Decision 08-11-032 November 6, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authorization to Enter into Long-Term Natural Gas Transportation Arrangements with Ruby Pipeline, for Cost Recovery in PG&E's Gas and Electric Rates and Nonbypassable Surcharges, and for Approval of Affiliate Transaction. (U39G and U39E)	Application 07-12-021 (Filed December 21, 2007)

(See Appendix for List of Appearances.)

DECISION APPROVING GAS TRANSPORTATION ARRANGEMENTS

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1. Summary of Decision

This decision grants the application filed by Pacific Gas and Electric Company (PG&E) for authority to contract for long-term capacity on the proposed Ruby Pipeline. If built, the Ruby Pipeline will transport gas from Opal, Wyoming to Malin, Oregon where it will interconnect with PG&E's system. The key terms of PG&E's contract with Ruby Pipeline, LLC are as follows:

- PG&E will acquire firm pipeline capacity of 375 thousand dekatherms per day (MDth/d) for a 15-year period beginning November 1, 2011. Of this amount, 250 MDth/d is for PG&E's Core Gas Supply Department and 125 MDth/d is for PG&E's Electric Fuels Department (Electric Fuels).
- PG&E will acquire 250 MDth/d for Electric Fuels for an initial four-month period of July 1, 2011 through October 31, 2011.
- PG&E will pay an anchor-shipper rate equal to the lower of $0.68/Dth or 5% lower than the Initial Recourse Rate. Assuming PG&E pays $0.68/Dth, its annual cost for 375 MDth/d of capacity will be $93.1 million. PG&E will also pay a fuel charge equal to approximately 1.1% of the actual volume shipped.
- PG&E has the right to receive any lower rate that Ruby Pipeline, LLC, provides to another similarly-situated shipper.
- PG&E may annually reduce its Ruby Pipeline capacity by 20% increments beginning in Year 11 of the initial 15-year term.
- At the expiration of the initial 15-year term, PG&E may annually renew, for a one-year term, all or part of the contracted capacity. PG&E's right to annually renew the contracted capacity expires after 10 years (i.e., after 10 one-year renewals).

PG&E also requests authority for Electric Fuels to obtain matching downstream capacity on PG&E's intrastate pipeline known as the Redwood Path. Thus, PG&E seeks authority for Electric Fuels to acquire 250 MDth/d of firm capacity on the Redwood Path for a four-month period beginning July 1, 2011, and 125 MDth/d for a 15-year period beginning November 1, 2011.

PG&E's current tariffed rate for firm service on the Redwood Path is $8.9095/Dth/month. This equates to an annual cost of $13.4 million for Electric Fuels' 125 MDth/d of capacity on the Redwood Path, plus a usage rate of $0.0070/Dth. PG&E's Core Gas Supply Department already has matching capacity on the Redwood Path.

The proposed Ruby Pipeline transportation arrangements will provide PG&E with access to prolific and growing gas supplies in the Rocky Mountains. Today's decision finds that it is in the public interest to grant PG&E's application because (1) PG&E has a need to diversify away from its heavy reliance on declining Canadian gas supplies, and (2) the proposed Ruby Pipeline transportation arrangements provide a reasonable and cost-effective means for doing so. PG&E is authorized to recover from its core gas customers and bundled electric service customers the costs PG&E incurs to transport gas on the Ruby Pipeline and Redwood Path pursuant to the gas transportation arrangements authorized by today's decision.

The authority granted by today's decision is subject to the following conditions. First, PG&E shall obtain Commission authorization before exercising, or not exercising, its right to annually reduce its Ruby capacity by 20% increments beginning in Year 11 of the Ruby contract. PG&E shall likewise obtain Commission authorization before exercising, or not exercising, its right to annually renew the Ruby Pipeline transportation arrangements after the initial 15-year term of the Ruby contract.

Second, the transportation benchmark component of PG&E's Core Procurement Incentive Mechanism shall reflect the actual transportation rates that PG&E pays under its contract with Ruby LLC.

Additional conditions are listed in the Ordering Paragraphs of today's decision.

2. Summary of A.07-12-021

In Application 07-12-021 (A.07-12-021 or application), PG&E requests Commission approval of long-term natural gas transportation arrangements on a proposed interstate pipeline known as the Ruby Pipeline Project (Ruby Pipeline). If built, the Ruby Pipeline will extend from Opal, Wyoming to an interconnection with PG&E's gas transmission system at Malin, Oregon, on the California-Oregon border, a distance of approximately 670 miles. The Ruby Pipeline will have a firm delivery capacity of between 1.3 billion cubic feet per day (Bcf/d) and 1.5 Bcf/d at Malin, depending on final contracts with shippers.

The Ruby Pipeline will be an interstate pipeline regulated by the Federal Energy Regulatory Commission (FERC) and must receive a certificate of public convenience and necessity from FERC authorizing its construction and operation. In addition, Ruby's rates, terms, and conditions of service will be subject to ongoing regulation by FERC.

The Ruby Pipeline will be owned and operated by Ruby Pipeline, LLC (Ruby LLC) which, in turn, will be owned 100% by El Paso Corporation (El Paso). El Paso is the largest operator of interstate pipelines in the United States.

PG&E's contract with Ruby LLC is contained in the Precedent Agreement that was executed on December 20, 2007, a copy of which is attached to PG&E's application. The Precedent Agreement includes two sets of transportation arrangements, one for PG&E's Core Gas Supply Department (Core Gas Supply), and the other for PG&E's Electric Fuels Department (Electric Fuels).

In the case of Core Gas Supply, PG&E seeks to acquire 250 MDth/d of firm capacity for the 15-year period of November 1, 2011 through October 31, 2026.

The actual start date will depend on when the Ruby Pipeline goes into service. Core Gas Supply will reduce its current holding of 610 MDth/d on the Gas Transmission Northwest Corporation (GTN) pipeline by 250 MDth/d, to 360 MDth/d. As a result, there will be no increase in Core Gas Supply's interstate pipeline capacity holdings. Core Gas Supply already holds firm downstream capacity on PG&E's Redwood Path, and PG&E does not propose any changes to Core Gas Supply's Redwood Path arrangements.

In the case of Electric Fuels, PG&E seeks to acquire 250 MDth/d of firm capacity on Ruby for a four-month period beginning July 1, 2011, and 125 MDth/d for the 15-year period of November 1, 2011 through October 31, 2026. PG&E also seeks to acquire matching downstream capacity on the Redwood Path (i.e., 250 MDth/d for an initial 4-month period followed by 125 MDth/d for a 15-year period). Electric Fuels does not currently hold capacity on the Redwood Path.

Core Gas Supply and Electric Fuels will together hold 375 MDth/d of firm capacity on the Ruby Pipeline (250 MDth/d + 125 MDth/d) for a 15-year period. PG&E will pay a fixed reservation charge equal to the lower of $0.68 per dekatherm (Dth) or 95% of the Initial Recourse Rate (IRR).[1] PG&E will also pay a fuel charge equal to approximately 1.1% of the volume of gas shipped. In addition, PG&E has negotiated a most-favored-nation clause that guarantees PG&E will receive any lower rate offered to another similarly situated shipper during the 15-year period. This rate protection applies to the reservation charge but not the fuel charge.

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[1] The IRR is the tariffed rate for firm service for a term of between one and 15 years.

Starting on the 11th anniversary (November 1, 2022) and each anniversary thereafter, Core Gas Supply and Electric Fuels will each have the option to reduce its capacity as follows: Down to 80% of contracted capacity on the 11th anniversary; down to 60% on the 12th anniversary; down to 40% on the 13th anniversary; down to 20% on the 14th anniversary; and down to 0% on the 15th anniversary. At the end of the initial 15-year term, Core Gas Supply and Electric Fuels will each have an evergreen right to renew its gas arrangements for a one-year term. The evergreen renewal will be exercisable until October 31, 2035 (i.e., 10 years after the expiration of the initial 15-year term). The rate for evergreen extension periods will be the effective rate at the end of the initial 15-term or at the end of any subsequent evergreen extension term.

The annual fixed cost for Core Gas Supply's and Electric Fuels' proposed capacity on the Ruby Pipeline is $93.1 million based on a rate of $0.68/Dth. The annual fixed cost for Electric Fuels' proposed capacity on the Redwood Path is $13.4 million based on PG&E's current tariffed rate of $8.9095/Dth per month. The combined annual fixed cost is $106.5 million. PG&E will have to pay additional, FERC-approved, volume-based charges for (1) pipeline compressor fuel, and (2) lost and unaccounted for gas (L&U gas). All these costs would be offset, in part, by the savings that PG&E obtains from de-contracting 250 MDth/d of capacity on the GTN pipeline. PG&E also forecasts that the savings it achieves by purchasing gas in the Rocky Mountains will more than offset the costs of the proposed gas transportation arrangements.

PG&E requests that the Commission (1) approve the proposed transportation arrangements on the Ruby Pipeline and Redwood Path, and (2) authorize PG&E to recover the costs for these arrangements in PG&E's retail gas and electric rates. PG&E also requests Commission authorization to make conforming changes to its Core Procurement Incentive Mechanism.

At the time PG&E filed A.07-12-021, PG&E's parent company – PG&E Corporation – held an option to purchase a 25.5% equity interest in the Ruby Pipeline. Because it was possible that an affiliate relationship could ensue during the pendency of the application, PG&E requested that the Commission either (1) find that no affiliate transaction approval is required, as the Precedent Agreement was negotiated and executed prior to the existence of any affiliate relationship between PG&E and Ruby LLC, or (2) authorize PG&E's proposed transportation arrangements with Ruby LLC as an approved affiliate transaction pursuant to D.06-12-026, Appendix A-3, Affiliate Rule III.B.1.

On May 6, 2008, PG&E Corporation terminated its option to acquire an equity interest in the Ruby Pipeline, and PG&E withdrew the request in its application for the previously described approvals and waivers related to PG&E Corporation's acquisition of an equity interest in the Ruby Pipeline.

3. Procedural Background

PG&E filed A.07-12-021 on December 21, 2007. Notice of A.07-12-021 appeared in the Commission's Daily Calendar on December 26, 2008. The following parties filed a protest or response: Aglet Consumer Alliance and L. Jan Reid; Alliance for Retail Energy Markets; CAlifornians for Renewable Energy (CARE); California Municipal Utilities Association; Energy Producers and Users Coalition; Independent Energy Producers Association; GTN; Kern River Gas Transportation Company; PPM Energy; Questar Overthrust Pipeline Company and Questar Southern Trails Pipeline Company; Ruby LLC; School Project for Utility Rate Reduction; Sierra Pacific Power Company; The Utility

Reform Network (TURN); Western Power trading Forum; and Williams Gas Pipeline Company, LLC (Williams).

PG&E filed an amendment to its application on February 1, 2008. The most significant revision was to remove the condition in the Precedent Agreement that allowed Ruby LLC to cancel the development of the pipeline in the event the estimated cost of the pipeline exceeded $2.2 billion.[2] PG&E also made the Precedent Agreement public at that time. CARE filed a response to the amendment and GTN filed a protest. There were no other responses or protests to the amendment.

A prehearing conference (PHC) was held on February 29, 2008. In addition to the previously listed parties, the following entities were granted party status at the PHC or by a ruling issued by the assigned Administrative Law Judge (ALJ): Anadarko Petroleum Corporation; Clearwater Port LLC; the Commission's Division of Ratepayer Advocates (DRA); El Paso; Lodi Gas Storage, LLC; Iberdrola Renewables; Merced Irrigation District and Modesto Irrigation District; Southern California Gas Company (SoCalGas) and San Diego Gas and Electric Company (SDG&E); and the Wyoming Pipeline Authority.

The Assigned Commissioner's Ruling and Scoping Memo (Scoping Memo) was issued on March 18, 2008. The Scoping Memo established the scope and schedule for the proceeding, determined there was a need for evidentiary hearings, and addressed other procedural matters. Seven days of hearings were held during the period of June 24 through July 2, 2008. Opening briefs were filed on July 14, 2008, and reply briefs were filed on July 23, 2008. An oral argument

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[2] The estimate cost eventually reached $3 billion.

was held before a quorum of Commissioners on October 27, 2008, after the proposed decision was issued. The case was submitted at the conclusion of the oral argument.

4. The Pipeline Projects

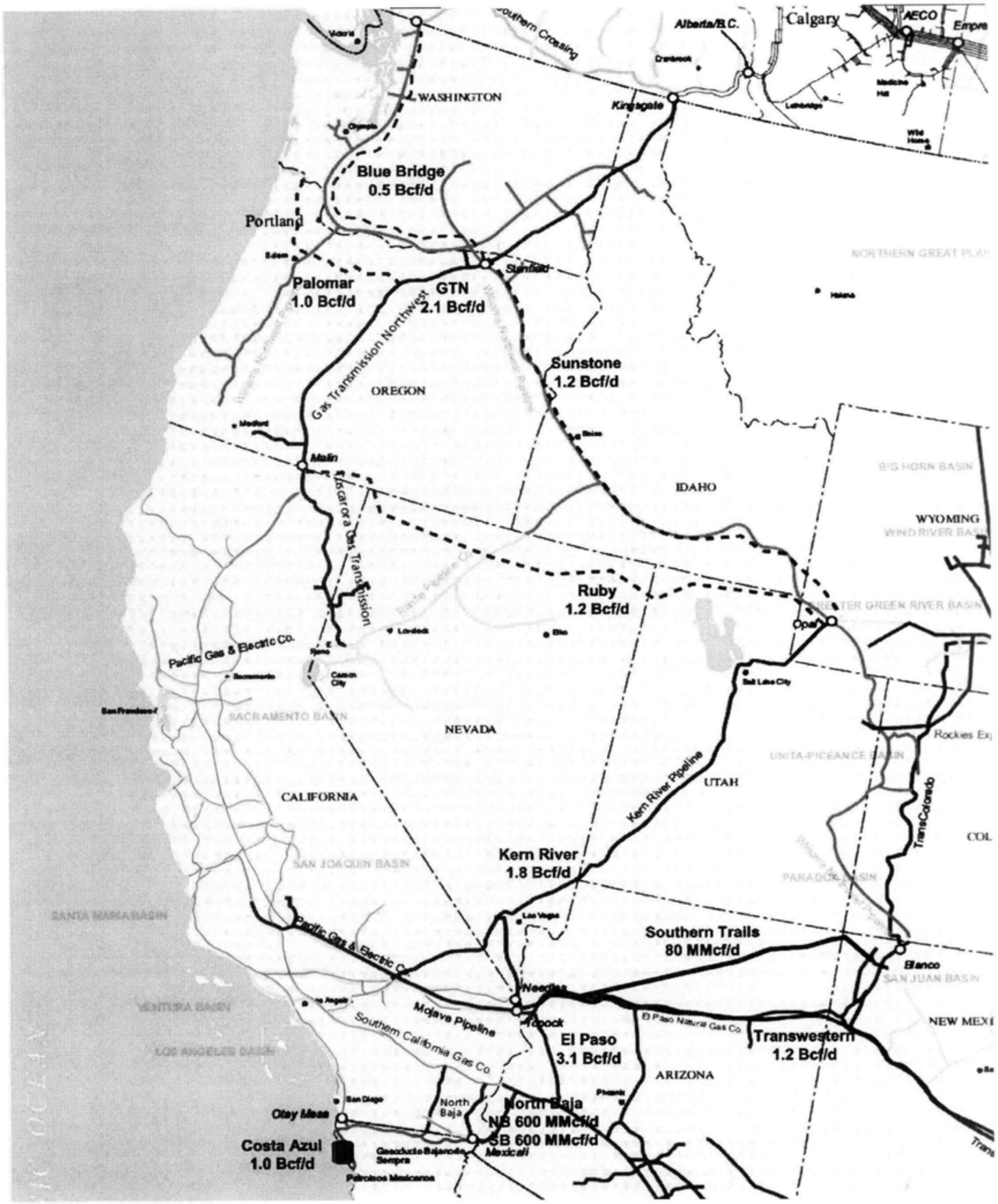
This proceeding is fundamentally about PG&E's access to prolific and growing natural gas supplies in the Rocky Mountains. The parties to this proceeding have presented two alternatives for obtaining firm access to Rocky Mountain gas supplies. One alternative is the proposed Ruby Pipeline sponsored by El Paso. The second alternative is the proposed Sunstone Pipeline (Sunstone), which is a joint venture sponsored by TransCanada Pipelines Ltd. (TransCanada) and Williams. Sempra Pipelines & Storage has an option to acquire a 25% equity interest in Sunstone. If built, Sunstone would transport gas from Opal, Wyoming to an interconnection with GTN's existing pipeline system at Stanfield, Oregon. The delivery capacity of Sunstone would be 1.2 Bcf/d. Sunstone shippers could then use the exiting GTN system to transport gas south to Malin, Oregon. The distance of the Opal-Sunstone-GTN-Malin route is approximately 900 miles.

GTN is a wholly-owned subsidiary of TransCanada. The GTN system transports gas from Kingsgate, British Columbia at the Canada-United States border to Malin, Oregon. The gas carried by GTN originates mostly in the Western Canadian Sedimentary Basin that is located largely in the Canadian Provence of Alberta.

GTN interconnects with PG&E's backbone gas transportation system at Malin, Oregon. Gas delivered at Malin is transported into Northern California via PG&E's Redwood Path pipeline. Currently, GTN's delivery capacity at Malin is evenly matched with PG&E's receipt capacity of 2.1 Bcf/d.

The proposed Ruby Pipeline would also interconnect with PG&E's system at Malin, creating a total delivery capacity at Malin of between 3.4 and 3.6 Bcf/d. PG&E's receipt capacity would remain unchanged at 2.1 Bcf/d. Thus, the construction of the Ruby Pipeline would create a surplus of delivery capacity at Malin into PG&E's Redwood Path.

A map of the GTN, Sunstone, Ruby, and Redwood Path pipelines is shown on the next page.


Calgary
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Southern Crossing
WASHINGTON
Kingsgate
Blue Bridge
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Portland
Palomar
1.0 Bcf/d
GTN
2.1 Bcf/d
Stanfield
Gas Transmission Northwest
OREGON
Sunstone
1.2 Bcf/d
Malin
Tuscarora Gas Transmission
IDAHO
WYOMING
Ruby
1.2 Bcf/d
Opal
Pacific Gas & Electric Co.
NEVADA
UTAH
Kern River Pipeline
CALIFORNIA
Kern River
1.8 Bcf/d
Southern Trails
80 MMcf/d
Blanco
Needles
Topock
Mojave Pipeline
Pacific Gas & Electric Co.
Southern California Gas Co.
El Paso
3.1 Bcf/d
Transwestern
1.2 Bcf/d
ARIZONA
NEW MEXI
Otay Mesa
North Baja
NB 600 MMcf/d
SB 600 MMcf/d
Mexicali
Costa Azul
1.0 Bcf/d
TransColorado
Rockies Ex

5. Summary of the Active Parties' Positions

Although there are numerous parties to this proceeding, relatively few participated in the evidentiary hearings or filed briefs. The summaries of the parties' positions in today's decision are limited to those parties who actively participated in the hearings or who filed briefs.

PG&E's application is supported by CARE, DRA, Ruby LLC, and TURN. CARE believes the Ruby Pipeline will create pipeline-on-pipeline competition to transport gas to California, which should lower costs for California consumers. DRA states the PG&E-Ruby agreements provide economic value to PG&E's customers and all of California. Ruby LLC contends its pipeline will provide PG&E with access to the Rocky Mountains gas supplies at favorable terms. TURN states that PG&E has obtained a "great deal" for PG&E's ratepayers.

SoCalGas and SDG&E (SoCalGas/SDG&E) are concerned that PG&E's release of capacity on the GTN system will increase GTN's rates for the remaining shippers, including SoCalGas/SDG&E. They also recommend that PG&E's proposal to provide its Electric Fuels Department with both on-system and off-system delivery rights on the Redwood Path be deferred to the next Gas Accord Proceeding.

PG&E's application is opposed by GTN and Williams (together, "GTN") on the grounds that (1) the Ruby Pipeline is not the best project for California or PG&E's ratepayers, (2) PG&E's commitment to the Ruby Pipeline was made without an open and competitive process, and (3) PG&E's selection of the Ruby Pipeline was due to improper influence from its parent company. GTN urges the Commission to reject PG&E's application or, alternatively, either (1) direct PG&E to engage in an open and fair process for the acquisition of pipeline capacity to the Rocky Mountains, or (2) not act on the Ruby Precedent Agreement at this time, but require PG&E to submit the Agreement to a reasonableness review following commencement of operations by Ruby.

L. Jan Reid (Reid) opposes PG&E's application. Reid asserts that the claimed benefits of the Ruby Precedent Agreement are dubious, that the no-project alternative is the best choice for PG&E's ratepayers, and that PG&E used a flawed process to select the Ruby Pipeline.

6. Jurisdiction and Standard of Review

PG&E's application requests Commission approval of proposed natural gas transportation arrangements pursuant to Pub. Util. Code §§ 701, 702, and 2821. PG&E has the burden of proof to support its application through a preponderance of evidence.

Among other things, the application requests authority for PG&E to recover the rates and charges it incurs to transport gas on the Ruby Pipeline and the Redwood Path. Pub. Util. Code § 451 requires all utility rules, rates, and charges to be just and reasonable. Pub. Util. Code § 454 requires the Commission to determine whether a rate increase is justified. Thus, the Commission should approve PG&E's application only if it finds that PG&E has demonstrated that the proposed gas transportation arrangements are just and reasonable. For the reasons set forth below, we conclude that PG&E's application satisfies these requirements and should be granted.

7. Issues

7.1. Access to Rocky Mountain Gas Supplies

7.1.1. Position of the Parties

PG&E

PG&E's primary justification for acquiring capacity on the Ruby Pipeline is to increase its access to Rocky Mountain gas supplies in order to diversify away from its heavy reliance on declining gas supplies in Canada. Currently, PG&E obtains more than half of its gas from the Western Canadian Sedimentary Basin (WCSB). According to PG&E, gas exports to the United States from the WCSB are declining due to falling production and increased gas consumption within Canada. The domestic supply regions that serve California – principally the San Juan Basin in the Four Corners area of New Mexico and Colorado, and the Permian Basin in west Texas – have leveled off and are expected to decline in the future. In contrast, gas production in the Rocky Mountains has been increasing for several years and will continue to increase. PG&E states that other sources of natural gas, such as imported liquefied natural gas, will not be available in sufficient quantities for several years.

DRA

DRA supports increased access to Rocky Mountain gas supplies in order to increase diversity of supply. DRA believes that increased diversity will enhance reliability and promote competition among gas suppliers.

GTN

GTN sees little need for increased access to Rocky Mountain gas supplies. GTN states that California has access to ample gas supplies, and that PG&E itself projects scant growth in gas demand. GTN opines that gas demand in California may actually decline over time due to (1) increased reliance on energy efficiency and renewable generation in lieu of gas-fired electric generation, and (2) statutorily mandated reductions of greenhouse gas (GHG) emissions.

Reid

Reid states there is no demonstrated need to access Rocky Mountain gas supplies or to diversify gas supplies.

7.1.2. Discussion

PG&E has historically obtained more than half of its natural gas from the WCSB.[3] The record of this proceeding indicates that the WCSB is in long-term decline. PG&E projects that WCSB production will decline from approximately 16.2 Bcf/d in 2007 to 12.7 Bcf/d by 2015, and to 11.3 Bcf/d by 2025. PG&E also projects that an increasing portion of the diminishing WCSB gas supply will be consumed within Canada, primarily to extract petroleum from oil sands. PG&E estimates that the use of natural gas for this purpose will increase steadily, from 1.0 Bcf/d in 2007 to 3.0 Bcf/d by 2025.[4] Ruby LLC provided similar forecasts of falling WCSB production and rising Canadian demand.[5] GTN agrees that the WCSB will be a diminishing source of supply.[6]

In contrast, the record of this proceeding shows that the Rocky Mountains region is experiencing significant growth in gas production. PG&E projects that Rockies production will increase from approximately 8.6 Bcf/d in 2007 to 11.6 Bcf/d in 2015, and will continue to grow until 2026.[7] Ruby LLC provided a similar forecast of increasing Rockies production.[8]

For the preceding reasons, we conclude that PG&E has a need to diversify away from its heavy reliance on declining WCSB supplies by increasing its access

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[3] 2008 California Gas Report, p. 51. We take official notice of the 2008 California Gas Report pursuant to Rule 13.9 of the Commission's Rules of Practice and Procedure.

[4] Exhibit PG&E-3, pp. 2-4 to 2-5.

[5] Exhibit Ruby-1, pp. 1 - 3.

[6] Exhibit GTN-2, p. 8, lines 13-15.

[7] Exhibit PG&E-3, p. 2-1, lines 11-12, and p. 2-3, lines 26-32.

[8] Exhibit Ruby-1, pp. 1 - 2.

to Rocky Mountain gas, provided that it is cost effective to do so. Our conclusion is consistent with Commission policy. In D.04-09-022, the Commission determined that gas utilities should hold a diverse portfolio of pipeline capacity across multiple supply basins to ensure adequate supplies for core gas customers.[9] In D.06-09-039, the Commission instructed electric utilities to take all necessary steps to ensure adequate gas supplies for gas-fired generation.[10] And in Order Instituting Ratemaking (OIR) 07-11-001, the Commission stated its commitment to obtaining more gas from the Rocky Mountains:

> In D.04-09-022, we had addressed the procedures for the utilities to seek pre-approval of contracts for interstate pipeline capacity, which will continue to be essential for supplying California with most of its natural gas supplies…Although the present OIR is focused primarily upon LNG supply related issues, nothing in this OIR should be interpreted as relieving the California natural gas utilities' obligation to have sufficient firm capacity rights on interstate pipelines to meet their customers' needs. **<u>Moreover, the Commission is fully committed to</u>…<u>diversification of supplies to include more natural gas from the producing basins in the Rocky Mountains</u>**, the enhancement of infrastructure with additional storage facilities, and the loading order's priorities of promoting energy efficiency, conservation and renewable energy sources. These other matters are being addressed or will be addressed in other proceedings. (OIR 07-11-001, p. 6. Emphasis added.)

There is no support for GTN's suggestion that current gas supplies are ample, making it unnecessary for PG&E to obtain increased access to Rocky

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9 D.04-09-022, Findings of Fact 1 and 8.

10 D.06-09-039, p. 31.

Mountains gas supplies. The record shows that the main source of PG&E's gas supplies – the WCSB – is in steep decline. We are not persuaded by GTN's suggestion that demand for gas in California will decline because of statutorily mandated reductions in greenhouse gas emissions, making it unnecessary to increase access to the Rockies. While the use of gas for electric generation may decline, it is not foreordained.[11] Moreover, there is no firm plan at this time for reducing the amount of gas used to heat homes, schools, and businesses. What is more certain, however, is that gas exports from the WCSB will probably decline, perhaps significantly. As regulators, we have a responsibility for ensuring that California has access to adequate supplies of gas. The proposed Ruby Pipeline will help to achieve this vital objective.[12] Conversely, if Ruby is not built and gas exports from the WCSB decline as forecasted, California could face higher prices for a shrinking supply of gas and, perhaps, even shortages.

7.2. Costs and Benefits for Core Gas Supply

We previously concluded that it is reasonable for PG&E to acquire expanded access to Rocky Mountain gas supplies, provided that it is cost effective to do so. We next consider the costs and benefits of the proposed Ruby Pipeline, starting with PG&E's Core Gas Supply.

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[11] Instead of reducing the amount of gas-fired generation, it is possible that utilities and regulators may decide to purchase the emissions credits needed for gas-fired generation under a cap-and-trade regime.

[12] It is possible that demand for natural gas could increase if natural gas is used to replace gasoline as a transportation fuel, either directly in compressed natural gas vehicles or indirectly through plug-in hybrids and all-electric vehicles. Under this scenario, it is even more important to obtain increased access to Rocky Mountain gas supplies to offset declining supplies in the WCSB.

7.2.1. Position of the Parties

PG&E

PG&E proposes to acquire 250 MDth/d of capacity on the Ruby Pipeline for Core Gas Supply and simultaneously to de-contract the same amount of capacity on the GTN pipeline. Thus, PG&E does not seek to increase its overall capacity holdings for Core Gas Supply. PG&E's objective is to diversify both its interstate pipeline portfolio and its sources of gas supply in order to foster competition among supply regions, enhance supply security, and improve reliability for PG&E's core gas customers.

PG&E prepared six different forecasts of the net present value of purchasing Rocky Mountain supplies, transported via Ruby, over a 15-year period compared to purchasing WCSB supplies transported via GTN. PG&E's analysis shows that purchasing Rockies gas and transporting it via PG&E's proposed 250 MDth/d of Ruby capacity will be less costly than purchasing supplies from the WCSB and continuing to use 250 MDth/d of its existing capacity on GTN. Depending on the forecast, PG&E projects cost savings ranging from $113 million to $613 million.

CARE

CARE believes the Ruby Pipeline will create competition for the transportation of gas to the California-Oregon border, which should lower transportation costs over the long run.

DRA and TURN

DRA and TURN support PG&E's request to obtain capacity on the Ruby Pipeline. They believe it is prudent to replace capacity connected to a region where gas production is declining with capacity connected to a region experiencing significant growth in production. They also believe that PG&E has negotiated very favorable rates, terms, and conditions.

GTN

GTN argues that PG&E's calculation of benefits rests on two flawed assumptions. First, PG&E assumes that the price of gas in the WCSB will remain significantly above the price of gas in the Rockies. GTN believes this is unlikely. Second, PG&E underestimates the increase in rates that will occur on the GTN system due to PG&E's de-contracting of 250 MDth/d of capacity. GTN argues that the increase in rates on the GTN system will offset any benefits the Ruby capacity provides to PG&E's core gas customers. The issue of PG&E's de-contracting of GTN capacity is addressed later in today's decision.

Reid

Reid states PG&E's motivation for acquiring Ruby capacity is PG&E's belief that Rocky Mountain gas will be cheaper than WCSB gas. Reid sees this as improper speculation in energy markets with ratepayer funds.

7.2.2. Discussion

Our review of the costs and benefits of PG&E's proposed Ruby capacity for Core Gas Supply is within the context of the Commission's policy of requiring gas utilities to hold a diverse portfolio of pipeline capacity to multiple supply regions to reduce the risks of supply disruption and price instability.[13] PG&E's current portfolio for Core Gas Supply lacks diversity. PG&E's interstate pipeline portfolio is 63% GTN capacity, 21% El Paso capacity, and 16% Transwestern capacity. Almost all gas for Core Gas Supply comes from just two regions – the WCSB and the San Juan Basin.[14]

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[13] D.04-09-022, Finding of Fact 1.

[14] Exhibit PG&E-3, p. 5-8.

Acquiring Ruby capacity will provide needed diversification for the Core Gas Supply portfolio by adding a fourth interstate pipeline and a third major gas supply region. The added diversification will increase supply security, reliability, and price stability. It should also help PG&E to exploit differences in the price of gas among supply regions, thereby lowering costs for ratepayers.

The additional security and reliability afforded by the Ruby Pipeline will provide significant benefits. As mandated by D.06-07-010, Core Gas Supply must hold sufficient assets to meet a 1-in-10 year peak day demand.[15] If temperatures drop below the 1-in-10 year level, and core-storage withdrawals cannot meet incremental demand, Core Gas Supply must turn to the citygate market to procure gas. If supplies are not available, PG&E must divert gas from non-core customers, including electric generation, for delivery to core customers.

During low-temperature events, history has shown that supplies delivered by the GTN pipeline tend to diminish due to increased consumption in upstream markets where temperatures are also low. This reduction in flows puts upward price pressure at the PG&E citygate market at a time when supplies are most needed. The Ruby Pipeline will increase available supplies, which should lower the cost of citygate purchases during cold weather events and reduce the likelihood of non-core gas diversions.

PG&E conducted a multi-faceted analysis of the risks, costs, and benefits of the proposed Ruby capacity for Core Gas Supply. The analysis used several gas-price forecasts that PG&E developed internally and obtained from

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[15] The Ruby capacity for Core Gas Supply fits within the Commission-established capacity range for PG&E set forth in D.04-09-022, Findings of Fact 23 and 24.

independent sources. In general, these forecasts anticipate that price of gas in the WCSB will remain above the price of gas in the Rockies for the duration the 15-year Precedent Agreement. PG&E's analysis shows that the Ruby Pipeline leads to significant reductions in expected risks and costs for core gas customers. While the ultimate outcome 15 years hence cannot be known, PG&E' analysis suggests that it is likely the proposed Ruby Pipeline capacity will advance the Commission's policy objectives of gas supply security, reliability, and price stability at no additional cost – or even less cost - to core gas customers.

The Ruby Precedent Agreement contains three provisions that reduce risk for PG&E's customers. First, PG&E is guaranteed to receive the lowest transportation rate provided to shippers who contract for a term of one to 15 years. Second, the Agreement includes capacity step-down rights in Years 11 through 15. The step-down rights provide flexibility to reduce capacity if conditions warrant. Third, at the end of the initial 15-year term, PG&E has the right to annually renew the Precedent Agreement for up to ten one-year extensions. This ensures that PG&E can maintain prudent diversification for an additional 10-year period at favorable rates ($0.68/Dth) if conditions warrant.

For the preceding reasons, we conclude that PG&E's core gas customers will likely benefit from PG&E's proposed Ruby Pipeline arrangements. We are not persuaded by GTN's argument that PG&E's analysis of costs and benefits is based on the unrealistic assumption that the price of gas in the WCSB will remain significantly higher than the price of gas in the Rocky Mountains throughout the 15-year term of the Precedent Agreement. GTN's argument overlooks the fact that PG&E's gas supplies are weighted disproportionately towards the WCSB, a producing region that is in steep decline. Currently, the price of gas in the WCSB is significantly higher than the price of gas in the

Rockies. If PG&E does not diversify away from the WCSB, it is all but certain that the price of gas in the WCSB will remain above the price of gas in the Rockies, as there will be the same level of demand chasing a declining level of WCSB supply.

Conversely, if PG&E obtains access to cheaper gas supplies in the Rocky Mountains and there is a subsequent narrowing of the price differential between the WCSB and the Rockies as suggested by GTN, it is reasonable to assume that the narrowing is due, at least in part, to competition between the regions, and that the price paid by PG&E for gas from either region would be less what PG&E would have paid had it relied on WCSB supplies alone.

We disagree with Reid's assessment that PG&E's justification for the proposed Ruby capacity amounts to speculation in energy markets. The fundamental purpose of the proposed Ruby capacity is to diversify away from PG&E's disproportionate reliance on Canadian gas supplies in order to reduce portfolio risk. Reid's own analysis shows that it is cost effective for PG&E to reduce portfolio risk by acquiring Ruby capacity.[16] Moreover, the amount of interstate pipeline capacity that PG&E can hold for Core Gas Supply is capped by D.04-09-022. PG&E's testimony explains how the Ruby capacity fits within this cap while diversifying its portfolio.[17] In sum, the record shows that PG&E seeks diversification to minimize risks and costs. There is no evidence of market speculation.

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[16] Reid Opening Brief, pp. 10 - 12.

[17] Exhibit PG&E-5, pp. 5-6 to 5-9.

7.3. Costs and Benefits for Electric Fuels

PG&E proposes to acquire 250 MDth/d of Ruby capacity for its Electric Fuels Department for a four-month period beginning on July 1, 2011, and 125 MDth/d for a 15-year period beginning on November 1, 2011. Electric Fuels currently has no pipeline capacity and is limited to purchases at the PG&E citygate. Beginning in July 2009, it has one contract for 50 MDth/d on the GTN system, which will be effective July 1, 2009 through May 31, 2014.[18]

7.3.1. Position of the Parties

PG&E

To demonstrate that Electric Fuels has a need for the proposed Ruby capacity, PG&E provided two long-term forecasts of Electric Fuels' net open position and gas demand for the period of 2011 through 2026. One forecast assumed a 20% Renewable Portfolio Standard (RPS), and the other assumed a more aggressive 33% level. Both forecasts assumed that half of the net open position (i.e., unmet need for electric generation) would be filled by contracts for gas-fired generation that require PG&E to procure gas supply. Both forecasts show that Electric Fuels' need for gas will grow substantially beginning in the year 2010, when PG&E must procure fuel for several new, Commission-approved gas-fired generation plants. Under the current 20% RPS, the proposed Ruby capacity represents 27% of Electric Fuels' expected average daily gas demand and 10% of expected peak demand. Under the 33% RPS, the Ruby capacity represents approximately 45% of expected average daily demand.

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[18] PG&E also manages a California Department of Water Resources purchased power agreement (PPA) with PPM Energy that supplies power to PG&E. The PPA includes 51.8 MDth/d of capacity on the GTN pipeline and expires on June 30, 2011.

To demonstrate that the proposed Ruby capacity for Electric Fuels is cost effective, PG&E provided six different forecasts of the direct costs, direct benefits, and indirect benefits of the proposed Ruby capacity relative to the status quo. PG&E's calculation of direct benefits and direct costs compares two different gas-purchasing strategies: (1) the Ruby strategy of buying gas in the Rockies and transporting it to the PG&E citygate using Electric Fuels' proposed capacity on the Ruby Pipeline and the Redwood Path; and (2) the status quo strategy of buying the same volume of gas at the PG&E citygate. Four of PG&E's forecasts show that the direct benefits of the Ruby strategy outweigh the direct costs. Two of the forecasts show the direct costs of the Ruby strategy outweigh the direct benefits. However, when indirect benefits are considered, all six of forecasts show the Ruby strategy results in lower costs compared to the status quo. The indirect benefits consist of lower priced gas from increased gas-on-gas competition made possible by the Ruby Pipeline.

DRA and TURN

DRA and TURN find that PG&E has demonstrated a need to acquire the proposed Ruby capacity to support growing demand for gas-fired generation and that it is cost effective to do so. DRA states that it is important to obtain the Ruby capacity relatively soon because there are three large gas-fired generating plants (Colusa, Gateway, and Russell City) that will come online by 2010 for which PG&E will have to supply gas. TURN adds that only a fraction of Electric Fuels' needs will be met with Ruby capacity, leaving PG&E free to rely on citygate purchases to a significant extent, particularly for swing supply.

GTN

GTN contends that PG&E has not demonstrated a need to acquire Ruby capacity for Electric Fuels. GTN believes that PG&E's projected need for gas-fired generation can be met, in large part, by renewable generation, direct access, and energy efficiency. GTN also asserts that PG&E will have to reduce its projected use of gas-fired generation in order to reach statutorily mandated reductions in GHG emissions.

GTN argues that PG&E's own evidence shows that electric ratepayers will be worse off with the proposed Ruby capacity. PG&E calculated the net present value of the proposed Ruby capacity using six different price forecasts over the 15-year life of the contract. Four of the forecasts show positive net benefits, while two show negative net benefits. GTN maintains that the two forecasts showing negative net benefits are the most reliable.

Ruby LLC

Ruby LLC opines that it is reasonable for Electric Fuels to diversify its gas procurement strategy away from near total dependence on citygate purchases.

7.3.2. Discussion

In D.06-09-039, the Commission held that securing "firm interstate gas pipeline capacity rights is an important element of electric utility resource planning and an important factor in assuring the reliability of the natural gas delivery system.[19]" Currently, PG&E's portfolio of interstate pipeline capacity for the Electric Fuels consists of a single contract for 50 MDth/d on the GTN pipeline for a 59-month period beginning on July 1, 2009. This represents only a fraction of PG&E's forecasted average daily need of more than 400 MDth/d for electric generation throughout the period of 2011 through 2026, and forecasted

[19] D.06-09-039, Finding of Fact 37.

peak demand of more than 1,000 MDth/d.[20] Thus, PG&E has a substantial unfulfilled need for interstate pipeline capacity to serve electric generation. We find that the proposed Ruby capacity will help achieve the Commission's policy of securing firm interstate pipeline capacity for electric generation.

We also find that PG&E conducted a reasonable analysis of the risks, costs, and benefits of the proposed Ruby capacity for Electric Fuels. The analysis shows the net present value benefits of the Ruby Precedent Agreement ranges from $52 million to $343 million, depending on the forecast used. The major representatives of PG&E's customers – DRA and TURN – agree with PG&E's analysis and support PG&E's requested Ruby capacity.

For the preceding reasons, we conclude that PG&E's bundled electric customers will likely benefit from the proposed Ruby capacity for Electric Fuels. We are not persuaded by GTN's argument that PG&E has overestimated its need for gas-fired generation. PG&E's forecast of gas-fired generation incorporated aggressive energy efficiency and RPS goals. PG&E also assumed that only half of its net open position would be filled by gas-fired generation with fuel supplied by PG&E. But even if PG&E has overestimated its need for gas-fired generation, the proposed Ruby capacity is still only a fraction of the gas-fired generation that will be in-service in 2011.[21] Thus, there is still a reasonable need for Ruby capacity even if no additional gas-fired generation is built. Furthermore, to limit risk, PG&E has negotiated capacity step-down rights in Years 11 through 15 of the Ruby Precedent Agreement. If the need for gas-fired

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[20] Exhibit PG&E-4, pp. 3 – 8.

[21] Exhibit PG&E-4, pp. 3 and 8.

generation does not materialize, PG&E will be able to reduce its capacity on the Ruby Pipeline.

GTN's claim that PG&E's own forecasts show that electric ratepayers will be worse off is misleading. PG&E presented six forecasts; four show net direct benefits and two show net direct costs. The net direct costs shown in latter two forecasts are $100 million and $104 million, respectively, over 15 years.

However, PG&E anticipates, and we agree, that the large volume of Rocky Mountain gas that Ruby will bring to Malin will compete head-to-head with PG&E's other main sources of supplies from the WCSB and the San Juan Basin, putting downward pressure on gas prices. PG&E forecasts that the indirect benefits of competition will average $0.10/Dth over the 15-year life of the Ruby contract, which will save PG&E's bundled electric ratepayers approximately $200 million.[22] These forecasted savings from gas-on-gas competition more than offset the net direct costs in the two forecasts at issue.[23]

7.4. Alternatives

We previously concluded in today's decision that PG&E has a need for increased access to Rocky Mountain gas supplies and that PG&E's proposed contract for long-term capacity on the Ruby Pipeline provides a cost-effective means for doing so. We next consider alternatives to the Ruby Pipeline.

There were four alternatives identified in this proceeding:

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[22] Exhibit PG&E-3, Chapter 6, p. 6-11, lines 13-16. Ruby LLC separately estimated that the benefits of competition would be in the range of $0.08 to $0.12/Dth. (Exhibit Ruby-1, p. 3, lines 12-18.)

[23] The forecasted net benefits do not include the additional benefits of enhanced supply security, improved physical reliability, and increased price stability that comes from holding interstate pipeline capacity across multiple supply regions.

1. The no-project alternative.
2. The proposed expansion of the Kern River Pipeline.
3. The proposed Bronco Pipeline Project sponsored by Spectra Energy (Spectra).
4. The proposed Sunstone Pipeline Project.

Three of these alternatives can be easily rejected. First, we previously rejected the no-project alternative because it would keep PG&E dependent on declining WCSB gas supplies. Second, PG&E presented unrebutted testimony that obtaining capacity on an expanded Kern River Pipeline is both uneconomic and infeasible.[24] No party supports this alternative. Third, Spectra Energy has canceled the Bronco Project because it could not match the rates that Ruby LLC is offering to PG&E and other shippers.[25]

The one remaining alternative is the proposed Sunstone Pipeline Project (Sunstone) sponsored by Williams and GTN's parent company, TransCanada. Sempra Pipelines & Storage has an option to acquire a 25% equity interest in Sunstone. If built, Sunstone would transport gas from Opal, Wyoming to an interconnection with GTN's pipeline system at Stanfield, Oregon. Sunstone shippers could then use the GTN pipeline to transport gas south to Malin, Oregon. The distance of the Opal-Stanfield-Malin route is approximately 900 miles, which is about 230 miles longer than Ruby. A map of the proposed Sunstone and Ruby pipelines is presented previously in today's decision.

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[24] Exhibit PG&E-5, pp. 1-3 and 1-4.

[25] Exhibit Ruby-21, p. 10, lines 8-14.

7.4.1. Position of the Parties

PG&E

PG&E maintains that Sunstone is inferior to Ruby because (1) GTN has not offered PG&E a rate equal to or better than the $0.68 rate offered by Ruby, (2) GTN has not offered the other favorable terms in the Ruby Precedent Agreement, such as capacity step-down rights, and (3) Sunstone would provide less gas-on-gas competition for California markets compared to Ruby because much of the gas transported by Sunstone would flow to the Pacific Northwest. PG&E also contends that Sunstone would provide less reliability because it would deliver gas at Stanfield. PG&E would then have to transport its gas some 335 miles on GTN to Malin. As a result, PG&E's gas supplies would be subject to disruption on the GTN pipeline between Stanfield and Malin. With Ruby, a disruption on GTN would not affect the flow of Rockies gas to California.

CARE, DRA, and TURN

CARE supports Ruby over Sunstone. CARE believes that having separate pipelines on separate routes and owned by separate companies is the only way to have transportation-on-transportation competition.

DRA and TURN likewise supports Ruby over Sunstone. In DRA's opinion, Ruby offers better terms and conditions. Ruby has the added advantages of creating transportation-on-transportation competition with GTN, and providing a superior opportunity for gas-on-gas competition in California by delivering gas directly to the California-Oregon border instead of 335 miles upstream at Stanfield where much of the gas will flow to non-California markets.

TURN believes that the Ruby Pipeline is a "great deal" for PG&E's ratepayers. TURN notes that even Reid, who opposes the Ruby Pipeline, calculated that the benefits of Ruby would exceed its costs by more than 2 to 1.

