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Decision 02-08-070 August 22, 2002

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 8, 2001)

OPINION REGARDING THE JOINT MOTION FOR APPROVAL OF THE GAS ACCORD II SETTLEMENT AGREEMENT

Summary

On May 20, 2002, Pacific Gas and Electric Company (PG&E) and 13 other parties filed a "Joint Motion For Approval Of Gas Accord II Settlement Agreement And Request For Shortened Comment Time" ("joint motion"). The joint motion requests that the Commission promptly approve the "Gas Accord II Settlement Agreement" (also referred to as "proposed settlement agreement") without modification. The proposed settlement agreement would extend, for a one-year term (the "Gas Accord II period"), the existing, Commission-approved market structure, rates, tariffs, and terms and conditions of service, for PG&E's gas transmission and storage system.[1]

[1] Under the proposed settlement agreement, the market structure for PG&E's gas transmission service would be extended for the period from January 1, 2003 to December 31, 2003, and for PG&E's gas storage service for the period from April 1, 2003 to March 31, 2004.

Today's decision grants the joint motion to approve the Gas Accord II Settlement Agreement. A copy of the approved settlement agreement is attached to this decision as Appendix A.

Background

Hearings for this proceeding were initially established in the February 26, 2002 Scoping Memo. PG&E subsequently held two settlement conferences to discuss a possible settlement of the application to extend the provisions of the "Gas Accord."[2] On May 20, 2002, PG&E and 13 other parties filed the joint motion. A copy of the proposed settlement agreement was attached to the joint motion. On June 4, 2002, PG&E filed a motion to supplement the proposed settlement agreement with the signature pages of four additional parties.[3] That motion to supplement was granted in an Administrative Law Judge's (ALJ) ruling dated July 9, 2002.

On May 29, 2002, the ALJ shortened the time for parties to comment on the joint motion and the proposed settlement agreement. Comments were filed by the California Department of General Services (DGS), Calpine Corporation

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[2] The "Gas Accord" is the term that was given to describe the settlement regarding the gas structure for PG&E that was adopted by the Commission in Decision (D.) 97-08-055 [73 CPUC2d 754]. The Gas Accord is effective through December 31, 2002.

[3] In addition to PG&E, the 16 other signatories to the proposed settlement agreements are: California Cogeneration Council; California Industrial Group and the California Manufacturers & Technology Association; California Utility Buyers JPA; Canadian Association of Petroleum Producers; City of Palo Alto; Coral Energy Resources, L.P., Duke Energy North America and Duke Energy Trading & Marketing, LLC; Dynegy Marketing & Trade; Mirant Americas Inc.; Occidental Energy Marketing, Inc.; Office of Ratepayer Advocates; PG&E National Energy Group; Sacramento Municipal Utility District; School Project for Utility Rate Reduction; Suncor Energy Marketing, Inc.; and TXU Energy Services.

(Calpine), El Paso Natural Gas Company (EPNG), Lodi Gas Storage, L.L.C. (LGS), Northern California Generation Coalition (NCGC), and jointly by Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E). Joint reply comments were filed by The Utility Reform Network (TURN) and 17 signatories to the proposed settlement agreement.

Proposed Settlement Agreement

The settling parties recommend that the proposed settlement agreement be promptly adopted in order to ensure stability in the natural gas market for the coming winter season, and to prevent the disruption of natural gas supplies and other adverse consequences. The following is a summary of the key agreements in the proposed settlement agreement.[4]

Under the proposed settlement agreement, the existing market structure, rates, tariffs, and terms and conditions of service for PG&E's gas transmission and storage system, as adopted in the Gas Accord and as modified by subsequent decisions, would continue for the Gas Accord II period.[5] The rates for transmission and core storage services for the Gas Accord II period are to be equal to the adopted rates in effect on January 1, 2002. The rates for market center storage services for the Gas Accord II period are to be equal to the adopted rates in effect on April 1, 2002. Customer access charges for noncore customers are to be equal to the adopted rates in effect on January 1, 2002.

