that these customers obtain their gas from a third-party supplier.”

- b. The above-quoted paragraph shall be modified as follows, and shall replace the deleted paragraph at page 372 of D.03-12-061:

“We have considered PG&E’s proposal, and the concerns of DGS. We will eliminate the 250,000 therm cutoff from PG&E’s proposal, and retain the right for customers that are otherwise core to receive core procurement under their otherwise applicable retail rate schedule (unless they elect core aggregation services). However, if a small DG user’s electric generation has a rated generation capacity of five-hundred kilowatts (500 kW) or larger, or with annual usage that exceeds 250,000 therms per year, it shall be required to obtain its gas from a noncore third-party supplier.”

2. The motions submitted to the Docket Office by the East Bay Municipal Utility District (EBMUD) on May 28, 2004 for leave to intervene and to file its comments three days out-of-time are granted.

- a. EBMUD shall be allowed to participate in this proceeding for the purpose of resolving SCC’s petition to modify D.03-12-061.
- b. The Docket Office shall file EBMUD’s comments to the draft decision as of May 28, 2004.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.