GTN

GTN asserts that Sunstone-GTN can offer a better deal than Ruby if only PG&E would negotiate. GTN also argues that only Sunstone retains the ability to access future gas supplies in the Arctic regions of Alaska and Canada because Sunstone, unlike Ruby, will use the GTN system. The GTN system, in turn, will interconnect with future pipelines built to transport gas from Arctic regions. In contrast, Ruby would displace much of the gas that is currently transported by GTN, which could force GTN to retire capacity. The retired capacity could not be used to transport future gas supplies from the Arctic.

Reid

Reid used an option pricing model to compare pipeline alternatives. His analysis shows that Ruby is a slightly better alternative than Sunstone. Reid states there is no evidence the Ruby Pipeline will be more reliable than the Sunstone pipeline or the existing GTN pipeline.

Ruby LLC

Ruby LLC contends that its pipeline offers a number of benefits that Sunstone cannot match. First, the Ruby Pipeline has a 15-year fixed rate of $0.68/Dth that is lower than either (1) the combined rate on GTN and upstream pipelines that transport WCSB gas, or (2) the Sunstone-GTN option. Ruby LLC believes its fixed rate is especially valuable in an era of rising costs.

Second, Ruby provides most-favored-nation rate protection, term-extension rights, and the option to step-down capacity during the final five years of the contract term. Sunstone has not offered equal or better terms.

Third, the Ruby Pipeline provides enhanced reliability. Currently, GTN is the only pipeline that delivers gas at Malin. Adding Ruby will enable PG&E to receive gas at Malin from Ruby in the event of a disruption on the GTN system.

Ruby LLC views this as a valuable benefit given California's heavy reliance on gas for electric generation and winter heating.

Fourth, Ruby will provide increased gas-on-gas competition and transportation-on-transportation competition at Malin. While Sunstone could provide some increase in competition, its impact would be diluted because it will not deliver gas directly to Malin.

Finally, the Ruby Pipeline has a significant head start. Ruby has already: (1) signed sufficient binding agreements with shippers (i.e., agreements that do not allow the shipper to cancel the contract) to permit Ruby to proceed with its project; (2) signed contracts with steel mills for all of the pipe needed for the project; (3) executed incentive-based contracts with a consortium of three construction companies; and (4) initiated the FERC "pre-filing" environmental review process in early 2008. Sunstone has not achieved any of these milestones.

Ruby LLC downplays GTN's claims that Sunstone offers better access to future Arctic gas supplies because Sunstone will ensure that GTN remains in operation. Ruby LLC argues that GTN can backhaul the gas delivered by the Ruby Pipeline to Malin to markets in Oregon and Washington. These backhauls should ensure continued use of GTN, according to Ruby LLC.

7.4.2. Discussion

We conclude the Ruby Pipeline is a better alternative than Sunstone for accessing Rocky Mountain gas supplies. Ruby provides favorable rates, terms, and conditions that have not been matched by Sunstone-GTN. PG&E's principal customer representatives in this proceeding - DRA and TURN – support the proposed Ruby Precedent Agreement. There is no opposition from PG&E's non-core gas customers, electric generators, gas producers and marketers, and nearly all other market participants. The main opposition comes from the owners and sponsors of competing pipelines (i.e., Sunstone and GTN).

Ruby is clearly superior in terms of transportation costs. PG&E will pay $0.68/Dth or less for capacity on the Ruby Pipeline, plus fuel costs. GTN has not provided in this proceeding a rate for the Sunstone-GTN route to Malin. However, there are reasonable approximations available. These are:

Rate for Sunstone-GTN Route	**Basis for Rate**
$0.746/Dth	GTN rate is assumed to be its current recourse rate of $0.20 less a 50% discount. Sunstone rate is assumed to be the same as Ruby ($0.68) less a 5% discount for the shorter mileage compared to Ruby. (Exhibits PG&E-3, p. 3-8, lines 10-19, and PG&E-6, p. 4-2.) <u>Note</u>: GTN did not offer any evidence to support this rate. We derived this rate from PG&E's testimony.
$0.835/Dth	Sunstone-GTN offer to PG&E in December 2007 in response to PG&E's Rockies Pipeline Project Framework. (Exhibits PG&E-5, pp. 1-4 to 1-6, and PG&E-6, p. 4-2.)
$0.845/Dth	Negotiated rate offered during Sunstone's open season. (Exhibit PG&E-6, pp. 4-3 and 4-4.) <u>Note</u>: This rate is for Sunstone only. It excludes GTN transportation costs.
$0.846/Dth	GTN rate is assumed to be its current recourse rate of $0.20. Sunstone rate is assumed to be the same as Ruby ($0.68) less a 5% discount for the shorter mileage compared to Ruby. (Exhibit PG&E-3, p. 3-8, lines 10-19.)

The above table shows the Ruby rate of $0.68/Dth is less than any rate likely to be charged for the Sunstone-GTN route. This comparison does not include pipeline fuel costs, which would likely be more for Sunstone-GTN than Ruby because of the longer distance of the Sunstone-GTN route.[26]

Ruby has other advantages over Sunstone. First, Ruby would interconnect with PG&E's system at Malin, while Sunstone would interconnect with GTN's system at Stanfield, several hundred miles upstream of Malin. Having two major pipelines delivering gas at Malin, GTN and Ruby, increases reliability compared to having just one pipeline, GTN, delivering gas at Malin. If there is an outage on GTN, gas supplies from the Rockies will continue to flow on Ruby. If there is an outage on Ruby, gas supplies from the WCSB will continue to flow on GTN. The added reliability provided by Ruby is a significant advantage given California's heavy reliance on gas for electric generation and winter heating.

Second, Ruby offers a distinct geographic advantage in fostering competition that will benefit California. While both Ruby and Sunstone-GTN would transport Rockies gas to Malin, which under virtually all scenarios will be priced below WCSB supplies, Ruby will provide more gas-on-gas competition at Malin. That is because all of Ruby's capacity (i.e., at least 1.3 Bcf/d) will flow to Malin, whereas only a portion of Sunstone's capacity of 1.2 Bcf/d will flow to Malin, with the remainder going to the Pacific Northwest.[27] The increased gas-

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[26] Sunstone-GTN estimated that it would charge a fuel rate equal to 1.69% of volume shipped on the Opal to Malin route (Exhibit PG&E-5, p. 106), which is higher than the currently estimated Ruby Pipeline fuel rate of 1.1%. (6 TR 617:3-7.)

[27] Exhibit Ruby-26, the 13th slide ("Sharing the Load"); and GTN Opening Brief, p. 26.

on-gas competition provided by Ruby should be more effective at reducing gas prices in California compared to Sunstone,[28] all else being equal.

We give little credence to GTN's claim that Sunstone-GTN can offer a superior deal if only PG&E would negotiate. Sunstone-GTN had at last two opportunities to beat the Ruby deal. One opportunity was in December of 2007 when PG&E asked Sunstone-GTN to respond to PG&E's "Framework" proposal. This proposal is described in more detail later in today's decision. The second opportunity was at the evidentiary hearing were GTN's witness was asked if Sunstone could offer, then and there, a better deal than Ruby LLC. On both occasions Sunstone did not avail itself of the opportunity presented.[29]

Sunstone-GTN have known the terms of the Ruby deal since February 1, 2008, when the Precedent Agreement was made public. Sunstone could have sent a written offer to PG&E at any time. All Sunstone-GTN had to do was offer the same non-rate terms and conditions as Ruby LLC and a better rate. The fact that Sunstone-GTN have not done so indicates that they are unwilling or unable to beat the Ruby deal.

We accord little weight to GTN's claim that Sunstone is superior because it will keep all of GTN's capacity in service and thereby preserve the option of

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[28] PG&E estimates that increased gas-on-gas competition at Malin will reduce prices by $.10/Dth over the initial 15-year term of the PG&E-Ruby agreement. (Exhibit PG&E-3, p. 6-11, lines 13-16.) Ruby LLC's estimate is $.08 to $.12/Dth. (Exhibit Ruby-1, p. 3, lines 12-18.) These projected savings equate to hundreds of millions of dollars over the term of the PG&E-Ruby agreement. (Exhibit PG&E-3, p. 6-11, lines 18-26.)

[29] 7 TR 731: 23 – 732: 9, and 7 TR 806: 6-14 (GTN/Ferron-Jones).

accessing Arctic gas supplies.[30] It is pure speculation whether any pipelines will be built to Arctic regions. Even if such pipelines are built, it will be many years before they enter service,[31] and the cost of transporting gas from the distant Arctic to California will be much more expensive than transporting gas from the Rocky Mountains over the Ruby Pipeline.

7.5. Capacity on PG&E's Redwood Path

7.5.1. Position of the Parties

PG&E

The Ruby Pipeline will deliver gas to PG&E at Malin, Oregon, where it will be transported into California via PG&E's Redwood Path pipeline. PG&E's Core Gas Supply Department currently has firm capacity on the Redwood Path, while PG&E's Electric Fuels Department does not.

In A.07-12-021, PG&E requests authority for Electric Fuels to acquire capacity on the Redwood Path that matches Electric Fuels' upstream arrangements on the Ruby Pipeline. The specific transportation arrangements on the Redwood Path proposed for Electric Fuels are as follows:

- 250 MDth/d of firm capacity for four months followed by 125 MDth/d for 15 years. Electric Fuels' will be able to use its Redwood Path capacity to make both firm on-system and firm off-system deliveries.
- The Redwood Path capacity commitment will commence at the same time that Electric Fuels' Ruby transportation arrangements go into effect.

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30 We address elsewhere in today's decision GTN's claim that it may retire capacity if Ruby is selected over Sunstone.

31 A pipeline from Alaska may not enter service until 2020. (PG&E Reference Item 15.)

- Electric Fuels and PG&E's California Gas Transmission (CGT) Department, which operates PG&E's gas transmission system, will each have the right to terminate the Redwood Path arrangements if the Ruby Pipeline fails to make reasonable progress towards commercial operations.

Electric Fuels' Redwood Path arrangements will be subject to the rates, terms, and conditions set forth in PG&E Tariff Schedule G-AFTOFF. The current tariffed rate for firm service on the Redwood Path is $8.9095/Dth/month.[32] The annual cost for Electric Fuels' 125 MDth/d of capacity on the Redwood Path will be $13.4 million,[33] plus a usage rate of $0.0070/Dth. However, the flexible start date and termination rights are non-standard conditions that require Commission approval. The proposed contract between Electric Fuels and CGT containing these non-standard conditions is set forth in PG&E Exhibit 6, Chapter 7, Appendix B. PG&E will offer the same arrangements to similarly situated shippers. PG&E represents that the proposed arrangements for Electric Fuels on the Redwood Path are consistent with the "Gas Accord" decisions, beginning with D.97-08-055 and most recently in D.07-09-045.

Under the current Gas Accord, PG&E has authority to offer a total of 400 MDth/d of long-term firm capacity on the Redwood Path.[34] Because long-term transportation arrangements on the Redwood Path related to the Ruby Pipeline would represent a significant percentage of the 400 MDth/d, PG&E requests that Ruby-related arrangements not count against the 400 MDth/d.

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[32] This is the "straight-fixed variable" rate.

[33] $13,364,250 = 125,000 Dth x $8.9095/Dth/month x 12 months.

[34] The 400 MDth/d does not include certain firm capacity held by PG&E's Core Gas Supply and other entities.

Other Parties

CARE supports PG&E's proposal. CARE also recommends that the actual costs of using the Redwood Path be determined in a separate proceeding.

DRA notes that Electric Fuels currently purchases most of its gas at the PG&E citygate. DRA believes Electric Fuels' acquisition of firm capacity on the Redwood Path will enhance the reliability of Electric Fuels' gas supply.

SoCalGas/SDG&E claim that PG&E's proposal to provide Electric Fuels with both firm on-system and firm off-system delivery rights on the Redwood Path violates PG&E Tariff Schedule G-AFTOFF. They argue that Tariff Schedule G-AFTOFF only allows for firm off-system delivery. On-system delivery is not labeled as "firm" under G-AFTOFF, but as "alternate."

SoCalGas/SDG&E contend that PG&E's proposal for the Electric Fuels to acquire firm, non-tariffed, on-system delivery rights on the Redwood Path, together with PG&E's request for other non-standard conditions, amounts to a modification of the Gas Accord. They further argue that that PG&E's proposal would allow Electric Fuels to obtain rights that are not available to others under the current Gas Accord. They recommend that the Commission direct PG&E to pursue this matter in the next Gas Accord proceeding where all other shippers on PG&E's Redwood Path may seek similar treatment.

7.5.2. Discussion

We will approve PG&E's proposed transportation arrangements on the Redwood Path for the Electric Fuels Department, with certain clarifications described below. PG&E provides electricity to millions of Californians, much of it through gas-fired generation, yet the Electric Fuels Department currently has no firm capacity on PG&E's intrastate gas transportation system. The firm gas transportation arrangements approved by today's decision will provide an important measure of reliability for the Electric Fuels Department's gas supply.[35]

SoCalGas/SDG&E assert that PG&E seeks to improperly use Tariff Schedule G-AFTOFF for firm on-system deliveries. We agree. G-AFTOFF is plainly intended for firm off-system deliveries. The Tariff Schedule states, in relevant part, as follows: "Applicability: This rate schedule applies to the firm transportation of natural gas on PG&E's Backbone Transmission system to the **Off-System Delivery Points**." (Emphasis added.) However, the record clearly indicates that PG&E plans to use its Redwood Path capacity primarily for on-system deliveries.[36] The proper tariff for firm on-system deliveries is G-AFT which states, in relevant part, as follows: "Applicability: This rate schedule apples to the firm transportation of natural gas on PG&E's Backbone Transmission System to **On-System Delivery Points**(s) only.[37]"

PG&E contends that G-AFTOFF can be used for firm on-system deliveries because the Tariff states that customers may designate an "alternate" on-system delivery point. We agree with SDG&E/SoCalGas that "alternate" is not the same as "firm." We interpret G-AFTOFF as providing firm off-system delivery service, and permitting alternate on-system delivery points on a non-firm basis.

For the preceding reasons, we will require PG&E's Electric Fuels Department to use Tariff Schedule G-AFT for firm on-system deliveries. If PG&E believes it is beneficial to deliver off-system from time-to-time, PG&E

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[35] The Electric Fuels Department can use its firm capacity on the Redwood Path to transport gas received from both the GTN system and the Ruby Pipeline.

[36] 4 TR 367: 20-28.

[37] We take official notice of Tariff Schedule G-AFT pursuant to Rule 13.9.

shall use the provision in G-AFT that specifies the procedures for making off-system deliveries.[38] Like all shippers, Electric Fuels may use other current and future tariffs for proper purposes. However, before switching to another tariff, PG&E shall obtain Commission approval (or pre-approval) to the extent required by the Commission's rules and regulations at that time. If no procedures are in place for obtaining such approval (or pre-approval), PG&E shall file an advice letter pursuant to GO 95-B, Rule 3.6.

The rates, terms, and conditions of service on the Redwood Path provided to Electric Fuels will be inherently fair, reasonable, and nondiscriminatory because service will be governed by a Commission-approved tariff schedule. The only non-standard conditions are (1) a start date tied to the in-service date of the Ruby Pipeline, and (2) termination rights for both Electric Fuels and CGT in the event the Ruby Pipeline does not progress in a timely manner. These non-standard conditions serve a legitimate purpose, and there is no evidence these conditions are detrimental to PG&E's ratepayers. The non-standard conditions do not discriminate against other shippers, as PG&E will offer these conditions to similarly situated shippers.

We decline to adopt SoCalGas/SDG&E's recommendation to defer consideration of Electric Fuels' Redwood Path arrangements to the next Gas Accord proceeding. Their recommendation is based on the premise that Electric Fuels' Redwood Path arrangements are inconsistent with the Gas

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[38] Tariff Schedule G-AFT states: "To arrange for the further transportation and delivery of natural gas to an Off-System Delivery Point, one of the following additional rate schedules must be utilized: G-AFTOFF, G-AAOFF, G-NFTOFF or G-NAAOFF."

Accord. We disagree. For the reasons stated previously, the authorized Redwood Path arrangements for Electric Fuels are consistent with PG&E's existing tariffs. The only non-standard terms are the flexible start date and termination rights. These non-standard terms do not modify the Gas Accord. Rather, they address a situation that is unique to the Ruby Pipeline. As such, the instant proceeding is the appropriate forum to consider the non-standard terms.

Finally, we decline to grant PG&E's request to exclude Ruby-related transportation arrangements on the Redwood Path from the 400 MDth/d that is reserved on the Redwood Path by the Gas Accord for long-term firm capacity. This matter is directly related to the Gas Accord and, as such, should be addressed in PG&E's next Gas Accord proceeding.

7.6. Recovery in Retail Rates

7.6.1. Position of the Parties

PG&E

PG&E requests authority to recover in retail rates for core gas customers and bundled electric service customers all rates and charges that PG&E pays to Ruby LLC. PG&E also seeks authority to recover in bundled electric rates all amounts paid for Electric Fuels' matching downstream capacity on the Redwood Path. PG&E states that because the proposed gas transportation arrangements are reasonable and beneficial to ratepayers, the Commission should authorize PG&E to recover all associated costs, including reservations charges and volumetric charges.

Other Parties

CARE and DRA support PG&E's recovery in retail rates of PG&E's proposed gas transportation arrangements to the extent these arrangements are used by PG&E to provide gas service to its core gas customers and bundled electric customers.

GTN opposes PG&E's request for reasons addressed elsewhere in today's decision. Ruby LLC responds that PG&E's request is consistent with the Commission's policy of pre-approving gas transportation commitments.[39]

7.6.2. Discussion

We conclude elsewhere in today's decision that PG&E's proposed gas transportation arrangements on the Ruby Pipeline and the Redwood Path are reasonable. Therefore, we will authorize PG&E to recover in retail rates the costs that it incurs to transport gas on the Ruby Pipeline and the Redwood Path, subject to the following conditions. First, the amount that PG&E is authorized to recover in retail rates for core gas customers is limited to the rates and charges that PG&E pays under the Precedent Agreement for Core Gas Supply to transport 250 MDth/d. As a general principle, PG&E is not authorized to recover from core gas customers any costs associated with capacity reserved on the Ruby Pipeline and Redwood Path for Electric Fuels. This prohibition does not apply to short-term capacity acquired by Core Gas Supply through arms-length capacity brokering transactions or to capacity diverted to serve core customers.

Second, the amount that PG&E is authorized to recover in retail rates for bundled electric service customers is limited to (1) the rates and charges that PG&E will pay under the Precedent Agreement for Electric Fuels to transport 250 MDth/d for an initial 4-month period followed by 125 MDth/d for a 15-year

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[39] D.04-09-022, pp. 24 - 25.

period, and (2) tariffed rates and charges that the Electric Fuels pays for matching downstream capacity on the Redwood Path. PG&E is not authorized to recover from bundled electric service customers any costs for capacity reserved on the Ruby Pipeline for Core Gas Supply. This prohibition does not apply to short-term capacity acquired through arms-length capacity brokering transactions.

Third, the Precedent Agreement specifies that the rate PG&E pays for Ruby capacity will the lower of (1) $0.68 Dth/d, (2) the Initial Recourse Rate less 5%, or (3) any lower rate paid by similarly situated shippers. PG&E is authorized to recover the lowest rate available under the Precedent Agreement, not to exceed $0.68 Dth/d.[40] Whenever PG&E seeks Commission approval to recover Ruby Pipeline costs, PG&E shall certify that it is paying the lowest rate available under the Precedent Agreement. This certification may take the form of (1) a sworn declaration signed by an officer of PG&E or Ruby under penalty of perjury,[41] or (2) any other form deemed acceptable by the Commission.

Fourth, the amount that PG&E may recover in retail rates for Ruby fuel surcharges and other surcharges is limited to the amounts paid to Ruby pursuant to Section 3(b)(iii) of the Precedent Agreement.[42]

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40 The maximum amount that PG&E may recover is $93,075,000 (375 MDth/d x $0.68/Dth x 365 days). This amount will be slightly higher in years with 366 days.

41 We recognize that any declaration submitted by PG&E will necessarily rely on information that PG&E receives from Ruby pursuant to the Most Favored Nation Rights in 3(v) of the Precedent Agreement.

42 Section (b)(iii) states, in relevant part, as follows: "Fuel and [Lost & Unaccounted (L&U)] Surcharges; Usage/Reservation Charges. In addition to the negotiated rate, Shipper shall pay those applicable fuel and L&U surcharges…approved by the FERC…Shipper shall also pay [the Annual Change Adjustment], and all other

Footnote continued on next page

Fifth, PG&E has the right after 10 years to reduce its Ruby capacity by 20% annually. The Commission will decide at that time whether it is appropriate for PG&E to keep or release the step-down capacity. To that end, Core Gas Supply and Electric Fuels shall each use the procedures the Commission has in place at that time to obtain Commission approval (including pre-approval) to either keep or release the step-down capacity.[43] If no procedures are in place, PG&E shall file an application at least one year prior to the first step down to obtain authority to either keep or release the step-down capacity. The application shall include a proposal for Commission review and approval of any subsequent decisions by PG&E to retain or release step-down capacity under the Precedent Agreement.

Sixth, at the end of the initial 15-year term of the Precedent Agreement, PG&E has the option of letting the Precedent Agreement expire or, alternatively, exercising one-year extensions through October 31, 2036 (for ten possible 1-year extensions) for all or part of the contracted capacity. The Commission will

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surcharges applicable to transportation on the Ruby Pipeline under the Tariff. The Anchor Shipper Negotiated Rate shall not include any commodity or usage charge, unless Transporter is required by FERC to assess such a commodity charge, in which case the commodity charge shall be set at the minimum permissible level and the reservation rate described in Section 3(b)(ii) shall be reduced to a level that cause the combined commodity and reservations rates to equal 100% of load factor rate of the bid amount."

[43] For example, under existing rules, if PG&E's Core Gas Supply decides to exercise a contract quantity step-down provision in a previously approved contract, PG&E would recommend to DRA and TURN to reduce its existing contract quantity, along with a corresponding replacement by other capacity. If PG&E receives their concurrence, PG&E would then seek the Commission's approval of the replacement contract. The Commission's approval of the replacement contract has the effect of ratifying PG&E's decision to step down capacity under the original contract. If this procedure remains in place, PG&E may use it to obtain the Commission's approval for Core Gas Supply's decision to step down its Ruby Pipeline capacity.

decide at that time whether it is appropriate to let the Precedent Agreement expire or, alternatively, to extend the Agreement for one-year terms. To that end, Core Gas Supply and Electric Fuels shall each use the procedures the Commission has in place at that time to obtain Commission approval (including pre-approval) to either extend the transportation arrangements or let them expire.[44] If no procedures are in place, PG&E shall file an application at least one year prior to the expiration of the initial 15-year term of the Precedent Agreement to obtain authority to either extend the transportation arrangements or let them expire. The application shall include a proposal for Commission review and approval of any subsequent decision(s) by PG&E to annually extend or terminate the transportation arrangements under the Precedent Agreement.

Finally, PG&E may recover costs for Electric Fuels' Redwood Path arrangements in future years only to the extent the Commission has authorized recovery of Electric Fuels' upstream arrangements on the Ruby Pipeline. Thus, if the Commission does not authorize Electric Fuels to retain step-down capacity on the Ruby Pipeline in Years 11 through 15 of the Precedent Agreement, PG&E may not recover Electric Fuels' matching step-down capacity on the Redwood Path in Years 11 - 15.[45] Similarly, if the Commission does not authorize annual one-year extensions of Electric Fuels' capacity on the Ruby Pipeline in Years 16

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[44] For example, if PG&E decides to extend the Ruby Precedent Agreement via its evergreen right, PG&E may do so under the contract approval procedures applicable at that time, including any expedited advice letter approval process for contracts that meet the criteria for such treatment.

[45] Electric Fuels' step down capacity is 25 MDth/d in Year 11, 50 MDth/d in Year 12, 75 MDth/d in Year 13, 100 MDth/d in Year 14, and 125 MDth/d in Year 15.

through 25 of Precedent Agreement, Electric Fuels may not recover its matching downstream capacity on the Redwood Path in Years 16 - 25.

The authority granted by today's decision is consistent with the Commission's policies. In D.04-09-022, the Commission expressed its preference for pre-approval of rate recovery of interstate pipeline costs, and authorized utilities to file applications to request pre-approval of costs for interstate pipeline capacity acquired to serve core gas customers.[46] The Commission also held that pre-approval of costs for long-term interstate pipeline capacity is consistent with the electric procurement requirements in Pub. Util Code § 454.5.[47] In D.07-12-052, the Commission authorized investor-owned electric utilities to file applications to obtain pre-approval for long-term gas supply contracts for gas-fired generation.[48]

Today's decision does not address PG&E's recovery of (1) any rate increase on the GTN system that might occur as a result of de-contracting, or (2) any rate increase on the Ruby Pipeline due to FERC actions that might occur under the scenarios raised by GTN that are addressed later in today's decision. These rate increases are unlikely and/or highly speculative for the reasons set forth later in today's decision. However, if such rate increases occur, and PG&E seeks to recover these increases in retail rates, the Commission will decide on the appropriate course of action at that time.

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[46] D.04-09-022, pp. 24 - 25.

[47] D.04-09-022, p. 24 and Finding of Fact 8.

[48] D.07-12-052, Conclusion of Law 41.

7.7. Core Procurement Incentive Mechanism

7.7.1. Position of the Parties

PG&E

The Core Procurement Incentive Mechanism (CPIM) is a Commission-approved mechanism designed to encourage cost-effective procurement of gas for core gas customers. The CPIM has been in effect for more than 14 years, and has been modified from time to time to reflect changing circumstances.

Under the CPIM, PG&E's gas costs are compared to a market-based benchmark equal to the weighted average of published monthly and daily natural gas price indices at the points where PG&E buys gas. PG&E gas commodity costs that fall within or below the "tolerance band" of 99% to 102% of the benchmark are considered reasonable per se and are fully recoverable in core gas rates. Customers receive 80% of any savings from costs that are below the tolerance band and pay 50% of any costs that exceed the tolerance band. Any shareholder award is capped at the lower of $25 million or 1.5% of total annual natural gas commodity costs.

Development of the CPIM commodity benchmark begins with forecasted daily demand, including storage injections. The total benchmark load is served first from storage withdrawals during the winter, then from flowing supplies. Currently, a firm block of 200 MDth/d, split evenly from the San Juan Basin and the WCSB, is the first flowing gas sequenced each day. The remaining demand is sequenced between supply basins on a least cost basis. A daily benchmark is calculated by multiplying the sequenced volumes by the associated price indices. This process is repeated for each day of the year. At the end of the annual CPIM period, the daily commodity benchmarks are added together to form the annual aggregate commodity benchmark. Finally, fixed and variable pipeline and storage costs are added to the commodity benchmark to formulate the total annual CPIM benchmark. DRA audits and evaluates the CPIM results annually.

In A.07-12-021, PG&E requests that the Commission, in approving the proposed Ruby Pipeline transportation arrangements, also authorize conforming modifications to the CPIM, to become effective on November 1, 2011, to incorporate the costs of Ruby capacity and Rocky Mountain supplies into the CPIM benchmark. These modifications pertain only to the Core Gas Supply capacity on Ruby (250 MDth/d). Adjusting the CPIM benchmark to accommodate the proposed Ruby capacity would require reducing GTN and Canadian pipeline capacity by 250 MDth/d, adding 250 MDth/d of Ruby into the sequence; and choosing the appropriate gas price index for Rocky Mountain purchases. The specific CPIM modifications are described below.

Ruby Pipeline Transportation Costs

- The transportation benchmark will include a dollar amount equal to the applicable Ruby Pipeline firm transportation reservation charges plus all commodity charges and surcharges in the Ruby Pipeline tariff for service from Opal, Wyoming, to Malin, Oregon.
- The transportation benchmark will be adjusted to reflect a reduction of 250 MDth/d of pipeline capacity from Canada and the addition of 250 MDth/d of Ruby capacity.

Supply Sequencing

- The supply sequencing order will be revised to include three Firm Blocks of 75 MDth/d each instead of two Firm Blocks of 100 MDth/d. These Firm Blocks are deemed to be the first flowing gas sequenced on any given day. The three blocks of gas supplies are from (1) the Rocky Mountain Supply Area; (2) the San Juan Basin; and (3) the AECO "C" hub in Alberta, Canada.
- Following the Firm Blocks, the remaining supplies will be sequenced on a least cost basis determined by monthly gas price

indices from the Rocky Mountain Supply Area, San Juan Basin, and AECO "C."

- All remaining commodity sequencing is unchanged.

Commodity Index

- The commodity benchmark will include the "Rocky Mountain, Northwest Pipeline Corp." monthly index as published in Platt's Inside FERC's Gas Market Report, or other appropriate industry standard index agreed to by DRA and PG&E, to reflect gas purchases from the Ruby Pipeline.

All other aspects of CPIM would remain unchanged.

DRA

DRA was the only party to respond to PG&E's proposed modifications to the CPIM. DRA supports PG&E's proposal.

7.7.2. Discussion

PG&E's CPIM has been modified periodically to conform to market and regulatory changes. The CPIM modifications requested by PG&E in this proceeding are of a similar conforming nature. There is no opposition to PG&E's proposed modifications to the CPIM. With one exception, we find that the proposed modifications are reasonable, and we hereby adopt them.

The one exception concerns PG&E's proposal to include in the transportation benchmark component of the CPIM what PG&E calls "the applicable Ruby Pipeline firm transportation reservation charges plus all commodity charges and surcharges set forth in the Ruby pipeline tariff for service from Opal, Wyoming, to Malin, Oregon." We will require the transportation benchmark component to reflect the actual firm transportation rates that PG&E pays under the Precedent Agreement, which will be $0.68/Dth or less, plus all tariffed charges for fuel and L&U gas to the extent allowed by the

Precedent Agreement. This is because the amount that PG&E is obligated to pay to Ruby LLC is fixed by the Precedent Agreement approved by today's decision. The CPIM benchmark should reflect the amount that PG&E is obligated to pay under the Precedent Agreement, which may be different than the firm transportation reservation charges (and other charges) in Ruby's tariff.

7.8. Environmental Considerations

The Ruby Pipeline will be constructed entirely outside of California. The California Environmental Quality Act (CEQA) does not apply to projects located outside of California that are subject to an environmental impact review under the National Environmental Policy Act (NEPA), with the exception that emissions or discharges that could have a significant impact on California are not exempt from CEQA.[49]

FERC will be the lead agency for purposes of conducting an environmental review of the Ruby Pipeline project under NEPA.[50] FERC will cooperate with other federal and state agencies to develop measures to avoid, minimize, or mitigate the potential environmental impacts of the Ruby Pipeline project. There is no evidence in the record of this proceeding that the Ruby Pipeline may cause significant impacts on California.

For the preceding reasons, it is evident that CEQA does not apply to the proposed Ruby Pipeline. Even so, the Commission may take environmental considerations into account in deciding whether to grant PG&E's application. In

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[49] Cal. Pub. Res. Code § 21080(b)(14) and Cal. Code Regs., Title 14, § 15277.

[50] The Natural Gas Act, 15 U.S.C. § 717n(b)(1) (2008), designates FERC as lead agency for the purposes of complying with NEPA.

order to provide the Commission with a full record, the Scoping Memo instructed the parties to address the following issues:

> How do the various alternatives (including the no-project alternative) compare in terms of greenhouse gas emissions and other environmental impacts? Environmental impacts include construction of new right-of-way on previously undisturbed land, fuel consumption, and other effects. This issue does not assume at this time that any environmental assessment by the Commission under CEQA is required in this proceeding[.] (Scoping Memo, p. 5, Issue 3.F.)

7.8.1. Position of the Parties

PG&E

PG&E provided testimony that shows Ruby will produce lower GHG emissions than other alternatives, including the no-project alternative, primarily because Ruby will use less compressor fuel to transport gas to California.

CARE

CARE believes that Ruby will have a lower impact in terms of greenhouse gas (GHG) emissions relative to Sunstone because (1) the Ruby route from Opal to Malin is shorter than the Sunstone-GTN route to Malin, thus requiring less compressor fuel to transport gas to California; (2) Ruby will use more efficient compressors; and (3) Ruby LLC's commitment to minimizing fossil fuel use.

CARE disagrees with GTN's argument that Sunstone is environmentally superior to Ruby because Sunstone can transport gas to the Pacific Northwest to displace coal-fired generation. CARE states the Ruby Pipeline can also transport gas to the Pacific Northwest via backhaul service on GTN.

GTN

GTN asserts that Sunstone will create fewer environmental impacts during construction compared to the Ruby Pipeline because Sunstone will be built alongside an existing gas pipeline and, therefore, will use existing corridors and facilities. GTN also contends that Sunstone will result in lower GHG emissions than Ruby. Sunstone is 100 miles shorter than Ruby, which means there will be fewer construction-related emissions. More significantly, Sunstone will allow utilities in the Pacific Northwest to replace coal-fired generation with natural gas. Substituting gas for coal will reduce GHG emissions far more than the small difference in GHG emissions from compressor fuel use on pipelines.

GTN disputes CARE's assertion that GTN can transport gas delivered by Ruby at Malin to the Pacific Northwest using backhaul service. Because the Ruby Pipeline would replace much of GTN's forward haul throughput, there would be no significant potential for backhaul by displacement.

Ruby LLC

To minimize construction related environmental impacts, Ruby LLC states that it has selected a route that avoids Areas of Critical Environmental Concern, Wilderness Study Areas, Instant Study Areas, and Native American lands. The chosen route also minimizes contact with wild and scenic rivers and other sensitive environmental areas.

Ruby LLC pledges to mitigate 100% of its GHG emissions. Ruby LLC will mitigate GHG emissions during construction by contracting for low-emissions equipment and using bio-diesel to the extent possible. Ruby LLC will offset the balance of GHG emissions during construction by purchasing Voluntary Emissions Reduction (VER) credits. Once operational, Ruby LLC will undertake a portfolio approach to its mitigation efforts. These include the purchase of renewable electric power for compressors where possible, internal pipe coating, re-forestation, Best (methane) Management Practices, application of the US Green Building Council Leadership in Energy and Environmental Design for buildings, and VER credit purchases.

Ruby LLC disputes GTN's claim that Sunstone offers a better means to transport gas from the Rockies to the Pacific Northwest where it can be used to displace coal-fired generation and thereby achieve large reductions in GHG emissions. This assumes that GTN cannot backhaul gas from Malin to the Pacific Northwest. Ruby LLC states that GTN's FERC-approved tariff authorizes GTN to backhaul gas from Malin to the Pacific Northwest.

7.8.2. Discussion

FERC will conduct a detailed environmental review of the proposed Ruby Pipeline under NEPA. Our environmental review in the instant proceeding was limited to identifying, on a preliminary basis, significant environmental issues that might call into question whether PG&E's application should be approved. As noted previously, CEQA does not apply to the Ruby Pipeline because it will be located entirely outside of California, will be subject to an environmental review under NEPA, and there is no evidence in this proceeding that the Ruby Pipeline will have any significant impacts on California.

We are not persuaded by GTN's claim that Sunstone is superior to Ruby in terms of environmental impacts because (1) Sunstone will be constructed in exiting corridors and will use existing facilities, and (2) the gas delivered by Sunstone can be used to offset coal-fired generation serving the Pacific Northwest, thereby producing a substantial reduction to GHG emissions. GTN's claim is pure speculation. There has been no formal environmental review completed by FERC for either the Ruby or Sunstone pipelines. Thus, there is no basis to conclude that the construction of the Ruby Pipeline will have a greater environmental impact than the construction of the Sunstone pipeline. Further, GTN failed to provide a single example of a coal-fired plant that will be replaced by gas-fired generation. In light of growing concerns about climate change, it is possible that if and when coal-fired generation is replaced, it will not be replaced with more fossil fuel generation, but with renewable resources.

Even assuming that new gas-fired generation is built to displace coal-fired generation as GTN asserts, there is no basis to conclude that the Sunstone pipeline will serve this new load. Ruby could serve some of this new load through backhaul on the GTN system, as demonstrated by GTN's FERC-approved tariff for backhaul service.[51] Additional gas from the WCSB might also be available to the Pacific Northwest to the extent that Ruby displaces WCSB gas delivered at Malin with gas from the Rocky Mountains.

In its comments on the proposed decision, GTN states that utilities and regulators in the Pacific Northwest at one time had anticipated 1,500 megawatts of new coal-fired generation by 2020, but they now anticipate new gas-fired generation instead.[52] For the reasons stated in the two previous paragraph, there is no basis to conclude that the Sunstone pipeline will serve new gas-fired generation that is built in lieu of new coal-fired generation.

For the preceding reasons, we conclude there are no environmental issues that warrant the denial of PG&E's application. We recognize that it is possible

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[51] There little evidence to support GTN's claim that backhaul is infeasible, since GTN has not analyzed the viability of backhauls from Malin if the Ruby Pipeline is built. (Exhibit PG&E-16.) On the other hand, the available evidence indicates that, with facility modifications, GTN's system could flow gas in both directions, as shown by the flow reversal modifications on GTN's affiliated North Baja Pipeline. (Exhibit Ruby-30; 7 Tr. 754-55.) The record also indicates that GTN will continue to have backhaul capability, even after PG&E steps down its capacity in 2011, due to the fact that GTN will continue to have numerous forward haul contracts, including some with PG&E and other shippers that deliver to Malin. (Exhibit Ruby-29.)

[52] GTN Opening Comments, pp. 19 – 20, citing Exhibit GTN-6, pp. 8, 10, and 11.

that FERC might identify significant environmental issues during its environmental review of the Ruby Pipeline. If that occurs, we will take appropriate actions, as necessary.

7.9. Other Issues Raised by the Parties

GTN and Reid raised several additional arguments opposing PG&E's application. For the reasons set forth below, we find their arguments do not warrant the denial of PG&E's application.

7.9.1. Selection Process

7.9.1.1. Position of the Parties

PG&E

El Paso approached PG&E in the spring of 2007 to discuss a new pipeline to bring Rocky Mountain gas directly to northern California. Negotiations commenced on June 14, 2007, and concluded with the execution of the Ruby Precedent Agreement on December 20, 2007.

PG&E states that it used a reasonable process to select Ruby over competing pipelines. Before committing to Ruby, PG&E solicited bids from the two competing Rocky Mountains pipeline projects that had approached PG&E. Spectra approached PG&E about the Bronco project in the fall of 2007, and GTN approached PG&E about the Sunstone project in December 2007. PG&E provided to them a written "Rockies Pipeline Project Framework" that identified the key terms that PG&E wanted based on what PG&E had already negotiated with Ruby LLC, but left blank the proposed rates. PG&E represents that it informed Spectra and GTN that each needed to give its best offer.

Bronco and Sunstone provided written responses to PG&E's Framework on December 17, 2007. Bronco offered to meet all of the key terms, but proposed a fixed rate of $0.80/Dth. PG&E represents that Sunstone was not willing to meet the key terms and proposed a fixed rate of $0.835/Dth. In light of these offers, PG&E concluded that neither project was competitive with the fixed rate of $0.68/Dth offered by Ruby LLC, and that Sunstone was not competitive on the other key terms.

In response to criticisms from GTN and Reid that PG&E should have used a request for offers (RFO) process, PG&E states that it knows of no instance where a prospective shipper has issued an RFO for a new interstate pipeline. PG&E even contacted several pipeline companies, including Kern River, Spectra, and El Paso, to get their views on the feasibility of an RFO prior to ruling out this option. According to PG&E, the general practice is for pipeline developers to solicit customers and not the other way around. To this end, FERC requires the developers of new interstate pipelines to hold an open season for prospective shippers to make offers for portions of the pipeline capacity.

CARE

CARE believes that PG&E acted properly in signing the Precedent Agreement without an RFO.

DRA

DRA states that D.04-09-022 specifies the procedures that gas utilities must use to obtain Commission approval for interstate pipeline capacity. That decision did not require an RFO process. DRA says the typical process for acquiring capacity on a new interstate pipeline is through direct negotiations or an open season held by the pipeline. DRA emphasizes that no party offered any examples of utilities obtaining capacity on a new pipeline through an RFO process or any evidence that an RFO process would have benefited ratepayers.

DRA opposes Reid's recommendation, described below, to henceforth require PG&E to conduct an RFO when acquiring pipeline capacity, and that

PG&E retain an Independent Evaluator to ensure the RFO is fair to all participants. DRA states the Ruby agreement is a very good deal for ratepayers, and that Reid is attempting to fix something that is not broken.

GTN

GTN contends that utilities are required to use an open, transparent, and competitive process to obtain large increments of interstate pipeline capacity. Specifically, Pub. Util. Code § 454.5 requires electric utilities to use a competitive process to acquire new electric resources and for the Commission to specify "criteria to insure that the auction process is open and adequately subscribed."

Similarly, in D.04-09-022 the Commission announced that it would "consider the alternatives available to the utilities when deciding whether…to pre-approve their new [pipeline capacity] contracts.[53]" In the same proceeding, the Commission required PG&E to use a competitive process to obtain gas storage services, and PG&E subsequently issued an RFO for storage services. The RFO was successful, and in approving the contracts the Commission observed that "RFOs have been sanctioned for use by the Commission in a variety of different contexts…to minimize…procurement costs.[54]"

GTN stresses that it is not arguing that the Commission has mandated the use of RFOs exclusively; rather, it requires utilities to use an open, competitive, and transparent process. Thus, even if PG&E is correct that an RFO would not work, PG&E could have used another competitive process in which the

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[53] D.04-09-022, p. 22.

[54] Resolution G-3398, p. 11.

participants knew they were competing, for how much, with a reasonable period to respond, and with an opportunity to negotiate.

GTN states that PG&E did not use an open and fair competitive procurement process. Rather, PG&E held secret negotiations with El Paso and had agreed on all substantive terms by mid-October 2007. To create the appearance of competition, PG&E used a "Framework" to request bids from the Sunstone and Bronco pipelines. PG&E requested the bids on Thursday, December 13, 2007, and required a response by 8 a.m., Monday, December 17.

Sunstone-GTN was able to submit a timely "first offer" on December 17. To GTN's dismay, PG&E rejected the offer 24 hours later, on December 18. El Paso signed the Precedent Agreement on December 19, and PG&E signed the Agreement on December 20. The following day, December 21, 2007, PG&E filed A.07-12-021 for authority to contract with the Ruby Pipeline. Thus, from the time GTN was provided the Framework proposal by PG&E, to the actual filing of a fully-detailed application, was one week. Any analysis of the Sunstone-GTN offer by PG&E lasted less than one day, even though hundreds of millions of ratepayers dollars were at stake.

GTN states that it had no idea that PG&E and El Paso had been negotiating for months, and that PG&E was on the verge of executing a binding commitment for the Ruby Pipeline. GTN intimates that Sunstone-GTN might have responded differently to PG&E's Framework proposal had they known the circumstances. Regardless, Sunstone-GTN were denied the same opportunity to compete as Ruby LLC. Thus, PG&E failed to conduct a fair procurement process for the benefit of its ratepayers who are being asked to assume all costs and risks.

Reid

Reid argues that PG&E's pipeline selection process was unfair to companies other than Ruby LLC, which effectively denied ratepayers the benefits of competition. PG&E did not seriously consider competitors to Ruby until December 14, 2007, when PG&E solicited proposals from two other pipeline companies. The terms of the two bids were based on what PG&E had already negotiated with Ruby LLC, giving Ruby a distinct advantage. Reid doubts that PG&E intended to seriously consider these two bids, as PG&E's senior executives had previously approved the Ruby Precedent Agreement on November 14, 2007. To ensure a fair process in the future, Reid recommends that the Commission:

1. Require PG&E to conduct an RFO when acquiring pipeline capacity for a contract term of more than three years or a quantity of more than 100 million cubic feet per day (Mcf/d).
2. Order PG&E to retain an Independent Evaluator to ensure that the above mentioned RFO is fair to all participants.

Ruby LLC

Ruby LLC states that if PG&E had held a RFO, it would have allowed Ruby's competitors an unfair chance to catch up and to learn of the essential terms of its negotiations with PG&E. Ruby LLC would no longer have been the first mover and, therefore, would have been less inclined to agree to the many terms of the Precedent Agreement that are favorable to PG&E.

TURN

TURN believes that PG&E acted properly by focusing on the Ruby Pipeline and foregoing the RFO process. TURN states the RFO model works well for electric generation where PG&E is typically seeks an amount of new generation capacity that exceeds the capacity of any single project. In that situation, the utility can contract for the full capacity of a new generator.

In contrast, PG&E represented only a fraction of the total capacity needed to support a new interstate pipeline to the Rockies. In that situation, the pipeline developer needs to secure commitments from other shippers in order for the project to succeed. In light of these circumstances, it would have made no sense for PG&E to conduct its own RFO.

TURN opines that it would have been unfair to El Paso, which had displayed considerable entrepreneurship in conceiving, marketing, and developing the Ruby project, to impose an ad hoc "competitive process" to allow slower-moving competitors to catch up. Such an approach would guarantee that no one in the future would pursue efforts similar to Ruby's here, because the reward for such initiative would be removed.

7.9.1.2. Discussion

As a general principle, utilities should use an open and competitive process to procure resources. Such a process is most likely to result in the lowest cost and the best terms and conditions for utilities. The process used by PG&E to acquire Ruby Pipeline capacity was clearly not a paragon of an open and competitive process. The question before us is whether the process used by PG&E was reasonable under the circumstances.