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[4] The specific terms of each provision of the settlement are set forth in the Gas Accord II Settlement Agreement.

[5] Certain provisions of the Gas Accord were modified in the "Operational Flow Order Settlement Agreement" adopted in D.00-02-050, and in the "Comprehensive Gas OII Settlement Agreement" adopted in D.00-05-049.

The proposed settlement agreement would allow existing holders of firm transportation or storage rights on the PG&E system to extend those rights for the Gas Accord II period, or until the first day the subject transportation or storage arrangements are under the jurisdiction of the Federal Energy Regulatory Commission (FERC), whichever occurs first. Once the settlement agreement is approved by the Commission, each existing firm shipper will be given the opportunity to renew, for the Gas Accord II period, up to the full contract demand quantity on the same contract path. In order to qualify for renewal of their contract, each shipper must continue to meet PG&E's credit worthiness standard contained in PG&E's Commission-approved Gas Rule 25. Except for the expiration date, the renewal process for the existing firm storage contracts is similar to the procedure described above for the gas transportation contracts.

The proposed settlement agreement also establishes the rules for an open season. In this process, all firm transportation and storage rights that are not subject to extension will be offered to the public on a non-discriminatory basis for the Gas Accord II period, or until the first day the subject transportation or storage arrangements are under FERC's jurisdiction. The open season for transmission capacity would include unsold transmission capacity on the Redwood and Baja paths, up to approximately 200 MDth/day on the Redwood Path due to expanded capacity, and transmission capacity that is relinquished or not extended. A market concentration limit would also be established for each transmission path, which the settling parties contend is consistent with the Commission's recent decision in D.01-12-018 approving the Comprehensive Settlement for SoCalGas.

The proposed settlement agreement would also fix the level of firm intrastate transportation and storage rights currently held by PG&E's Core

Procurement, as authorized by the Commission in PG&E's most recent Biennial Cost Allocation Proceeding (BCAP). Thus, PG&E's Core Procurement Department would not participate in the open season for additional intrastate capacity. However, the proposed settlement agreement provides that after the open season, PG&E's Core Procurement Department may elect to increase (if capacity is available) or decrease (through capacity assignments) its firm transmission and storage capacity holdings as necessary during the term of the settlement. The proposed settlement agreement also states that PG&E's Core Procurement Department is to be treated equally with other shippers and is not to be granted any undue preference.

The proposed settlement agreement also extends PG&E's Core Procurement Incentive Mechanism (CPIM) for the Gas Accord II period, and permits PG&E and consumer advocates to propose modifications to the CPIM prior to or during the Gas Accord II period.

Under the proposed settlement agreement, PG&E's gas financial risk management program would continue through the Gas Accord II period.[6] In addition, the proposed settlement agreement calls for PG&E to post on a quarterly basis the names and contact information for shippers and storage holders, as well as a separate quarterly posting (without identifying individual shippers) of the relative market shares of the top five shippers by contract paths.

The proposed settlement agreement also calls for the postponement of the existing procedural schedule for issues identified in the February 26, 2002

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[6] The Commission granted PG&E's request for authorization to engage in a financial risk management program in D.98-12-082, as modified by D.99-04-013. This authority is scheduled to expire on December 31, 2002.

Scoping Memo (Scoping Memo) until the Fall of 2002. If the proposed settlement agreement is approved, all of the Scoping Memo issues would be deemed resolved through the Gas Accord II period. The proposed settlement agreement also states that on or before August 1, 2002, PG&E will undertake a settlement process with the parties in an attempt to resolve the Scoping Memo issues by stipulation or settlement. The signatories to the proposed settlement agreement have also reserved all of their rights with respect to the issues identified in the Scoping Memo, and PG&E has reserved its right to modify Application (A.) 01-10-011, or to file a superceding application for the period beginning January 1, 2004.

