

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company for Authorization to Sell Electric Distribution and Certain Transmission Facilities Serving the City of Patterson, the Community of Crows Landing, and Certain Adjacent Rural Areas to the Turlock Irrigation District Pursuant to Public Utilities Code Section 851 and For Approval of Service Area Agreement Under Public Utilities Code Section 8101.

Application 02-01-012  
(Filed January 4, 2002)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER  
AND ADMINISTRATIVE LAW JUDGE**

This ruling addresses the category, need for hearing, scope and schedule for this proceeding and designates a principal hearing officer in accordance with Article 2.5 of the Commission Rules of Practice and Procedure (Rules).

**1. Summary**

On January 4, 2002, Pacific Gas and Electric Company (PG&E) filed this application for authorization pursuant to Section 851<sup>1</sup> to sell electric distribution and certain related transmission facilities located in a portion of the west side of Stanislaus County, including the City of Patterson, the Community of Crows Landing, and certain adjacent rural areas (the Westside Zone)<sup>2</sup> to Turlock

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<sup>1</sup> All code references are to the Public Utilities Code, unless otherwise specified.

<sup>2</sup> The Westside Zone covers roughly 225 miles.

Irrigation District (TID); for approval of a new service area agreement pursuant to Section 8101; and for approval of certain related transactions.

TID owns and operates an electrical transmission and distribution system in portions of Merced, Stanislaus, and Tuolumne Counties. The Commission has previously approved two service area agreements that defined the areas in which PG&E and TID could provide electrical service.<sup>3</sup>

The facilities that PG&E proposes to sell to TID include all electric distribution circuits and associated distribution facilities, meters, streetlights and control and protective devices in the Westside Zone, associated easements and rights of way, the Patterson substation facilities, a portion of the Salado substation facilities, a portion of transmission poles with distribution underbuild, and a few associated transmission poles that would otherwise be stranded. TID will rent certain PG&E real property at the Patterson substation and the Salado substation facilities.

PG&E proposes to sell these facilities to TID at the price of \$15,111,825.00. PG&E requests that the Commission allocate the gain on sale, which would amount to approximately \$2.9 million net after taxes, to PG&E's shareholders pursuant to the Redding II decision, D.89-07-016 (Redding (II)) and D.01-06-007.

PG&E, TID, the Patterson Irrigation District (PID), and the Westside Power Authority (WPA)<sup>4</sup> have agreed to enter into a new 25-year service agreement (proposed agreement) to replace the 1953 agreement between PG&E and TID. PG&E alleges that this agreement will resolve a number of disputes concerning

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<sup>3</sup> The Commission approved the first agreement between PG&E and TID in 1941 in Decision (D.) 34796. The Commission approved a subsequent service area agreement (the 1953 agreement) in D.49937 (1954).

<sup>4</sup> WPA is a joint powers agency consisting of TID and PID.

TID's, PID's, and WPA's efforts to serve PG&E customers. The proposed agreement provides that TID would exclusively serve the eastern portion of TID's existing territory, the Don Pedro Zone, in which PG&E has no customers or facilities. WPA will serve Westside Zone customers, but TID will operate the electric distribution system on behalf of WPA. The proposed agreement also makes certain adjustments to the northern boundary of TID's service area as defined in the 1953 agreement.

The Merced Irrigation District (MED), the Modesto Irrigation District (MOD), and the Commission's Office of Ratepayer Advocates (ORA) filed protests to the application. A summary of these protests follows:

- Merced Irrigation District — MED has signed a settlement agreement with TID, which appears to have resolved all disputed issues between MED, PG&E and TID.
- Modesto Irrigation District — MOD contends that the proposed agreement between PG&E, TID, PID, and WPA will extend TID's service area into territory designated as MOD's service area under Public Utilities Code Section 9610.<sup>5</sup> MOD argues that while PG&E and TID may, with Commission approval, agree to allocate certain territory within their joint service area to each other for electric service, the Commission does not have jurisdiction to grant one irrigation district the right to provide retail electric service within the service area of another irrigation district.

MOD also claims that the expansion of TID's territory under the proposed new agreement between TID and PG&E violates a 1933 agreement between MOD and TID regarding service areas (the 1933 agreement). According to MOD, in the 1933 agreement, TID

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<sup>5</sup> MOD's protest states that under Public Utilities Code Section 9610, each of the areas that Turlock seeks to add to its service area are within the electric service area of both MOD and PG&E.

agreed not to provide electric distribution service to areas north of the Tuolumne River.