We conclude that the process used by PG&E was reasonable. As noted by DRA, PG&E, Ruby LLC, and TURN, the usual industry practice is for the developer of an interstate pipeline to solicit customers for its project through bilateral negotiations and an open season held under FERC rules. This is exactly what El Paso did with its Ruby project. The process used by PG&E – bilateral negotiations with El Paso – was consistent with industry practice.

We agree with PG&E, Ruby LLC, and TURN that it would have made no sense for PG&E to issue an RFO when PG&E represented only a fraction of the capacity needed to fill a new interstate pipeline. The fallacy of the RFO approach is borne out empirically. Witnesses for PG&E, Ruby LLC, and GTN all testified that they do not know of one instance of a pipeline customer issuing a successful RFO for a greenfield pipeline.[55] As Ruby's witness Thomas Price testified:

> [T[here are times when an RFO makes sense, and there are times when it does not. I have never seen an RFO used in a greenfield project where a shipper is only a proportion or a partial revenue contributor to the project. For a project of the scope of Ruby to be viable, it needs broad customer support. This is a $3 billion project. PG&E's contribution, revenue contribution, is under 20 percent of what we need to make it economically viable. (6 TR 601-602.)

We recognize that PG&E had an opportunity to negotiate with two competing pipelines, but that PG&E did not pursue this opportunity vigorously. PG&E provided these two competitors only three days to respond to PG&E's Framework proposal, and PG&E rejected their bids within 24 hours. This was a very abbreviated process compared to the months that PG&E spent negotiating with Ruby LLC. GTN and Reid argue that the fact that PG&E did not spend more time and effort on the opportunity presented by these two pipelines leaves some room for doubt about whether the Ruby deal is the best deal.

These doubts are hypothetical, however. The weight of the evidence demonstrates the Ruby Pipeline is a better alternative for accessing Rocky Mountain gas supplies than the two closest competitors – the proposed Bronco

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[55] Exhibit PG&E-6, p. 1-5, lines 7-13; 6 RT 601:16-22 (Ruby LLC /Price); 6 RT 653-654 (GTN/Carpenter); and GTN Opening Brief, p. 1. It is telling that the Sunstone Pipeline has not received an RFO from any potential shipper for new capacity to the Rocky Mountains. (Exhibit PG&E-17 and 7 TR 794: 3-9, GTN/Ferron-Jones.)

and Sunstone pipelines. PG&E used a competitive process of sorts when it invited Bronco and Sunstone to submit bids with all the same terms and conditions as the Ruby Precedent Agreement except price.[56] This provided an apples-to-apples comparison of the Ruby Pipeline to its competitors. PG&E informed the two competitors that they needed to respond to PG&E's invitation with their best offer.[57] Bronco and Sunstone were unable to match Ruby's price, and Sunstone was unwilling to match the other favorable terms of the Ruby Precedent Agreement. Although GTN claims that Sunstone can beat the Ruby deal if only PG&E would negotiate, this appears to be empty rhetoric. Sunstone had a chance to beat the Ruby deal in December 2007, but did not. Since then, Sunstone could have offered a better deal at any time, but has not. There is no evidence besides GTN's general statements that PG&E could have reached a better deal if it had used a different competitive process.

In its comments on the proposed decision, GTN states that while Sunstone could send a written offer to PG&E at any time, there is no point in doing so. PG&E has no incentive to negotiate with Sunstone, according to GTN, because PG&E faces financial penalties under the Ruby Precedent Agreement if PG&E's actions undermine or delay the Ruby Pipeline project.[58] We see no reason why

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[56] GTN's comments on the proposed decision note that the "framework proposal" which PG&E gave to the two competitors included a provision that placed PG&E at risk for pipeline construction cost overruns in excess of 10%. (GTN Opening Comments, Fn. 93, citing GTN Exhibit 9, pp. 38 - 39.) This provision should have encouraged the two competitors to bid their lowest possible prices.

[57] PG&E informed GTN and Spectra that they needed to respond with "their best offer" and that there was "no time for protracted, extended discussions." (1 TR 79:10 – 80:11 and 1 TR 83:19 - 25.)

[58] GTN Opening Comments, p. 16, citing Exhibit GTN-4, Attachment 4.

PG&E's predicament should prevent Sunstone from submitting a better offer. If anything, submitting a better offer would help GTN to achieve its primary goal in this proceeding of having the Commission deny A.07-12-021 by providing the Commission with a strong justification for doing so.

GTN argues that PG&E had a duty to give Sunstone an opportunity to meet or beat Ruby's offer. We find that PG&E did provide an opportunity for the previously stated reasons. Moreover, the proposed Ruby project was presented to PG&E in early 2007, while GTN and Williams did not form a partnership to pursue the Sunstone project until November 2007, [59] and did not approach PG&E until December 2007.[60] It would be contrary to ratepayer interests if PG&E had to wait for competitors to emerge in order to pursue opportunities that present themselves, as was the case here.

The evidence shows that PG&E obtained the best available price for capacity on the Ruby Pipeline among similarly situated shippers. The Precedent Agreement guarantees that PG&E will receive the lower of (1) $0.68/Dth, (2) the initial Recourse Rate less 5%, or (3) any lower rate offered to a similarly situated shipper. The Agreement also provides PG&E with term-extension rights and the option to reduce contract capacity over the final five years of the contract term. None of Ruby's competitors have offered equal or better terms to PG&E.

Whatever the shortcomings of the competitive process used by PG&E, we are confident that a better deal is not available from either Ruby or competitors. The two parties in this proceeding representing ratepayer interests – DRA and

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[59] 7 TR 735: 21-23.

[60] 1 TR 75: 24 – 76: 1.

TURN – agree that PG&E has struck a good bargain. The following statement by TURN provides a fair summary of the situation at hand:

> [T]he Ruby agreement has come to represent not just a "good deal" but a "great deal" for PG&E's ratepayers…PG&E will obtain firm pipeline capacity of 375 MDth/d from the rapidly expanding Rocky Mountain gas producing area to Malin…at a fixed rate of 68 cents per Dth. This attractive price has remained in place despite projected cost increases for the project of roughly 50% (from $2 billion at the time of the application to $3 billion at the time of the hearings)…[N]on-anchor tenant customers of Ruby will be paying 95 cents per Dth, almost 40% more than PG&E's anchor tenant rate under the precedent agreement (5 TR 579: 11-15). Clearly PG&E has obtained an excellent bargain for its ratepayers. (TURN Opening Brief, pp. 1 - 2. Citation in original.)

GTN cites Pub. Util. Code § 454.5 and several Commission decisions as requiring PG&E to hold an open, transparent, and competitive process for acquiring large increments of long-term interstate pipeline capacity. However, nothing cited by GTN specifies exactly what process should be used.[61] We find for the previously stated reasons that the competitive process used by PG&E was reasonable under the circumstances.

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[61] D.07-12-052 deferred to an unspecified future proceeding the topic of electric utilities' procurement of firm interstate pipeline capacity. Until then, D.07-12-052 directed electric utilities to file applications to obtain approval for proposed long-term interstate pipeline contracts. (D.07-12-052, pp. 179 - 180.) In D.04-09-022, the Commission held that gas utilities should use the procedures set forth in that Decision to obtain approval, or pre-approval, of long-term interstate pipeline capacity contracts, but D.04-09-022 did not specify the nature of the competitive process that should be used to acquire long-term capacity. (D.04-09-022, pp. 24 - 25.)

We decline to adopt Reid's proposals to require PG&E to use an RFO process to acquire interstate pipeline capacity contracts for a term longer than three years or for capacity larger than 100 Mcf/d. We disagree with the premise of Reid's proposal, namely, that the process used by PG&E was fatally flawed. Because the process used by PG&E was reasonable under the circumstances, we see no need to adopt the corrective measures proposed by Reid.

7.9.2. Let the Market Decide

7.9.2.1. Position of the Parties

GTN

GTN asserts the Commission has a longstanding policy to "let the market decide" which pipelines should be built. In Investigation (I.) 88-12-027 and D.90-02-016, the Commission promulgated the general parameters of its let-the-market-decide policy. There, the Commission refrained from trying to pick the "best" project. Instead, the Commission established criteria and committed to support all pipeline projects that met those criteria. The Commission stated:

> [W]e expect the California's LDCs [gas utilities], as potential large subscribers to firm capacity, will be in excellent position to extract favorable terms for long-term supply capacity agreements. The LDCs should take advantage of the competition among project sponsors to negotiate favorable deals, taking into consideration both costs and risks for ratepayers … We will, of course, review in appropriate proceedings the reasonable decisions of both the LDCs and electric utilities on subscriptions to additional capacity. (D.90-02-016, 35 CPUC2d 196, 249.)

GTN argues that PG&E has disregarded every element of this policy. PG&E did not let competition develop. Rather, it actively inhibited competition by keeping its needs a secret to all but one market participant. Subsequently, PG&E not only attempted to choose the winner, but lobbied on behalf of its decision with other potential customers in an effort to make it succeed.

GTN states the Commission previously addressed circumstances similar to PG&E's current application. In 1991, PG&E filed A.91-03-052 for Commission pre-approval of PG&E's proposed contract for expansion capacity on the Transwestern Pipeline (Transwestern). The Commission denied PG&E's application in D.91-07-007, stating:

> Utilities may be tempted to substitute our regulatory judgment for their own assessment of market demand for firm interstate capacity. This is precisely the scenario we stressed we would avoid by allowing market forces to determine if, when, and which interstate pipelines would be built. We will abide by our policy and let the market decide whether the subject facilities will be built. (D.91-07-007, 40 CPUC2d 667, 671, and 674.)

The Commission did not review the merits of PG&E's Transwestern contract until after FERC certificated the expansion in August 1991, the project was placed in service, and PG&E had signed final transportation contracts. The Commission ultimately found that PG&E's contract for Transwestern capacity was imprudent and denied recovery of the costs.

PG&E and Ruby LLC

PG&E and Ruby LLC state that the market has decided and picked Ruby. This is demonstrated by El Paso's announcement on June 25, 2008, that it has binding contracts for more than 1.1 Bcf/d and that El Paso will move forward with the Ruby project.

TURN

TURN observes that the Commission's let-the-market-decide policy is more than 17 years old. TURN submits that gas and electric markets have changed dramatically since the early 1990's, and that it would be unwise to rely on an outdated policy to reject PG&E's application which offers clear benefits to ratepayers today.

7.9.2.2. Discussion

We find that the PG&E-Ruby Precedent Agreement complies with the Commission's let-the-market-decide policy articulated in D.90-02-016. There, the Commission determined it would "support <u>any</u> given interstate project to build additional natural gas pipeline capacity to California based on the project's conformity with the conditions…set forth in [D.90-02-016]."[62] These conditions were as follows:

- Economic Justification: The proposed pipeline must be economically justified.
- Supply Diversity: The proposed pipeline should promote supply diversity among the major producing regions within economic reach of the State.
- Capacity Allocation: The cost of the proposed pipeline should be allocated in advance among utility core gas customers, electric customers, and others, and the capacity should be available for short-term and long-term capacity brokering.
- Bypass: To avoid bypass of utilities, the proposed pipeline should interconnect at the State border with an intrastate pipeline subject to the Commission's jurisdiction.

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[62] D.90-02-016, Conclusion of Law 4, 35 CPUC2d 196, 252-253 (emphasis added). See also dicta at p. 250 ("[W]e wish to repeat that pipeline projects which conform to our criteria will receive enthusiastic Commission support for their projects, both in California and before FERC") and Ordering Paragraph 1 at p. 253 ("[I]t is the long-term policy of the State of California to support interstate pipeline projects that conform to the conditions set forth…in [D.90-02-016].").

- Cost Allocation: Cost responsibility for the new pipeline should flow to those customer groups that benefit from the pipeline.[63]

The Commission's focus in D.90-02-016 was not on the competitive process that should be used by utilities to acquire interstate pipeline capacity as GTN seems to suggest. Rather, the fundamental purpose of the Commission's let-the-market-decide policy was to ensure that new interstate pipeline capacity built to serve California satisfied the previously indentified criteria. For reasons stated elsewhere in today's decision, we find that (1) the PG&E-Ruby Precedent Agreement satisfies all of the criteria of the let-the-market-decide policy, and (2) PG&E used a competitive process that was reasonable under the circumstances to acquire the Ruby capacity. Therefore, consistent with the Commission's determination in D.90-02-016 that it would support any proposed pipeline that satisfied the specified criteria, we conclude that PG&E's application should be approved pursuant to the Commission's let-the-market-decide policy.

GTN mistakenly contends that because the Commission held in D.91-07-007 that its let-the-market decide policy did not allow for pre-approval of PG&E's contract for capacity on the Transwestern Pipeline, the Commission should deny PG&E's request in the instant proceeding for pre-approval of the Ruby Precedent Agreement. The precedent established by D.91-07-007 has been superseded by D.04-09-022 and D.07-12-052. The latter decisions authorize

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[63] D.90-02-016 also established the following criteria that are not relevant to the Ruby Pipeline: (i) jurisdiction over any new pipeline facilities constructed within California must revert to Commission jurisdiction upon specified events; and (ii) proposed capacity should supply gas for enhanced oil recovery.

utilities to request pre-approval for interstate pipeline capacity and specify procedures for doing so.[64] PG&E has followed those procedures here.

7.9.3. Higher Costs on the GTN Pipeline

7.9.3.1. Position of the Parties

GTN

GTN is concerned that much of the gas currently shipped on GTN will migrate to the Ruby Pipeline. For example, PG&E plans to de-contract 250 MDth/d of capacity on GTN for PG&E's Core Gas Supply and to acquire the same amount of capacity on the Ruby Pipeline. GTN states that because its costs will remain roughly the same while the volume it ships will decline, GTN will have to increase the amount it charges per unit shipped in order to recover its costs. GTN estimates that it will have to raise rates by $0.214/Dth in 2012 as a result of the Ruby Pipeline. This would be a 65% increase over GTN's existing rate of $0.33/Dth.

After the Ruby Pipeline is built, PG&E will continue to hold 360 MDth/d of capacity on GTN. However, because GTN will have to raise rates by $0.214/Dth, the cost of PG&E's remaining capacity on GTN will rise by $28.1 million per year (360,000 Dth x $0.214/Dth x 365 days). These higher costs will swamp any benefits that PG&E's realizes from Ruby. Moreover, other California shippers hold capacity on GTN. GTN states the total annual cost to

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[64] D.04-09-022, pp. 24-25 ("We agree with the concept of pre-approval, which is consistent with Pub. Util. Code § 454.5, which provides for up front standards and eliminates the need for after the fact reasonableness reviews in electric procurement matters…Our preference would be for all contracts to be submitted for pre-approval either through the application, advice letter or proposed expedited advice letter processes.). See also D.04-09-022, Findings of Fact 8 and 16, and D.07-12-052, Conclusion of Law 41.

California (including PG&E) will be $46.2 million (591,998 Dth x $0.214/Dth x 365 days). When these added costs are considered, the benefits of the Ruby Pipeline vanish for California as a whole.

GTN disputes Ruby LLC's contention that backhaul service can provide offsetting revenues to reduce GTN's rate increase. GTN states that backhaul service will make only a small dent in the lost revenue caused by Ruby, and that such revenues are reflected in GTN's estimated rate increase of $0.214/Dth.

DRA

DRA recommends that the Commission not speculate about the impact of PG&E's Ruby contract on GTN's future rates because any number of things could happen between now and 2012. For example, GTN may strive to operate more efficiently in response to competition from the Ruby Pipeline, thereby reducing the alleged need for a rate increase. DRA also believes that the benefits provided by Ruby will mitigate any rate increases on GTN.

PG&E

PG&E agrees that GTN may have to raise rates due to shippers switching to the Ruby Pipeline. In fact, PG&E's analysis of the costs and benefits of its Ruby contract, which was addressed previously in today's decision, included an estimated GTN rate increase of $0.095/Dth.

PG&E argues that GTN's estimated rate increase of $0.214/Dth is based on unsupported speculation that existing shippers other than PG&E will not renew their transportation agreements when they expire. At hearing, GTN's witness conceded that not a single existing shipper other than PG&E has informed GTN that it plans to de-contract if the Ruby Pipeline moves forward.[65]

PG&E also claims that GTN's calculation of the $0.214 rate increase excludes potential revenues that GTN may receive from the de-contracted capacity. For example, GTN's witness testified that the last time GTN had uncontracted capacity, "we made a lot of money on that capacity when it was unsubscribed . . . It was great to have it unsubscribed."[66]

PG&E contends that even if GTN does increase rates by $0.214/Dth, PG&E's ratepayers would still be better off with the Ruby Pipeline compared to the status quo. Several of PG&E's forecasts show that the net direct benefits of Ruby more than offset the $0.214 rate increase on GTN. For those forecasts that show net direct costs if GTN achieves a rate increase of $0.214, PG&E represents that the net direct costs are more than offset by indirect benefits (e.g., lower gas prices from gas-on-gas competition, supply diversity, and pipeline reliability).

Reid

Reid states there is substantial evidence that a reduction in capacity held by PG&E and others on the GTN pipeline will result in additional costs for PG&E's ratepayers. Further, de-contracting costs will be not limited to PG&E; all shippers on the GTN pipeline would be subject to de-contracting costs. These shippers include the Commission-jurisdictional utilities PacifiCorp, Sierra Pacific, Nevada Power, and SoCalGas/SDG&E.

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[65] 7 TR 783: 3-14, GTN/Ferron-Jones.

[66] 7 TR 788: 19-22, GTN/Ferron-Jones.

Ruby LLC

Ruby LLC argues that GTN's threatened rate increase is overstated. First, Ruby LLC claims that GTN's calculation ignores the FERC's policy that pipelines must bear some risk for unsubscribed capacity. Second, GTN unreasonably assumed its operating costs would increase, in contrast to other pipelines that have reduced costs in response to competition. Third, GTN unreasonably assumed a large increase in its depreciation rates. Finally, Ruby LLC states that GTN did not assume any revenues from re-marketing its de-contracted capacity and underestimated its revenues from backhaul of Rockies gas received at Malin.

SoCalGas/SDG&E

SoCalGas/SDG&E have a contract for 52,508 Dth/d of capacity on GTN until October 2023. They are concerned that if GTN is successful in raising rates by $0.214/Dth beginning in 2012, SoCalGas/SDG&E's costs would increase by $4.1 million annually (52,508 Dth/d x $0.214/Dth x 365 days) or approximately $48 million over the life their contract.

7.9.3.2. Discussion

We are skeptical of GTN's claim that it will receive FERC approval to increase rates by $0.214 Dth in 2012 if the Ruby Pipeline is built, which would be an increase of 65% over GTN's existing FERC-approved rate of $0.33/Dth. PG&E and Ruby LLC have highlighted several possible flaws in GTN's calculation of the $0.214 rate increase, which raises legitimate doubts about the calculation.[67] As noted by Ruby LLC, FERC requires pipelines to share the risk

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[67] Exhibit Ruby-24, pp. 8 – 14; and Exhibit PG&E-6, Ch. 1, pp. 1-12 to 1-15. GTN and all other parties elected to waive cross examination of Ruby's witness on this matter.

for unsubscribed capacity.[68] Thus, if there is a rate increase, GTN will have to bear some of the increase itself. There are also the realities of the marketplace. If GTN raises its rates by 65%, its shippers would have a strong incentive to seek less expensive options. In light of these circumstances, it is not at all clear that GTN can impose, or that FERC will authorize, any rate increase as a result of Ruby, let alone an increase in the range of $0.214/Dth. For the preceding reasons, we conclude that GTN's alleged rate increase cannot be relied upon as a basis for decision-making the instant proceeding.[69]

7.9.4. Capacity Release Revenues

GTN argues that Sunstone will provide superior opportunities to obtain revenues from capacity release. Unlike Ruby, Sunstone will serve the Pacific Northwest, not just California. Thus, Sunstone would allow PG&E to release capacity to shippers serving either the Pacific Northwest or California markets.

On the other hand, if the Ruby Pipeline is built, GTN argues that PG&E's revenue from the release of its remaining GTN capacity will dramatically decrease, perhaps to zero, because there will be more capacity on GTN and Ruby than needed to serve the market at Malin.

There was no response to GTN's argument from other parties.

We are not persuaded by GTN's argument. GTN did not provide historical data on capacity released by PG&E or a projection of capacity that

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[68] GTN agrees that FERC requires interstate pipelines to share the risk of unsubscribed capacity. (Exhibit GTN-46, pp. 15 - 16.)

[69] Even if GTN does raise its rate by 21.4¢, PG&E provided evidence that the Ruby Pipeline would still be cost effective. (Exhibit PG&E-6, Ch. 5, pp. 5-9 to 5-11.)

PG&E might release in the future. Without this data, GTN has not demonstrated that the issue of capacity release revenues is relevant.

Furthermore, the record suggests that PG&E will release little, if any, of the capacity it holds on a pipeline to the Rocky Mountains because PG&E projects that gas from the Rockies will cost less than gas from the WCSB.[70] If this projection materializes, PG&E will need to retain its capacity on a Rockies pipeline to transport the cheaper gas, regardless of whether such gas is transported by Ruby or Sunstone.

GTN also admits that it currently has substantial unused capacity that it cannot sell at any price.[71] If GTN cannot sell its own unused capacity, then it follows that there is currently no market for GTN capacity released by PG&E. Consequently, the addition of Ruby should not change the status quo; it appears there will be little or no market for GTN capacity released by PG&E either before or after the arrival of the Ruby Pipeline.

7.9.5. Redeployment of GTN Pipeline Facilities

7.9.5.1. Position of the Parties

<u>GTN</u>

GTN expects to have 1 Bcf/d of uncontracted capacity if the Ruby Pipeline is built. This is essentially the full capacity of one of GTN's two pipeline loops that run between the borders of Canada and California. GTN states it may redeploy underutilized assets to some other use, idle the underutilized assets, or

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70 Exhibits PG&E-3, Chapters 2 and 6, and PG&E-6, Chapter 3.

71 GTN Reply Brief, p. 22.

abandon them. Any of these actions would reduce California's access to existing WCSB gas supplies and potential Arctic gas supplies.

Ruby LLC

Ruby LLC doubts that GTN will remove pipeline assets from service if the Ruby Pipeline is built. First, GTN's FERC-approved tariff authorizes GTN to backhaul gas from Malin (where Ruby will deliver gas) to Oregon and Washington. Ruby LLC believes the backhauls will undercut GTN's incentive to abandon part or all of its system.

Second, if demand in the Pacific Northwest for Rockies gas strengthens as GTN claims it will for gas-fired generation and other purposes, and the volume of WCSB gas flowing on GTN to Malin drops significantly, it may be possible to reverse flow on GTN so that gas delivered at Malin by Ruby can be transported north on GTN via forward haul. Ruby LLC notes that a GTN affiliate, the North Baja Pipeline, recently installed facilities to reverse flow on its system.

Third, removal of interstate pipelines from service requires that FERC find, under Section 7(b) of the Natural Gas Act, "that the present or future public convenience and necessity permits such abandonment."[72] GTN has claimed that its looped pipeline will be needed to transport Arctic gas to California. Ruby LLC doubts that FERC, in the face of large quantities of gas from Arctic sources that GTN predicts will become available, will find that the "public convenience and necessity permits" the abandonment of one of GTN's main pipelines.

Finally, GTN's parent company, TransCanada, has proposed to build a pipeline from Alaska to North American markets. Ruby LLC finds it implausible

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[72] 15 U.S.C. § 717f(b).

that TransCanada would spend billions of dollars to transport gas from Alaska's North Slope and simultaneously abandon the GTN pipeline facilities needed to deliver the same Alaskan gas to one of the largest markets in North America.

7.9.5.2. Discussion

We agree with Ruby LLC that it is speculative whether GTN will redeploy, idle, or abandon a portion of its pipeline facilities serving California. It is also questionable whether it would be cost effective for GTN to remove half of its pipeline capacity from service as GTN suggests it may do. For the preceding reasons, we conclude that GTN's suggestion that it might redeploy, idle, or abandon half of its capacity serving California if Ruby is built does not warrant a rejection of PG&E's application.

7.9.6. Commercial Viability

7.9.6.1. Position of the Parties

GTN

GTN asserts that the Ruby Pipeline is a financially risky project. Ruby's sole sponsor, El Paso, has a junk bond credit rating and does not intend to invest any equity into the project. Project financing will be based on the contractual commitments of shippers like PG&E. Because all the shipper contracts have fixed rates, the Ruby project is at risk for cost overruns. Since the start of 2008, Ruby's costs have increased by 50%. If additional overruns occur, which GTN views as likely, the Ruby project may fail.

An even greater risk, in GTN's view, is that Ruby's shipper contracts generally have a term of 10 to 15 years. In contrast, lenders generally assume a project service life of 30 years. Thus, Ruby's lenders are at risk for half or more of the depreciable life of the project. This means the debt financing for the Ruby project will be expensive, adding considerable financial risk to the project.

PG&E

PG&E responds that recent events demonstrate the Ruby Pipeline Project is viable. During the hearing, Ruby LLC announced that it had signed up the needed critical mass of shippers for the pipeline, that it is going forward with the project, and that it had signed steel and construction contracts for the project.

Reid

Reid states that the record shows the Ruby Pipeline is a commercially viable project. A witness for Ruby LLC testified that the pipeline has subscriptions for at least 60% of capacity, excluding PG&E. Reid says it is not necessary for a pipeline project to have a 100% subscription rate in order to succeed. This is due, in part, to the ability of pipelines to sell spare capacity on a short-term firm or interruptible basis.

Ruby LLC

Ruby LLC states its pipeline project is viable and moving forward. On June 25, 2008, Ruby's parent company, El Paso, issued a press release announcing its commitment to move forward with the pipeline project, subject to regulatory approvals. That press release reported, and Ruby's witness confirmed in his testimony, that Ruby LLC has binding shipper contracts for 1.1 Bcf/d of capacity out of a total capacity of 1.3 and 1.5 Bcf/d. These binding contracts include PG&E and at least eight other shippers. Ruby LLC expects additional binding contracts for some or all of the remaining capacity. Ruby LLC states the project will go forward with or without the additional contracts.

7.9.6.2. Discussion

We find that the weight of the evidence shows the proposed Ruby Pipeline is a commercially viable project. Ruby LLC testified that it has secured sufficient binding shipper contracts to construct the pipeline.[73] While the estimated cost of the project has risen to approximately $3 billion, or 50% higher than Ruby's original estimate, that is due to the extraordinary increase in steel prices and other construction costs since the initial estimate.[74] Ruby LLC testified that it has taken steps to contain costs by signing contracts for all the steel pipe needed for the project, thereby locking in the cost of steel.[75] Ruby LLC has also signed contracts with a consortium of construction contractors, thus ensuring contractor availability.[76] Ruby LLC would not have signed these contracts if it did not intend to proceed with the project.

The ultimate cost of the Ruby Pipeline does not affect PG&E directly because PG&E has a fixed, 15-year rate of $0.68/Dth, plus fuel costs. The reasonableness of Ruby's rising cost estimates is relevant to this proceeding only to the extent they raise doubts about Ruby's ability to attract sufficient capacity commitments beyond PG&E to go forward with the project. Because sufficient capacity commitments have materialized, there is no need for the Commission to consider the reasonableness of Ruby LLC's cost estimates.

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[73] Exhibit Ruby-20; and 6 TR 548-49, 559, and 565-66.

[74] Steel prices have risen nearly 100% since October 2007. (Exhibit Ruby-16, p. 8, lines 27-28 (citing Exhibits Ruby-18 and Ruby-19)).

[75] Exhibit Ruby-20; 6 TR 544: 13-19; and 6 TR 595: 24 – 596: 8.

[76] Exhibit Ruby-20.

GTN claims that Ruby is a risky project because of El Paso's low credit rating. However, Ruby LLC testified the project's viability rests on the shippers' credit,[77] and nowhere in the record is the shippers' credit called into question.

7.9.7. Compliance with Affiliate Transaction Rules

At the time PG&E filed its application, PG&E's parent company, PG&E Corporation, had an option to acquire a 25.5% equity interest in the Ruby Pipeline. If the option were exercised, Ruby LLC would become an affiliate of PG&E, and PG&E's transactions with Ruby would become subject to the Commission's various rules governing affiliate transactions.

In A.07-12-021, PG&E requested Commission authorization to enter into the Precedent Agreement with Ruby LLC as an approved affiliate transaction under D.06-12-029, Affiliate Rule III.B.1. On May 6, 2008, PG&E Corporation terminated its option to acquire an equity interest in the Ruby Pipeline. PG&E subsequently withdrew the request in its application for approval of the Precedent Agreement under the Commission's Affiliate Transaction Rules.

On May 29, 2008, the assigned ALJ issued a ruling which informed the parties that the following issues listed in the Scoping Memo would still be considered in this proceeding:

> **Scoping Memo Issue 1(e)**: Was the Ruby Precedent Agreement negotiated entirely at arms-length, without any undue favoritism, given that PG&E Corporation at one time had indicated an intent to acquire an ownership interest in the Ruby Pipeline project?
>
> **Scoping Memo Issue 7(e)**: As discussed in Issue 1.e above, were the terms of the Ruby Precedent Agreement negotiated

[77] 6 TR 611: 4-7.

entirely at arms-length, without any undue favoritism, given that PG&E Corporation at one time had indicated an intent to acquire an ownership interest in the Ruby Pipeline project?

7.9.7.1. Position of the Parties

PG&E

PG&E states that El Paso first raised the idea of a possible PG&E Corporation ownership interest in Ruby Pipeline on May 14, 2007. PG&E Corporation responded that it would defer consideration of an ownership interest until mid-October, 2007. By then, the major terms of the Precedent Agreement had been agreed upon.

PG&E maintains that it negotiated the Ruby Precedent Agreement at arms-length, without any undue favoritism, even though PG&E Corporation had an outstanding offer to acquire an ownership interest in the Ruby Pipeline. The Commission need only review the results of the negotiation process to see that PG&E negotiated with the sole objective of obtaining the best possible deal for its customers. PG&E submits that if it were acting on behalf of PG&E Corporation, it would not have insisted on a fixed-price of $0.68/Dth rate. The current Ruby rate for non-anchor shippers is $0.95/Dth.

CARE

CARE sees no evidence that PG&E Corporation meddled in PG&E's negotiations with Ruby LLC.

GTN

GTN states that El Paso offered PG&E Corporation an equity interest of 25.5% of the Ruby Pipeline at meeting on May 14, 2007. Despite this inherent conflict of interest, PG&E negotiated the Precedent Agreement with Ruby LLC, with the knowledge that one of its counterparties was its parent company.

GTN notes that PG&E briefed senior executives of PG&E Corporation about the status of PG&E's negotiations. PG&E also obtained approval from its risk management and risk policy committees to enter into the Precedent Agreement. Both of those committees included officers of PG&E Corporation. GTN believes these facts prove that (1) PG&E utility employees knew that its parent company stood to profit if the utility executed a Precedent Agreement with Ruby LLC, and (2) PG&E Corporation had influence over the content of the Ruby Precedent Agreement.

GTN alleges that the purpose of PG&E's agreement with Ruby was to support PG&E Corporation's prospective investment in Ruby. GTN also alleges that PG&E Corporation dropped its plan to acquire an equity interest when the projected cost of building the Ruby Pipeline increased by 50%, leaving PG&E's ratepayers stuck with an unattractive contract.

GTN further alleges that PG&E violated the Commission's rules governing affiliate transactions set forth in D.02-10-062, D.04-12-048, and D.06-12-029. These rules require (1) that utility transactions with affiliates occur through an open and transparent solicitation process, and (2) that utility energy procurement solicitations that could result in transactions with affiliates to be reviewed by an independent evaluator in order to provide a neutral, unbiased perspective on the fairness of the procurement process.

GTN claims that because PG&E Corporation was a de facto partner of Ruby LLC, PG&E was required to use the safeguards set forth in the Affiliate Rules. The subsequent withdrawal of PG&E Corporation's equity ownership interest does not remedy PG&E's violation of the Affiliate Rules because the damage was done. PG&E already had entered into the Precedent Agreements without an open and transparent solicitation process or the use of an independent evaluator. These violations cannot be undone by an after-the-fact withdrawal of the ownership interest.

Reid

Reid is skeptical of PG&E's claim that PG&E Corporation did not exercise any influence on PG&E's negotiations with Ruby. Reid suspects that PG&E Corporation monitored PG&E's negotiations with Ruby and waited for PG&E to create a profit opportunity before investing.

TURN

TURN maintains that because PG&E's proposed transportation arrangements with Ruby are highly beneficial to ratepayers, GTN's and Reid's concerns do not merit rejection of PG&E's application. While there was clearly a potential for PG&E's shareholders to benefit at ratepayer expense, TURN contends that no such harm occurred.

7.9.7.2. Discussion

The issue before us is whether PG&E negotiated the Ruby Precedent Agreement at arms-length, without any undue favoritism to PG&E Corporation, given that PG&E Corporation had an outstanding offer to acquire an option for an ownership stake in the Ruby Pipeline project. PG&E Corporation ultimately acquired the option, which it chose not to exercise. After carefully reviewing the record, we find no evidence that PG&E Corporation had any influence on PG&E's negotiations with Ruby LLC.

Although GTN alleges that PG&E Corporation exerted pressure on PG&E to negotiate a contract with Ruby LLC that benefited PG&E Corporation at the expense of ratepayers, there is not a scintilla of evidence that such pressure was ever brought to bear. To the contrary, the two PG&E officers responsible for the Ruby Precedent Agreement both testified that PG&E's negotiations with

Ruby LLC were free from any influence from PG&E Corporation and were focused strictly on what was best for the utility.[78] We agree with PG&E that if it were acting on behalf of PG&E Corporation, it would not have negotiated a fixed-price of $0.68/Dth, which is considerably lower than the current rate for non-anchor shippers of $0.95/Dth. Nor would PG&E have negotiated a most-favored-nation clause. This provision states that if Ruby offers a rate lower than $0.68/Dth to similarly situated customers, PG&E will also receive the lower rate. This ensures that PG&E will receive the best deal available on the Ruby Pipeline. PG&E would not have negotiated these favorable terms for its ratepayers if its focus was lining the pockets of its parent company as GTN alleges.

We disagree with GTN's assertion that PG&E violated the provision in D.06-12-029, Appendix A-3, Rule III.B.1, which requires utilities that procure energy resources from affiliates to obtain prior approval from the Commission.[79] In A.07-12-021, PG&E requested the prior approval required by Rule III.B.1, so there is no violation of this provision in the Rule.

On the other hand, Rule III.B does require that utility transactions with affiliate occur through an open and competitive procurement process. This is consistent with D.04-12-048, which requires utilities to (1) use an open and transparent solicitation process in electric resource procurement involving

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[78] Exhibit PG&E-6, pp. 2-1 to 2-5; and Exhibit PG&E-6, p. 1-3, lines 14-31.

[79] Even though GTN expresses concern about PG&E negotiating with Ruby LLC at a time when PG&E Corporation could acquire an equity interest in the Ruby Pipeline, GTN had no qualms about negotiating with PG&E under similar circumstances. GTN's witness testified that when Sunstone approached PG&E, "we wanted the utility to know that…we planned to ask PG&E Corporation if they'd like to participate in equity." (7 TR 795-796, GTN/Ferron-Jones.)

affiliates, and (2) have a neutral independent evaluator review solicitations that involve affiliates.[80] The solicitation process used by PG&E was not open and transparent, and PG&E did not use an independent evaluator. PG&E engaged in secret negotiations with El Paso and never disclosed publicly that it wished to acquire pipeline capacity to the Rocky Mountains.

We recognize, however, that there are mitigating circumstances which call into question whether D.06-12-029 and D.04-12-048 are applicable to PG&E's acquisition of Ruby capacity. First, the rules prescribed by D.06-12-029 and D.04-12-048 apply to affiliate transactions. Arguably, there is no affiliate transaction here because PG&E Corporation never acquired an equity interest in the Ruby Pipeline. Rather, at the time PG&E was negotiating with Ruby LLC, PG&E Corporation had an outstanding offer to acquire an option for an equity interest, and then acquired the option which it chose not to exercise.

Second, as described previously in today's decision, the acquisition of capacity on a large new interstate pipeline does not lend itself to an open and transparent process. Aside from PG&E's possible violation of D.06-12-029 and D.04-12-048, PG&E used a reasonable process under the circumstances to acquire capacity on the Ruby Pipeline.

Finally, there is no evidence that PG&E Corporation attempted to influence the negotiations between PG&E and Ruby, or that PG&E strived for

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[80] D.04-12-048, Finding of Fact 84 and Conclusion of Law 29.

anything but the best deal for its ratepayers.[81] To the contrary, PG&E reached what TURN and DRA consider to be a "great deal" for ratepayers.[82]

Based on the totality of circumstances, we decline to spend further time, effort, and resources on investigating whether PG&E violated the Commission's affiliate transaction rules.

7.9.8. Revisions to Affiliate Transaction Rules

7.9.8.1. Position of the Parties

Reid

On May 14, 2007, a meeting was held between El Paso and employees of both PG&E and PG&E's parent company, PG&E Corporation, in which El Paso first raised the idea of a possible PG&E Corporation ownership stake in the Ruby Pipeline. PG&E Corporation responded that it would not consider an ownership interest until October of 2007. On December 20, 2007, PG&E Corporation signed a letter of intent with El Paso to acquire a 25.5% interest in the Ruby Pipeline. On May 6, 2008, PG&E informed the ALJ and the interested parties that PG&E Corporation had decided not to acquire an ownership interest.

Reid is concerned that PG&E Corporation had an outstanding offer to obtain an option for an ownership interest in Ruby LLC at the same time PG&E was negotiating with Ruby LLC and evaluating alternatives to the Ruby Pipeline. Reid notes that two risk management committees reviewed PG&E's negotiations with Ruby: the Utility Risk Management Committee (URMC) and the PG&E Corporation Risk Policy Committee (RPC). The two committees have

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81 Exhibit PG&E-6, pp. 2-1 to 2-5; and Exhibit PG&E-6, p. 1-3, lines 14-31.

82 TURN Opening Brief, p. 1.

overlapping membership that includes high-level officers from both PG&E and PG&E Corporation.

The URMC and the RPC approved the Ruby Precedent Agreement on November 14, 2007. Reid argues that it was a clear conflict of interest for PG&E Corporation to review and approve PG&E's agreement with Ruby at a time when PG&E Corporation could obtain an option for an ownership interest in the Ruby Pipeline. To prevent future conflicts of interest, Reid recommends that the Commission take the following actions:

1. Prohibit PG&E from employing any individual who is also employed by PG&E Corporation
2. Prohibit PG&E from having a member of its URMC who is also a member of the RPC.
3. Prohibit PG&E from having a member of its URMC who is employed by PG&E Corporation.

TURN

TURN states there was clearly a potential for PG&E's shareholders to benefit at ratepayer expense, even though no such harm occurred. For example, if PG&E had actually acquired an ownership interest in the Ruby Pipeline, PG&E Corporation could have used its position as PG&E's parent company to drive a better deal for Ruby's owners at the expense of PG&E's ratepayers.

Even though PG&E Corporation did not invest in Ruby, TURN sees a continuing potential for harmful conflicts of interest under PG&E's corporate structure. Accordingly, TURN urges the Commission to consider, in a subsequent phase of this proceeding, changes to the Commission's affiliate rules, such as those proposed by Reid, to ensure that ratepayers are not adversely impacted in the future.

PG&E

PG&E opposes Reid's and TURN's recommendations on the grounds that they address non-existent problems. The PG&E officers responsible for negotiating the Precedent Agreement testified that the negotiations were free from any influence from PG&E Corporation and were focused strictly on what was best for the utility. PG&E adds that it followed the Commission's rules for affiliate transactions and that no shared employees were part of the negotiations.

Ruby LLC

Ruby LLC opposes TURN's proposal to open a new phase of this proceeding to consider changes to the Commission's affiliate rules. Ruby does not believe this proceeding is an appropriate forum to consider changes to the Commission's rules. If the Commission is inclined to reconsider its affiliate rules, Ruby LLC recommends that a rulemaking proceeding be opened.

7.9.8.2. Discussion

We share Reid and TURN's concern about the conflict of interest that arose when PG&E's Corporation was offered the option to acquire an ownership stake in the Ruby Pipeline while PG&E was negotiating with Ruby LLC. At the time, it would have been in the interest of PG&E Corporation's shareholders for Ruby to obtain the highest price for service provided to PG&E, while it would have been in the interest of PG&E's ratepayers to obtain the lowest possible price.

However, we decline to adopt the remedies proposed by Reid and TURN. There is no evidence that PG&E Corporation attempted to influence the negotiations between PG&E and Ruby LLC, or that PG&E strived for anything but the best possible deal for its ratepayers.[83] To the contrary, PG&E reached what TURN calls a "great deal" for ratepayers.[84]

Although there was a conflict of interest, our rules governing affiliate transactions are designed to prevent such conflicts from harming either ratepayers or competitors. Our rules explicitly prohibit a holding company from attempting to influence a utility in way that encourages the utility to provide an affiliate with preferential treatment, an unfair competitive advantage, or non-public information.[85] If PG&E's parent company had violated our rules by attempting to influence PG&E to favor the Ruby Pipeline over other competitors, we would not hesitate to deny A.07-12-021, levy monetary penalties, and impose other sanctions.

Our affiliate-transaction rules also require utilities to obtain services from affiliates through an open and competitive bidding process.[86] In addition, electric utilities must use independent evaluators to review and assess solicitations for energy resources that could result in affiliate transactions.[87] If PG&E Corporation had exercised its option, these rules would have been triggered retroactive to the date that PG&E Corporation acquired its option. In that case, the Commission would have little choice but to deny PG&E's proposed gas transportation arrangements with the Ruby Pipeline because these rules

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[83] Exhibit PG&E-6, pp. 2-1 to 2-5; and Exhibit PG&E-6, p. 1-3, lines 14-31.

[84] TURN Opening Brief, p. 1.

[85] D.06-12-026, Appendix A-3, Rule II.C.

[86] D.06-12-029, Appendix A.3, Rule III.B.

[87] D.04 12-048, pp. 128 - 129.

would have been violated. The end result is that any potential harm to ratepayers or competitors from the conflict of interest would be avoided.

We are confident that our existing rules for affiliate transactions adequately protect ratepayers and competitors, which makes it unnecessary to adopt Reid's proposed remedies. In addition, Reid's proposal to prohibit PG&E from employing any person who is also employed by PG&E Corporation casts too wide a net because it would include clerical employees and others who could not possibly influence affiliate transactions.[88]

Similarly, Reid's proposals to exclude from PG&E's URMC anybody who is employed by PG&E Corporation or who is a member of PG&E Corporations RPC is already addressed by D.06-12-029, Affiliate Rules V.E and V.G, which strike a careful balance between the need to keep utilities and affiliate separate with the need for senior officer oversight and corporate governance. These Rules recognize that, absent a showing of specific conflict, holding company officials must have access to all material information about their subsidiaries' businesses in order for them to certify the company's financial statements and internal controls in compliance with state and federal law, including the Sarbanes-Oxley Act of 2002.[89] At the same time, the Affiliate Rules V.E and V.G prohibit the use of the URMC and RPC as a means to transfer confidential information from the utility to an affiliate, to create opportunities for preferential treatment or unfair competitive advantage, or to provide opportunities for cross-subsidization of

[88] The Commission's affiliate-transaction rules already prohibit a utility and its affiliates from jointly employing the same personnel except in narrowly specified circumstances. (D.06-12-013, Appendix A-3, Rule V.G.)

[89] D.06-12-029, p. 20.

affiliates. The composition of the URMC and RPC is consistent with the needs of corporate governance and Commission requirements.

We also decline to adopt TURN's proposal to open another phase of this proceeding to consider changes to the affiliate rules. We conclude that our existing affiliate transaction rules adequately address the issues raised by Reid and TURN, thereby making TURN's recommendation unnecessary.

7.9.9. Separation of Procurement Functions

7.9.9.1. Position of the Parties

GTN

GTN argues that Commission policy requires PG&E's Core Gas Supply and Electric Fuels Departments to separately procure interstate pipeline capacity. GTN alleges that PG&E violated this policy by negotiating a package deal for both Core Gas Supply and Electric Fuels. GTN further alleges that information was shared improperly between Core Gas Supply and Electric Fuels. GTN states the policy violated by PG&E was established by (1) D.91-11-025, Appendix B, Rule VI.G, and (2) D.06-12-029, Appendix A-1, Rule V.D.

PG&E

PG&E responds that it maintained the required separation between Core Gas Supply and Electric Fuels, and that it followed the same process it used in the fall of 2007 when it negotiated new transportation commitments on the GTN pipeline for Core Gas Supply and Electric Fuels. These negotiations resulted in a settlement agreement that was approved by FERC. PG&E notes that the GTN Settlement, what was supported by the Commission and GTN, includes separate capacity commitments on the GTN pipeline for Core Gas Supply and Electric Fuels. These were similar to the Ruby capacity commitments in the instant proceeding that GTN now complains about.

Reid

Reid states that PG&E's Electric Fuels Department independently derived its need for Ruby transportation capacity. Reid adds that he served on PG&E's Procurement Review Group from 2002 until March, 2008, and is familiar with the natural gas capacity needs of PG&E's Electric Fuels Department.

7.9.9.2. Discussion

GTN argues that D.91-11-025 and D.06-12-029 prohibit PG&E's Core Gas Supply and Electric Fuels Departments from jointly negotiating for capacity on the Ruby Pipeline. We find that neither decision supports GTN's contention.

GTN cites D.91-11-025, Appendix B, Rule VI.G., which states as follows:

> PG&E's electric department shall purchase gas supplies separately from PG&E's gas department except that PG&E's gas department may sell gas, under contracts existing as of September 1, 1991, to PG&E's electric department if such sales are required to avoid contract penalties.

The above provision in D.91-11-025 prohibits Core Gas Supply from selling gas to Electric Fuels except in limited circumstances. That prohibition is not relevant to the situation at hand because the two Departments are not doing business with one another. As PG&E witness Roy Kuga testified:

> Each [Department] will have its own, separate firm transportation agreement with Ruby. These agreements will be administered independently by each organization. All scheduling, capacity release, invoicing and settlement will be handled separately. (Exhibit PG&E-6, p. 1-11.)

GTN also cites D.06-12-029, Appendix A-1, Rule V.D., which states:

> **Joint Purchases**: To the extent not precluded by any other Rule, the utilities and their affiliates may make joint purchases of good and services, but not those associated with the traditional utility merchant function. For purpose of these

> Rules, to the extent that a utility is engaged in the marketing of the commodity of electricity or natural gas to customers, as opposed to the marketing of transmission and distribution services, it is engaging in merchant functions. Examples of permissible joint purchases include joint purchases of office supplies and telephone services. Examples of joint purchases not permitted include gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, systems operations, and marketing. The utility must insure that all joint purchases are priced, reported, and conducted in a manner that permits clear identification of the utility and affiliate portions of such purchases, and in accordance with applicable Commission allocation and reporting rules.

The above provision in D.06-12-029 applies to joint purchases by utilities and affiliated companies. PG&E's Core Gas Supply and Electric Fuels Departments are not affiliated companies; they are both part of the same utility. Thus, the above provision in D.06-12-029 does not prohibit Core Gas Supply and Electric Fuels from jointly negotiating for capacity on the Ruby Pipeline.

Other factors reinforce our conclusion that PG&E's negotiations did not violate any Commission decision or policy. PG&E argues persuasively that it maintained a strict separation between Core Gas Supply and Electric Fuels during negotiations with Ruby LLC. The two Departments are in separate buildings and have separate personnel. Each Department independently determined that it needed Ruby capacity to diversify its portfolio - by pipeline and supply basin - for reliability, price stability, and lower costs. Also, each Department separately derived the amount of Ruby capacity that it needed.[90]

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[90] Exhibit PG&E-6, pp. 1-10 and 1-11.

During the course of negotiations, Core Gas Supply negotiated with Ruby LLC exclusively, without the presence of Electric Fuels employees, on the proposed terms and conditions that are unique to Core Gas Supply, such as contract quantities. Likewise, Electric Fuels conducted its own independent negotiations with Ruby LLC, without the presence of Core Gas Supply employees, on the proposed terms and conditions unique to Electric Fuels. Negotiations on provisions common to both Core Gas Supply and Electric Fuels, such as the anchor shipper rate, receipt and delivery points, and compressor fuel rate, were conducted with employees from both Departments under the direction of Roy Kuga, the PG&E officer in charge of both Departments.[91]

PG&E used a similar process in 2007 to negotiate new transportation agreements on the GTN pipeline for Core Gas Supply and Electric Fuels.[92] The result was a settlement agreement that included separate capacity commitments for Core Gas Supply and the Electric Fuels. The parties to the settlement included PG&E, this Commission, and GTN. FERC approved the settlement in 2008.[93] GTN did not express any concerns during the settlement negotiations about the joint involvement of PG&E's Core Gas Supply and Electric Fuels Departments.[94] It is disingenuous for GTN to now argue that it was improper for the Core Gas Supply and Electric Fuels Departments to negotiate simultaneously

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91 Exhibit PG&E-6, pp. 1-8 and 1-9; 3 TR 320: 18 – 321: 5 (PG&E/Clare); and 4 TR 370: 20 – 28 (PG&E/Kowalewski).

92 Exhibit PG&E-6, p. 1-11; and 1 TR 105: 7-14.

93 122 FERC 61,102 at ¶ 13 (January 7, 2008).

94 Exhibit PG&E-6, p. 1-12.

with Ruby LLC when GTN itself negotiated with these two Departments simultaneously in 2007.

We are not persuaded by GTN's argument that Core Gas Supply and Electric Fuels shared information improperly during negotiations with Ruby. One instance cited by GTN concerned PG&E's designating a Core Gas Supply employee as Ruby's point of contact. This employee was responsible for exchanging drafts of the Precedent Agreement with Ruby LLC that contained proposed terms for both Core Gas Supply and Electric Fuels. GTN believes this proves that Core Gas Supply was negotiating on behalf of Electric Fuels. We disagree. As explained previously, the record shows that Core Gas Supply and Electric Fuels negotiated separately.[95] There is no evidence that this particular Core Gas Supply employee negotiated for Electric Fuels.[96] As a matter of convenience, PG&E responded to Ruby LLC during the negotiations with integrated comments from both Core Gas Supply and Electric Fuels. No Commission policy was violated by the fact that PG&E designated a Core Gas Supply employee to serve as a single point of contact for Ruby LLC.

GTN also alleges that an Electric Fuels employee sent an e-mail to Core Gas Supply[97] that contained "Electric Fuels' internal market-sensitive long-term forward price curves.[98]" However, PG&E represents that the forward-price curves were available to both Departments already. According to PG&E, it is the responsibility of another PG&E organization – the Market Risk Management

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[95] Exhibit PG&E-6, pp. 1-8 through 1-11.

[96] 3 TR 313 - 314, and 320:18 – 321:5 (PG&E/Clare).

[97] The e-mail is contained in Exhibit GTN-23.

[98] GTN Opening Brief, p. 40.

Department - to forecast the price of natural gas and to share this information company wide. It was information prepared by this Department that was contained in the e-mail.[99] Based on PG&E's representation, we find that GTN has not substantiated its allegation that the e-mail in question shows there was an improper sharing of information between Electric Fuels and Core Gas Supply.

7.9.10. FERC Policies

7.9.10.1. Position of the Parties

GTN

The proposed Ruby Pipeline is subject to FERC's jurisdiction. GTN asserts that FERC's approval of the construction and operation of the Ruby Pipeline will face serious policy hurdles, including the alleged violation of FERC rules barring affiliated electric and gas divisions of a utility from procuring natural gas transportation services jointly (FERC Rule 2004), and unduly discriminatory terms favoring PG&E relative to other shippers on price and step-down rights. GTN claims that if FERC modifies the Precedent Agreement, PG&E's costs will rise and it will lose other benefits obtained by contract.

Ruby LLC

Ruby LLC responds that FERC Rule 2004 governs the conduct of affiliates of "transmission providers," and that PG&E's Core Gas Supply and Electric Fuels Departments are not "transmission providers" under the rule.[100] Ruby LLC further responds that FERC has held that discounted rates and other favorable terms for anchor shippers such as PG&E are not unduly

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[99] PG&E Reply Brief, pp. 8 - 9.

[100] 18 C.F.R. §§ 358.2 and 358.3.

discriminatory. However, if FERC does find that such arrangements are unduly discriminatory, Ruby LLC believes the likely remedy will be for Ruby to make such terms available on a non-discriminatory basis to other shippers, which would have no impact on the Precedent Agreement.

7.9.10.2. Discussion

We cannot conclude with certainty whether FERC will find any violations of its rules. However, we find GTN has not demonstrated any violations of FERC rules. We agree with Ruby LLC that FERC Rule 2004 governs the activities of affiliates of a transmission provider, and is not applicable to transmission customers such as PG&E's Core Gas Supply and Electric Fuels Departments that are not affiliates of the transmission provider. Moreover, as noted elsewhere in today's decision, FERC previously approved a settlement agreement that allowed PG&E's Core Gas Supply and Electric Fuels Departments to each contract for capacity on the GTN pipeline.[101] This FERC-approved settlement undermines GTN's claim that FERC will find that it was improper for PG&E's Core Gas Supply and Electric Fuels Departments to contract for Ruby capacity.

We also conclude for the reasons cited by Ruby LLC that FERC policies do not automatically treat as unduly discriminatory any favorable treatment given to anchor shippers such as PG&E.[102] Thus, we decline to deny PG&E's application based on GTN's argument that FERC might find the Precedent Agreement unduly discriminatory.[103]

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[101] 122 FERC 61,102 at ¶ 13 (January 7, 2008).

[102] Ruby LLC Opening Brief, pp. 21 – 26, and Ruby LLC Reply Brief p. 12.

[103] The fact that GTN argues the Precedent Agreement is unduly preferential to PG&E is an indirect admission by GTN that the Agreement is favorable to PG&E.

7.9.11. Due Process

7.9.11.1. Position of the Parties

GTN

GTN alleges the assigned ALJ issued several rulings that resulted in the denial of GTN's due process. The first ruling concerned PG&E's withholding of certain confidential material from GTN's primary litigation counsel Manatt, Phelps & Phillips (Manatt). GTN agreed to sign a non-disclosure agreement (NDA), but PG&E insisted that Manatt could not review the confidential material because Manatt was a "market participant." GTN filed a motion to compel PG&E to provide the material to Manatt, but the motion was denied by the ALJ. Although the ALJ later reversed his ruling, GTN claims the ALJ did not do so until after the opportunity to prepare and submit direct testimony had passed.

Second, GTN served several data requests on Ruby LLC that sought cost information about the Ruby Pipeline and the results of Ruby's open season. Ruby LLC declined to provide much of the requested information, claiming that it was confidential, despite GTN having publicly disclosed similar information for the Sunstone pipeline, and despite GTN's willingness to sign an NDA.

GTN filed several motions to compel Ruby LLC to provide the requested information. The motions were denied in large part, primarily because the ALJ deemed the information to be highly confidential, and because the ALJ found that the likelihood the requested information would lead to the discovery of admissible evidence was outweighed by the burden, expense, and intrusiveness of GTN's request. Then, on the eve of hearings, Ruby LLC issued a press release that made public the same information it had previously insisted was confidential. GTN contends that Ruby LLC's public release of the information shows it was never confidential and that the ALJ's rulings were erroneous.

GTN next filed a motion to compel Ruby LLC to provide the requested information to GTN's "reviewing representatives." The ALJ denied GTN's motion. Because the ALJ had previously required PG&E to provide confidential information to GTN's reviewing representatives, GTN contends it was legal error when the ALJ did not require Ruby LLC to provide confidential information to GTN's reviewing representatives so that GTN could prepare for litigation.

Third, on June 25, 2008, after the evidentiary hearings had begun, Ruby LLC issued a press release that announced the estimated cost of the Ruby Pipeline had increased to $3 billion, that the design capacity had increased to range of 1.3 Bcf/d to 1.5 Bcf/d, and that no equity partners, other than El Paso itself, were participating in the Ruby Project. The press release was discussed at the evidentiary hearing on June 25, at which time the ALJ ordered Ruby LLC to update its testimony by noon on Friday, June 27, 2008, to reflect the information in the press release. The ALJ also directed GTN to file reply testimony by noon on Tuesday, July 1, 2008.

GTN filed a motion to suspend the proceedings for one month so GTN could amend its case in response to Ruby's new testimony. The ALJ denied GTN's motion. The ALJ also determined that the procedural schedule would not be altered and that GTN would be required to cross-examine Ruby's witnesses on Monday, June 30, 2008. Consequently, GTN had to both write rebuttal testimony and prepare for cross-examination on new evidence in less than two business days, all the while continuing its cross examination of PG&E's witnesses. GTN believes this shows it was denied discovery on Ruby's replacement testimony and an adequate opportunity to prepare its own testimony to respond to Ruby's replacement testimony.

Finally, GTN alleges that it was deprived of the opportunity to complete its cross-examination of Ruby LLC's main witness and the sponsor of Ruby's replacement testimony. The ALJ terminated GTN's cross-examination of Ruby's witness on the grounds that GTN's cross-examination exceeded its estimated time. That estimate had been provided prior to Ruby's press release and Ruby's filing of replacement testimony.

GTN argues that California Courts have held the Commission cannot allow one party to submit new testimony during a hearing without providing the other parties an opportunity to respond to the new testimony. The Courts view three business days as insufficient time to allow an opposing party to respond to new issues raised by another party. Here, only two days were provided.[104]

GTN also argues the ALJ rulings allowing Ruby LLC to submit testimony after the start of the evidentiary hearings failed to comply with the due dates for submitting testimony set forth in the Scoping Memo and violated the Commission's Rules of Practice and Procedures (Rules). Rules 13.8(a) and 13.8(b) require that prepared testimony be served to all the parties prior to start of the hearing; that such prepared testimony constitute the entirety of the witnesses' direct testimony; and that any additional testimony that alters the substance of the prior submitted prepared testimony will not be accepted unless

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[104] Southern California Edison Co. v. Public Utilities Commission (2006) 140 Cal. App. 4th 1085, 1106.

the sponsoring party demonstrates good cause as to why the additional testimony could not have been served prior to the hearing.

PG&E

PG&E responds that GTN's claims of due process violations are misplaced. The ALJ rejected many of GTN's motions to compel as overly broad, and at one point the ALJ had to admonish GTN on its discovery tactics.

PG&E says GTN was not deprived of the opportunity to cross-examine Ruby LLC's main witness. Rather, GTN failed to complete its cross-examination in the time allotted by the Joint Hearing Management Plan – to which GTN had previously agreed. The ALJ informed GTN's counsel that "you are past your 1-hour allotted time, so I'd appreciate any efficiencies you can do to wrap this up."[105] Several minutes later the ALJ issued a second warning to GTN that "you have five minutes to wrap it up."[106] PG&E states the ALJ's actions were warranted because at the time the cross-examination was being conducted, the time estimates of cross examination for the remaining witnesses indicated the hearing would not finish within the timeframe set by the Scoping Memo.

Ruby LLC

Ruby LLC responds there is no merit to GTN's assertion that Ruby LLC's disclosure of updated cost information in a press release on June 25, 2008, demonstrates the updated cost information was never confidential, and that prior ALJ rulings finding the information was confidential were in error. Ruby LLC claims the updated cost information was confidential prior to June 25.

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[105] 5 TR 580: 10-12.

[106] 5 TR 580: 2-3.

Ruby's parent company, El Paso, had only signed contracts for steel pipe and construction services the day before, on June 24, and Ruby LLC had signed the last of the shipper contracts needed for the project to go forward on June 20. Following these developments, El Paso issued the press release in conjunction with a Securities and Exchange Commission (SEC) Form 8K filing on June 25, which El Paso was required to do because of the materiality of the steel purchase and contractor commitments. El Paso included the updated $3 billion cost estimate in the press release because SEC regulations require El Paso to keep the investment community informed of material transactions.

Ruby LLC agrees with the ALJ's ruling that denied GTN's motion to suspend the hearing following the submittal of Ruby's updated testimony on June 27, 2008, that reflected the contents of the press release issued on June 25. GTN did not move for a delay until the evening of June 29th, more than four days after the press release.[107] The ostensible reason for GTN's motion was the need for more time to review Ruby LLC's updated testimony submitted at noon on June 27th.[108] Ruby LLC states the revisions simply reiterated information in the press release, with no major new facts. In Ruby LLC's opinion, the real purpose of GTN's motion was to drag out the proceeding in order to undermine the competing Ruby Pipeline.

Ruby LLC notes that the ALJ provided GTN with extra time to cross-examine Ruby LLC's main witness, Thomas Price, just not as much time as GTN would have liked. Regardless, Ruby LLC states that GTN was not prejudiced by

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[107] 5 TR 461: 11-13.

[108] 5 TR 461: 17-21.

the ALJ's actions because GTN never stated what additional information would have been obtained had the ALJ given GTN more time.

7.9.11.2. Discussion

We find no merit to GTN's claim that it was denied due process by several ALJ rulings. First, GTN states the ALJ rulings prevented its primary counsel, Manatt, from receiving certain confidential material from PG&E until after the opportunity to file direct testimony had passed. However, GTN's other outside counsel, Hogan & Hartson LLP, had access to the confidential material, as did the relevant GTN witness, well before GTN filed its direct testimony. Thus, GTN was not denied due process on this matter.

Second, GTN alleges it was deprived of due process by several ALJ rulings that denied GTN's motions to compel Ruby LLC to provide information on (1) Ruby LLC's updated estimate of construction costs for the proposed Ruby Pipeline, and (2) the status of Ruby LLC's contracts with potential shippers. These rulings properly took into account the fact that Ruby LLC is competing with GTN's parent company, TransCanada, to build the next large pipeline transporting gas out of the Rocky Mountains. TransCanada is a sponsor of the proposed Sunstone and Pathfinder pipelines. If built, Sunstone will transport gas West and Pathfinder will transport gas East. While cost information for Sunstone has been disclosed publicly, similar information for Pathfinder remains confidential. In light of these circumstances, the ALJ correctly ruled that it would be inappropriate to require Ruby LLC to provide competitively sensitive information to GTN because:

> Both TransCanada and [Ruby LLC] are…competing for the same customers…whose commitments to a project will likely determine which one is built. In this highly competitive environment and sensitive stage of negotiations, it would be a

> significant advantage for GTN and its parent company to know Ruby's current costs while maintaining the secrecy of Pathfinder's rates and costs. With such information, TransCanada will be able to compete effectively knowing Ruby's "bottom line," while Ruby will be without the benefit of the same kind of information.[109]

Although GTN argues that it needed access to competitively sensitive information about Ruby costs and shipper contracts in order to prepare its case, the ALJ correctly held that such information was of marginal relevance to this proceeding given that PG&E has a 15-year, fixed-price contract with Ruby LLC that is unaffected by changes to Ruby's costs.[110] We affirm the ALJ's ruling that the potential for significant competitive harm weighed against disclosure of competitively sensitive information of marginal relevance to this proceeding.

We are not persuaded by GTN's argument that the ALJ should have required Ruby LLC to provide confidential information to GTN's "reviewing representatives" because an earlier ALJ ruling required PG&E to provide confidential information to GTN's reviewing representatives. GTN filed three separate motions to compel Ruby LLC to provide confidential information on Ruby's costs and shipper contracts, all of which were properly denied by the ALJ. GTN waited until its third motion to request that Ruby LLC be required to provide the confidential information to GTN's reviewing representatives. The ALJ correctly denied the third motion for the following reasons:

> This is Ruby's third motion to obtain confidential and commercially sensitive cost information on the Ruby Pipeline

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[109] ALJ Ruling Denying Supplemental Motion to Compel dated May 16, 2008, pp. 4 - 5.

[110] Id., pp. 3 and 6.

> and its second motion to obtain responses to GTN Data Request Nos. 4-1 and 4-2(b). The only new argument raised in GTN's current motion is that Ruby should be compelled to provide the sought-after information to GTN's reviewing representatives who meet the criteria set forth in D.06-12-030, consistent with an earlier ruling issued by the assigned Administrative Law Judge (ALJ) on April 22, 2008, that required Pacific Gas and Electric Company to provide confidential and commercially sensitive information to GTN's reviewing representatives.
>
> GTN's motion amounts to second and third bites at the apple. There is no reason why GTN could not have made its "reviewing representative argument" in earlier motions, since GTN is represented by obviously competent attorneys from a large and prestigious law firm. The fact that GTN chooses to raise this argument now, after failing to do so in three previous motions, suggests the possibility that GTN may be using tactics that are troublingly similar to vexatious litigation and abuse of process. At the very least, GTN's repeated motions are an unproductive use of scarce Commission resources.
>
> To prevent any further expenditure of Commission time, effort, and resources on matters that were decided in previous ALJ rulings, and to encourage GTN to henceforth raise its arguments in a timely fashion, GTN's motion is summarily denied. (ALJ Ruling Denying GTN's Motion to Compel, dated June 16, 2008, pp. 2 – 3.)

There is no merit to GTN's argument that public disclosure of Ruby's costs and the status of its shipper contracts in a press release issued by El Paso on June 25, 2008, demonstrates the information was never confidential and that the ALJ's rulings were erroneous. The issuance of the El Paso press release on June 25 (Exhibit Ruby-20) followed closely on the heels of Ruby LLC having signed contracts on June 24 for steel pipe and construction services, and having signed on June 20 the last of the binding shipper contracts needed for the Ruby

Pipeline project to go forward.[111] These signed contracts marked the conclusion of Ruby LLC's negotiations with suppliers and customers, and ended the need for Ruby LLC to keep confidential its estimated construction costs and the status of shipper contracts. The fact that such information was confidential prior to the signed contracts is demonstrated conclusively by GTN's parent company, TransCanada, keeping similar information confidential for the competing Pathfinder pipeline.

Third, we find no merit to GTN's claim that the ALJ committed legal error when, following the El Paso press release, the ALJ directed Ruby LLC to update its written testimony to reflect the information in the press release. The update affected only a small portion of Ruby's testimony. It is not unusual for ALJs to allow updated testimony during a hearing in response to new developments.

In the same vein, we find no merit to GTN's claims that the ALJ committed legal error by (1) giving GTN two business days to submit written testimony responding to Ruby's updated testimony, and (2) denying GTN's motion to suspend the proceeding for 30 days so that GTN could review and respond to Ruby's updated testimony. The updated testimony provided by Ruby LLC was narrow in scope and pertained, for the most part, to the peripheral issue of pipeline construction costs.[112] The ALJ provided GTN with adequate time to

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[111] Exhibit Ruby-16, p. 4, lines 18-27.

[112] As stated previously, the issue of the Ruby's estimated pipeline construction costs is of marginal relevance to this proceeding because PG&E has a 15-year, fixed priced contract with Ruby LLC that is unaffected by changes to Ruby's costs.

prepare a response and correctly ruled that there was insufficient justification for suspending the hearing for one month for a peripheral issue.[113]

To support its claim of procedural error, GTN cites Southern California Edison Co. v. Public Utilities Commission ("*SoCal Edison*").[114] *SoCal Edison* addressed a situation where the Commission adopted a regulation that was not proposed until late in the proceeding. The Court stated: "Neither the preliminary scoping memo nor the scoping memo suggested that the scope of issues to be addressed included consideration of a proposed prevailing wage requirement."[115] The Court held that "three business days was insufficient time for the parties to respond to the new proposals."[116] *SoCal Edison* does not apply here. The updated testimony submitted by Ruby LLC did not raise an entirely new issue as was the case in *SoCal Edison*, but merely provided updated information regarding a minor issue that was explicitly identified as being within the scope of this proceeding in the assigned Commissioner's Scoping Memo.[117]

We find no merit to GTN's claim that the ALJ, by directing Ruby LLC to update its testimony, ignored the deadline for submitting testimony set forth in the Scoping Memo. The Scoping Memo states that the adopted schedule may be

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[113] 5 TR 468-69.

[114] 140 Cal. App. 4^{th} 1085, 45 Cal. Rptr. 3d 485 (2006).

[115] *Id.* at 1105.

[116] *Id.*

[117] Scoping Memo, p. 5, Issue 3.g. Although the issue of estimated construction costs is within the scope of the proceeding, it is not a central issue in the proceeding.

revised by the assigned ALJ.[118] The ALJ properly used his discretion under the Scoping Memo. We similarly find no merit to GTN's claim that the ALJ violated Rule 13.8. As GTN correctly notes, once prepared testimony has been served, Rule 13.8 prohibits the submittal of additional prepared testimony without good cause. We agree with the ALJ that there was good cause to update the record to reflect more recent information.

Finally, we find the ALJ acted properly when he ended GTN's cross examination of Ruby LLC's main witness, Thomas Price. The schedule for the hearing, which GTN had agreed to, provided GTN with 60 minutes to cross examine Ruby's witness. The ALJ ended GTN's cross examination after 78 minutes, which exceeded GTN's allotted time by 30%.[119] The ALJ twice informed GTN that it had exceeded its allotted time and that GTN needed to wrap up its cross examination. As noted by PG&E, at the time this occurred, the hearing was running behind schedule. These circumstances convince us that the ALJ acted reasonably by ending GTN's cross examination of Ruby's witness.

In its comments on the proposed decision, GTN declares that after it became clear the hearing was going to end one day early, GTN was denied the opportunity to complete its cross-examination of Thomas Price.[120] However, GTN never requested an opportunity to complete its cross-examination, even when it became clear the hearing would end early. Because GTN never requested the opportunity, it was never denied the opportunity.

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118 Scoping Memo, p. 9.

119 The hearing video shows that GTN exceeded its allotted time by 18 minutes.

120 GTN Opening Comments, p. 22.

7.9.12. U.S. Dept. of Transportation Regulations

Reid recommends that the Commission require El Paso to file an annual compliance report that explains (1) whether El Paso has complied with U.S. Department of Transportation (DOT) pipeline regulations, and (2) any relevant findings by DOT related to DOT regulations. Reid believes the reporting requirement is necessary in light of a major outage on El Paso's Cheyenne Plains Pipeline in 2007 that lasted nearly two months.

Ruby LLC was the only party to respond to Reid's recommendation. Ruby opposes the recommendation.

We decline to adopt Reid's recommendation. El Paso has a vast network of interstate pipelines, most of which does not serve California or affect California gas markets. Thus, most of the information required by Reid's proposed report would have no relevance to California. Moreover, it appears that most or all of the information in the report would pertain to matters entirely outside of the Commission's jurisdiction.

Although the Commission has no authority over Ruby Pipeline operations, we are concerned about the impacts an outage could have on California. To ensure the Commission is kept apprised of outage events, we will approve PG&E's application with the condition that PG&E provide prompt responses to Commission requests for information regarding outages on the Ruby Pipeline.

8. Conclusion and Implementation

For the reasons set forth previously in today's decision, we conclude that PG&E's application should be approved pursuant to Pub. Util. Code §§ 701, 702, and 2821. As required by Pub. Util. Code §§ 451 and 454, the rates and charges that result from granting PG&E's application are just and reasonable.

We hereby authorize PG&E to: (1) enter into the gas transportation arrangements on the Ruby Pipeline requested in A.07-12-021; (2) obtain matching downstream capacity for PG&E's Electric Fuels Department on the Redwood Path; (3) recover associated transportation costs for the Ruby Pipeline and Redwood Path in retail rates for core gas customers and bundled electric service customers; and (4) make conforming revisions to the CPIM. The authority granted by today's decision is subject to the following conditions:

1. PG&E shall file an executed copy of each FTSA between PG&E and Ruby LLC with the Commission's Energy Division pursuant to GO 96-B, Sections 3.9 and 6.1, no later than 30 days after the FTSAs are executed. This same requirement shall apply to any subsequent modifications to the FTSAs.

2. PG&E shall file one or more advice letters to obtain approval for the interconnection, operating, and balancing (IOB) agreements between PG&E and Ruby LLC. PG&E shall file the advice letter(s) at least six months before the expected in-service date of the Ruby Pipeline. The advice letter(s) shall be effective pending disposition by the Commission's Energy Division pursuant to GO 96-B, Rules 3.6, 7.5.3, and 8.2.3. PG&E shall use this same advice letter procedure to obtain approval for any subsequent modifications to the IOB agreements.

3. Electric Fuels shall use Tariff Schedule G-AFT for firm on-system deliveries on the Redwood Path. If Electric Fuels seeks to make off-system deliveries from time-to-time, it shall use the provision in G-AFT that specifies the procedures for making off-system deliveries. Like all shippers, Electric Fuels may use other current and future tariffs for proper purposes. Before switching to another tariff, PG&E shall obtain Commission approval (or pre-approval) to the extent required by the Commission's rules at that time. If no procedures are in place for obtaining such approval (or pre-approval), PG&E shall file an advice letter pursuant to GO 95-B, Rule 3.6.

4. The amount of Ruby Pipeline costs that PG&E may recover in retail rates for core gas service shall be limited to the rates and charges that PG&E pays under the Precedent Agreement to transport 250 MDth/d. PG&E may not recover from core gas customers any costs for capacity reserved on the Ruby Pipeline and Redwood Path for Electric Fuels. This prohibition does not apply to short-term capacity acquired by Core Gas Supply through arms-length capacity brokering transactions or to capacity diverted to serve core customers.

5. The amount of Ruby Pipeline costs that PG&E may recover in retail rates for bundled electric service shall be limited to (i) the rates and charges that PG&E pays under the Precedent Agreement to transport 250 MDth/d for an initial four-month period followed by 125 MDth/d for a 15-year period, and (ii) tariffed rates and charges that the Electric Fuels pays for matching downstream capacity on the Redwood Path. PG&E may not recover from bundled electric customers any costs associated with capacity reserved on the Ruby Pipeline for Core Gas Supply. This prohibition does not apply to short-term capacity acquired through arms-length capacity brokering transactions.

6. The amount that PG&E may recover in retail rates for Ruby capacity shall be the lower of (i) $0.68 Dth/d, (ii) the Initial Recourse Rate less 5%, or (iii) any lower rate paid by similarly situated shippers. Whenever PG&E seeks Commission approval to recover Ruby Pipeline costs, PG&E shall certify that it is paying the lowest rate available under the Precedent Agreement.

7. The amount that PG&E may recover in retail rates for Ruby fuel surcharges and other surcharges is limited to the amounts paid pursuant to Section 3(b)(iii) of the Precedent Agreement.

8. PG&E shall obtain prior Commission authorization before exercising, or not exercising, its right under the Precedent Agreement to annually reduce its Ruby capacity by 20% increments beginning in Year 11 of the Agreement.

9. PG&E shall obtain prior Commission authorization before exercising, or not exercising, its right to annually renew the Ruby Pipeline transportation arrangements during Years 16 through 25 of the Precedent Agreement.
10. During Years 11 through 25 of the Precedent Agreement, PG&E may recover the costs for Electric Fuels' Redwood Path arrangements only to the extent the Commission has authorized recovery of matching upstream capacity for Electric Fuels on the Ruby Pipeline.
11. The transportation benchmark component of the CPIM shall reflect the actual transportation rates that PG&E pays under the Precedent Agreement, which will be $0.68/Dth or less, plus tariffed charges for fuel and L&U gas to the extent allowed by the Precedent Agreement.
12. PG&E shall provide prompt responses to Commission requests for information regarding outages on the Ruby Pipeline.

Today's decision does not authorize at this time PG&E's recovery of any rate increases on the GTN system that might occur as a result of de-contracting, or any rate increases on the Ruby Pipeline as a result of FERC actions that might occur under the scenarios raised by GTN that are addressed previously in today's decision. These rate increases are unlikely and/or highly speculative for the reasons stated previously. However, if such rate increases occur, and PG&E seeks to recover these increases in retail rates, the Commission will decide on the appropriate course of action at that time.

Finally, today's decision denies PG&E's request to exclude Ruby-related transportation arrangements on the Redwood Path from the 400 MDth/d that is reserved on the Redwood Path by the Gas Accord for long-term firm capacity. This matter is directly related to the Gas Accord and, as such, should be addressed in PG&E's next Gas Accord proceeding.

9. Categorization and Need for Hearings

In Resolution ALJ 176-3206, dated January 10, 2008, the Commission preliminarily categorized this application as ratesetting and preliminarily determined that hearings were necessary. These preliminary determinations were affirmed and finalized in the Assigned Commissioner's Ruling and Scoping Memo dated March 18, 2008.

10. Comments on the Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3. Timely opening comments were filed by CARE, DRA, GTN, PG&E, Reid, Ruby, and TURN. Timely reply comments were filed by DRA, GTN, PG&E, Reid, and Ruby. These comments have been reflected, as appropriate, in the final decision adopted by the Commission. Consistent with Rule 14.3(c), comments that merely reargued positions taken in briefs were given no weight.

11. Assignment of the Proceeding

Timothy Alan Simon is the assigned Commissioner for A.07-12-021 and Timothy Kenney is the assigned ALJ.

Findings of Fact

1. PG&E currently obtains more than half of its natural gas from the WCSB. The amount of gas available for export from the WCSB is declining due to falling production and rising Canadian demand.

2. PG&E has a need to diversify away from its heavy reliance on declining WCSB gas supplies. PG&E's proposed gas transportation arrangements on the Ruby Pipeline and PG&E's Redwood path that are described in A.07-12-021 provide a reasonable and cost-effective means for doing so.

3. It is the Commission's policy for PG&E to have a diverse portfolio of interstate pipeline capacity across multiple supply regions to ensure adequate and reliable supplies. PG&E's proposed capacity on the Ruby Pipeline will help to achieve the Commission's policy goal.

4. PG&E's current portfolio of interstate pipeline capacity for Electric Fuels represents only a fraction of PG&E's forecasted average daily demand of the gas that PG&E will be required to supply for gas-fired generation during the period of 2011 through 2026. Even with the proposed Ruby capacity, PG&E's interstate pipeline holdings will represent less than half of forecasted average daily demand and less than a quarter of peak demand through 2026.

5. It is the Commission's policy for PG&E to obtain firm interstate gas pipeline capacity rights to help ensure the reliability of gas-fired generation. PG&E's proposed capacity on the Ruby Pipeline will help to achieve the Commission's policy goal.

6. Ruby will deliver Rocky Mountain gas directly to Malin where it will compete with gas delivered from the WCSB by GTN. This will create transportation-on-transportation and gas-on-gas competition at Malin. This competition should result in lower costs for California over the long-run.

7. The Ruby Precedent Agreement provides PG&E with favorable rates, terms, and conditions for accessing Rocky Mountains gas supplies that have not been matched by other pipelines.

8. PG&E's Electric Fuels Department currently does not have firm capacity on PG&E's intrastate gas transportation system. The firm gas transportation arrangements on the Redwood Path requested by PG&E will provide an important measure of reliability for the Electric Fuels Department's gas supply.

9. PG&E currently has one tariff for firm on-system deliveries (G-AFT), and a second tariff for firm off-system deliveries (G-AFTOFF). PG&E does not have a tariff that clearly states a shipper may use its capacity on the PG&E gas transmission system to make both firm on-system and firm off-system deliveries.

10. PG&E requests approval of the following non-standard conditions of service on the Redwood Path for Electric Fuels: (i) a start date tied to the in-service date of the Ruby Pipeline, and (ii) termination rights for both the Electric Fuels and the CGT Departments in the event the Ruby Pipeline does not progress in a timely manner. These non-standard conditions serve a legitimate purpose, and there is no evidence these conditions are detrimental to PG&E's ratepayers. The non-standard conditions do not discriminate against others because PG&E will offer them to other similarly situated shippers.

11. Since 1998, PG&E's CPIM has been modified periodically to conform to market and regulatory changes. The CPIM modifications requested by PG&E to accommodate Ruby Pipeline costs and Rocky Mountain supplies are of a similar, conforming nature.

12. The Ruby Pipeline will be constructed entirely outside of California. There is no evidence in the record of this proceeding that Ruby may cause significant environmental impacts on California.

13. PG&E provided competitors with a reasonable opportunity to meet or beat the Ruby deal.

14. PG&E and Ruby LLC have highlighted several possible flaws in GTN's calculation of the $0.214 rate increase that GTN claims it will impose if the Ruby Pipeline is built, which raises legitimate doubts about GTN's calculation.

15. GTN has not demonstrated that PG&E's ability to sell released capacity on GTN, Ruby, or other pipelines should be a factor in deciding whether PG&E should be authorized to acquire Ruby capacity.

16. It is speculative whether GTN will redeploy, idle, or abandon a portion of its pipeline facilities serving California if Ruby is built. The fact that GTN says it might take these actions does not justify a rejection of PG&E's application.

17. The Ruby Pipeline is a commercially viable project.

18. The costs incurred to construct the Ruby Pipeline do not affect PG&E directly because PG&E has a fixed, 15-year rate that will not exceed $0.68/Dth.

19. There is no evidence that PG&E Corporation had any influence on PG&E's negotiations with Ruby LLC.

20. The most-favored-nation clause in the Ruby Precedent Agreement ensures that PG&E receives the best possible deal for Ruby capacity among shippers who subscribe to capacity for a term of one to 15 years.

21. There was a conflict of interest between PG&E's customers and PG&E's shareholders when PG&E Corporation was offered, and then obtained, an option to acquire an ownership stake in the Ruby Pipeline while PG&E was negotiating with Ruby LLC. There is no evidence that this conflict of interest harmed ratepayers or Ruby's competitors.

22. PG&E maintained a reasonable level of separation between Core Gas Supply and Electric Fuels during negotiations with Ruby LLC.

23. There is no evidence of improper sharing of information between Core Gas Supply and Electric Fuels.

Conclusions of Law

1. PG&E's application should be approved pursuant to Pub. Util. Code §§ 701, 702, and 2821, subject to the conditions set forth in the following Order. As required by Pub. Util. Code §§ 451 and 454, the rates and charges that result from granting PG&E's application are just and reasonable.

2. PG&E's Electric Fuels Department should use Tariff Schedule G-AFT for firm on-system deliveries on the Redwood Path. If Electric Fuels seeks to make off-system deliveries from time-to-time, it should use the provision in G-AFT that specifies the procedures for making off-system deliveries. Like all shippers, Electric Fuels may use any available current or future tariff that suits its needs. Before switching to another tariff, PG&E should obtain Commission approval (or pre-approval) to the extent required by the Commission's rules at that time. If no procedures are in place for obtaining such approval (or pre-approval), PG&E should file an advice letter pursuant to GO 95-B, Rule 3.6.

3. The rates, terms, and conditions of service on the Redwood Path for PG&E's Electric Fuels Department that are approved by today's decision are fair, reasonable, and nondiscriminatory because they will be governed by a Commission-approved tariff.

4. PG&E's proposed non-standard conditions of service on the Redwood Path for Electric Fuels should be approved. To avoid undue preferential treatment, PG&E should offer these non-standard conditions to similarly situated shippers.

5. PG&E's request to exclude Ruby-related transportation arrangements on the Redwood Path from the 400 MDth/d that is reserved on the Redwood Path by the Gas Accord for long-term firm capacity implicates the Gas Accord and, as such, should be addressed in PG&E's next Gas Accord proceeding.

6. PG&E should be authorized to recover from its retail customers the costs it incurs to transport gas on the Ruby Pipeline and PG&E's Redwood Path pursuant to the transportation arrangements approved by today's decision.

7. The transportation benchmark component of the CPIM should reflect the amount that PG&E is obligated to pay under the Precedent Agreement.

8. CEQA does not apply to projects located outside of California, such as the Ruby Pipeline, unless there are emissions or discharges that could have a significant impact on California. There is no evidence in this proceeding that the Ruby Pipeline Project may cause significant environmental impacts on California.

9. The process used by PG&E to procure capacity on the Ruby Pipeline was reasonable under the circumstances and generally complied with applicable Commission precedent.

10. A central tenet of the Commission's let-the-market-decide policy is that the Commission will support any interstate pipeline project that satisfies the criteria set forth in D.90-02-016. The Ruby Pipeline satisfies these criteria.

11. D.04-09-022 authorized core gas utilities to request pre-approval for interstate pipeline capacity and established procedures for doing so. D.07-12-052 authorized electric utilities to request pre-approval for interstate pipeline capacity and established procedures for doing so. PG&E has followed those procedures.

12. GTN's alleged need to increase its rates by $0.214/Dth if Ruby is built is too speculative to be relied upon for decision-making the instant proceeding.

13. The reasonableness of Ruby's estimated pipeline construction costs is relevant to this proceeding only to the extent it raises doubts about Ruby's ability to attract sufficient capacity commitments to go forward with the project. Because sufficient capacity commitments have materialized, there is no need for the Commission to consider the reasonableness of Ruby's cost estimates.

14. GTN has not demonstrated that PG&E's negotiations with Ruby LLC or the proposed Ruby transportation arrangements violate FERC rules.

15. There is no merit to GTN's allegation that it was denied due process. The ALJ rulings about which GTN complains were reasonable.

16. The following Order should be effective immediately so the Ruby Pipeline Project may proceed in a timely manner.

O R D E R

IT IS ORDERED that:

1. Application 07-12-021 filed by Pacific Gas and Electric Company (PG&E) is granted, subject to the conditions set forth in the following Ordering Paragraphs.

2. PG&E is authorized to recover from its core gas customers and bundled electric service customers the costs it incurs to transport gas on the Ruby Pipeline and PG&E's Redwood Path pursuant to the transportation arrangements approved by this Order.

3. The authority granted by this Order is subject to the following conditions:

   i. PG&E shall file an executed copy of each Firm Transportation Service Agreement (FTSA) between PG&E and Ruby Pipeline, LLC (Ruby LLC) with the Commission's Energy Division pursuant to General Order (GO) 96-B, Sections 3.9 and 6.1, no later than 30 days after the FTSAs are executed. This same requirement shall apply to any subsequent modifications to the FTSAs.

ii. PG&E shall file one or more advice letters to obtain approval for the interconnection, operating, and balancing (IOB) agreements between PG&E and Ruby LLC. PG&E shall file the advice letter(s) at least six months before the expected in-service date of the Ruby Pipeline. The advice letter(s) shall be effective pending disposition by the Commission's Energy Division pursuant to GO 96-B, Rules 3.6, 7.5.3, and 8.2.3. PG&E shall use this same advice letter procedure to obtain approval for any subsequent modifications to the IOB agreements.

iii. Electric Fuels shall use Tariff Schedule G-AFT for firm on-system deliveries on the Redwood Path. If Electric Fuels seeks to make off-system deliveries from time-to-time, it shall use the provision in G-AFT that specifies the procedures for making off-system deliveries. Like all shippers, Electric Fuels may use other current and future tariffs for proper purposes. Before switching to another tariff, PG&E shall obtain Commission approval (or pre-approval) to the extent required by the Commission's rules at that time. If no procedures are in place for obtaining such approval (or pre-approval), PG&E shall file an advice letter pursuant to GO 95-B, Rule 3.6.

iv. The amount of Ruby Pipeline costs that PG&E may recover in retail rates for core gas customers shall be limited to the rates and charges that PG&E pays under the Precedent Agreement to transport 250 thousand dekatherms per day (MDth/d). PG&E may not recover from core gas customers any costs for capacity reserved on the Ruby Pipeline and Redwood Path for Electric Fuels. This prohibition does not apply to short-term capacity acquired by Core Gas Supply through arms-length capacity brokering transactions or to capacity diverted to serve core customers.

v. The amount of Ruby Pipeline costs that PG&E may recover in retail rates for bundled electric service customers shall be limited to (i) the rates and charges that PG&E pays under the Precedent Agreement to transport 250 MDth/d for an initial four-month period followed by 125 MDth/d for a 15-year period, and (ii) tariffed rates and charges that the Electric Fuels pays for matching downstream capacity on the Redwood Path.

PG&E may not recover from bundled electric service customers any costs associated with capacity reserved on the Ruby Pipeline for Core Gas Supply. This prohibition does not apply to short-term capacity acquired through arms-length capacity brokering transactions.

vi. The amount that PG&E may recover in retail rates for Ruby capacity shall be the lower of (i) $0.68 Dth/d, (ii) the Initial Recourse Rate less 5%, or (iii) any lower rate paid by similarly situated shippers. Whenever PG&E seeks Commission approval to recover Ruby Pipeline costs, PG&E shall certify that it is paying the lowest rate available under the Precedent Agreement. This certification may take the form of (a) a sworn declaration signed by an officer of PG&E or Ruby under penalty of perjury, or (b) any other form deemed acceptable by the Commission.

vii. The amount that PG&E may recover in retail rates for Ruby fuel surcharges and other surcharges is limited to the amounts paid pursuant to Section 3(b)(iii) of the Precedent Agreement.

viii. PG&E shall obtain prior Commission authorization before exercising, or not exercising, its right under the Precedent Agreement to annually reduce its Ruby capacity by 20% increments beginning in Year 11 of the Agreement. To that end, PG&E's Core Gas Supply and Electric Fuels Departments shall each use the procedures the Commission has in place at that time to obtain Commission approval (including pre-approval) to either keep or release the step-down capacity. If no procedures are in place, PG&E shall file an application at least one year prior to the first step down to obtain authority to either keep or release the step-down capacity. The application shall include a proposal for Commission review and approval of any subsequent decisions by PG&E to either retain or release step-down capacity under the Precedent Agreement.

ix. PG&E shall obtain prior Commission authorization before exercising, or not exercising, its evergreen right to annually renew the Ruby Pipeline transportation arrangements when these arrangements expire after 15 years. To that end, PG&E's Core Gas Supply and Electric Fuels Departments shall each use the procedures the Commission has in place at that time to obtain Commission approval (including pre-approval) to either extend the transportation arrangements or let them lapse. If no procedures are in place, PG&E shall file an application at least one year prior to the expiration of the initial 15-year term of the transportation arrangements to obtain authority to either extend the arrangements for one year or let them expire. The application shall include a proposal for Commission review and approval of any subsequent decision(s) by PG&E to annually extend or terminate the transportation arrangements under the Precedent Agreement.

x. During Years 11 through 25 of the Precedent Agreement, PG&E may recover in retail rates for bundled electric service the costs for Electric Fuels' Redwood Path arrangements only to the extent the Commission has authorized recovery of matching upstream capacity for Electric Fuels on the Ruby Pipeline.

xi. The transportation benchmark component of the Core Price Incentive Mechanism shall reflect the actual transportation rates that PG&E pays under the Precedent Agreement, which will be $0.68/Dth or less, plus tariffed charges for (a) fuel and (b) lost & unaccounted for gas to the extent these charges are allowed by the Precedent Agreement.

xii. PG&E shall provide prompt responses to Commission requests for information regarding outages on the Ruby Pipeline.

4. PG&E may raise in its next Gas Accord proceeding the issue of whether to exclude Ruby Pipeline-related transportation arrangements on the Redwood Path from the 400 MDth/d that is reserved on the Redwood Path by the Gas Accord for long-term firm capacity.

5. Application 07-12-021 is closed.

This Order is effective today.

Dated November 6, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

APPENDIX

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