The joint motion states that the proposed settlement agreement is supported by a wide and diverse cross-section of gas and electric industry representatives. The settling parties contend that this widespread support is indicative of a reasonable and balanced resolution of all the issues for the one-year Gas Accord II period, and that approval of the proposed settlement agreement is in the public interest.

The settling parties further contend that prompt approval of the proposed settlement agreement is vitally important, and consistent with the public interest, because gas transportation and storage must be arranged in advance of the 2002-2003 winter heating season. Extending the existing firm gas transportation and storage contracts on the PG&E system, and conducting an open season for available capacity, will ensure that these contractual arrangements will be in place for the upcoming winter season. The settling parties also point out that the one-year Gas Accord II period is appropriate because gas supplies and associated transportation arrangements are typically on a fixed one-year basis.

The settling parties also contend that approval of the settlement without modification will promote stability in the gas market by providing commercial certainty to gas industry participants. This certainty will allow participants to compete regionally in the supply basins for long-term supply contracts, which will help reduce supply disruptions, price volatility, and other harmful effects.

The settling parties also point out that the proposed settlement agreement would only extend the Gas Accord market structure and rates for an additional year, and that the contract extensions and open season process will only establish capacity rights for the one-year period. Although several parties have recommended changes to the proposed settlement agreement, the settling parties recommend that the Commission decline to make any of the changes to ensure that the settlement can be implemented in a timely manner. The settling parties also assert that it would be unreasonable to entertain any fundamental changes to the Gas Accord market structure at this point.

Comments of the Parties

NCGC does not oppose the adoption of the proposed settlement agreement. LGS supports the proposed settlement agreement in principle, but did not sign the settlement because it wants to remain free to advocate its position that LGS be treated equally with any other gas storage provider on PG&E's system.

Calpine does not oppose or support the proposed settlement agreement. Although Calpine acknowledges the need for certainty with regards to the terms and conditions of transportation capacity after the Gas Accord ends, Calpine points out that the proposed settlement agreement is only a short-term solution. Calpine requests that the Commission find that the settlement agreement has no precedential effect on the final resolution of the Scoping Memo issues, and that

the Commission order that the Scoping Memo issues be addressed in this proceeding.

EPNG states that the proposed open season would create a competitive imbalance to the detriment of interstate pipelines transporting gas from the Southwest and to Southwest Gas producers, and would benefit PG&E, PG&E's interstate pipeline affiliate, PG&E Gas Transmission Northwest, and Canadian producers. EPNG contends that this imbalance will occur because only annual capacity, and not seasonal capacity, is being made available during the open season. EPNG believes that after the existing contracts are extended, there is likely to be seasonal capacity available on Line 300. However, since this seasonal capacity on Line 300 will not be made available for the open season, there will be no capacity on Line 300 to compete with the expansion capacity on PG&E's Lines 400 and 401, the Redwood Path. EPNG asserts that this will tend to encourage shippers to request and contract for firm capacity on Lines 400 and 401 rather than on Line 300. To eliminate this concern, EPNG recommends that the Commission condition the approval of the settlement upon PG&E making all unsubscribed capacity, including all seasonal capacity, available to shippers in the open season on an open and nondiscriminatory basis.

DGS states that due to the uncertainty over PG&E's pending bankruptcy, the upcoming expiration date of the Gas Accord, and the limited term of the proposed extension, the Commission has no other real option other than to extend the term of the Gas Accord for one additional year and to market the additional expansion capacity. DGS, however, recommends that the Commission make the following changes to the proposed settlement agreement.

The first change is clarification of whether the Commission wants another deal presented to it regarding the Scoping Memo issues, or if it wants to have a

full record on the efficacy of PG&E's Gas Accord. DGS states that PG&E should be required to file an amended application and testimony in response to the Scoping Memo issues within 30 days after the approval of whatever plan of reorganization is adopted by the Bankruptcy Court. TURN supports this recommendation.

DGS also states that any settlement discussions should be deferred until PG&E has filed the amended application, and that the other parties' testimony should follow the holding of a prehearing conference on the amended application. DGS also states that PG&E should be required to provide a full cost of service study on the backbone system and to disclose its revenues from those operations because DGS believes that PG&E has made substantially more than its costs and the authorized rate of return.

