

Decision **DRAFT DECISION OF ALJ WALWYN** (Mailed 11/16/2004)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company  
Proposing Cost of Service and Rates for Gas  
Transmission and Storage Services for 2005 and  
Backbone Level Service and Rates Starting  
January 1, 2005, as Required by Commission  
Decision 03-12-061.

Application 04-03-021  
(Filed March 19, 2004)

**OPINION ADOPTING GAS ACCORD III SETTLEMENT****I. Summary**

This decision adopts a comprehensive settlement and associated tariff changes that continue the basic Gas Accord market structure for Pacific Gas and Electric Company's (PG&E) storage and transmission services for a three-year term commencing January 1, 2005. The settlement, titled the "Gas Accord III Settlement Agreement" (Gas Accord III), settles all issues in this proceeding and also supersedes and extinguishes PG&E's obligation under Ordering Paragraph 6.j of Decision (D.) 03-12-061 to file a new application by February 2005 addressing rates and market structure for 2006 and beyond.<sup>1</sup>

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<sup>1</sup> The Gas Accord market structure and rates for PG&E were originally approved in the Gas Accord Settlement Agreement that was adopted in D.97-08-055 (73 CPUC2d 754) and implemented on March 1, 1998. That settlement, and the time period covered by

A motion for approval of the Gas Accord III settlement agreement (Joint Motion) was filed on August 27, 2004 by PG&E and a broad array of parties representing every affected segment of the natural gas industry (The Settlement Parties).<sup>2</sup> All active parties in this proceeding are included in the Settlement Parties and no protest or comments on the settlement were received.

The major contested issues resolved by the Gas Accord III are: (1) adoption of eligibility standards and cost allocation methodology for a backbone-level end-use service; (2) increased access to PG&E's backbone transmission system for Core Transport Agents (CTAs) and independent storage providers; (3) agreement on a procedural process to address whether incremental gas storage needs for the core should be put out to bid; (4) 2005 through 2007

the settlement (through December 31, 2002), is commonly referred to as the "Gas Accord." On October 8, 2001, PG&E filed Application (A.) 01-10-011 requesting that the Gas Accord structure and rates for its gas transmission and storage system be extended for two more years (through the end of 2004) pending the resolution of PG&E's bankruptcy filing. In D.02-08-070, we approved a settlement by the parties to extend the Gas Accord until December 31, 2003 (Gas Accord II), and in D.03-12-061 we issued a decision resolving the issues for the period January 1, 2004 through December 31, 2004 in a manner very similar to what was contained in the Gas Accord.

<sup>2</sup> The Settlement Parties are as follows: PG&E, ABAG Publicly Owned Energy Resources, the California Cogeneration Council, the California Manufacturers and Technology Association, Calpine Corporation (Calpine), the Canadian Association of Petroleum Producers, the City of Coalinga, Coral Energy Resources, LP, Duke Energy North America, LLC, and Duke Energy Marketing America, LLC (collectively, "Duke"), GTN, Indicated Producers (representing Chevron U.S.A. Inc, Occidental Energy Marketing, Inc., Valero Refining Company - California, BP Energy Company, and ConocoPhillips Company), Lodi Gas Storage, L.L.C. (Lodi), Mirant Americas, Inc. (Mirant), the Northern California Generation Coalition (NGCC) (representing Silicon Valley Power, Turlock Irrigation District, Modesto Irrigation District, Northern California Power Agency, and City of Redding), the Office of Ratepayer Advocates (ORA), the City of Palo Alto, Sacramento Municipal Utility District, the School Project for Utility Rate Reduction, JPA, the State of California Department of General Services, TURN, and Wild Goose Storage, Inc. (Wild Goose).

backbone load factors; and (5) a phase-in of the “direct assignment” method of cost allocation.

The Gas Accord III does not settle all issues concerning gas rates paid by PG&E customers. Distribution level service rates, gas commodity costs, and some aspects of customer class charges are set in other proceedings.

## **II. Procedural Background**

On March 19, 2004, PG&E filed this application proposing rates effective January 1, 2005 for gas transmission and storage services, to include a new rate category for a backbone-level end-use service, as required by D.03-12-061. On May 11, 2004 a prehearing conference was held to discuss areas of dispute raised in written protests and to set a procedural schedule for evidentiary hearings.