- Commission's Office of Ratepayer Advocates — ORA's protest raises two issues:
  - (1) that PG&E's application has not provided sufficient information to support PG&E's conclusion that the sale of its facilities to TID and the proposed agreement are in the public interest and will benefit ratepayers, and
  - (2) if this application is approved, the gain on sale should be placed in PG&E's real property gain/loss on sale memorandum account, so that the allocation of the funds may be determined in a future rulemaking or broader proceeding.

The following parties have intervened in this proceeding:

- Latino Issues Forum (LIF)/Planning and Conservation League (PCL)  
Both LIF and PCL contend that TID has not complied with the requirements for public benefits and low-income programs under Sections 385 and 386. LIF and PCL state that TID has improperly used public benefits funds to subsidize baseline rates and peak load reduction programs. LIF also contends that since TID's low-income programs, including community outreach, are inadequate, many low-income customers in TID's service area do not have access to affordable electricity. LIF states that the Commission should not permit TID to enlarge its service area until TID has complied with Sections 385 and 386.
- Laguna Irrigation District (LID) — LID has previously received assistance from TID with the operation of electric distribution systems and an operations and maintenance plan and is concerned that the proposed agreement may prevent or interfere with collaborative projects or mutual aid between TID and other irrigation districts. LID also contends that the valuation of the PG&E facilities to be sold to TID could affect the valuation of similar PG&E facilities that LID is attempting to condemn in eminent domain litigation against PG&E.

## 2. Scope of the Proceeding

The issues to be decided in this proceeding are:

A. Public Interest Standard — Would the sale of PG&E facilities to TID, approval of the proposed agreement between PG&E and TID, and the other related transactions for which PG&E requests Commission approval (jointly, “the proposed transactions”) be adverse to or serve the public interest? This issue includes, but is not limited to, the following subissues:

- 1) Do the proposed transactions comply with the applicable law?
- 2) Does Section 9607 or Section 9608 apply to the proposed transactions? If Section 9607 applies, have the parties followed the correct procedure in this application and is there a sufficient basis for the Commission to make the required findings?<sup>6</sup>
- 3) How would the proposed transactions affect ratepayers, including ratepayers to be served by TID/WPA under the proposed agreement and remaining ratepayers of PG&E?
  - i. Will these transactions result in increased rates or costs to ratepayers (as defined above)?

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<sup>6</sup> PG&E’s application states that the proposed transactions are covered by Section 9608, rather than Section 9607. Section 9607 requires Commission approval and sets forth standards and related findings applicable when an irrigation district that was providing electric service as of January 1, 1999 acquires or operates facilities for the distribution or transmission of electric service to retail customers with the service area of a utility corporation that is providing electric distribution services. Section 9608 exempts irrigation districts from Section 9607 under certain circumstances, including if “the irrigation district acquires substantially all of the electric distribution facilities and related subtransmission facilities of any electrical corporation that has an obligation to provide electric distribution service within the area to be served by the irrigation district.” (Emphasis added.) However, here, PG&E’s application states that PG&E wishes to sell all of its distribution facilities in the applicable area, but only “a few related” transmission facilities to TID.

- ii. How will these transactions affect service to customers, including reliability and efficiency of service?
  - iii. Will TID/WPA provide universal service to all customers within the area to be served by TID/WPA under the proposed agreement at published rates and on a reasonable, just and non-discriminatory basis?
  - iv. What is the impact of the proposed transactions on public benefit and low-income programs pursuant to Sections 385 and 386 in the areas that TID/WPA would serve under the proposed agreement?
  - v. Will the proposed transactions avoid the economic waste, inefficiency, and increased costs associated with duplicative facilities?
  - vi. Does the proposed agreement between PG&E and TID limit or prohibit mutual aid or other collaborative or joint activities between TID and other irrigation districts? If yes, is this restriction adverse to the public interest?
  - vii. Should the Commission require a true-up or other more specific determination of the NBC's to be paid in full by TID to PG&E on behalf on customers in the Westside Zone if this application is approved?
  - viii. Should PG&E's shareholders be shielded from liability related to any NBC obligation for customers in the Westside Zone?
  - ix. Is the proposed agreement between PG&E and TID in the best interest of the State of California, PG&E and TID?
- B. Commission Oversight of Service Area Agreement Disputes —Is it in the public interest for the Commission to exercise continuing oversight over the proposed agreement between PG&E and TID by adjudicating disputes which arise under the agreement?
- C. MOD Protest Issues — This issue includes the following subissues:

- 1) Does the Commission have jurisdiction to adjudicate issues raised by MOD regarding the effect of the proposed agreement between TID and PG&E on MOD's service area?
  - 2) If yes, does the proposed agreement between PG&E and TID authorize TID to provide electric service in Modesto's service area as designated in the 1933 agreement between MOD and TID?
  - 3) Can PG&E enter into a service agreement that would permit TID to provide electric service in territory that was in the service area of both PG&E and another irrigation district, pursuant to Sections 8101-8104, 9607, 9608, and 9610?
  - 4) Does the definition of MOD's service area as stated in Public Utilities Code Section 9610 apply to this case? If yes, would approval of the proposed new service area agreement between PG&E and TID violate Public Utilities Code Section 9610 by permitting TID to provide electric service within MOD's service area?
- D. Environmental (CEQA) Issues — Is there a basis for the lead agency's (TID's) conclusion in the negative declaration that granting this application will not result in significant environmental effects or that any significant environmental impacts can be mitigated to a level of non-significance? Does the Commission as a responsible agency, wish to impose additional mitigation measures on matters within its jurisdiction, in approving the negative declaration?
- E. Ratemaking Issues — This issue includes the following subissues:
- 1) Has PG&E used proper methodology in determining the value of the facilities to be sold to TID?
  - 2) Should the allocation of any gain on sale by PG&E between shareholders and ratepayers be determined in this proceeding or in another broader proceeding?
  - 3) If allocation of PG&E's gain on sale is to be decided in this proceeding, does Redding II (D.89-07-016) apply to this case? If yes, should the Commission follow Redding II?

- 4) How should the Commission allocate PG&E's gain on sale in this case?

### **3. Category of Proceeding/Ex Parte Rules**

This ruling confirms the Commission's preliminary finding in Resolution ALJ 176-3080, issued on January 23, 2002, that the category for this proceeding is ratesetting. This ruling, as to category, is appealable pursuant to Rule 6.4. The *ex parte* rules set forth in Rule 7 apply to this proceeding.

### **4. Principal Hearing Officer**

Administrative Law Judge (ALJ) Myra Prestidge is designated as the principal hearing officer pursuant to Public Utilities Code Section 1701.3.

### **5. Requests for Final Oral Argument Before Assigned Commissioner**

The parties may request the opportunity for final oral argument in the presence of the assigned Commissioner by no later than the end of the first day of evidentiary hearings or as otherwise directed by the principal hearing officer or assigned Commissioner.

### **6. Requests for Final Oral Argument**

Parties may request the opportunity for final oral argument before the full Commission on the last day of evidentiary hearings or as otherwise directed by the principal hearing officer or the assigned Commissioner.

### **7. Schedule**

Since the need for a hearing is uncertain at this time, we have set forth two alternate schedules below. The principal hearing officer will confirm the remaining schedule for the proceeding after reviewing any written requests for a hearing received from the parties by May 1, 2002.

As we have previously notified the parties, if an evidentiary hearing is necessary, the schedule for this proceeding shall be as follows:

<b>Event</b>	<b>Date</b>
<u>Discovery:</u> <ul style="list-style-type: none"> <li>• Issuance of any remaining discovery by ORA</li> <li>• Issuance of any remaining discovery by other parties</li> <li>• Discovery responses due</li> <li>• Final discovery cut-off/Responses to any follow-up discovery due</li> </ul>	<p>April 2, 2002</p> <p>April 9, 2002 (or as otherwise agreed to by parties)</p> <p>April 18, 2002 (or as otherwise agreed to by parties)</p> <p>April 26, 2002</p>
Last Day to Request Evidentiary Hearing <sup>7</sup>	May 1, 2002
Last Day to File Opposition to Request for Hearing	May 3, 2002
Service of prepared direct testimony	May 14, 2002
Service of prepared rebuttal testimony	May 24, 2002
Cross-examination time estimates and proposed schedule of witnesses submitted to principal hearing officer by facsimile sent to (415) 703-1723, by e-mail addressed to tom@cpuc.ca.gov, or by personal delivery <sup>8</sup>	May 30, 2002 at noon
Evidentiary Hearing in Commission Courtroom, 505 Van Ness Ave., San Francisco, California	June 3-6, 2002 beginning at 10 a.m.

<sup>7</sup> Any party that wishes to request an evidentiary hearing shall first meet and confer with the other parties to see if the contested factual issues can be resolved. If a request for a hearing is opposed, the principal hearing officer shall make reasonable efforts to notify the parties of her ruling within three business days.

<sup>8</sup> The parties shall meet and confer by conference call regarding a proposed schedule for the presentation of witnesses, exhibits and cross-examination time estimates. If the parties agree on a proposed schedule of witnesses, they shall jointly submit the proposed schedule and cross-examination estimates.

