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Decision 02-12-072 December 19, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E 3338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan. (U 39 E)	Application 00-11-056 (Filed November 22, 2000)
Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)

OPINION APPROVING THE 2003 SERVICING ORDER CONCERNING PACIFIC GAS AND ELECTRIC COMPANY AND THE CALIFORNIA DEPARTMENT OF WATER RESOURCES

Summary

On October 8, 2002, the California Department of Water Resources (DWR) submitted to this Commission a memorandum and proposed modifications to the "Servicing Order Concerning State of California Department of Water Resources And Pacific Gas and Electric Company" (Original Servicing Order).[1] DWR's submission was made in response to D.02-09-053 (the "Contract

[1] The Original Servicing Order was previously approved by the Commission in Decision (D.) 02-05-048.

Allocation Decision"), which directed DWR to request that the Commission make appropriate modifications to the Original Servicing Order governing PG&E as a result of the allocation of energy from, and operational responsibility for, DWR's electricity contracts to PG&E and the other two large electric utilities.

Today's decision approves a modified version of DWR's proposed modifications to the Original Servicing Order, which has been labeled as the "2003 Servicing Order Concerning State of California Department of Water Resources And Pacific Gas and Electric Company" (2003 Servicing Order). Appendix A of this decision contains a marked version of the revisions to the 2003 Servicing Order that we approve today. Appendix B of this decision is a "clean" copy of the approved 2003 Servicing Order. PG&E is ordered to comply with the terms and conditions of the 2003 Servicing Order. The 2003 Servicing Order sets forth the terms and conditions under which PG&E will provide the transmission and distribution of DWR-purchased electricity, as well as billing, collection, and related services on behalf of DWR. The 2003 Servicing Order also addresses DWR's compensation to PG&E for providing those services.

The Contract Allocation Decision ordered that PG&E, and the other two large electric utilities, are to assume operational control of the DWR contracts beginning on January 1, 2003. Since the utilities will be responsible for selling surplus energy from the DWR contracts, the utilities will have to remit the revenues from such sales to DWR. In order to do so, the 2003 Servicing Order addressing the remittance of the revenues from the sales of surplus energy needs to be put into place prior to year's end.

Background

In January 2001, in response to the energy crisis facing California, the Legislature gave DWR the authority to purchase electricity and sell it to the retail customers of California's electric utilities. This authority was provided for in Assembly Bill 1 of the First Extraordinary Session of 2001-2002 (Stats. 2001, Ch. 4) (AB X1).

In March 2001, the Commission ordered PG&E to segregate, and hold in trust for the benefit of DWR, certain amounts its customers had paid for DWR's electricity. (D.01-03-081.) At the request of DWR, this arrangement was formalized in the "Servicing Agreement Between State of California Department of Water Resources and Pacific Gas and Electric Company" (Servicing Agreement), which the Commission approved in D.01-09-015. D.01-09-015 ordered PG&E to provide the services requested by DWR as set forth in the Servicing Agreement. On September 24, 2001, PG&E filed a motion in Bankruptcy Court requesting an order that PG&E be entitled to refrain from entering into and implementing the Servicing Agreement as ordered in D.01-09-015.

On April 18, 2002, DWR submitted a memorandum to the Commission requesting that PG&E be ordered to comply with the terms and conditions set forth in DWR's modifications to the Servicing Agreement. In D.02-05-048, the Commission approved a modified version of the Servicing Agreement in the form of the Original Servicing Order. D.02-05-048 ordered PG&E to comply with all of the terms and conditions of that order.

Prior to today's decision, PG&E's servicing arrangement uses the terms and conditions contained in the Original Servicing Order.

Under AB X1, DWR's authority to contract for electricity purchases expires on January 1, 2003. (Water Code § 80260.) Rulemaking (R.) 01-10-024 was initiated by the Commission to allow the electric utilities to resume the responsibility of procuring electricity for their customers. In D.02-09-053, the Commission ordered PG&E, and the other two large electric utilities, to assume all of the operational, dispatch, and administrative functions for the electricity contracts that DWR had entered into, effective January 1, 2003. D.02-09-053 also allocated the DWR contracts to the resource portfolios of the three utilities, who are to schedule and dispatch the contracts in a least-cost manner.

As a result of the assumption of the operational duties for the DWR contracts, the Contract Allocation Decision recognized that the existing "servicing arrangements" with respect to PG&E would need to be altered to reflect the new operational arrangements as a result of the allocation of DWR's contracts to the utilities. (D.02-09-053, pp. 15, 59.) In Ordering Paragraph 3 of D.02-09-053, DWR was directed to request that the Commission make appropriate modifications to the Original Servicing Order governing PG&E. DWR was directed to "submit its proposed modifications" by October 1, 2002. DWR and the three electric utilities were also directed to jointly file proposed operational agreements and proposed standards for reasonableness review by October 1, 2002.

The three utilities requested an extension of the submission date for the proposed modifications to the servicing arrangements and proposed operational agreements. The Commission's Executive Director, in a letter dated September 27, 2002, granted an extension of one week, to October 8, 2002.

In response to the submissions ordered in D.02-09-053, on October 8, 2002, DWR electronically transmitted to the Commission, and to the service list, a

memorandum from Peter Garris of DWR, along with the proposed modifications to the Original Servicing Order for PG&E, and the other two utilities.[2] The document containing DWR's proposed modifications to PG&E's Original Servicing Order is labeled "2003 Servicing Order Concerning State of California Department of Water Resources And Pacific Gas and Electric Company." DWR also transmitted four other documents for PG&E consisting of Attachment A, Attachment B, Attachment E and Attachment J.[3]

Due to the earlier extension by the Executive Director, the assigned administrative law judge (ALJ) issued a ruling on October 10, 2002, allowing interested parties additional time to submit comments on the proposed modifications to PG&E's servicing arrangements, and reply comments.

PG&E filed its comments on DWR's proposed modifications to the Original Servicing Order on October 18, 2002. On October 23, 2002, DWR transmitted a memorandum entitled "Comments Concerning Submissions Requested by the California Public Utilities Commission Decision 02-09-053."

Summary of Proposed Modifications to the Original Servicing Order

DWR's proposed modifications to the Original Servicing Order and related attachments have been compared to the Original Servicing Order that was approved in D.02-05-048. In addition, the proposed modifications have been reviewed in light of the Contract Allocation Decision. Appendix A of this

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[2] DWR also submitted the proposed operating agreement and related attachments.

[3] DWR did not submit Attachments C, D, F, G, H and I. We assume, therefore, that the version of these six attachments that were approved in D.02-05-048 can be used for the 2003 Servicing Order. Attachments C, D, F, G, H and I appear in Appendix A and Appendix B of this decision.

decision reflects DWR's proposed modifications to the Original Servicing Order through the use of underlining and strikeout markings.

The proposed modifications fall into the following categories:

- Definitions and requirements relating to the DWR contracts allocated to PG&E in the Contract Allocation Decision.
- Definitions and requirements relating to the surplus energy sales and remittances that PG&E will be responsible for.
- Definitions and requirements relating to the Operating Order.
- Certain attachments to be provided by PG&E in Service Attachment 2.

In addition to DWR's proposed modifications, additional changes have been made by us to the Original Servicing Order and the related attachments. These additional changes are described in the discussion section below, and also reflect that an Operating Order is expected to be approved, rather than an Operating Agreement.

Position of the Parties

A. DWR

According to DWR's October 8, 2002 memorandum, DWR distributed the proposed modifications to PG&E's servicing arrangements on October 3 and 4, 2002. As of October 8, 2002, DWR was unable to ascertain whether the proposed modifications were acceptable to PG&E.

DWR has proposed modifying the Original Servicing Order by making certain changes to the accounting and reporting procedures. According to DWR, these proposed modifications are found in Attachment B, and parallel accounting and reporting provisions are contained in Exhibits C and F of the Operating

Order. DWR states that these accounting and reporting procedures are consistent with the policy set forth in the Contract Allocation Decision.

In its October 23, 2002 memorandum, DWR noted that, consistent with AB X1 and the Contract Allocation Decision, it would still be subject to continuing obligations with respect to the DWR contracts. In particular, these obligations include:

- Servicing the bonds as issuer;
- Managing legal and financial obligations under its long-term contracts;
- Ensuring the integrity of its revenues; and
- Fulfilling its substantial reporting obligations associated with the above.

DWR states that it is working to ensure that there is an efficient and timely transition to the utilities of the operational functions of the DWR contracts, while ensuring that DWR is able to fulfill its continuing obligations. To accomplish this goal:

> "DWR believes that certain principles and arrangements must be established regarding utilities' performance of certain functions under the allocated DWR long-term contracts on behalf of DWR. The operating agreement is a compilation of such principles and arrangements that DWR believes are necessary to achieve these goals.
>
> …
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> "In preparing the operating agreement, DWR's objective has been to minimize DWR's involvement in the utilities' operation of the integrated portfolio, consisting of utility and allocated DWR contract resources, and to allow the utilities

to make substantially all the operating decisions. The operating agreement is intended to provide appropriate mechanisms that allow the utilities to optimize the use of the integrated portfolio of resources on a service territory basis…. After the operational transition, DWR will continue to be legally and financially responsible for the direct costs under the allocated DWR long-term contracts, including gas-related costs. As a result, DWR needs to receive timely reporting of data outlined in Exhibit F of the operating agreement.

"To implement checks and balances while operating the integrated portfolio, DWR has proposed certain accounting and revenue sharing principles in Exhibit C of the operating agreement. DWR believes that the proposed accounting and revenue sharing principles provide greater certainty of revenues and cash flows to the utilities and DWR and, accordingly, aid the utilities in their quest for creditworthy status. Finally, DWR believes that the pro rata revenue-sharing methodology articulated in the Contract Allocation Decision and further reflected in DWR's accounting and revenue sharing principles results in an equitable sharing of risk and reward. The information and data being requested under Exhibit F of the operating agreement are to facilitate DWR's verification of the utilities' remittances to DWR and costs incurred under the allocated contracts rather than to conduct an operational review of the utilities decisions.

"At this time, DWR does not believe that there is a consensus on the accounting and revenue sharing principles proposed by DWR. … The resolution of the issues related to the accounting and revenue sharing principles will require a significant shift from the existing remittance policy and DWR believes that such a policy implementation can only be achieved with the Commission's support and active involvement." (DWR October 23, 2002 Memorandum, pp. 1-2.)

B. PG&E

PG&E has three general concerns with the modifications that are being proposed by DWR, and with the process for making the modifications.

PG&E's first concern is that the modifications proposed by DWR are inconsistent with the Contract Allocation Decision and the original purpose of the servicing arrangements. PG&E states that the only changes that are needed to conform the Original Servicing Order to the Contract Allocation Decision are to "address the specific rights and obligations for remittances of revenues for DWR surplus energy sales, as well as a separate remittance obligation for variable costs." (PG&E Comments, p. 2.)

Instead, PG&E contends that DWR's proposed modifications to the Original Servicing Order would incorporate the flawed proposal that DWR has advanced in the proposed Operating Agreement for dividing wholesale revenues. PG&E contends that D.02-09-053 directed the parties to submit the procedures for the prorating of revenues from the sale of surplus power in DWR's 2003 revenue requirement proceeding.

PG&E's second concern is that DWR's proposed modifications to the Original Servicing Order overlap with the provisions that are being negotiated by the parties in the proposed Operating Agreement. PG&E contends that this appears to be a tactic on DWR's part so that DWR's flawed methodology for the division of wholesale revenues will be adopted. This overlap could result in misuse or confusion between competing provisions in the Operating Order and the 2003 Servicing Order. Instead of adopting modifications to the servicing arrangements before an Operating Agreement is finalized, the revisions to the servicing arrangements should take place later.

The third concern of PG&E is that the proposed modifications fail to correct historical problems with the Original Servicing Order, require excess remittances to DWR, and allocate financial risk to PG&E without proper compensation. PG&E points out that:

> "DWR's modifications would require PG&E to remit to DWR revenues not actually collected and DWR Power not actually provided to customers; and DWR's modifications would make PG&E the insurer of the creditworthiness of purchasers of DWR surplus power, and would require the utility to post collateral to facilitate such power sales." (PG&E Comments, p. 3.)

PG&E's comments also lists a series of other concerns with the proposed modifications to the Original Servicing Order and to the attachments. These issues fall into the following categories:

- Certain proposed modifications to the Original Servicing Order and the attachments have no relationship to the allocation of the contracts, and the contract allocation issues should be addressed in the proposed Operating Agreement or in other venues.

- The proposed modifications to PG&E's servicing arrangements make reference to an Operating Agreement which has not yet been adopted.

- Service Attachment 2 is incomplete because the utilities have not yet provided any of the information listed on that attachment.

- DWR's proposed modification seeks to increase the amount of remittances PG&E would owe to DWR by including the term "total retail demand" in section 3 of Attachment B.

- DWR's proposed modifications to section 4.2 of the Original Servicing Order and to Attachment J would require PG&E to remit amounts to DWR for surplus energy sales before PG&E actually collects revenues from such sales.

- The proposed modifications would impose risks and costs on PG&E without adequate compensation or reimbursement.

- The proposed use of the term "deemed" in sections 1.58 and 2.2(c) of the Original Servicing Order could be interpreted to broaden PG&E's remittance obligation to cover power that is not actually supplied to customers.

- The references to an agency relationship should be removed from the servicing arrangement or clarified.

- The indemnification provisions are unreasonable because they require PG&E to indemnify and hold harmless DWR for any failure of PG&E to act or perform in accordance with the servicing arrangement, and that PG&E would be required to assume such risk without any compensation.

- The Commission should revise the Original Servicing Order using PG&E's previously submitted revisions to address PG&E's fundamental concerns with the servicing arrangement.

PG&E also states that the Commission should provide additional time so that the parties can negotiate the changes to the servicing arrangements.

Discussion

In deciding whether we should approve the proposed modifications to the Amended Servicing Agreement and related attachments, the Commission is mindful of the course of action we have taken in R.01-10-024 and in D.02-09-053.

One of the goals of R.01-10-024 is to allow the utilities "to resume purchasing electric energy, capacity, ancillary services and related hedging instruments to fulfill their obligation to serve and meet the needs of their customers." (R.01-10-024, p. 1.)

In order for PG&E and the other utilities to undertake the operational responsibilities associated with the allocated DWR contracts beginning on January 1, 2003, certain operational arrangements and servicing arrangements need to be in place. With less than one month to go before the utilities are to take over the operational responsibilities for the DWR contracts, DWR and PG&E have been unable to agree on a mutually acceptable servicing arrangement. To ensure a seamless transition of the DWR contracts allocated to PG&E, while ensuring that DWR's legal and financial responsibilities for the DWR contracts continue to be fulfilled, it is imperative that servicing arrangements be in place before the end of 2002.

D.02-09-053 also required DWR to submit proposed operational agreements. As noted in the positions of the parties, certain provisions of the proposed operational agreement that DWR submitted may affect certain provisions of the proposed modifications to the Original Servicing Order and the related attachments. The proposed operating agreement is being considered by the Commission in R.01-10-024. Since DWR and the utilities have been unable to mutually agree on a proposed operational agreement, we believe that the Commission will concurrently adopt an Operating Order when a Servicing Order for PG&E is adopted.

On December 9, 2002, PG&E filed its comments on the draft decision regarding the Servicing Order, and DWR submitted its comments on the three draft decisions regarding the Servicing Order.

DWR's comments state that it is currently in discussions with PG&E regarding possible changes to the existing Servicing Order that was adopted in D.02-05-048, as a result of the Bond Charge Decision. According to DWR, DWR and PG&E have verbally agreed on a procedure to implement the bond charge remittance and DWR has provided PG&E with a draft of the proposed changes to the existing Servicing Order. DWR has also requested a cost estimate for the bond charge remittance process from PG&E. DWR's comments state that it hopes to reach a written agreement with PG&E with regard to these changes, and provide them to the Commission when the reply comments on the draft decision are due.[4]

DWR's December 9, 2002 submission also states that it reserves comment on the draft decisions which would adopt the Servicing Orders. DWR considers it premature to comment on these draft decisions because DWR has submitted a request pursuant to Water Code § 80106(b) to order the utilities to enter into an operating agreement with DWR, and that any Servicing Order adopted by the Commission must be consistent with that request.

We now turn to PG&E's concerns with the proposed modifications to the Original Servicing Order and the attachments.

One of the general concerns of PG&E is that the proposed modifications refer to an Operating Agreement that has not yet been adopted by the Commission. PG&E's comments to the draft decision notes the difficulty of making changes to the Servicing Order when that document contains so many cross-references to a proposed Operating Agreement. PG&E states that if PG&E

[4] As of December 18, 2002, no written agreement regarding the implementation of the bond charge was received.

and DWR are unable to resolve possible conflicts or ambiguities between the two documents, that they may need to file a petition for modification of any decision adopting the Servicing Order.

The proposed Operating Agreement is being examined by the Commission in R.01-10-024.[5] Without a final Operating Agreement to work off of, we realize that it is difficult to make definitive revisions to the Original Servicing Order. However, since PG&E and the other utilities will take over the operational duties for the DWR contracts on January 1, 2003, including the sale of surplus energy, there is a definite need to have the operational and servicing arrangements in place by that time so that the operational transition for the DWR contracts can proceed smoothly.

Once the Commission adopts an Operating Order for the DWR contracts that have been allocated to the utilities, the utilities and DWR are free to suggest further modifications or refinements to the servicing arrangements so that the servicing arrangements fully conform to the adopted Operating Order. However, in the interim, the attached 2003 Servicing Order will serve as the ordering instrument by which PG&E shall conduct itself with respect to the energy supplied by DWR and allocated to PG&E.

Southern California Edison Company (SCE) raised a point in its comments to the draft decision regarding SCE's servicing order that has applicability to PG&E as well. SCE states in its comments that it has had discussions with DWR as to the possible terms and conditions that could be included in the Amended Servicing Agreement. Although it is unclear at this point whether such

[5] A draft decision on the proposed Operating Order was released concurrently with the draft decision on PG&E's 2003 Servicing Order.

discussions will lead to an agreement, SCE seeks clarification from the Commission that SCE be allowed to seek the termination of any Servicing Order that may be adopted, with an executed agreement between SCE and DWR "which substantially and fundamentally comport with the terms and conditions set forth in the … Servicing Order and the related attachments as they then exist." (SCE December 9, 2002 Comments, p. 11.)

We are receptive to reviewing a mutually agreeable servicing arrangement between PG&E and DWR, so long as the terms do not substantially deviate from what's adopted in today's 2003 Servicing Order. Should PG&E and DWR negotiate such an arrangement, PG&E is free to request that the Commission consider replacing the 2003 Servicing Order adopted in today's decision with the mutually agreeable arrangement.

PG&E is concerned about the venue in which the accounting and reporting procedures for the revenues from the sales of surplus energy will take place. Based on the draft decision regarding the Operating Order, the principles by which the utilities will calculate the revenues from the surplus energy sales is addressed in Exhibit C of the Operating Order. Exhibit C of the proposed Operating Order states in part that: "The principles herein, together with the applicable methods and calculations contained in the Servicing Arrangement, form a substantive component of the accounting protocols required to implement the Contract Allocation Order." Should there be a need to conform the methods and calculations for surplus energy sales contained in the 2003 Servicing Order with the Operating Order, we expect that DWR or the utilities will bring this to our attention.

PG&E is also concerned that financial risks are being allocated to PG&E without proper compensation. The other utilities have raised similar concerns in

their comments to their respective servicing arrangements. PG&E's comments to the draft decision, and to the alternate draft decision of Commissioner Brown, points out that Section 3.1(c) of the proposed Servicing Order provides that if the utility sells surplus power to an entity that requires collateral, that the cost and obligation to post such collateral shall be the utility's responsibility. PG&E asserts that this approach is at odds with the legal and financial responsibility of DWR for these contracts. PG&E contends that requiring it to use cash to pay collateral for the sale of DWR's contracts, instead of using that cash to pay PG&E's creditors, may increase and prolong PG&E's reliance on the use of state resources. PG&E contends that it should not be required to post collateral for DWR.

We will accept DWR's proposed modification to sections 3.1.(c) and 3.1(d) of the Servicing Order. This is consistent with the Commission's goal of reducing the utilities' reliance on the use of state resources to fulfill their obligations to serve customers. As noted in the Operating Order decision, the collateral requirements are not imposed by the DWR contracts, but rather by exogenous variables such as the ISO tariff. With respect to the incremental costs associated with surplus energy sales, the Operating Order decision addresses the recovery of those costs.

PG&E and the other two utilities have expressed concern about the use of the term or phrase "deemed" and "or is deemed to have provided" in sections 1.58 and 2.2(c) of the proposed modifications to the Original Servicing Order. PG&E contends that the use of such term or phrase may be interpreted to broaden PG&E's remittance obligation to include power that is not actually supplied to customers by DWR.

We agree with PG&E. The use of the term or phrase starting with "deemed" could be interpreted to mean that another calculation of DWR energy is possible. We will delete the references in sections 1.58. and 2.2.(c) of the 2003 Servicing Order.

PG&E has expressed reservations about the reference to the "agency" relationship in section 2.3. PG&E continues to have concerns about being DWR's agent, when PG&E and DWR have not agreed to any agency. PG&E states that the references to PG&E acting as DWR's agent should be removed from the Servicing Order.

The decision regarding the Operating Order notes that the utilities are operating as DWR's agent for limited purposes, and that this limited agency reflects the nature of the capacity in which the utilities are undertaking these functions.

PG&E states that the indemnification provisions of the servicing arrangement are commercially unreasonable because they require PG&E to indemnify and hold DWR harmless for any failure of PG&E to act or perform in accordance with the terms of the servicing arrangement. Section 12 of the Original Servicing Order addresses indemnity. DWR has not proposed any modifications to this section, and PG&E has not proposed any language to clarify the indemnification issue. We refrain from crafting additional indemnification language for the Servicing Order. This issue is best left to DWR and PG&E to work out.

PG&E has also raised concerns about the information that DWR seeks in Service Attachment 2. DWR's October 8, 2002 submission only included the one page "Service Attachment 2," which described the "Title" of the seven sections. Service Attachment 2 also notes that this information is "To be provided by

Utility." We will retain the Service Attachment 2 page as part of the 2003 Servicing Order, with the understanding that DWR and PG&E will need to discuss what kind of information DWR wants.

PG&E points out that in DWR's proposed modification of section 3 of Attachment B, that "DWR has again proposed the use of the phrase 'total retail load'[6] … in an attempt to increase the amount of remittances PG&E would owe to DWR." PG&E asserts that the use of this phrase would exclude the Western Area Power Administration (WAPA) load, whereas the use of the phrase "total load" would include the WAPA load. PG&E states that DWR had raised this issue in the process leading up to D.02-05-048 and that this issue was specifically rejected in that decision.

We have reviewed the WAPA issue in D.02-05-048, and reviewed the proposed modifications that DWR is now seeking. We agree with PG&E that this issue has already been decided by the Commission, and that the WAPA load should be included. Accordingly, section 3 of Attachment B has been revised to use the phrase "total demand." In addition, "total demand" has been used in three places in section 3.(b) of Attachment B.

Another concern of PG&E is the timing of when PG&E shall make its remittances to DWR for the sale of surplus energy. Under section 4.2(g) and Attachment J, PG&E is to remit DWR's share of the surplus sales revenues on the first business day after the 20th day of the month following each delivery month. Such requirement would also apply to the revenues from ISO spot market sales, even though the revenues from such sales would not be realized until about

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[6] DWR proposes the use of the phrase "total retail demand" rather than "total retail load."

43 business days after the last day of a particular delivery month. PG&E contends that the funding of this lag period is not a wise use of PG&E's cash. PG&E also points out that Exhibit C of the proposed Operating Order addresses remittances, and that Exhibit C's resolution of the issue "is fair and workable to both parties." Attachment J of the proposed Servicing Order refers to Exhibit C of the proposed Operating Order. PG&E presumes that Exhibit C of the draft Operating Order will be adopted by the Commission, and that the provisions in Exhibit C should override any conflicting language in the proposed Servicing Order. PG&E proposes in its December 12, 2002 comments on the alternate draft decision of Commissioner Brown to the draft decision on the Servicing Order, that Section 4.2(g) of the proposed Servicing Order and Attachment J should be deleted.

In D.02-09-053, at page 46, we stated that although DWR remains financially responsible for paying all contract-related bills, we expect that the utilities will "verify the invoices and instruct DWR to pay the bills." This statement suggests that PG&E should not have to advance funds to DWR before DWR has to pay its invoices. The provisions in section 4.2(g) and Attachment J would require PG&E to remit payments within 20 days of each delivery month, which presumably does not match up with when the invoices are due. Exhibit C of the Operating Order, which is entitled "Settlement Principles For Remittances And Surplus Revenues," provides at page C-3 that the: "Revenues from a forward market sale shall not be distributed to the Parties until after Utility receives the revenues from the sales and any sale-related charges." In reference to "ISO Real Time Market Sales," Exhibit C states that the: "Revenues from delivery of surplus energy to the ISO real time market shall not be distributed to the Parties until after Utility receives payment for final monthly invoice from the

ISO for the month in which the surplus energy was delivered." Both of the quoted passages mean that PG&E should not have to remit revenues from the energy sales to DWR until PG&E has received payment. Accordingly, we shall change the reference in Section 4.2(g) of the Servicing Order to the 20 days to make it consistent with Exhibit C of the Operating Order.

Attachment J of the proposed Servicing Order is premised on remitting a preliminary amount of the surplus energy sales revenues to DWR on the first business day after the 20th day of the month. However, as discussed above, Exhibit C of the Operating Order specifies that revenues from forward sales, and sales to the ISO, are to be remitted to DWR after the utility has received payment. In order to make the Servicing Order consistent with the Operating Order, proposed Attachment J should be deleted from the 2003 Servicing Order that we adopt in this decision. In addition, other references to Attachment J that appear in the following sections of the 2003 Servicing Order shall also be deleted: Table of Contents; 1.32.5.; 2.2.(e); 2.6.; 4.1.; 4.2.; 4.2.(e); 4.2.(f); 4.2.(h); 4.2.(i); 5.1.; 5.5.; and 14.17.

PG&E states that Attachment I of the proposed Servicing Order should be revised. Attachment I addresses real-time energy and ISO invoiced charges, and Section 13 of Attachment I provides for the automatic termination of Attachment I upon the occurrence of certain conditions. Upon such termination, Section 13 provides that "nothing in this Attachment I shall establish, bind or allocate financial responsibility for either party for ISO invoiced charges from such time forward."

PG&E contends that the problem with Attachment I is that the final settlement from the ISO for the period from January 17, 2001 to December 31, 2002, or whenever PG&E assumes administration for DWR, may not be issued

until after termination. PG&E states that Attachment I should be revised to clarify that expenses incurred prior to termination should continue to be the responsibility of DWR or PG&E respectively, including prior day adjustments that are the results of the ISO settlement process. PG&E contends that this would remove any ambiguity that DWR would directly pay the ISO for charges incurred when DWR had administrative control of the contracts."

PG&E's proposed change to Section 13 of Attachment I would clarify that the financial responsibility for the final ISO settlement continues even after the termination of Attachment I. We do not believe that such a clarification is needed because it is evident that the settlement should be paid by whoever incurred the charges. In addition, we are reluctant to make that change since Attachment I has been in existence for a number of months already.