The Assigned Commissioner’s and administrative law judge’s (ALJ) Ruling and Scoping Memo, issued May 27, 2004, narrowed the scope of PG&E’s original application and supporting testimony, emphasizing that consistent with the direction provided in D.03-12-061, this proceeding was on an expedited schedule and had a limited scope. This ruling was reaffirmed in a July 6, 2004 ruling on PG&E’s request for reconsideration of two issues and NGCC’s motion to strike testimony.

ORA served its Report on Operations on June 29, 2004. Interested parties served opening testimony on July 16, 2004 and all parties served concurrent rebuttal testimony on July 26, 2004. While preparing for hearings, parties also participated in several settlement negotiations.

On the eve of scheduled evidentiary hearings, parties represented that a settlement had been reached and e-mailed the ALJ and parties the terms of the settlement. At a second prehearing conference on August 2, 2004, a procedural schedule was set that included another formal settlement conference, the filing of

a motion for settlement approval, and an opportunity for comment and reply comment. The motion for approval of the settlement, together with the Gas Accord III, pro forma tariffs, and supporting documents, was filed on August 27, 2004.

### **III. The Gas Accord III Settlement**

#### **a. Overview**

The Gas Accord III is attached to this decision as Attachment A. In the motion for approval of the Settlement, the Settlement Parties also included: (a) a description and discussion of the settlement terms; (b) a comparison matrix of the parties' litigation positions; (c) additional tables showing results of operations, cost of service allocations and illustrative rates for the Baja Path and Redwood Path backbone service; (d) pro forma tariffs showing all tariff changes needed to implement the Gas Accord III; and (e) cost allocation and rate design workpapers.

The Gas Accord III explicitly preserves the fundamental market structure, rules and features of the original Gas Accord, as modified by subsequent Commission decisions, and retains this structure in place for three years.<sup>3</sup> In their motion for approval, the Settlement Parties state that the settlement makes six minor changes to the earlier Gas Accords. These changes, each of which is discussed in the following sections, consist of: (1) backbone level end-use service; (2) storage-related changes; (3) balancing account treatment for core local

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<sup>3</sup> Certain provisions of the Gas Accord were modified by D.00-02-050, D.00-05-049, and D.03-12-061.

transmission service; (4) a phase-in of the direct assignment method of cost allocation; (5) services for Core Transportation Agents; and (6) elimination of the commensurate discount rule.

The Gas Accord III goes beyond the 2005 rate case scope of this proceeding by addressing gas market structure and rate issues for 2006 and 2007. Written notice of the proposed settlement was given to all parties in PG&E's last gas market structure case because the terms of Gas Accord III would supersede and extinguish PG&E's requirement under D.03-12-061 to file an application by February 4, 2005 proposing rates and a gas market structure for the period commencing January 1, 2006.

The Settlement Parties state that the longer time frame provided under the settlement provides for a protracted period of rate certainty as well as a stable business environment for the natural gas industry in Northern California.

#### **b. The Settlement's Key Provisions**

The Gas Accord III has seven sections. Following is a discussion of the key provisions of each section.

##### **(1) Introduction**

The introductory section states that the purpose of Gas Accord III is to resolve all the issues set for litigation in this proceeding and to supersede and fulfill D.03-12-061's requirement to file an application by February 4, 2005 addressing market structure and rates for PG&E's gas transmission and storage system beginning in 2006. The parties request that the Commission approve the

pro forma tariff sheets at the same time we approve the settlement agreement, and that the tariffs and rates be effective on January 1, 2005.<sup>4</sup>

### (2) **Terms of Settlement**

The Settlement Period is from January 1, 2005 through December 31, 2007 for transmission services and April 1, 2005 through March 31, 2008, for storage services. PG&E commits to file its next rate case no later than February 9, 2007. The settlement also provides that should new rates not be in place by January 1, 2008, the interim transmission and storage rates will equal the rates in effect on December 31, 2007 plus a two percent escalator. According to the settlement, these interim rates will remain in effect until the Commission otherwise approves rates for the remainder of 2008.<sup>5</sup>

### (3) **Transmission Services**

This section addresses both transmission and storage issues. The key change from Gas Accord II is the establishment of a new backbone level end-use service and the cost allocation treatment provided to other customers. This section adopts PG&E's originally proposed eligibility criteria for backbone level

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<sup>4</sup> The section also states that Gas Accord III is to be treated as a complete package, not as a collection of separate agreements on discrete issues or proceedings, and in the event the Commission rejects or modifies the settlement agreement, the parties reserve their rights under Rule 51.7 of the Commission's Rules of Practice and Procedure.