Last Day to Request Closing Arguments Before Assigned Commissioner	End of first day of hearing
Last Day to Request Oral Argument Before Commission	Final day of hearing
Concurrent opening briefs filed and served	June 28, 2002
Concurrent Reply Briefs filed and served	July 10, 2002
Proposed Commission Decision	90 Days after Submission

If an evidentiary hearing is not required, the schedule shall be the same as above through May 3, 2002. The remaining schedule for the proceeding shall be as follows:

Filing and service of concurrent opening briefs	May 15, 2002
Filing and service of reply briefs	May 30, 2002
Proposed Commission decision	90 days after submission of case

The Commission wishes to resolve this matter as soon as possible after the case is submitted so that, if the application is granted, TID may begin to provide service by January 1, 2003. However, we currently aim to complete this proceeding within 18 months from the filing date of the application.

**8. Service of Documents and Transmission of Documents to Principal Hearing Officer**

The parties shall serve all documents required to be filed or served in this proceeding on persons included in the service list by e-mail, facsimile, or personal delivery to arrive on or before the due date, as well as by mail.

The parties shall also transmit a copy of all documents required to be filed or served in this proceeding to the principal hearing officer by e-mail addressed

to tom@cpuc.ca.gov, facsimile sent to (415) 703-1723, or by personal delivery in order to arrive on or before the due date, as well as by mail.

### **9. Discovery/Law and Motion Matters**

Parties should raise any discovery disputes or law and motion matters according to the procedure outlined in Resolution ALJ-164, attached as Appendix A.

### **10. Service List**

The official service list for this proceeding is attached as Appendix B.

Persons who wish to be added to the official service list must contact the principal hearing officer ALJ Prestidge by mail at 505 Van Ness Avenue, San Francisco, CA 94102, by telephone at (415) 703-2629, by facsimile at (415) 703-1723, or by e-mail to tom@cpuc.ca.gov to request authorization.

### **11. Exhibits**

The parties shall comply with Rules 69, 70, and 71 and Appendix C to this ruling regarding exhibits.

### **12. Assistance with Participation in Commission Proceedings**

The Commission Public Advisor's Office provides assistance to persons who have questions about the Commission's procedures or how to participate in Commission proceedings. The Public Advisor's Office may be reached by mail at the California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102, by e-mail at [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov) or by telephone at (415) 703-2074. A calendar of hearing dates, the Commission Rules, and other information are also available on our website at <http://www.cpuc.ca.gov>.

**IT IS SO RULED.**

Dated April 17, 2002, at San Francisco, California.

/s/ GEOFFREY F. BROWN  
Geoffrey F. Brown  
Assigned Commissioner

/s/ MYRA J. PRESTIDGE  
Myra J. Prestidge  
Administrative Law Judge

## APPENDIX A

### PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-164  
Administrative Law Judge Division  
September 16, 1992

#### RESOLUTION

Establishes a Law and Motion Procedure to Hear  
Discovery Disputes and Other Procedural Motions

In order to promote uniformity of outcomes in formal proceedings, build a body of rulings that will serve to guide parties on discovery practice at the Commission, and improve predictability and timeliness in the disposition of motions, the Commission hereby establishes a Law and Motion Procedure. The Law and Motion Procedure will operate as follows:

1. **Applicability.** These procedures are applicable to any formal matter pending before the Commission including applications, complaints, investigations and rulemakings. Rulings under law and motion procedures will be deemed to be rulings in the underlying proceeding in which the dispute arose.
2. **Discovery Disputes**
  - a. **Discovery Dispute Defined.** A discovery dispute shall include contested requests to obtain, preclude or limit discovery, and disputes over the procedures to be followed in resolving such matters. No discovery dispute shall be eligible for law and motion resolution unless the parties to the dispute have previously met and conferred in a good faith effort to informally resolve the dispute.
  - b. **Means to Invoke Procedures.** A request to invoke these procedures shall be by motion, denominated to indicate the relief requested. Examples of such motions would include:

Motion to Compel Discovery  
Motion to Limit Discovery and/or for a Protective Order  
Motion for Leave to File Under Seal  
Motion for Extension of Time to Comply with Discovery Order

- c. The motion shall contain a title indicating the relief requested, a brief explanation of the issue, relevant points and authorities, any supporting documentation which is necessary or useful in resolving the dispute, and a draft of a proposed ruling which clearly indicates the relief requested. In addition, the motion must be accompanied by a declaration stating facts showing a good faith attempt at an informal resolution of each issue presented by the motion.
  - d. Responses to any such motion shall be filed and served within 10 days.
  - e. The Docket Office will refer motions relating to discovery disputes to the law and motion administrative law judge (ALJ). If the ALJ assigned to the underlying proceeding determines that particular factors concerning the discovery dispute make it more practicable for the assigned ALJ, rather than the law and motion ALJ, to rule on the matter, the assigned ALJ will confer with the law and motion ALJ regarding removal of the matter from the law and motion procedure. If the matter is removed, the assigned ALJ will issue a ruling notifying all parties to the dispute that it has been removed. The time requirements applicable to the issuance of a ruling on the merits will be the same as if the dispute had remained a law and motion matter.
3. Procedural motions (other than those identified in paragraph 2) may be assigned to the law and motion ALJ for resolution. Affected parties shall be notified of such assignment.
  4. Law and motion matters will be scheduled weekly. The specific dates and times will be noticed in the Commission's Daily Calendar in advance.
  5. The law and motion ALJ may deviate from the scheduled dates and times in appropriate cases and with notice to the affected parties, and may notice matters for argument via conference telephone call.
  6. No court reporter will be present when law and motion matters are heard unless a party has demonstrated good cause for having it reported. The law and motion ALJ may issue an oral ruling immediately after hearing the arguments of the parties. The ALJ will provide a written ruling within 10 days following argument.
  7. Only matters which appear on the Law and Motion Calendar for a particular day will be considered on that day, and if no matters are calendared, the Law and Motion Calendar will be cancelled for that day.
  8. Law and motion matters will be heard in San Francisco. However in appropriate circumstances the law and motion ALJ may hear a particular matter at another location.

9. The hearing on a particular matter will be calendared for the weekly session which follows by at least 5 days the date for filing of responses to the motion. If a calendared matter is settled by the parties prior to the day the matter is to be heard, the moving party shall immediately inform the law and motion ALJ of that fact. The law and motion ALJ may reschedule the time for hearing upon notice to the parties.

The ALJ Division will monitor the success of the law and motion procedures, which we will adopt today as an experimental procedural reform. Depending upon the initial results of this new procedure, and any additional needs that surface, we may consider an expanded program or related rules changes in the future.

**IT IS RESOLVED** that the procedures outlined above in connection with the establishment of a Law and Motion Procedure are hereby adopted for implementation.

The Executive Director shall cause a copy of this resolution to be mailed to each appearance in all current major energy, telecommunications and water utility proceedings (I.87-11-033, I.88-11-040, I.89-03-005, I.89-07-004, I.90-11-033, A.90-12-018, A.91-11-024, A.91-11-036) and the generic Rules proceeding, R.84-12-028.

This resolution becomes effective 45 days from today.

I certify that this resolution was adopted by the Public Utilities Commission at its regular meeting on September 16, 1992. The following Commissioners approving it:

NEAL J. SHULMAN  
Executive Director

DANIEL Wm. FESSLER  
President

JOHN B. OHANIAN  
PATRICIA M. ECKERT  
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**(END OF APPENDIX A)**

\*\*\*\*\***APPENDIX B--SERVICE LIST**\*\*\*\*\*

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\*\*\*\*\***APPENDIX B--SERVICE LIST**\*\*\*\*\*

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\*\*\*\*\* **INFORMATION ONLY** \*\*\*\*\*

**(END OF APPENDIX B)**

**APPENDIX C**  
**Exhibits and Motions to Strike**

1. Each party sponsoring an exhibit should, in the hearing room, provide two copies to the ALJ and one to the court reporter, and have copies available for distribution to parties present in the hearing room. The upper right hand corner of the exhibit cover sheet should be blank for the ALJ's exhibit stamp. If there is not sufficient room in the upper right hand corner for an exhibit stamp, please prepare a cover sheet for the exhibit. Parties should pre-mark exhibits when feasible.
2. As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction.
3. Generally, corrections to an exhibit should be made in advance and not orally from the witness stand. Corrections should be made in a timely manner by providing new exhibit pages on which corrections appear. The original text to be deleted should be lined out with the substitute or added text shown above or inserted. Each correction page should be marked with the word "revised" and the revision date.
4. Individual chapters of large, bound volumes of testimony may be marked with separate exhibit numbers, as convenient.
5. Partial documents or excerpts from documents must include a title page or first page from the source document; excerpts from lengthy documents should include a table of contents page covering the excerpted material.
6. Notices, compliance filings, or other documents may be marked as reference items. They need not be served on all parties. Items will be marked using letters, not numbers.
7. Motions to strike prepared testimony must be made at least two working days before the witness appears, to allow the ALJ time for review of the arguments and relevant testimony.

**(END OF APPENDIX C)**

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge on all parties of record in this proceeding or their attorneys of record.

Dated April 17, 2002, at San Francisco, California.

/s/ KE HUANG  
\_\_\_\_\_   
Ke Huang

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.