

Decision 06-02-003 February 16, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's Own Motion Into the Operations and Practices of Pacific Gas and Electric Company; Notice of Opportunity for Hearing; and Order to Show Cause Why the Commission Should Not Impose Fines and Sanctions for the December 20, 2003 PG&E Mission Substation Fire and Electric Outage Pursuant to Public Utilities Code Section 451.

Investigation 05-03-011
(Filed March 17, 2005)

OPINION APPROVING SETTLEMENT

Summary

We approve the settlement between Pacific Gas and Electric Company (PG&E), the Commission's Consumer Protection and Safety Division (CPSD), and the City and County of San Francisco (CCSF). The settlement resolves all issues in this proceeding, which was opened after the issuance of investigative reports on the 2003 fire at PG&E's Mission Substation. The parties' settlement requires PG&E shareholders to make payments totaling \$6.5 million -- \$6.0 million for five programs and projects to improve electric system reliability and the remainder to the State's General Fund. We order only two refinements of the reporting requirements the parties have already agreed upon, in order to guard against inadvertent double counting in PG&E's next general rate case (GRC).

First, we direct CPSD to exercise its rights for an accounting of CCSF's use of one expenditure and second, we require PG&E to provide, for our review, an accounting of the total expenditure – something the settlement already permits the two other parties to request.

Background and Procedural History

The Commission opened this Order Instituting Investigation (OII) following the conclusion of independent investigations into the December 20, 2003 fire at PG&E's Mission Substation by CPSD and by PG&E. Both investigations into the 2003 fire also reviewed the causes of a 1996 fire at Mission Substation. On March 26, 2005, nine days after this OII issued, a third fire broke out at Mission Substation.

The assigned administrative law judge (ALJ) held a prehearing conference (PHC) in this proceeding on April 11, 2005 and the Assigned Commissioners' scoping memo issued on April 19. Among other things, the scoping memo identified the issues for hearing and set a schedule for this proceeding. By ruling on May 17, the ALJ authorized CCSF to intervene in this proceeding and amended the schedule to accommodate CCSF's participation. The ALJ held a second PHC on June 30.

Though the schedule provided for evidentiary hearing to commence on September 7, at the parties' request the ALJ continued the hearing to permit the parties to pursue settlement discussions. By Joint Motion filed October 18, 2005, as amended by the Supplement to Joint Motion filed October 19, the parties now ask for approval of their Settlement Agreement, which resolves all disputed issues between them. The Settlement Agreement, Exhibit (Ex.) A to the Joint Motion, includes two appendices. A second Supplement to Joint Motion, filed November 15, 2005, contains Appendix B to the Settlement Agreement, which was omitted from the filed copy (though it was included with the copy served by

electronic mail). We have appended the Settlement Agreement to this opinion as Attachment A.¹

Confidentiality issues pertaining to select portions of Ex. 1 offered in evidence as part of CPSD's prepared testimony, and Ex. 100 and 101, offered in evidence as part of PG&E's prepared testimony, were resolved by ALJ ruling on November 15, 2005.

Discussion

Overview

Responding to the articulated concerns of the OII and following extensive discovery, the parties have executed a Settlement Agreement which they offer as a resolution of all issues raised by this OII. The OII asks, first, whether PG&E should be found in violation of Pub. Util. Code § 451 and assessed a penalty for "allowing an unsafe condition to exist at the Mission Substation, which led to an electrical fire and catastrophic power outage on December 20, 2003." (OII, Ordering Paragraph 2.) Second, the OII asks whether the Commission should order "changes to PG&E's maintenance, operations, or construction standards ... to improve and ensure system-wide safety and reliability." (*Id.*, Ordering Paragraph 3.) The parties agree that PG&E should pay \$6.5 million from shareholder funds, \$6.0 million to be used for projects designed to improve

¹ We have appended the Settlement Agreement without the two appendices, which we briefly describe here. Appendix A is a revised (redlined) version of PG&E's Mission Substation March 26, 2005 Event Report. The redlined version, revised as of October 18, 2005, corrects the event report to clarify that:

This report is intended only to address issues associated with PG&E's equipment and operations. This report is not intended to offer any judgment regarding the efforts of the San Francisco Fire Department (SFFD) in responding to the fire, other than to comment the SFFD for an outstanding job in responding to the event. (Settlement Agreement, Ex. A.)

Appendix B is a list of all prepared testimony and other documents which the parties stipulate should be marked for identification and received in evidence in this proceeding.

safety and reliability in San Francisco, and the remaining \$500,000 to be paid to the State's General Fund.

The evidence offered by the parties consists of three investigative reports and the prepared testimony of nine expert witnesses. Two of the three investigative reports examine the 2003 Mission Substation fire: Ex. 100, PG&E's Event Report, dated August 20, 2004 and Ex. 1, CPSD's Outage Report, dated October 20, 2004. PG&E prepared the third report, Ex. 101, Indoor Substation Status Report, in response to Ordering Paragraph 3 of the OII and the scoping memo's further requirement that "[b]ecause another fire broke out at Mission Substation only days after the Commission issued this OII, the May 20 status report should also detail conditions at Mission Substation between December 20, 2003 and March 26, 2005." (Scoping memo, p. 2.)

Major Terms of the Settlement Agreement

The rationale for the parties' settlement consists of a three-part assessment that: (1) while PG&E's operations of Mission Substation, and its response to the December 20, 2003 fire, did not violate any Commission General Orders pertaining to electrical systems; (2) nevertheless, PG&E did not implement its own internal recommendations, following the 1996 fire, regarding operational response procedures, the lack of smoke detection equipment, and the lack of fire barrier penetration sealing; and (3) thus, had PG&E implemented those 1996 recommendations, it is reasonable to conclude that the duration of the December 2003 fire and the associated outage, as well as the number of customers affected by the outage, would have been significantly reduced.

In response to the reliability and related public safety concerns advanced by CPSD and CCSF in their prepared testimony, the three parties earmark the bulk of the \$6.5 million shareholder payment (\$6.0 million) for five specific purposes, with the remainder (\$500,000) to go to the State's General Fund. PG&E also agrees to revise and reissue its March 26, 2005 Mission Substation Event Report to address the concerns raised by the San Francisco Fire Department (SFFD) in CCSF's testimony. On this point, the Joint Motion states: "By agreeing to revise its report and to disseminate the revised report to all parties who received the initial report, PG&E has satisfied SFFD's concerns and provided a stronger foundation for a cooperative working relationship going forward." (Joint Motion, pp. 11-12.) The revised report is now public, since PG&E has appended it to the Settlement Agreement (see footnote 1, above).

Paragraph 3 of the Settlement Agreement provides that either CPSD or CCSF may request an accounting from PG&E to ensure that the \$6.5 million is spent in accordance with the parties' agreement. The five bullets, below, summarize the proposed allocation of the \$6.0 million. The Settlement Agreement provides further details.

- \$3.0 million for reliability improvements to PG&E's electric system in San Francisco, including \$500,000 to hire an independent consultant to evaluate system reliability and to identify potential projects or other measures to improve reliability, with the remaining \$2.5 million to implement one or more of those projects, etc., which the parties unanimously select.

The parties reasonably point out that the study, alone, should provide an invaluable resource for the Commission, CPSD, CCSF and PG&E for determining the scope of the additional capital investment that may be necessary within San Francisco and for prioritizing that investment. They also point out that the

benefit of this \$3.0 million expenditure for a study and resulting project development will extend to all ratepayers. Any work done will reduce the scope of the total work outstanding and likewise, reduce the demand on ratepayer funds. The Settlement Agreement provides for the continued role of CPSD and CCSF in review of the consultant's recommendations, selection of the projects to be implemented, and the setting of the implementation schedule, thereby providing a means for ongoing coordination and monitoring.

- \$750,000 for a fire safety program for SFFD and specialized fire equipment for SFFD, to enhance the ability of SFFD to respond effectively to indoor substation fires and other PG&E-related emergencies in San Francisco.

San Francisco has more indoor substations than any other city in PG&E's service territory. We agree that developing a specialized training program for SFFD not only provides a benefit to San Francisco, but also has the potential to benefit other fire departments in PG&E's service territory, to the extent the training program can be adapted for use elsewhere.

- \$750,000 for CCSF to build needed infrastructure to improve public safety in the event of an outage.

The parties propose that San Francisco use this portion of the shareholder payment to improve facilities critical to protect public safety when future outages occur.

- \$1.0 million for a Hunters Point Substation Improvement Program, to improve the Hunters Point Substation.

The parties note that while the Hunters Point Power Plant is slated to be fully shut down and demolished, the contiguous Hunters Point Substation will remain in place and will be a critical element of PG&E's ability to provide a reliable supply of electricity in San Francisco. We agree it is reasonable to target

\$1.0 million for a capital project to improve the visual and other aspects of the substation, in an effort to address community concerns about the continued operation of the substation next to the site of the demolished power plant. The Settlement Agreement provides that if the project costs less than \$1.0 million, the remainder is to be used for CCSF public safety infrastructure.

- \$500,000 to support the Commission's undertaking to create a substation inspection program.

This settlement provision will enable CPSD to develop an electric utility substation inspection program. Such a program should benefit San Francisco and its residents by providing a means of regularly checking substation safety and reliability. Because the substation inspection program anticipated also will apply to other Commission-regulated electric utilities, the benefit of this settlement provision extends beyond PG&E ratepayers to the customers of all Commission-regulated electric utilities.

Record in Support of Settlement Agreement

The Settlement Agreement includes the parties' stipulation to enter all of the prepared testimony into the record to form the basis of factual support for the parties' settlement. CPSD's prepared testimony consists of its investigative report, Ex. 1, and related witness testimony, which together recommend numerous improvements to PG&E's facilities and procedures as well as a \$10 million penalty.

CCSF's testimony expresses, among other things, SFFD's views that PG&E's report regarding the March 26, 2005 fire and outage at Mission Substation gave the incorrect impression that SFFD bore some responsibility for the scope and extent of that outage. For this perceived failing, and others, CCSF recommends that the Commission fine PG&E no less than \$14.6 million.

PG&E's prepared testimony consists of, among other things: its own investigative report, Ex. 100; documentation offered to demonstrate that the deficiencies affecting the Mission Substation had been corrected and that other indoor substations are safe and reliable; rebuttal testimony supporting PG&E's position that Mission Substation has been operated in a safe and reliable manner in compliance with all applicable codes, regulations, and Commission's orders; and PG&E's recommendation that no penalty be imposed.

Having reviewed all of this prepared testimony and conducted substantial discovery, and as further support for their settlement, the parties have agreed and state in Paragraph 1 of the Settlement Agreement that, while PG&E's operations at Mission Substation and response to the 2003 fire did not violate any General Orders of this Commission pertaining to electrical systems, nevertheless:

- PG&E's ability to detect and respond to the 2003 Mission Substation fire was constrained due to a combination of factors that increased the level of risk of an undetected, progressing fire;
- the 1996 report of PG&E's own Insurance Department (following the 1996 fire at Mission Substation) identified the need to expeditiously detect and respond to a progressing fire at Mission Substation and to install fire barrier penetration sealing;
- PG&E did not implement the 1996 recommendations prior to the December 2003 fire; and
- had PG&E implemented the 1996 recommendations, it is reasonable to conclude that the duration of the 2003 fire and the associated outage, as well as the number of customers affected by the outage, would have been significantly reduced.

The Settlement Agreement also lists, in Paragraph 2, a number of capital projects that PG&E has taken to improve reliability in San Francisco, some scheduled for construction in 2005 and some in 2006.² These capital projects, costing in excess of \$100 million, are not covered by revenues from the settlement in PG&E's 2003 GRC. The Settlement Agreement does not preclude PG&E from seeking rate recovery for these projects, however; neither do CPSD or CCSF agree to support such a request.³

Settlement Criteria

The parties represent that the Settlement Agreement is an uncontested “all-party” settlement. In such cases, the Commission applies two complementary standards to evaluate the proposed agreement. The first standard, set forth in Rule 51.1(e) of the Commission’s Rules of Practice and Procedure (Rule or Rules), which is applicable to both contested and uncontested agreements, requires that the “settlement is reasonable in light of the whole record, consistent with law, and in the public interest.” The second standard,

² Paragraph 2 of the Settlement Agreement reports that PG&E’ has undertaken or will undertake these projects:

- Replacement of 98 miles of paper insulated lead cable (PILC) cable, approximately 75% of which is within San Francisco;
- Replacement of switchgear, transformers, and other equipment at substations in San Francisco;
- Installation of SCADA in vaults containing network transformers and protectors, about 80% of which is in San Francisco; and
- Installation and/or upgrades of fire detection and suppression systems at 22 indoor substations, nine of which are in San Francisco.

³ We note that the Settlement Agreement expressly declines to comment upon “the sufficiency or reasonableness” of the reliability projects PG&E has undertaken outside of the settlement (projected to cost about \$100 million) or whether \$3 million will prove “necessary or sufficient” to fund any additional reliability projects that the independent consultant may recommend. (Settlement Agreement, Paragraphs 2, 4.) On the record available, we cannot project an opinion on either subject.

articulated in *San Diego Gas & Electric Company*, D.92-12-019, 46 CPUC 2d 538 (1992), applies specifically to all-party settlements and requires that:

- a. The proposed all-party settlement commands the unanimous sponsorship of all active parties to the proceeding.
- b. The sponsoring parties are fairly representative of the affected interests.
- c. No settlement term contravenes statutory provisions or prior Commission decisions.
- d. Settlement documentation provides the Commission with sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.

We consider the Rule 51.1(e) requirements first. The parties represent that, consistent with the rule, their settlement is reasonable in light of the record, consistent with the law, and in the public interest. We agree that the Parties have developed a thorough and complete factual record through the three investigative reports and the comprehensive prepared testimony of their witnesses. This record responds to the safety and reliability concerns articulated in the OII and in the scoping memo and we commend the parties for their close attention to our direction. Though the parties stress that they have negotiated the settlement as a package, we concur with their representation that the record and the circumstances of this case support each of the settlement provisions.

Regarding the applicable law, the Joint Motion first notes that only a very limited number of Commission decisions specifically concern electric utility enforcement proceedings. Probably most similar, considering the underlying facts and the settlement reached, is D.99-07-029, which issued in *OII into the Operations and Practices of PG&E in Connection with Pub. Util. Code § 451, GO95*,

and Other Applicable Standards Governing Tree-Line Clearances. (1999 Cal. PUC LEXIS 510.) Decision (D.) 99-07-029 approved a settlement between PG&E, CSD (the former name of CPSD), and other intervenors that required PG&E shareholders to fund \$22.7 million in vegetation management-related activities and programs over five years and to pay \$6.0 million to the State's General Fund. The settlement established various forward-looking PG&E/CSD vegetation management inspection and compliance protocols, and appropriated the \$22.7 million across four cost categories.

The parties also acknowledge D.04-04-065,⁴ in which the Commission imposed a fine of \$656,000 upon Southern California Edison Company for violation of three general orders governing electric utilities, General Order (GO) 95 (overhead electric line construction), GO 128 (construction of underground electric supply and communications systems), and GO 165 (inspection cycles for electric distribution facilities). (2004 Cal. PUC LEXIS 207.) No settlement was reached in that proceeding and in determining the appropriate penalty, the Commission weighed several factors (severity of the offense; the utility's actions to prevent, detect, disclose, and remedy a violation; need for deterrence; totality of the circumstances in furtherance of the public interest; role of precedent; and constitutional limitations on excessive fines.)

The parties cite D.98-12-076, as well. (1998 Cal. PUC LEXIS 924.) While D.98-12-076, which issued in *Carey v. PG&E*, involved natural gas and not electricity, it concerned interpretation of Pub. Util. Code § 451. Rejecting PG&E's argument that § 451 is too vague to form the basis of a fine, the Commission fined PG&E \$976,800 for maintaining an unsafe policy that allowed fumigation contractors to terminate gas service without adequate supervision.

⁴ The Joint Motion incorrectly cites this decision, no doubt inadvertently, as D.04-04-064.

We conclude that the parties' settlement is sufficiently congruent with the guidance these decisions provide. Though the parties agree that PG&E has not violated any general orders, their settlement is a tacit recognition of the basic service requirements inherent in § 451. The settlement acknowledges that the 2003 fire potentially was avoidable and that such fires pose a great threat to reliability and to public safety. Against this backdrop, the settlement rationally structures shareholder funding of \$6.0 million in reliability projects and programs, as well as a payment to the General Fund, provides a clear explanation for each allocation, and prohibits recovery of these monies from ratepayers. The Joint Motion states: "CPSD and CCSF regard this as a significant sum that should deter similar behavior by PG&E and other similarly situated utilities in the future." (Joint Motion, p. 10.) CPSD and CCSF are satisfied with this payment and given the circumstances here, including the critical importance of prompt action to remedy the reliability failures underlying the Mission Substation fires, we believe the monetary terms of the settlement are reasonable.

The public benefits of the Settlement Agreement are significant, and include reliability improvements and preventive measures, as well as programs to improve the ability of CCSF and SFFD to respond to outages if and when they do occur. As already discussed, PG&E's San Francisco customers receive direct benefit from the settlement, but because some of the public safety measures can be adapted for use outside San Francisco, other customers will benefit also. We conclude that the settlement is not arbitrary, but provides a reasoned solution to the issues raised by the OII.

The Settlement Agreement also meets each of the four *San Diego Gas & Electric Company* all party settlement criteria. With respect to the first and second, we note that CPSD, PG&E and CCSF are the only parties to this

proceeding and each is a signatory to the Settlement Agreement. Each party actively participated in all aspects of the proceeding – discovery, development of prepared testimony, etc. Settlement discussions did not commence until all parties' positions were public. PG&E was represented by knowledgeable employees and by counsel, as were CPSD and CCSF. These parties reasonably reflect the affected interests – the utility subject to this OII, the Commission's enforcement division, and the city and county in which the December 2003 outage occurred. We have already addressed, above, the third criterion.

As to the fourth, the settlement contains numerous reporting and tracking requirements to enable CPSD and the Commission to monitor implementation of the settlement. While these are fairly comprehensive, we think it prudent to require two refinements. First, we direct CPSD to exercise its rights under Paragraph 7 of the Settlement Agreement to obtain a list from CCSF of the ultimate uses of the \$750,000 targeted for improvement of San Francisco public safety infrastructure. We do this so that we may track the expenditure and ensure that funding for the CCSF projects is not inadvertently requested in future PG&E general rate cases, or other Commission proceedings. Second, we direct PG&E to provide, in its next GRC, A.05-12-002, the accounting of the total \$6.5 million expenditure which is referenced in Paragraph 3 of the Settlement Agreement. We do this to avoid, in that proceeding, an inadvertent request for funding of projects and programs that the Settlement Agreement is intended to finance. Subject to these two refinements, we believe the Commission will be able to fully and effectively monitor implementation of the Settlement Agreement.

Finally, we recognize that the San Francisco Board of Supervisors has reviewed the Settlement Agreement and has reached its independent determination to ratify it. On January 20, 2006, Mayor Gavin Newsom signed

Ordinance No. 16-06 approving CCSF's participation in the settlement; the Board of Supervisors passed the ordinance on January 17, 2006.

Given the totality of the circumstances, we conclude, on balance, that the Settlement Agreement is reasonable in light of the record developed in this proceeding, consistent with law, not adverse to the public interest, and should be approved. Thus, the Settlement Agreement meets the conditions of Rule 51.1(e) and the Commission's supplemental criteria for all-party settlements. We commend the parties for the professionalism exhibited in the proceeding, and particularly, for the completeness of the Settlement Agreement and accompanying Joint Motion. Given the clarity and completeness of these documents, the ALJ did not find it necessary to convene hearings on the Settlement Agreement or request supplemental explanation of its terms or the basis for the parties' agreement.

Paragraph 11 of the Settlement Agreement contains the parties' stipulation to the receipt in evidence of all the prepared testimony and other documents marked for identification in this proceeding. Because today's opinion approves the Settlement Agreement, these exhibits become the evidentiary record of this proceeding and should be received, formally, effective today.

Assignment of Proceeding

Susan P. Kennedy and Michael R. Peevey are the Co-Assigned Commissioners and Jean Vieth is the assigned ALJ in this proceeding.

Comments on Draft Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. In light of the parties' settlement and given the completeness of the Settlement Agreement and Joint Motion seeking its approval, the ALJ held no hearings.

2. In Paragraphs 3 and 7 of the Settlement Agreement, the parties have provided for certain reporting and accounting provisions, which the named party or parties may elect to implement.

Conclusions of Law

1. The settlement between PG&E, CPSD, and CCSF is an all-party settlement.

2. Subject to the additional requirements listed in Conclusion of Law 2, the Settlement Agreement is not adverse to the public interest and should be approved.

3. To ensure the Commission may fully and effectively monitor the Settlement Agreement (a) PG&E should provide, in its next GRC, A.05-12-002, the accounting of the total \$6.5 expenditure, as referenced in Paragraph 3 of the Settlement Agreement and (b) CPSD should exercise its rights under Paragraph 7 of the Settlement Agreement to obtain a list from CCSF of the ultimate uses of the \$750,000 targeted for improvement of San Francisco public safety infrastructure.

4. No hearings are necessary.

5. In order to provide timely direction to the parties and any interested persons or entities, this order should be effective immediately.

ORDER

IT IS ORDERED that:

1. The October 18, 2005 Joint Motion For Approval of Settlement Agreement filed by Pacific Gas and Electric Company (PG&E), the Consumer Protection and Safety Division (CPSD), and the City and County of San Francisco (CCSF), as amended by the October 19, 2005 Supplement to Joint Motion for Approval of Settlement Agreement, and November 15, 2005 Supplement to Joint Motion for Approval of Settlement Agreement, is granted and the Settlement Agreement is approved, subject to the following requirements:

- (a) PG&E shall provide, in its next general rate case proceeding, A.05-12-002, an accounting of the total \$6.5 million expenditure, as referenced in Paragraph 3 of the Settlement Agreement, and
- (b) CPSD shall exercise its rights under Paragraph 7 of the Settlement Agreement to obtain a list from CCSF of the ultimate uses of the \$750,000 targeted for improvement of San Francisco public safety infrastructure.

2. Within 60 days of the effective date of this opinion, PG&E shall submit \$500,000 to the State of California General Fund. Proof of payment shall be filed and served on the service list and shall be provided to the Executive Director of the California Public Utilities Commission within five days of payment.

3. No hearings need to be held.
4. Investigation 05-03-011 is closed.

This order is effective today.

Dated February 16, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners