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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
ENERGY DIVISION

I. D. # 10964  
RESOLUTION G-3465  
February 1, 2012

**R E S O L U T I O N**

Resolution G-3465. Pacific Gas and Electric Company (PG&E) requests approval of revisions to Gas Rule 23 – Gas Aggregation Service for Core Transport Customers to incorporate new consumer protection rules for core transport customers

PROPOSED OUTCOME: This Resolution grants PG&E’s revisions to Gas Rule 23 subject to modifications of the “Start Date” and the definition of a Core Transport Agent.

ESTIMATED COST: None.

By Pacific Gas and Electric Company Advice Letter 3244-G filed on October 6, 2011.

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**SUMMARY**

**This Resolution grants PG&E’s request to revise Gas Rule 23 to incorporate new Consumer Protection Rules subject to modification of the definition of a Core Transport Agent (CTA) in the rules and the effective date.** The CTA settlement approved in D.11-04-031 included a set of guiding principles for the development of these rules and provided for collaboration among the parties to develop the rules. The rules are intended to help protect core gas customers from potential slamming by CTAs, and from fraudulent, deceptive, or abusive marketing activities.”

This resolution makes two modifications to PG&E’s proposed rules. It extends the implementation timeline of the rules from 45 days to 90 days to provide the time necessary for CTAs to make the needed changes. This extension is acceptable to PG&E. It also modifies the CTA definition by excluding “recent acquisitions and mergers” to avoid penalizing CTAs for actions over which they had no control.

## **BACKGROUND**

On April 14, 2011, the commission issued Decision (D.) 11-04-031 which approved the Gas Accord V Settlement Agreement without modification. The Settlement Agreement was filed by PG&E and 24 settling parties on August 20, 2010. The "Core Transport Agent (CTA) Settlement Agreement" is attached to the Gas Accord V Settlement Agreement as Exhibit 2. and is referenced in Section 11.2 of the Gas Accord V Settlement.

The CTA Settlement addresses four issues including the development of new consumer protection rules through the collaborative efforts of PG&E, the CTAs and the Commission. D.11-04-031 states that "the development of these new rules were intended to help protect core gas customers from potential slamming by CTAs, and from fraudulent, deceptive, or abusive marketing activities." The new consumer protection rules are to be incorporated into the Core Gas Aggregation Service Agreement and all applicable PG&E tariffs.

D.11-04-031 includes the CTA Settlement as Appendix B. Section b, New Consumer Protection Rules, number 1 of the Appendix states that the "new rules will be developed in collaboration with the CTAs and the CPUC, but the CPUC's level of participation will be at its own discretion."

Section B, number 2 states that "PG&E proposes to implement the new consumer protection rules, developed in collaboration with the CTAs and the CPUC, based on the following guiding principles by no later than April 1, 2011:

- a) The New rules will be added to the Core Gas Aggregation Service Agreement and all applicable PG&E tariffs;
- b) The new rules will be submitted to the CPUC for approval through the Advice Filing process;
- c) CTAs agree not to oppose PG&E's advice filing of the consumer protection rules agreed upon in the collaborative effort;
- d) CTAs will provide PG&E with proof of a customer's authorized enrollment, within a specified timeframe, in response to customer complaints of unauthorized enrollments;

- e) The new rules will give CTAs the first opportunity to resolve a customer's complaint within a specified timeframe;
- f) The new rules will include monetary penalties assessed to CTAs if: 1) CTAs do not resolve complaints related to improper enrollments or provide proof of a customer's authorized enrollment within a specified timeframe; or 2) CTAs engage in fraudulent, deceptive or abusive marketing activities;
- g) The new rules will allow PG&E to suspend CTAs from enrolling new customers for a specified timeframe, and allow PG&E to terminate a CTA's Core Gas Aggregation Service Agreement under specified conditions as agreed upon in the collaborative effort.

On October 6, 2011 PG&E filed Advice Letter (AL) 3244-G proposing revisions to Gas Rule 23 – Gas Aggregation Service for Core Transport Customers to incorporate new consumer protection provisions for PG&E's core transport customers in compliance with D.11-04-031. In the AL, PG&E documents that, in complying with the requirement that the new rules be developed in collaboration with the CTAs and the CPUC, PG&E held four in person/conference call meetings with the CTAs. PG&E states that these meetings "allowed each CTA the opportunity to speak openly about the new Customer Protection Rules<sup>1</sup> and changes to Gas Rule 23. Each subsequent draft was sent out prior to the meetings and modifications from both PG&E and the CTAs."

The utility states that the proposed rules correspond to the guiding principles defined in the Gas Accord V. PG&E requests that the proposed rules be implemented within 45 days of the CPUC's approval of the revisions to Gas Rule 23.

PG&E states that while an effort was made to reach full consensus among all parties, there are two sections in the proposed rules where full agreement was not reached. The first section concerns the inclusion of subsidiaries or recent

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<sup>1</sup> The CTA Settlement Agreement reads "New Consumer Protection Rules." PG&E states that "Consumer" was replaced with "Customer" at the request of the CTAs at the first meeting on March 14, 2011; PG&E did not object.

mergers or acquisitions in the definition of CTA. This definition will be used when determining the number of noncompliance events and the potential subsequent suspending of a CTA's ability to enroll new customer accounts for a period of three months. The second section identified as lacking full agreement concerns a proposed effective date ("Start Date") for the revised Gas Rule 23. PG&E proposes an effective or implementation date of 45 days after approval by the Commission (versus a longer period of 60 or 90 days).

## **NOTICE**

Notice of AL 3244-G was made by publication in the commission's Daily Calendar. PG&E states that a copy of the Advice Letter was sent to parties on the Service List for Application 09-09-013 (Application of Pacific Gas and Electric Company Proposing Cost of Service and Rates for Gas Transmission and Storage Services for the Period 2011-2014).

## **PROTESTS**

**On October 26, 2011, Tiger Natural Gas, School Project for Utility Rate Reduction (SPURR), UET dba Blue Spruce Energy Services, and Gas and Power Technologies collectively as the "Protesting Parties" filed a protest to PG&E AL 3244-G. The Protesting Parties state that they generally agree with the proposed Customer Protection Rules with the following three exceptions:**

- 1) Customer protection should apply to all Core Procurement Groups including PG&E. They state that there is ongoing evidence that PG&E customer-facing employees do not always accurately describe and represent core gas aggregation service and CTAs to its customers. A customer protection "Standards of Conduct" similar to what applies to PG&E's electric or gas transmission and distribution customers is needed to protect core gas customers interested in core gas aggregation service and the CTAs and associated businesses needed to provide customer choice service to core gas customers. The Protesting Parties provide a sample "PG&E Gas Customer Choice Standards of Conduct" modeled on existing Electric Rule 22 and Gas Rule 26.
- 2) Implementing the new rules will take between 60 and 90 days and cannot be completed in the 45 days. The Protesting Parties note that "PG&E

System Enhancements” agreed to in the Gas Accord CTA settlement have implementation dates that far exceed the implementation period requested for the customer protection rules.

- 3) The inclusion of CTA subsidiaries and recent mergers or acquisitions was a unilateral PG&E decision made without the collaboration called for in the Gas Accord V. Further the Protesting Parties state that differing markets, marketing practices and/or techniques argues against combining subsidiaries under one entity; and, that including recent mergers and acquisitions should be excluded because pre-acquisition events beyond the control of the acquiring CTA could penalize it.

**On November 2, 2011, PG&E responded to each point raised in the protest as follows:**

- 1) Agreement for new customer protection rules specifically defined CTAs as the subject of those rules; and that, as a regulated utility, complaints against PG&E are governed by the CPUC’s complaint process.
- 2) With regard to the effective date of the proposed revisions to Gas Rule 23, PG&E states that the proposed requirements are substantially similar to existing practice and third party vendors are familiar with the proposed changes. The utility notes that if the Commission determines that more time is needed, that should not be an impediment to implementing the revisions.
- 3) Finally, PG&E states that including subsidiaries in the definition of a CTA does not prohibit a CTA from establishing and managing multiple CTA Groups. However, the utility notes that “by establishing multiple CTA Groups, an unscrupulous CTA could, in effect avoid suspension by temporarily halting its fraudulent customer enrollments into the suspended CTA Group while increasing its suspect marketing activities and any resulting customer enrollments into another CTA Group or Groups.” For this reason, PG&E believes including subsidiaries is needed to prevent the overall customer protection rules from being rendered impotent.

## **DISCUSSION**

**PG&E's proposed New Customer Protection Rules, to be incorporated as a revision to Gas Rule 23, are approved subject to modifications of the definition of a CTA and the effective date ("Start Date").**

As PG&E is a regulated utility subject to the CPUC's rules, requiring reciprocal or new rules for PG&E as part of this proposal is not necessary nor was it intended. We agree that all customers deserve protection from fraudulent, deceptive or abusive marketing activities. PG&E is subject to regulation by the Commission. The utility's customers can file complaints for review, evaluation and action by the Commission, including complaints concerning fraudulent, deceptive or abusive marketing activities. CTAs are not regulated and therefore not subject to rules of conduct or a formal complaint process. Thus, while CTAs are specifically referenced in the Joint Agreement discussion of Consumer Protection Rules, no reference is made to PG&E. The Joint Motion of Settlement Parties for Approval of "Gas Accord V" Settlement specifically states that the "CTAs have agreed to work with PG&E to develop new consumer protection rules governing the CTAs that will be added to the Core Gas Aggregation Agreement and all applicable PG&E Tariffs." The Joint Motion specifies that the rules are to govern the CTAs and makes no reference to applying the rules, or adding new rules concerning PG&E. Decision 11-04-031 notes that the development of the rules "is intended to help protect core gas customers from potential slamming by CTAs and from fraudulent, deceptive or abusive marketing activities." Further, Decision 11-04-031 approved guiding principles on which the rules are to be based. Among the guiding principles, those that address the content and consequences of the rules are framed in terms of requirements and consequences of non-compliance for CTAs without reference to PG&E. In summary, the decision makes no reference to the application of new rules to PG&E.

**The effective date ("Start Date") for counting a Non-Compliance Event should be revised from 45 to 90 days from the date of Commission approval for CTAs to make the necessary changes to fully implement the rules.** We agree that additional time is justified in order to implement the new rules. The Protesting Parties provided a "PG&E Customer Protection Rules Implementation Timeline" outlining each of the steps and estimates of the time required to complete them in order implement the rules. Their estimate ranges from 60 days to over 100 days. Given the time already invested and the importance of the rules, providing

more rather than less time for CTAs to make the necessary changes to fully implement the rules is appropriate. Additionally, PG&E stated in its reply to the protest that increasing the implementation time should not be an impediment to adopting new customer rules.

**Subsidiaries should remain in the definition of CTAs. However, the definition needs to be revised to exclude “recent mergers and acquisitions.”** PG&E allowed time for CTAs to respond to changes in the definition after subsidiaries were included. Subsidiaries were first included in the definition of CTAs in a draft of the rules provided to the CTAs by PG&E on July 13, 2011. Although a subsequent meeting was not held, CTAs had sufficient time and opportunity to respond to and provide input on the inclusion of subsidiaries in the definition prior to the final draft and the PG&E Advice Letter. Tiger Gas, one of the protesting parties, stated their objection to including subsidiaries on August 22. PG&E responded stating its reasoning on August 31, 2011. There was no further comment by the “Protesting Parties” or other CTAs. More importantly we disagree with the statement made by the Protesting Parties that “if the CTA groups are utilizing completely different target markets, marketing practices and/or techniques, then the tracking of CTA Groups non-compliance event(s) should not be combined for imposition of suspensions.”

Subsidiaries are an organizational convenience which may have little or no operational consequences. A CTA can organize its operations to approach different target markets, use different marketing practices and/or techniques with or without the use of subsidiaries. And, subsidiaries can be used without targeting different markets or using different marketing practices and/or techniques. If subsidiaries are excluded from the definition, companies that have chosen to organize using subsidiaries would be advantaged – provided with a greater number of non-compliance events before suspension – over those that do not use subsidiaries as part of their organization. Finally, the rules are intended to protect customers without regard to the target market, marketing practices and/or techniques. While CTA marketing practices and/or techniques may differ based on the target market they cannot differ in their compliance with the rules. Finally, there is the potential to use subsidiaries as a means of circumventing the rules by simply shifting marketing activities from one to another in order to avoid reaching the non-compliance event threshold for suspension.

However, we agree with the Protesting Parties that “recent mergers and acquisitions” should not be included in the definition of a CTA. First, actions prior to an acquisition are not under the control of the acquiring company. The acquirer should not be penalized under the rules for pre-acquisition/merger actions. Secondly, unlike the inclusion of subsidiaries in the definition, the addition of “recent mergers and acquisitions” was not made known to the CTAs until late in the day before PG&E filed its Advice Letter. The CTAs were not afforded a reasonable time to review, discuss and respond to this addition. As a result no opportunity for collaboration was afforded. Finally, the term “recent acquisitions and mergers” is vague and lacks definition concerning what is or is not “recent.”

## **COMMENTS**

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived or reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

## **FINDINGS AND CONCLUSIONS**

1. On October 6, 2011, PG&E filed Advice Letter 3244-G requesting approval for revisions to its Gas Rule 23 – Gas Aggregation Service for Core Transport Customers. The revisions incorporate new customer protection rules for CTAs in compliance with Decision 11-04-031.
2. On October 26, 2011, Tiger Natural Gas, School Project for Utility Rate Reduction (SPURR), UTE dba Blue Spruce Energy Services and Gas and Power Technologies, collectively, the “Protesting Parties,” filed a protest to PG&E’s Advice Letter 3244-G.

3. On November 2, 2011, PG&E filed a response to the Protesting Parties protest.
4. Decision 11-04-031 approved a set of guiding principles and a process for developing consumer protection rules governing the CTAs requiring collaboration between PG&E and CTAs.
5. As PG&E is a regulated utility subject to the CPUC's rules, requiring reciprocal or new rules for PG&E as part of this proposal is not necessary nor was it intended.
6. The effective date ("Start Date") for counting a Non-Compliance Event needs to be revised from 45 to 90 days from the date of Commission approval for CTAs to make the necessary changes to fully implement the rules.
7. PG&E conducted four joint meetings/conference calls with CTAs providing for CTA input into the new rules. Multiple drafts of the rules were produced incorporating the results of the meetings and CTA input.
8. A draft of the rules with a definition of a CTA that included subsidiaries in the definition of a CTA was circulated by PG&E on July 13, 2011. CTAs had sufficient time to review and offer comments and input into the revised definition.
9. Under the proposed customer protection rules including subsidiaries in the definition of a CTA is necessary in order to assure that the rules will not be circumvented and rendered impotent.
10. Under the proposed customer protection rules CTAs will be inappropriately penalized for past practices outside of their control if "recent mergers and acquisitions" are included in the definition of a CTA.

**THEREFORE IT IS ORDERED THAT:**

1. The request of PG&E to revise Gas Rule 23 as requested in Advice Letter AL 3244-G is approved subject to the following modifications:

- a. PG&E shall modify the "Start Date", in Section E., Number 3., paragraph e., line 3 to read: "A Non-Compliance Event will not be counted if the enrollment or underlying activity that generated the complaint occurred prior to [**Start Date To Be Added - start date will be 90 days from the date of Commission approval**]."
- b. PG&E shall modify the definition of a CTA in Section E., Number 3., paragraph d., line 4 to read: "A CTA, for the purpose of event tracking and suspension, includes any subsidiaries."

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on February 1, 2012; the following Commissioners voting favorably thereon:

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Paul Clanon  
Executive Director

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



December 29, 2011

I. D. # 10964  
RESOLUTION G-3465  
February 1, 2012

Commission Meeting

TO: PARTIES TO PACIFIC GAS AND ELECTRIC COMPANY ADVICE  
LETTER 3244-G

Enclosed is draft Resolution G-3465 of the Energy Division, issued in response to Pacific Gas and Electric Company (PG&E) Advice Letter (AL) 3244-G. It will appear on the agenda at the next Commission meeting which is at least 30 days after the date of this letter. The Commission may vote on this Resolution at that time or it may postpone a vote until a later meeting. When the Commission votes on a draft Resolution, it may adopt all or part of it as written, amend, modify or set it aside and prepare a different Resolution. Only when the Commission acts does the Resolution become binding on the parties.

Parties may submit comments on the draft Resolution. All comments on the draft Resolution must be received by the Energy Division by January 23, 2012.

An original and two copies of the comments, along with a certificate of service, shall be sent to:

Honesto Gatchalian  
Energy Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Email: [jnj@cpuc.ca.gov](mailto:jnj@cpuc.ca.gov)  
FAX: 415-703-2200

A copy of the comments shall be submitted in electronic format to:

Richard Myers and Gregory Reisinger  
Energy Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Email: [ram@cpuc.ca.gov](mailto:ram@cpuc.ca.gov) and [gregory.reisinger@cpuc.ca.gov](mailto:gregory.reisinger@cpuc.ca.gov)

Those submitting comments on the draft Resolution must serve their comments on the entire service list attached to the draft Resolution and the Director of the Energy Division on the same date that the comments are submitted to the Energy Division.

Comments shall be limited to fifteen pages in length and should list the recommended changes to the draft Resolution.

Comments shall focus on any errors in the draft Resolution.

Late submitted comments will not be considered. Reply comments will not be accepted.

Sincerely,

/s/ Richard Myers

Richard Myers, Program and Project Supervisor  
Energy Division

Enclosure: Service List  
Certificate of Service

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of Draft Resolution G-3465 on all parties or their attorneys as shown on the attached service list.

Dated December 29, 2011 at San Francisco, California.

/s/ Honesto Gatchalian

*Honesto Gatchalian*

**NOTICE**

Parties should notify the Energy Division, Public Utilities Commission, 505 Van Ness Avenue, Room 4002 San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the Resolution number on the service list on which your name appears.

*Parties to Pacific Gas and Electric Company Advice Letter 3244-G:*

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