<sup>5</sup> The settlement does not apply the rate escalators to G-XF (contracts for Redwood Path capacity that were signed when Line 401 was built). The rates for these contracts were set in D.03-12-061 for 2004 based on the incremental Line 401 pipeline expansion project cost of service.

end-use service and balancing account treatment for changes in local transmission demand arising from customers taking the new service.<sup>6</sup> In addition, it provides Duke a \$2 million per year bill credit on its local transmission level service to its gas-fired power plants at Moss Landing Units 1 and 2, to be collected through PG&E's backbone rates as a volumetric surcharge.

This section also provides that the commensurate discount rule will be removed from PG&E's tariffs once PG&E is no longer affiliated with Gas Transmission Northwest (GTN), the former Pacific Gas Transmission Company.

For storage, independent storage providers were not in operation at the time the Gas Accord was approved and implemented. To accommodate the interests of independent storage providers and their customers, Gas Accord III provides that PG&E will change its off-system Mission tariff to allow storage withdrawals to flow off-system at a zero rate for as-available service. PG&E will also modify its backbone transportation tariffs to allow storage as a receipt point for firm backbone contracts.

#### (4) **Storage Services**

This section provides that there will be no open season for noncore storage services at the outset of Gas Accord III because PG&E currently has sufficient firm storage capacity available for sale.<sup>7</sup> The language in this section also affirms

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<sup>6</sup> Even though backbone level end-use customers will not contribute towards PG&E's local transmission cost-of-service, these customers still will be obligated to pay applicable public purpose program and related end-use surcharges.

<sup>7</sup> If circumstances change during the Settlement Period, PG&E should file by Advice Letter a request to hold an open season, setting forth the proposed terms and conditions of the offering.

the assignments of firm storage to pipeline balancing remain as approved in D.03-12-061 and confirms PG&E's right to file an application under Section 851 to sell some of its noncycle working gas.

**(5) Cost of Service**

This section, along with the accompanying tables, details the cost of service upon which the Gas Accord III rates are based.<sup>8</sup> The settlement contains several downward adjustments, as proposed in testimony by the Office of Ratepayer Advocates and other parties. The total revenue requirement escalates at two percent for 2006 and 2007, except for the revenue requirement attributable to the G-XF contracts and other adjustments authorized by the settlement.<sup>9</sup>

A key provision of this section is that operating expenses after January 1, 2006 will be allocated based on a new method, referred to as a direct assignment method. The direct assignment method will result in an allocation of greater costs to the backbone transmission function, and a corresponding decrease in the allocation of costs to the local transmission function.<sup>10</sup>

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<sup>8</sup> A clerical error appears in Section 5.3; the revenue requirement table shown there should state that the numbers are in millions of dollars.

<sup>9</sup> For comparison, the Gas Accord provided for a 2.5%/year escalation for 1998 through 2002. The settlement adopted in D.02-08-070 for 2003 Gas Accord rates provided for no rate escalation and D.03-12-061 adopted rates for 2004 based upon a new revenue requirement and not a mechanical escalation rate. In addition, the recently approved settlement of PG&E's general rate case (A.02-11-017) provides attrition increases for 2006 for the distribution (range of 3-4%) and generation (range 2.5-4%) systems.

<sup>10</sup> This is a phase-in. For 2005, the allocation is based 50% on the old methodology and 50% on the direct assignment method.

**(6) Cost Allocation and Rates**

This section confirms that the Gas Accord structure and rate design is unchanged under Gas Accord III. The key provision is the agreed-upon load factors for the three years. The Settlement Parties state these figures represent a negotiated compromise of the litigation positions put forth by various parties and the load factor negotiation included consideration of many other aspects of the Settlement, including the starting cost of service and the cost escalation rate for 2006 and 2007. In the Joint Motion, the Settlement Parties assert that the negotiated load factors are actually higher than the adjusted load factor of 70.91% shown in PG&E's revised testimony in this case and, further, the negotiated load factors also equal or exceed the 74.05% load factor proposed by The Utility Reform Network (TURN).<sup>11</sup>

Provisions in this section also provide for balancing account treatment for the revenue requirement associated with local transmission service to PG&E's core gas customers. This is a change from the Gas Accord and is done to reduce the year-to-year variability of this cost component.