The second change sought by DGS is that the open season bidding process should give priority to end use customers before capacity is made available to non-end users. To implement this priority, DGS proposes a two-phased open season. The first phase would allow end use customers to obtain rights to capacity based on their expected demands, net of any rights they (or contracted marketers acting on their behalf) already possess. The second phase would make the balance available to the market.

The third change that DGS recommends is that PG&E should be required to immediately submit a cost of service study before the Commission approves the rates in the proposed settlement agreement. DGS believes that PG&E is making a greater return than it would under traditional cost of service, and that this study will allow the Commission to explore this issue.

SoCalGas and SDG&E state that they generally support the proposed settlement agreement because it would guarantee the continuation of a system of

firm, tradable rights on the PG&E system. However, if the Commission does not act quickly to implement D.01-12-018, the decision which approved a system of firm, tradable backbone transmission rights on the SoCalGas system and which is generally consistent with PG&E's Gas Accord system, SoCalGas and SDG&E state that the Commission should reject the proposed extension of the Gas Accord.

SoCalGas and SDG&E recommend that the Commission adopt two specific changes for the PG&E system as a condition of approval of the settlement. The first change is that PG&E should be required to be fully consistent with the nominations protocols of the North American Energy Standards Board (NAESB). Specifically, SoCalGas and SDG&E recommend that PG&E should be required to comply with the NAESB protocols with respect to the bumping of interruptible nominations by firm nominations after the first gas nomination cycle.

Under those protocols, for each day, firm nominations can bump any interruptible nominations up through and including the third cycle of the nomination process. Under the PG&E system, firm rights cannot bump previously scheduled interruptible nominations on nomination Cycles 2 and 3. SoCalGas and SDG&E assert that under PG&E's system, firm backbone rights holders have to nominate 24 hours ahead of time in order to assure that they get their gas scheduled ahead of interruptible shippers nominating in Cycle 1. They argue that such a procedure on PG&E's system clearly disadvantages firm rights holders relative to their rights under the NAESB.

SoCalGas and SDG&E state that all FERC regulated pipelines are required to be NAESB-compliant. If D.01-12-018 is implemented, SoCalGas intends to be NAESB-compliant with respect to nominations and scheduling procedures. By

requiring PG&E to be NAESB-compliant, firm holders on PG&E's system, such as SDG&E, can more fully utilize the firm rights that they are paying for, according to these parties.

The second change that SoCalGas and SDG&E recommend is a requirement that PG&E post daily on its publicly-available electronic bulletin board the total amount of gas stored in its underground storage fields as of the previous day. This information is published daily on SoCalGas' GasSelect system, and SoCalGas plans to continue doing so after D.01-12-018 is implemented. SoCalGas and SDG&E assert that this information will provide greater transparency to the market, and that it will affect perceptions as to the demand for flowing supplies and interstate and intrastate pipeline capacity for the immediate future.

Discussion

In evaluating whether the Commission should adopt or reject a settlement, we rely on the settlement and stipulation rules found in Rules 51 to 51.10 of the Commission's Rules of Practice and Procedure. In particular, Rule 51.1(e) provides that: "The Commission will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest." A "settlement" is defined in Rule 51(c) to mean "an agreement between some or all of the parties to a Commission proceeding on a mutually acceptable outcome to the proceedings."

A "contested" settlement is a "settlement that is opposed in whole or part, as provided in this article, by any of the parties to the proceeding in which such … settlement is proposed for adoption by the Commission." (Rule 51(e).) If a party decides to contest a settlement, it must do the following:

> "A party contesting a proposed … settlement must specify in its comments the portions of the stipulation or settlement that it opposes, the legal basis of its opposition, and the factual issues that it contests. Parties should indicate the extent of their planned participation at any hearing. If the contesting party asserts that hearing is required by law, appropriate citation shall be provided." (Rule 51.5)

If a settlement is contested "in whole or in part on any material issue of fact by any party, the Commission will schedule a hearing on the contested issue(s) as soon after the close of the comment period as reasonably possible." However, the "Commission may decline to set hearing in any case where the contested issue of fact is not material or where the contested issue is one of law." (Rule 51.6.)

Although the settling parties point out in their reply comments that "not a single party has opposed the Gas Accord II Settlement," or the one-year extension of the Gas Accord, the settling parties acknowledge that some of the commenting parties "have requested that the Commission impose one or more changes to the Settlement, or condition its approval in such a way as to modify the Settlement." (Joint Reply Comments, pp. 1-2.) Before deciding whether the proposed settlement agreement should be adopted or not, we must address whether these changes or conditions amount to a contested settlement, and if so, should there be a hearing on the contested issue.

No party has asserted that hearings are necessary, nor has any party indicated the extent of its participation if a hearing is held. Thus, one could infer that the proposed changes to the settlement agreement are issues that could be resolved without a hearing. Rule 51.6(b) specifically provides that the Commission "may decline to set hearing in any case where the contested issue of fact is not material or where the contested issue is one of law." Before making

that determination, we examine each of the clarifications, changes or conditions that the commenting parties have requested.

SoCalGas and SDG&E assert that the Commission should reject the proposed settlement agreement, if the Comprehensive Settlement adopted by the Commission in D.01-12-018 is not quickly implemented. The settling parties state in their reply comments that approval of the proposed settlement agreement, which is a one-year extension of the existing market structure for PG&E's system, should not be linked to the restructuring of the SoCalGas system adopted in D.01-12-018.

We agree with the settling parties. Although the implementation of D.01-12-018 would establish a gas structure for SoCalGas similar to PG&E's structure, this linkage should not be the basis for rejecting the proposed settlement agreement which extends the Gas Accord for PG&E by another year.

DGS seeks clarification as to whether there will be a settlement on the scoping memo issues or if there will be a full record on the effectiveness of the Gas Accord structure, and when PG&E can be expected to file an amended application. According to the settling parties, PG&E has reserved its right to modify its application in this proceeding or to file a superceding application, and other parties to the settlement have also reserved their rights. The settling parties recommend that the Commission honor the rights of the parties as set forth in the settlement, and not curtail PG&E's rights as sought by DGS.

At this time, we will defer to the settling parties on how they have agreed to proceed with the issues identified in the Scoping Memo, and whether or not PG&E will file an amended application or a new application. Under the settlement, the Gas Accord structure and rates will be extended for an additional year. During that time period, the present procedural schedule anticipates a

resolution of the issues identified in the Scoping Memo, and that the Bankruptcy Court will adopt some form of a reorganization plan. These subsequent events will shape the future gas structure for PG&E. Instead of requiring PG&E to adhere to a rigid schedule at this time, the settlement agreement provides the parties with the necessary flexibility to respond to future events.

DGS also seeks to change the proposed settlement agreement by adding a requirement that the open season bidding process give priority to end use customers before capacity is made available to non-end users. To implement this priority, DGS proposes a two-phased open season. The settling parties contend that such a change is not needed because end use customers who currently hold capacity rights will be given the opportunity to extend their contracts. The settling parties also state that Section V.E.3.b. of the proposed settlement agreement protects the interests of PG&E's end use customers by reserving 100 MDth/d of firm capacity in the open season for on-system deliveries, and limiting the initial off-system offering to 340 MDth/d.

Given the right of existing capacity holders under the proposed settlement agreement to extend their contracts for the Gas Accord II period, and the short duration of the one-year extension, we will not adopt DGS' request to give priority to end users.

SoCalGas and SDG&E recommend that PG&E change its nominations protocols to make them consistent with the NAESB protocols. If such a change is adopted, interruptible shipper nominations in Cycles 2 and 3 could be bumped by firm shipper nominations during those cycles.

The settling parties contend that the change requested by SoCalGas and SDG&E would require PG&E to change its current tariff, which has been in place since the beginning of the Gas Accord in 1998. The tariff currently provides that

interruptible shipper nominations in Cycles 2, 3, and 4 cannot be bumped by firm shipper nominations during those cycles. The settling parties state that this proposal is a new issue that was not previously raised in this proceeding, and was not identified in the Scoping Memo. They assert that such a change would be difficult, if not impossible, for the parties and the Commission to resolve in time for the one-year extension of the Gas Accord.

The change in the nomination protocols would affect both interruptible and firm shippers, and would require a change in PG&E's tariff. Since this issue was not raised prior to the comments on the proposed settlement agreement, the shippers who could be affected by such a change have not had a chance to voice their opinions. Also, given the need to resolve the Gas Accord extension before the start of the upcoming winter season, and the limited duration of the extension, it is unlikely that the nomination protocol change could be implemented in time. SoCalGas and SDG&E are free to raise this issue in the upcoming evidentiary hearing on the Scoping Memo issues.[7]

The other change that SoCalGas and SDG&E seek is a requirement that PG&E post on an electronic bulletin board the total amount of gas stored in its underground storage fields as of the previous day. The settling parties state that this issue was not raised prior to the comments on the proposed settlement

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[7] In footnote 2 of the July 9, 2002 ALJ ruling, it was noted that should additional issues be identified in the comments and reply comments to the proposed settlement agreement, that additional issues could be added to the scoping issues. We believe that this is an appropriate issue to address in the upcoming hearings on the Scoping Memo issues. In addition, since the Commission has addressed the issues raised by LGS relating to storage-related transportation issues in D.02-07-036, the issues identified in the February 26, 2002 Scoping Memo relating to PG&E's gas tariff should be removed from the Scoping Memo issues.

agreement, and that this change would also be difficult for the parties and the Commission to resolve in time for the one-year extension of the Gas Accord. The settling parties contend that such a posting requirement would alter the terms of the Gas Accord and other Commission-approved settlements. In addition, the settling parties note that PG&E's existing tariff protects the gas storage information from disclosure as commercially sensitive information of PG&E's Core Procurement Department, and that the storage facilities of SoCalGas are more extensive, and include a much higher percentage of storage allocated to the non-core market.

A review of D.00-02-050 and D.00-05-049 reveal that the idea of disclosing certain PG&E storage information on an electronic bulletin board has been considered. However, in the two settlements that were adopted in those decisions, the parties agreed that PG&E did not have to make this information available. (See D.00-02-050, Att. 1, Sections C.1.e. and C.1.g.; D.00-05-049, Att. A, Section 3.5.) Given the short duration of the Gas Accord extension, and the two previous settlements which considered requiring PG&E to post certain storage information, we decline to require PG&E to post the total amount of gas stored in its underground storage fields, as of the previous day, on an electronic bulletin board.

We now turn to the conditions that various commenting parties seek to impose on approval of the proposed settlement agreement. Calpine requests that the Commission find that the settlement agreement has no precedential effect on the final resolution of the Scoping Memo issues, and that the Commission order that the Scoping Memo issues be addressed in this proceeding. In reply comments, settling parties point out that Section IV of the settlement provides that all parties have reserved all of their rights with respect to the Scoping Memo

issues, and that Rule 51.8 covers Calpine's concern that the adoption of a settlement by the Commission does not set precedent.

We agree. The assurances that Calpine seeks are not needed as a condition of approving the settlement. Rule 51.8 provides that unless the Commission expressly provides otherwise, the adoption of a settlement "does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding." Nothing in today's decision affects how the Commission will ultimately resolve the issues identified in the Scoping Memo. The July 9, 2002 ALJ ruling established a schedule for the service of prepared testimony and reply testimony on the issues identified in the Scoping Memo, and stated that the evidentiary hearings for these issues would be set in a future ruling.

EPNG requests that PG&E make all unsubscribed capacity, including all seasonal capacity, available to shippers in the open season on an open and nondiscriminatory basis. The settling parties point out that Section V.A.3. of the proposed settlement agreement specifically provides that all existing seasonal contract holders will be given contract extension rights, and that PG&E has a tariff for anyone interested in seasonal service. They also state that anyone who wants seasonal service may seek short-term assignments of capacity from annual capacity holders in the secondary market. The settling parties also note the difficulty of setting up an open season process for seasonal capacity when the proposed settlement agreement only calls for a one-year extension of the Gas Accord.

We agree with the settling parties that we should not condition the approval of the settlement on a requirement that all unsubscribed capacity, including seasonal capacity, be made available to shippers in the open season.

Under the proposed settlement agreement, holders of seasonal transmission capacity may extend their contracts for the Gas Accord II period. In addition, establishing an open season process for seasonal capacity would not be feasible given the one-year extension of the Gas Accord.

DGS recommends that the Commission impose a condition that PG&E be required to submit a cost-of-service study before the Commission approves the proposed settlement agreement. The settling parties contend that a full cost-of-service review before approving the settlement is impractical given the short duration of the Gas Accord extension and the proposed start of the open season. They also note that PG&E's current rates would be extended without change, and that PG&E would forego the 2.5% annual rate escalation provided for in the Gas Accord.

We agree with the settling parties that DGS' recommendation for PG&E to submit a cost-of-service study, and the review of such a study, is impractical given the timeframe of the one-year extension, the open season process, and the upcoming winter season. We also note that one of the issues identified in the Scoping Memo is how the existing Gas Accord structure has performed, and whether it is in the best interest of the state to continue this structure. Thus, the upcoming hearings on the Scoping Memo issues will address the viability of the Gas Accord structure.

Although the commenting parties seek to make certain changes, or condition the approval of the proposed settlement agreement, they do not contest the one-year extension of the Gas Accord, or any of the factual issues relating to the settlement. In addition, none of the commenting parties have stated that hearings are necessary. We conclude that none of the changes or conditions that the commenting parties seek to impose are material to any of the

issues in the proposed settlement agreement, and in accordance with Rule 51.6, no hearings regarding the proposed settlement agreement are needed.

We note that a broad cross-section of gas industry participants and customer groups have signed the proposed settlement agreement. Even though some of the commenting parties have stated that they would like to make changes to the settlement or impose conditions, none of them have voiced any opposition to the premise of extending the terms and conditions of the Gas Accord for an additional year. By extending the Gas Accord for an additional year, participants in the gas market in PG&E's service territory will have commercial certainty over how PG&E's gas transmission and storage will work in the coming year, and what rates they can expect. This will also provide certainty as to the gas market structure for PG&E while the Bankruptcy Court decides which plan of reorganization is to be adopted. The Gas Accord II period is also limited to a duration of one year.

Although the settlement would deem the issues identified in the Scoping Memo to be resolved in the Gas Accord II period, these issues will be litigated or resolved in the upcoming months, and are to take effect after the Gas Accord II period has expired. In addition, if the proposed settlement agreement is approved, PG&E's authority to use natural gas-based financial instruments to manage the price and revenue risks associated with its natural gas transmission and storage assets, as set forth in D.98-12-082, will continue.

Based on the foregoing, and pursuant to Rule 51.1(e), we conclude that the May 17, 2002 "Gas Accord II Settlement Agreement," which the settlement parties move for us to approve, is reasonable in light of the whole record, consistent with the law, and in the public interest. Accordingly, the joint motion for approval of the Gas Accord II Settlement Agreement is granted.

Comments on Draft Decision

Pursuant to Rule 77.7, the draft decision of the assigned ALJ was mailed to the parties on July 23, 2002. In accordance with Rules 77.2 and 77.5, comments to the draft decision were filed by the signatories to the proposed settlement agreement, EPNG, and LGS. Those comments have been considered, and appropriate changes have been made.

Findings of Fact

1. PG&E held two settlement conferences to discuss a possible settlement of this application to extend the provisions of the Gas Accord.

2. A joint motion was filed on May 20, 2002 requesting that the Commission approve the Gas Accord II Settlement Agreement.

3. Comments and reply comments were filed in response to the joint motion and the proposed settlement agreement.

4. The Gas Accord II Settlement Agreement would, among other things, extend the existing Gas Accord gas market structure, rate, tariffs, and terms and conditions of service for PG&E's gas transmission and storage system for an additional year.

5. Under the proposed settlement agreement, the rates for transmission and core storage services for the Gas Accord II period would be equal to the adopted rates in effect on January 1, 2002, the rates for market center storage services would be equal to the adopted rates in effect on April 1, 2002, and the rates for customer access charges for noncore customers would be equal to the adopted rates in effect on January 1, 2002.

6. Under the proposed settlement agreement, existing holders of firm transportation or storage rights would be given the opportunity to extend those rights for the Gas Accord II period, or until the first day the subject

transportation or storage arrangements are under the jurisdiction of the FERC, whichever occurs first.

7. Under the proposed settlement agreement, an open season would be held for all firm transportation and storage rights that are not subject to extension.

8. Under the proposed settlement agreement, PG&E's gas financial risk management program, which was approved in D.98-12-082 as modified by D.99-04-013, would continue through the Gas Accord II period.

9. Under the proposed settlement agreement, the Scoping Memo issues would be deemed resolved through the Gas Accord II period.

10. A settlement is defined as "an agreement between some or all of the parties to a Commission proceeding on a mutually acceptable outcome to the proceedings."

11. No one has asserted in their comments that hearings are necessary, nor has any party indicated the extent of its participation if a hearing is held.

12. Although some of the commenting parties seek to make certain changes, or condition the approval of the proposed settlement agreement, they do not contest the one-year extension of the Gas Accord or any of the factual issues relating to the settlement.

13. A broad cross-section of gas industry participants and customer groups have signed the proposed settlement agreement.

14. Extension of the Gas Accord for an additional year will confer commercial certainty over how PG&E's gas and transmission market structure will work in the coming year, and what rates customers can expect.

15. Although the Scoping Memo issues are deemed resolved for the Gas Accord II period, these issues will be litigated or resolved in the upcoming months, and are to take effect after the Gas Accord II period has expired.

Conclusions of Law

1. A proposed settlement should not be approved unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.

2. If a party decides to contest a settlement, it must specify in its comments the portions of the settlement that it opposes, the legal basis of its opposition, and the factual issues that it contests.

3. The Commission may decline to set a hearing where the contested issue of fact is not material or when the contested issue is one of law.

4. If no one requested a hearing in their comments, one could infer that the requested changes or conditions to the settlement agreement are issues that can be resolved without a hearing.

5. None of the changes or conditions that the commenting parties seek to impose are material to any of the issues in the proposed settlement agreement, and consequently, no hearings regarding the settlement are needed.

6. The May 17, 2002 Gas Accord II Settlement Agreement is reasonable in light of the whole record, consistent with the law, and in the public interest.

7. The joint motion for approval of the Gas Accord II Settlement Agreement is granted.

O R D E R

IT IS ORDERED that:

1. The joint motion that was filed on May 20, 2002, seeking approval of the Gas Accord II Settlement Agreement, a copy of which is attached to this decision as Appendix A, is granted.

a. Pursuant to the terms of the Gas Accord II Settlement Agreement, the natural gas market structure, rates, and terms and conditions of service for Pacific Gas and Electric Company (PG&E), which were adopted in Decision (D.) 97-08-055 and modified in D.00-02-050 and D.00-05-049, shall be extended through December 31, 2003 for gas transmission service, and through March 31, 2004 for gas storage service.

2. The authority granted to PG&E in D.98-12-082 to engage in a natural gas financial risk management program shall be extended through the Gas Accord II extension period.

3. This proceeding shall remain open to address the issues identified in the February 26, 2002 Scoping Memo, and as discussed in this decision.

This order is effective today.

Dated August 22, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners