

Commissioner Geoffrey F. Brown, Concurring:

I support the Modified Settlement. I support it strongly. This protracted and difficult litigation must be brought to an end. We must do so, and we have done so, with a modified settlement that is in the public interest.

PG&E's bankruptcy filing challenged the very authority of the PUC to regulate and protect captive consumers. It challenged the enforceability of laws passed by our Legislature and rules lawfully established by this Commission. It threatened Californians with a break-up of the largest utility in the state and with the prospect of virtually unlimited prices.

To the credit of our staff, the challenge has been met. In the process PG&E retreated from its extreme position, entered in mediation under the supervision of a federal judge, and proposed a settlement for our consideration. During the last several months, this Commission examined the settlement document, held hearings, entertained noticed meetings, and received comments. The modified settlement, I believe, represents the product of a tough and open process of scrutiny.

The stark truth is that there is no easy way to pay the enormous debt racked up by this utility during the energy crisis of 2000 and 2001. We have raised rates to defray those procurement costs. PG&E, in turn, has foregone 12 quarters of dividends and will forego another. At the end of the day, over \$7 billion of debt remains. To refuse to help bail out the company will destroy the company's ability, and obligation, to serve. Until creditors are paid the company remains at junk bond status. Its cost to borrow for investment is prohibitive. In the meantime rates will be high.

In this modified settlement we have embraced a mechanism, a dedicated rate component (DRC), which will, as economically as possible, dispense with creditors' debts and restore the utility to creditworthy status. Its success depends upon getting legislation enacted very quickly. PG&E, TURN, and, by this decision, the PUC have committed themselves to a common effort toward that end. It is a solution advocated by the leading members of the Legislature. In the absence of legislation, the company will use a regulatory asset with an amortization over nine years.

I am confident that, faced with the option of legislatively creating a DRC, or leaving the more expensive Regulatory Asset in place, the Legislature and the Governor quickly will do the right thing. I am so confident of that fact that I have abandoned my Alternate that would have shrunk the payment period to five years and prohibited certain reimbursements, in order to join President Peevey's modified settlement. There are times when one's pride of authorship and in one's refinements must give way to comity, cooperation and consensus. If ever one seeks evidence proving the adage that the perfect is the enemy of the good, one has only to look at the extraordinary costs of delay and contention, both in this Commission and in the Legislature.

This modified settlement will:

- 1) pay off the Creditors;
- 2) place PG&E in a creditworthy status;
- 3) put in place immediate rate reduction worth at least \$670 million in the first year (A dedicated rate component would reduce rates by another \$100 million in 2004 and in each subsequent year); and finally
- 4) relieve ratepayers of PG&E Corporation's legal expenses.

I recognize that certain changes I sought had to be sacrificed:

- a) Gas hedging costs of \$96 million that rightfully should be borne by shareholders; and
- b) \$100 million in 2003 headroom that would have reduced rates

The size of the regulatory asset has also been a subject of dispute. Parties have sought to reduce it. In discussions with the rating agencies and financial community, it became apparent that its size was necessary for the company to obtain \$7 billion worth of credit at a low rate of interest.

Finally there is the issue of the length of the bankruptcy –nine years. It is argued that this limits the authority of the PUC, that it makes the bankruptcy judge the Supreme Court for PG&E's complaints about the PUC, and that it binds future Commissions.

Any settlement binds. Any settlement is a contract. No settlement can be open-ended. The Supreme Court of California has declared that this Commission can enter into binding settlements in order to "do all things necessary and convenient in the exercise of (its) power and jurisdiction." This means that the

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Commission has authority to maintain the viability of a utility's ability to serve. We did so in the Edison case, and we do so here.

The bankruptcy court's decisions have unambiguously stated that we, *not the court*, will regulate the utility. The bankruptcy court's role is to rule on claims arising out of the settlement, not to second guess our regulatory function.

I hear it said that we should let PG&E walk away without a regulatory asset or a dedicated rate component, or that we should go further in driving home our terms for settlement, and that there is no consequence in our so doing. Each commissioner must judge the costs and risks of future litigation.

I have made my calculation of risks and opportunities. I sincerely believe we have pushed to the angle of repose. The prospect of continued future litigation have been brought home to me by experienced litigators, bankruptcy lawyers, seasoned regulators, investment experts, and financial experts. I conclude that we should accept this settlement with the important modifications in the second Peevey alternate. Our agreement is affirmation, *not a derogation*, of our statutory and constitutional authority.

/s/ GEOFFREY F. BROWN
GEOFFREY F. BROWN
Commissioner

San Francisco, California
December 18, 2003