**(7) PG&E Core Procurement and Core Transportation Agents**

In this section, PG&E commits to file an application within a specified period to address how much, and by what process, incremental gas storage needs for the core should be put out to bid as well as other implementation

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<sup>11</sup> PG&E's revised testimony was filed on July 14, 2004 in compliance with the scoping memo rulings of May 27, 2004, July 6, 2004, and July 9, 2004. PG&E's revised load factor includes a 95% at risk adjustment for Line 401 and removes an earlier filed "slack capacity adjustment."

issues that PG&E feels need to be addressed before the provisioning of core storage is opened to independent storage providers. Further, PG&E agrees to meet with ORA, TURN, third-party storage providers and other parties to discuss, and attempt to reach a consensus on the contents of such a filing.

The remaining provisions in this section pertain to service by CTAs who compete with PG&E's Core Procurement Department for gas commodity service to PG&E's core customers. The provisions provide new access for CTAs to pipeline capacity from Canada and raise the Core Brokerage fee from \$0.024 per Decatherm (Dth) to \$0.030 per Dth.

**(8) Rate Certainty and Adjustments During Term of Settlement**

The key provision of this last section is that the cost of capital used to set rates for the Settlement Period will be the cost of capital for 2005 adopted by the Commission in A.04-05-023. The section also clarifies that certain rates, such as the Distribution and Customer Class charge, will continue to change with PG&E's Biennial Cost Allocation Proceeding or Annual True-Up filings, and as a result of other Commission decisions.

**4. Discussion**

**a. Standard of Review for Settlements**

We review this uncontested settlement pursuant to Rule 51.1(e) which provides that, prior to approval, the Commission must find a settlement "reasonable in light of the whole record, consistent with the law, and in the public interest."<sup>12</sup> We undertake our review by addressing each of these three elements.

**b. Reasonable in Light of the Whole Record**

The Commission has a comprehensive record upon which it can evaluate and approve the Gas Accord III. PG&E served its testimony on March 19, with revisions on June 11 and July 14, 2004. On June 29, 2004, ORA served its Report on the Results of Operations for PG&E's 2005 Gas Transmission and Storage rate case. A broad range of parties participated in discovery and served testimony and rebuttal testimony.<sup>13</sup> For the sole purpose of the Commission having the whole record available to evaluate the reasonableness of Gas Accord III, all served testimony is admitted as evidence under a separate ruling dated November 16, 2004.

The comparison matrix attached to the August 27, 2004 Joint Motion is comprehensive and cites to specific sections of numerous parties' opening and rebuttal testimony in its summary of litigation positions. A separate matrix

<sup>12</sup> The Settlement Parties filed Gas Accord III under Rule 51.1(e). The settlement has the support of all active parties in this proceeding and additional parties in A.01-10-011. Gas Accord III meets the lesser standard of review for all-party settlements adopted in D.92-12-019. The criteria established in D.92-12-019 require: (1) the unanimous sponsorship of all active parties to the instant proceeding; (2) that the sponsoring parties are fairly reflective of the affected interests; (3) that no term of the settlement contravenes statutory provisions or prior Commission decisions; and (4) that the settlement conveys to the Commission sufficient information to permit us to discharge our regulatory obligations with respect to the parties and their interests.

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<sup>13</sup> Active parties in A.04-03-021 are those parties that filed written protests and comments and/or served testimony. These parties are: PG&E, ORA, Calpine Corporation/the California Cogeneration Council, the Canadian Association of Petroleum Producers, the City of Palo Alto, Duke Energy North America, LLC/Duke Energy Marketing America, LLC, the Indicated Producers ad hoc coalition, Lodi, Mirant, Northern California Generation Coalition, the Sacramento Municipal Utility District, TURN, and Wild Goose.

column demonstrates that the resolution of each issue is within the range of litigation positions. On the most contested issues, compromises that we consider fair and reasonable are the outcome. In making this finding, we cite specifically to the issues of (1) backbone level end-use service definition with the trade-off billing credit to Duke, (2) negotiated load factors, (3) additional access to PG&E's backbone transmission system for CTAs and independent storage providers, and (4) the phase-in of the direct assignment method of cost allocation.

We also agree with the Settlement Parties that a three-year comprehensive settlement is preferable to having litigated a one-year rate case. In addition, we find it very persuasive in evaluating the reasonableness of the settlement that not only is it an all-party settlement, but that every segment of the natural gas industry is represented in the large list of Settlement Parties.