The majority of the proposed modifications to the Amended Servicing Agreement reflect the actions taken in the Contract Allocation Decision, and are also linked to the proposed Operating Agreement. All of the proposed modifications, as shown in the attached 2003 Servicing Order and as discussed above, are consistent with the directives ordered in D.01-09-015, D.02-02-051, D.02-02-052, and D.02-09-053.[7]

The marked and clean versions of the 2003 Servicing Order, which are attached to this decision as Appendix A and Appendix B, are approved. PG&E shall be directed to comply with the terms and conditions of the attached 2003 Servicing Order.

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[7] D.02-02-051 adopted the Rate Agreement between DWR and the Commission, and D.02-02-052 allocated DWR's 2001-2002 revenue requirement among the customers in the utilities' service territories.

Rehearing and Judicial Review

This decision construes, applies, implements, and interprets the provisions of AB X1. Pursuant to Public Utilities Code § 1731(c) any application for rehearing of this decision must be filed within 10 days of the date of issuance of this decision, and the provisions of Public Utilities Code § 1768 are applicable to any judicial review of this decision.

Comments on Draft Decision

Pursuant to Public Utilities Code §311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure, the draft decision of the ALJ was mailed to the parties on November 20, 2002. The comments on the draft decision have been reviewed, and appropriate changes have been made to the Servicing Order and the attachments.

Assignment of Proceeding

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

Findings of Fact

1. In response to D.02-09-053, on October 8, 2002, DWR submitted a memorandum and its proposed modifications to the Original Servicing Order.

2. Prior to today's decision, the existing servicing arrangement that PG&E operates under is the Original Servicing Order.

3. D.02-09-053 allocated the DWR contracts, and ordered PG&E and the other two large electric utilities, to assume all of the operational, dispatch, and administrative functions for the allocated electricity contracts, effective January 1, 2003.

4. The proposed modifications to the Original Servicing Order and related attachments have been compared to the Original Servicing Order that was

approved in D.02-05-048, and have been reviewed in light of the Contract Allocation Decision.

5. One of the goals of R.01-10-024 is to allow the utilities to resume purchasing electric energy, capacity, ancillary services and related hedging instruments to fulfill their obligation to serve and meet the needs of their customers.

6. In order for PG&E and the other utilities to undertake the operational responsibilities associated with the allocated DWR contracts beginning on January 1, 2003, certain operational arrangements and servicing arrangements need to be in place before that date.

7. Certain provisions of the proposed Operating Agreement may affect certain provisions of the proposed modifications to the Original Servicing Order and related attachments.

8. The proposed Operational Agreement is being considered by the Commission in R.01-10-024.

9. The concerns of PG&E over the proposed modifications to the Original Servicing Order and related attachments have been reviewed and considered, and appropriate changes have been made as discussed in this decision.

Conclusions of Law

1. All of the proposed modifications to the Original Servicing Order and the related attachments are consistent with the directives ordered in prior Commission decisions.

2. Since DWR and PG&E have been unable to agree on a mutually acceptable servicing arrangement, the Commission should adopt an arrangement in the form of the 2003 Servicing Order.

3. The 2003 Servicing Order attached to this decision should be approved.

4. PG&E should be directed to comply with the terms and conditions contained in the approved 2003 Servicing Order.

O R D E R

IT IS ORDERED that:

1. The marked version, attached hereto as Appendix A, and the clean version, attached hereto as Appendix B, of the "2003 Servicing Order Concerning State of California Department of Water Resources And Pacific Gas and Electric Company" (2003 Servicing Order) is approved.

2. Pacific Gas and Electric Company shall comply with all of the terms and conditions of the approved 2003 Servicing Order.

This order is effective today.

Dated December 19, 2002, at San Francisco, California.

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

APPENDIX A

2003 Servicing Order

APPENDIX B

2003 Servicing Order

Appendix A

Appendix A, Attachments

Appendix B

Appendix B, Attachments