The issues covered in the Gas Accord III address all contested issues in this proceeding and also go beyond the scope of this case to include 2006 and 2007 market structure and rates. PG&E noticed all the parties to its last market structure case (A.01-10-011) that its proposed settlement would cover a broader range of issues than originally raised in the application and that the proposed settlement would supersede and extinguish D.03-12-061's requirement for a 2006 market structure proceeding. Based on this notice, additional parties such as the CTAs actively participated in the noticed settlement conferences.

The parties reached agreement on the eve of evidentiary hearings and asked that the hearings be cancelled. We find that there is a comprehensive record available to evaluate the settlement and we find that there is no issue that requires any additional record.

Based on the above discussion, we find the Gas Accord III is reasonable in light of the whole record.

**c. Consistent With the Law****(1) Adequacy of Notice**

The legal issue of notice arises from the settlement covering more issues that were originally raised in the application. Because of the expanded scope of the proposed settlement, PG&E provided notice and an opportunity to participate to all parties in A.01-10-011 and we should likewise do so here by noticing the parties of both proceedings of our draft decision. Specifically, the Gas Accord III will supersede and extinguish PG&E's obligation under Ordering Paragraph 6.j of D.03-12-061 to file a new application addressing rates and market structure for 2006 and beyond.

A question also arises as to whether the written notice that PG&E initially provided the public at the outset of this one-year case gave potentially interested persons sufficient notice that PG&E's application might result in a settlement covering a longer, three-year rate period. The notice that PG&E sent to its customers in their monthly bills states that "when the Commission acts on this Application, it may adopt all or part of PG&E's request, amend or modify it, or deny the Application." Given that this is an all-party uncontested settlement and that the Settlement Parties represent every affected segment of the natural gas industry, we find that the written notice that PG&E has provided to its customers is sufficient notice. Our finding here is consistent with our approval in D.04-05-055 of a settlement of PG&E's General Rate case.<sup>14</sup>

**(2) Bill Credit for Unit 1 and 2 at the Moss Landing Power Plant**

<sup>14</sup> The GRC settlement adopted in D.04-05-055 sets rates for 2003 with attrition in the years 2004, 2005, and 2006. PG&E's original application sought attrition only through 2005.

Section 3.3.1 of the Settlement Agreement provides that, for the three-year term of the Settlement, Units 1 and 2 at the Moss Landing Power Plant will receive a monthly bill credit amounting to \$2.0 million annually. Service to other units at the Moss Landing plant will be provided at the otherwise applicable local transmission rate that results from this settlement. Units 1 and 2 are new, combined-cycle units installed at the existing plant site that came on line in 2002. Units 1 and 2 would not qualify for the backbone level rate under the criteria PG&E proposed in its testimony in this case, because they have been served by existing PG&E local transmission lines.

This provision of the Settlement Agreement is reasonable in light of the litigation positions taken by the parties in this case and is legally supportable because the Commission has long recognized that it is appropriate for utilities in certain circumstances to offer special arrangements, such as rate discounts, to certain customers if that action benefits all of the utility's other customers.

Duke submitted testimony in this case that included proposed eligibility criteria for the backbone level end-use service favoring the development of new generating units on brownfield sites (the sites of existing generating plants), including units - such as Moss Landing Units 1 and 2 - that have been served by existing PG&E local transmission lines. Under Duke's proposed criteria, some additional generating units might have been eligible for backbone-level service beyond those that would have been eligible under PG&E's proposed eligibility criteria. In response to Duke's application for rehearing of D.03-12-061, moreover, the Commission in D.04-05-061 granted Duke's request for an opportunity to be heard with respect to these broader criteria. (D.04-05-061, *mimeo*, pp. 21 and 25 (new Conclusion of Law 108).) PG&E's testimony, in turn, asserted that, under Duke's proposed approach, the remaining customers on

PG&E's local transmission system (including PG&E's core customers) would have experienced greater cost-shifting and potentially higher local transmission rates than under PG&E's eligibility proposal.

The Moss Landing plant currently is the largest single customer served by the PG&E local transmission system, contributing in excess of \$5 million per year towards the local transmission revenue requirement. Had this case proceeded through full litigation, PG&E's other local transmission customers would have faced the litigation risk that the Moss Landing plant would have qualified for the backbone level end-use rate option.

The Settlement strikes a compromise between the various litigation positions and avoids the prospect of additional cost-shifting to local transmission customers, by adopting PG&E's proposed eligibility criteria for the backbone level rate option. In return for Duke's agreement to join in the Settlement Agreement, and accept PG&E's proposed eligibility criteria, it is reasonable to provide a bill credit for service to Units 1 and 2 at the Moss Landing generating plant for the three-year term of the Settlement.

### (3) **Unspecified Provisions of the Settlement**

Based on our review of the settlement, we find there is a need to clarify and specify the non-Gas Accord provisions of D.03-12-061 that are being extended under the Gas Accord III. In D.03-12-061, the Commission adopted a number of provisions that were not a part of the existing Gas Accord, and provided that these provisions would expire at the end of 2005. Our interpretation of Section 1.2 of the settlement is that these provisions would be extended for the life of Gas Accord III. The part of Section 1.2 that addresses this is:

This Settlement Agreement makes certain small modifications to the existing Gas Accord provisions, as most recently modified in D.03-12-061, in addition to implementing a backbone level end-use service as ordered in D.03-12-061.

We find this single reference to be cryptic and as there is not an explicit discussion of this in the motion for approval of the settlement or its accompanying documents, we interpret the details here. By so doing, the Settlement Parties will have an opportunity to correct our interpretation, if necessary, in the comment cycle on the draft decision.

Ordering Paragraph 1 of D.03-12-061 provided in broad, general language for an extension of the entire Gas Accord market structure. It stated:

1. The existing gas market structure contained in Decision (D.) 97-08-055, as modified by D.00-02-050 and D.00-05-049, and as changed by the proposals adopted in today's decision, shall serve as the gas market structure for the gas transmission and storage facilities and operations of Pacific Gas and Electric Company (PG&E) for 2004 and 2005.
  - a. The proposals adopted today, as set forth in the Conclusions of Law and as described and discussed in this decision, shall be incorporated into the gas market structure.
  - b. PG&E shall conduct its transmission and storage operations in accordance with the adopted gas market structure, and with all other applicable rules, regulations, and Commission decisions.

(D.03-12-061, p. 461.)

In addition to this general extension of the Gas Accord market structure, the Commission in D.03-12-061 also culled out particular components of the existing market structure, and expressly extended them through 2005. The most important of these individually-mentioned items included: (i) the "z factor"

adjustment from the original Gas Accord; (ii) the Catastrophic Events Memorandum Account (CEMA) and the Hazardous Substance Mechanism (HSM); (iii) the Core Procurement Incentive Mechanism (CPIM); and (iv) the Risk Management Program and authority to use financial derivatives. (See D.03-12-061, Conclusion of Law 80 (z factor adjustment); Conclusion of Law 81 (CEMA and HSM); Conclusion of Law 86 (CPIM); and Conclusions of Law 101 and 102 (Risk Management Program and authority to use financial derivatives, respectively).) In addition to being separately mentioned in the Conclusions of Law, each of these items also was discussed individually in the body of the decision itself. (See D.03-12-061, pp. 381-382 (z factor adjustment, and CEMA and HSM); p.395 (CPIM); and pp. 435-436 (Risk Management Program, and authority to use financial derivatives).)

The Commission in D.03-12-061 also provided for: (i) continuation of an existing cash out mechanism for imbalances (D.03-12-061, pp. 180-181, and Conclusion of Law 23); (ii) continuation of PG&E's existing process for local curtailments (id., p. 185, and Conclusion of Law 33), and approval of local curtailment charges (id., p. 185, and Conclusion of Law 34); and (iii) continuation of a customer self balancing option (id., p. 295, and Conclusion of Law 61).

The Gas Accord III Settlement Agreement, dated August 27, 2004, adopts essentially the same approach used by the Commission in D.03-12-061. By the use of broad, general language, the Settlement proposes to extend the entire Gas Accord market structure through 2007, subject to the various modifications specified in the Settlement document itself. Thus, Section 1.2 provides that the Gas Accord, as approved in D.97-08-055 and modified thereafter, including the modifications adopted in D.03-12-061, will be extended for the three-year term of the Gas Accord III Settlement. Importantly, moreover, Section 1.5 of the

Settlement Agreement provides for the continuation of all existing, approved tariff provisions pertaining to the PG&E gas transmission and storage system, except to the extent those tariffs are expressly amended by the Gas Accord III Settlement. The specific requested tariff language changes (with the exception of the final rate numbers) were filed with the Settlement Agreement itself, for approval by the Commission. (Settlement Filing, Tab 5.)

The Gas Accord III does not individually address the extensions of the z factor adjustment, CEMA and HSM, CPIM, or Risk Management Program and financial derivatives authorization. Likewise, Gas Accord III does not expressly mention continuation of the cash out mechanism for imbalances, the local curtailment process and associated curtailment charges, or continuation of the customer self-balancing option. Rather, the settlement appears to assume that continuation of all of these various adjustments and programs, as approved in D.03-12-061, through 2007 is intended by Section 1.2.

To ensure that interested parties and the general public understand exactly what action the Commission is taking, we state here our interpretation of Section 1.2 is that Gas Accord III extends the z factor adjustment, CEMA and HSM, CPIM, the Risk Management Program and financial derivatives authorization provisions approved in D.03-12-061. Consistent with this, we find that under Gas Accord III the tariff provisions remain for the cash-out mechanism for imbalances, the local curtailment process and associated curtailment charges, and the customer self-balancing option.

**d. In the Public Interest**

As shown in the comparison matrix and discussed above, the Gas Accord III is a reasonable compromise of the Settlement Parties' respective positions on individual issues and taken as a whole is fair and reasonable. There

is a sound record basis for our findings and a broad array of active parties representing every segment of natural gas industry for Northern California joined in the settlement. We find that no term of the settlement contravenes statutory provisions or prior Commission decisions.

By continuing the previously-approved Gas Accord market structure, Gas Accord III will keep in place a gas market structure that has worked well in northern California over the past six years, including during the energy crisis period of 2000-2001.

The parties have avoided considerable litigation costs and uncertainty by entering a settlement and it has benefited the Commission by facilitating and expediting our review and approval of rates and pro forma tariffs. Further, the three-year term of the Gas Accord III has the advantage of providing rate certainty as well as a stable business environment for the natural gas industry in northern California over a protracted period.

We find the Gas Accord III to be in the public interest.

**e. Review of Pro forma Tariffs and Supporting Documents Attached to the Motion for Approval of Gas Accord III**

Attached to the motion for approval are pro forma tariff sheets showing the tariff changes necessary to implement Gas Accord III. The sheets are highlighted to illustrate proposed text to be added to or deleted from existing tariff sheets and address tariff language pertinent to balancing accounts, service agreements, rules, and rate schedules. We have reviewed the pro forma tariff sheets and find them to include tariff language that is consistent with the Gas Accord III and that covers all tariff changes needed to implement the settlement.

Based on our review of the supporting documents, we find that it would be beneficial for the Settlement Parties to provide the same level of detail on

revenue requirement and results of operation that the Commission included in D.03-12-061. This can be done by having PG&E update Table 6-2 in its opening testimony to reflect the provisions of Gas Accord III and filing this new table with its compliance filing. PG&E should also include in the compliance filing a completed page 24 to the workpapers (Tab 6) that corrects the omission of line number 33; the missing information of this line is an integral part of the workpaper calculations used in the development of rates.

In summary, we approve the Gas Accord III settlement agreement, attached to this decision at Appendix A, and the pro forma tariffs filed on August 27, 2004, with the clarification language and table discussed here, effective on January 1, 2005. Within 12 days of this decision, PG&E shall make a compliance filing to implement the rates and tariff provisions of Gas Accord III.<sup>15</sup>

## **5. Change in Determination on Need for Hearings**

The May 27, 2004 scoping memo confirmed the categorization of this proceeding as rate-setting and determined that evidentiary hearings were required. As discussed here, the Gas Accord III contains sufficient information to adopt in its entirety and no issues remain for evidentiary hearing. Therefore, the determination that hearings are necessary is changed.

## **6. Comments on Draft Decision**

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities

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<sup>15</sup> The compliance filing shall include rates for 2005. Rates for 2006 and 2007 under Section 6 of Gas Accord III shall be submitted in PG&E's Annual True-Up filings (see Section 8.4).

Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed by the Settlement Parties on December 6, 2004 and are reflected herein.

## **7. Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner and Christine M. Walwyn is the assigned ALJ in this proceeding.

## **Findings of Fact**

1. On August 27, 2004, PG&E, on behalf of the Settlement Parties, filed a Joint Motion for Approval of “Gas Accord III” Settlement.
2. The Joint Motion contains the settlement, a list of Settlement Parties, a comparison matrix, additional tables showing Results of Operations, Cost of Service allocations, and illustrative rates, workpapers, and pro forma tariff changes necessary to implement the settlement.
3. The Settlement Parties request the Commission approve the pro forma tariff sheets at the same time it approves the Settlement Agreement, and that the tariffs and rates be effective on January 1, 2005.
4. The scoping memo, issued on May 27, 2004, determined that hearings were necessary, and set a procedural schedule. The Settlement Parties served testimony and rebuttal testimony while also participating in settlement discussions. A settlement in principle was reached on the eve of scheduled hearings.
5. The Gas Accord III resolves all contested issues in this proceeding and also supersedes and extinguishes the requirement in D.03-12-061 that PG&E file by February 2005 an application addressing gas market structure beginning in 2006.
6. The testimony served in this proceeding, entered into evidence for the sole purpose of evaluating the reasonableness of Gas Accord III, provides a comprehensive record for consideration of the settlement.

7. The Gas Accord III resolves all contested issues in this proceeding.
8. PG&E provided notice and an opportunity to participate in settlement discussions to all parties in A.01-10-011, the Commission's last gas market structure proceeding.
9. The Settlement Parties represent every affected segment of the natural gas industry, including core and noncore customers, wholesale customers, core aggregators, electric generators, producers and other suppliers of natural gas, and independent storage operators.
10. The tariff changes necessary to implement the Gas Accord III, as set forth in the pro forma tariff sheets, are reasonable.
11. The three-year term of the Gas Accord III has the advantage of providing rate certainty as well as a stable business environment for the natural gas industry in northern California over a protracted period.
12. Evidentiary hearings are not required.

### **Conclusions of Law**

1. The scope of this proceeding is modified to consider the Gas Accord III.
2. The determination that hearings are necessary is changed.
3. The Commission reviews this uncontested settlement pursuant to Rule 51.1.(e) of the Commission's Rules of Practice and Procedure, which provides that the Commission must find a settlement reasonable in light of the whole record, consistent with the law, and in the public interest.
4. Adequate notice of the proposed settlement was provided to all parties in A.01-10-011 and the draft decision should be served on these same parties.
5. The written notice that PG&E has provided to its customers is sufficient notice for consideration of Gas Accord III.

6. The bill credit for Service to Moss Landing Units 1 and 2 in Section 3.3.1 is reasonable and consistent with past Commission practice.

7. Should PG&E need to conduct an open season for storage during the Gas Accord III settlement period, it should file an advice letter requesting to hold an open season. This advice letter should provide the proposed terms and conditions for the bidding.

8. We interpret Section 1.2 is that Gas Accord III to extend the z factor adjustment, Catastrophic Events Memorandum Account (CEMA) and Hazardous Substance Mechanism (HSM), the Core Procurement Incentive Mechanism (CPIM), the Risk Management Program and financial derivatives authorization provisions approved in D.03-12-061. Consistent with this, we find that under Gas Accord III the tariff provisions remain for the cash-out mechanism for imbalances, the local curtailment process and associated curtailment charges, and the customer self-balancing option.

9. The Gas Accord III is reasonable in light of the whole record, consistent with the law, and in the public interest.

10. This decision should be effective immediately so that the rates and tariff changes under the Gas Accord III can be effective January 1, 2005.

## O R D E R

### **IT IS ORDERED** that:

1. The Gas Accord III Settlement Agreement with its Appendices A and B, as filed on August 27, 2004 in the Joint Motion of Settlement Parties (Joint Motion), is approved and adopted.

2. The changes highlighted in the pro forma tariffs filed on August 27, 2004 in the Joint Motion are approved.

3. Pacific Gas and Electric Company shall file within 12 days of this decision a compliance filing containing the associated tariffs without modification to implement the rates and provisions of the Gas Accord III Settlement Agreement.

PG&E shall also include in this compliance filing an update Table 6-2 of its opening testimony to reflect the provisions of Gas Accord III and a completed page 24 to the Settlement workpapers.

4. The Commission's Process Office shall serve this decision on the service list in this proceeding, as well as on the service list for Application 01-10-011.

5. This is a final determination that evidentiary hearings are not required.
6. This proceeding is closed.

This order is effective today.

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

# ***Gas Accord III Settlement Agreement***

Subject to Rule 51 of the CPUC Rules of Practice and Procedure,  
Rule 601 et seq. of the FERC Rules of Practice, Rule 408 of the Federal  
Rules of Evidence, and Section 1152 of the California Evidence Code

A.04-03-021 ALJ/CMW/hl2

(scanned attachment = CPUC #184162)

**DRAFT**