ALJ/JSW/sid **Mailed 2/16/2001**

Decision 01-02-049 February 15, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39 G) for an Order Pursuant to Section 1005.5(b) of the Public Utilities Code to Increase the Maximum Cost Specified in PG&E's Certificate of Public Convenience and Necessity to Construct the California Portion of the Expansion of its Natural Gas Pipeline.	Application 92-12-043 (Filed December 21, 1992)
And Related Matters.	Application 93-03-038 Application 94-05-035 Application 94-06-034 Application 94-09-056 Application 94-06-044 Application 96-08-043 Rulemaking 90-02-008 Rulemaking 88-08-018 Rulemaking 92-12-016 Investigation 92-12-017 Application 92-07-049 Application 95-02-008 Application 95-02-010 Application 94-11-015 Application 93-04-011 Application 94-04-002 Application 95-04-002 Application 96-04-001 Application 94-12-039

OPINION REGARDING THE EMERGENCY PETITION TO MODIFY DECISION 97-08-055 AND RESOLUTION G-3288

I. Summary

On January 16, 2001, the Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) filed an "emergency petition" (petition) to modify Decision (D.) 97-08-055,[1] the decision approving the "Gas Accord" for Pacific Gas and Electric Company (PG&E), and Resolution G-3288, the resolution which implemented the tariffs associated with the Gas Accord. ORA/TURN request that the charges associated with the Emergency Flow Order (EFO) and Operational Flow Order (OFO) provisions be waived, and that the charge for involuntary diversions of noncore gas supplies be modified on an expedited basis.

Today's decision, in expectation that PG&E (due to its financial condition) will have to divert noncore gas supplies in order to serve its core customers, waives the noncompliance charges associated with an OFO and EFO. Those charges are contained in PG&E's Gas Rule 14. We deny ORA/TURN's request to reduce the involuntary diversion charge.

II. Background

The petitioners requested that the Commission take immediate action, or in the alternative, that the Commission shorten the time for the filing of responses to the petition for modification to five days. An Administrative Law

[1] This decision is found in 73 CPUC2d 754.

Judge's (ALJ) ruling was issued on January 19, 2001, shortening the time for parties to file responses to the petition.

Responses or protests opposing the proposed modifications were filed by the California Industrial Group (CIG) and the California Manufacturers and Technology Association (CMTA), Calpine Corporation (Calpine), Coral Energy Resources, L.P. (Coral), Enron North America Corp. and Enron Energy Services, Inc. (collectively "Enron"), Nabisco Brands, Inc. (Nabisco), PanCanadian Energy Services (PCES), and Northern California Generation Coalition (NCGC). Pacific Gas and Electric Company (PG&E), the City and County of San Francisco, the City of Palo Alto, and the School Project for Utility Rate Reduction (SPURR) filed responses which supported the petition in whole or in part. Duke Energy North America's response, as well as NCGC, requests that electric generators be exempt from any diversions during the ongoing crisis.

ORA/TURN filed a reply to the responses on January 30, 2001.

Due to the need to take immediate action, the Commission provided notice in its agenda that action would be taken on this item at the regularly scheduled February 8, 2001 Commission meeting. At the February 8, 2001 meeting, this item was held over to the Commission's continuation meeting on February 15, 2001.

Gas curtailment and constraint conditions are described in PG&E's Gas Rule 14. This rule was originally developed in the PG&E Gas Accord, which was approved by the Commission in D.97-08-055. The specific tariff language was subsequently approved in Resolution G-3288, which became effective on March 1, 1998.

Under Rule 14-E., PG&E can issue an Operational Flow Order (OFO) to protect the integrity of its pipeline system. The OFO can be implemented on a system-wide, local, or customer-specific basis. PG&E "will issue an OFO for a Gas Day if, on the day prior to this Gas Day, PG&E's forecast of pipeline inventory for the Gas Day is either below the Lower Pipeline Inventory Limit or above the Upper Pipeline Inventory Limit." When PG&E issues the OFO, "Balancing Agents" are required to balance the supply and demand on a daily basis within a specified tolerance band. If the Balancing Agent fails to stay within the tolerance bank, the agent is subject to non-compliance charges. The noncompliance charge varies depending on the tolerance band. (PG&E Gas Rule 14-E.)

An Emergency Flow Order (EFO) may be called by PG&E "when a forecast or an actual supply and/or capacity shortage threatens deliveries to End-Use Customers." During an EFO period, gas usage by end-use customers must be less than or equal to the gas it nominated for that day. That is, the supply must be equal to or greater than the usage. Noncompliance with the EFO results in a charge of $50 per decatherm (Dth), which is paid to PG&E. (PG&E Gas Rule 14-F.)

PG&E may also divert gas from its noncore end-use customers to serve core customers if conditions exist where the "supply is insufficient to meet demand and deliveries to Core End-Use customers are threatened." If an involuntary diversion occurs in conjunction with an EFO, the transmission service customers, whose gas supply is involuntarily diverted, receives an involuntary diversion credit depending on whether the customer receives firm or as-available transmission service. Firm transmission customers receive a credit of $50 per Dth of gas diverted.[2] As-available transmission customers receive a diversion credit based on the market price for the gas on the day the diversion occurred.[3] (Rule 14-G.3.)

III. Position of ORA/TURN

ORA/TURN propose to modify D.97-08-055 and Resolution G-3288 by modifying PG&E Rule 14 to address the charges associated with diversion of gas supplies. ORA/TURN propose that: (1) the OFO penalties to core procurement customers be waived; (2) EFO penalties to core procurement customers be waived; and (3) the involuntary diversion charge of $50 per Dth be modified to reflect the actual market price of gas up to $50 per Dth.[4] In essence, ORA/TURN's proposal would not subject core customers to penalties of $100 per Dth, or 10 times the market price of the gas, if PG&E is forced to divert noncore gas to meet its core customer needs.

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[2] Thus if an involuntary supply diversion occurs in conjunction with an EFO, the total penalties amount to $100 per Dth.

[3] The current market price is based on an average of the published price data from Natural Gas Intelligence (NGI) and the BTU Daily Gas Wire for the PG&E interconnect points of Malin (Line 400) and Topock (Southern California Border), weighted by the supply mix of all gas received at Malin and Topock for on-system end-use customers for that day.

[4] In their reply, ORA/TURN state that they would agree to modify their original request to allow: (1) a modification of PG&E Gas Rule 14 to allow noncore customers to ship additional gas rather than curtail gas usage if the customer physically nominates a quantity of gas necessary to replace diverted gas; (2) a diversion penalty that would be based on the higher of 120% to 125% of the market price of gas or on the equivalent price of an alternative fuel, such as propane; and (3) a limitation on the waiver of the EFO and diversion penalties only during the period of gas supplier's refusal to sell to PG&E due to financial credit concerns, not due to operational shortages.

ORA/TURN contend that the current tariffs did not anticipate a situation whereby PG&E would be unable to purchase gas supply because of insufficient credit. They point to the following phrase in support of their argument:

> "When operational conditions exist such that supply is insufficient to meet demand and deliveries to Core End-Use Customers are threatened, and subject to the obligations of Core Procurement Groups to utilize all available capacity associated with supply, PG&E may divert gas supply in its system from Noncore End-Use Customers to Core End-Use Customers." (Rule 14-G.)

ORA/TURN argue that the above tariff language envisions that PG&E's Core Procurement Group would be utilizing all its firm gas pipeline capacity to transport gas to its customers before it diverted natural gas supply from noncore end-users. This is not the situation that PG&E finds itself in.

ORA/TURN also point to PG&E Rule 14-G, where it states that prior to a diversion, "PG&E's Core Procurement Department and Core Transport Agents, on behalf of their Core End-Use Customers, will use:

1) their own firm capacity, to the extent gas supply is available;
2) any As-Available capacity on the system at any receipt point to the extent gas supply is available; and
3) capacity made available from Noncore End-Use Customers…."

Ample gas supply is still available in the market. Gas suppliers are simply unwilling to sell gas supply to PG&E. The diversion charge was based on the premise that no other gas supplies were available to the core except for the diversion of noncore gas. Thus, ORA/TURN is seeking to modify the diversion charge only in a situation where core gas supplies are unavailable due to the unwillingness of gas suppliers to sell. Noncore customers who are diverted should still able to purchase replacement gas since there is sufficient capacity on the system.

ORA/TURN contend that the current penalties serve no purpose other than unnecessarily increasing the cost of natural gas to core customers. They assert that the OFO and EFO penalties were developed to encourage marketers and customers to balance supply and demand on the system, and that the diversion penalty was designed to assure that PG&E core procurement had an appropriate incentive to assure gas supply was delivered to the system during cold weather conditions. ORA/TURN contend that the threat of gas suppliers not providing gas supply to PG&E for its core customers was never contemplated or even considered when the rules were developed.

ORA/TURN further assert that the current rules were developed to address circumstances of a temporary and unusually high gas demand by core customers that would result in the need for PG&E to divert gas from noncore customers to meet the high core demand, such as during extreme weather conditions. If diversions were required, it would only apply to a small incremental volume of gas supply. In the situation which PG&E finds itself in, large volumes of noncore gas would be diverted, and core customers would eventually end up having to pay the penalties and diversion charges. ORA/TURN contend that this type of situation was never contemplated by the Gas Accord rules.

ORA/TURN have filed the petition because they fear that if diversion of noncore gas supplies occur, gas marketers may game the situation by refusing to sell gas to PG&E at a low price, but may allow supplies to be transported to noncore customers whose gas will be diverted at the $50 per Dth diversion charge. As a result, the cost to core customers would increase substantially.

In addition to the concern that PG&E may not be able to meet its public utility obligation of providing gas to its core customers, ORA/TURN are also concerned that core and noncore customers should not be exposed to gas supply interruptions, especially when gas is available, and gas revenues from core customers are enough to pay actual gas costs.

ORA/TURN also believe that PG&E should be directed to immediately inform the Commission of the current storage and supply situation, and to inform the Commission of how PG&E intends to ensure that its obligation to provide gas to its core customers is met.

In their reply, ORA/TURN agree that eliminating the EFO and OFO charges and reducing the diversion charge are not viable long-term solutions to PG&E's problem. Other steps need to be taken to ensure that natural gas supplies continue to be purchased for core customers by a creditworthy entity.

In satisfaction of Rule 47(d) of the Commission's Rules of Practice and Procedure,[5] ORA/TURN assert that it could not file this petition within one year of the effective date of D.97-08-055 because PG&E's financial crisis and related credit situation did not manifest itself until recently, and the need to modify the decision is based on conditions that were never contemplated when the Gas Accord settlement was negotiated and approved.

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[5] Rule 47(d) requires that if more than one year has elapsed since the effective date of the decision, the petition for modification must explain why the petition could not have been presented within the first year.

IV. Other Parties' Positions

The California Industrial Group and the California Manufacturers & Technology Association (CIG/CMTA) oppose the petition and request that the Commission deny the petition in its entirety.[6]

CIG/CMTA contends that its members are strongly opposed to any diversion of their gas supplies to serve core customers. However, if such a diversion occurs, then noncore customers should be compensated at the tariffed diversion charge of $50 per decatherm (Dth). They contend that many noncore customers were forced to close their businesses in November and December 2000 because of extremely high natural gas prices, and that the loss of production during that period has already threatened the viability of many of those businesses. CIG/CMTA contends that the petition:

> "would further threaten these businesses by confiscating their natural gas supplies and compensating them only for the cost of the gas. The $50/Dth diversion charge at least would allow these customers to recoup some of their production losses resulting from confiscation of their gas supplies. CIG/CMTA submit that there is no basis whatsoever for any change in the charge associated with confiscation of noncore gas supplies." [7]

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[6] PG&E states in its response that although CIG/CMTA has opposed the petition "in its entirety," "CIG/CMTA has not opposed the waiver of OFO and EFO noncompliance charges for PG&E core customers."

[7] In its reply, ORA/TURN argue that there should be no need to compensate noncore customers for lost production because that customer can decide whether to switch to an alternate fuel, purchase additional gas from other sources, or cease or reduce production and continue to flow gas already purchased or to resell the gas upstream.

CIG/CMTA also argue that PG&E's deteriorating financial condition is consistent with the position that ORA/TURN took in the rate stabilization proceedings,[8] that there should not be any rate increases for the utilities.

CIG/CMTA asserts that PG&E will not be able to continue to procure gas for its customers unless some action is taken by the Commission and the state to either guarantee PG&E's payment obligations under its gas supply contracts, or to insert some other creditworthy entity into PG&E's gas procurement function. They also warn that the diversion of noncore gas supplies will force gas-fired electric generators and qualifying facilities to curtail their operations, which will further exacerbate the current electrical shortage.

CIG/CMTA contend that if the compensation for confiscation of noncore gas is reduced from $50 per Dth to a market rate, that the most likely consequence is that the noncore customers and their marketers will simply sell their gas elsewhere, rather than incur the costs to transport the gas within California.

Calpine Corporation (Calpine) is opposed to the petition and urges that it be denied in its entirety. Calpine contends that ORA/TURN's proposal will simply accelerate and exacerbate the current energy crisis. Calpine agrees with CIG/CMTA that if noncore gas is diverted, electric generation facilities which use natural gas will not be able to generate electricity, which will increase the likelihood of blackouts in PG&E's service territory. The diversion of noncore customer gas supplies may also result in gas suppliers refusing to sell gas to noncore customers in PG&E's service territory. In addition to noncore customers

[8] See Application (A.) 00-11-038, A.00-11-056 and A.00-10-028.

having to shut down their businesses, there might be no noncore gas to divert for the benefit of core customers.

Before adopting the proposal of ORA / TURN, Calpine states that the Commission should evaluate alternative solutions proposed by PG&E such as ordering Southern California Gas Company (SoCalGas) to provide assistance, or to use the existing core aggregation service so that core customers can purchase gas supply from parties other than PG&E.

Calpine states that if PG&E is permitted to divert natural gas supplies, and ORA / TURN's proposals are adopted, the Commission should modify the proposal so as to eliminate the cap on the diversion credit. That is, it should be based on the actual market price of natural gas, whether above or below $50 per Dth. Calpine states that in the preceding months, gas prices at the California border have at times exceeded $60 per Dth. In addition, PG&E should also be required to reimburse firm transmission noncore customers for the demand charge component of the customers' gas transmission charges. Calpine believes this is appropriate because the diversion of gas supply transforms firm transmission service into interruptible service. Calpine also states that the Commission should limit any waiver of non-compliance penalties to those due solely as a result of PG&E's financial inability to procure adequate core gas supplies, and not to penalties assessed during periods of operational constraints.

The City and County of San Francisco (CCSF) believes that the Commission should act quickly to avoid the severe consequences identified by ORA / TURN in its petition, and by PG&E in its emergency application in A.01-01-024. CCSF contends that if PG&E cannot provide reliable gas service due to its financial viability, then the Commission must ensure that service can be provided in another way. CCSF states that customers should not have to face the threat of gas curtailments when there are sufficient gas supplies available in the market and when PG&E is collecting sufficient revenues to purchase those supplies.

CCSF supports the modifications proposed by ORA/TURN, and suggest that three additional modifications be adopted. First, that the Commission should suspend the imbalance penalties of $10 per therm for use which exceeds the specified curtailment if curtailment or diversion is necessary due to PG&E's current inability to obtain supplies. CCSF contends that PG&E's Gas Rule 14 was intended to be used for physical shortages of gas supply due to uncontrollable forces. The penalties which accrue under this rule when the specified curtailment is not reached are inappropriate when the situation is created by PG&E's financial condition.

The second modification that CCSF proposes to be adopted is to exempt certain facilities from curtailments to minimize the impacts on the public of noncore gas curtailments and diversions. CCSF states that it has 14 noncore accounts which consist of museums, hospitals, jails, and other municipal and educational facilities. Some of these facilities have backup facilities to provide heat if gas is curtailed, but backup facilities are not available for cooking and water heating.

The third modification that CCSF proposes is that customers with multiple accounts should be permitted to meet curtailment orders by aggregating all accounts. CCSF states that it and other public entities should be entitled to choose which facilities to curtail in order to meet curtailment orders.

Coral Energy Resources, L.P. (Coral) opposes the petition, and recommends that interested parties be provided an opportunity to provide their input on the issues raised by the petition. Coral recommends that workshops be held to explore the implications of the proposals of ORA/TURN, and that the proposals and alternatives be thoroughly examined before the Commission reaches a decision.

Coral contends that if the proposals of ORA/TURN are approved, they would provide little incentive for PG&E's core procurement department to comply with EFO orders. That is, since there would be no OFO or EFO penalties, and the involuntary diversion charge would be less, PG&E would have no incentive to avoid the diversion of noncore gas.

Also, Coral contends that frequent and continuing EFOs will harm core and noncore transport-only customers and their suppliers because it may result in substantial overdeliveries that result in imbalances which must be traded at the end of the month.[9] Transport-only customers and their suppliers will suffer substantial financial harm if the price of gas changes from the time it was delivered until the monthly imbalances can be traded.

Coral states that it would not object to a limited reduction in the level of OFO and EFO penalties for all customers during PG&E's gas supply crisis. However, if such a reduction is adopted, Coral asserts that the Commission should also waive any monthly imbalance charges.

Coral also contends that the proposal to reduce the involuntary diversion charge from $50 per Dth to the lower of the actual market price[10] or $50 per Dth,

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[9] Coral suggests as an alternative that if excess gas supplies are delivered to PG&E's system by the supplier during an EFO event, that the Commission could order PG&E's core gas procurement department to purchase the gas at the customer's actual cost plus interest.

[10] Coral assumes that ORA/TURN's use of the term "actual market price" means the use of published prices.

provides no compensation to noncore customers for the business interruptions that would inevitably result from a supply diversion. Coral contends that the proposed change to the diversion penalty would barely cover the noncore customers' purchased gas cost, and would not cover the cost of a customer's alternate fuel. In addition, the diversion charge would not compensate a gas supplier whose gas has been diverted to PG&E. ORA/TURN's diversion proposal penalizes noncore customers and their suppliers, and not PG&E, who created the need for the involuntary supply diversion. Coral asserts that the involuntary diversion charge is essentially a liquidated damages provision that a noncore customer should be entitled to in the event its gas is diverted.

Coral also asserts that the proposed reduction of the diversion charge is not likely to compensate the noncore customer for the cost of the gas that has been diverted. If the diversion penalty is reduced to the actual market price, as ORA/TURN propose, the published gas prices may not fully cover either the supplier's cost of the gas or the price agreed upon in the contract between the supplier and the customer. Coral also points out that there is no provision for interest on the cost of the gas, or an added premium that should be associated with PG&E's poor credit as a gas purchaser. Coral also argues that a reduction in the supply diversion penalty would amount to a taking of the noncore customer's gas without just compensation and would be confiscatory.

Coral also argues that the proposals of ORA/TURN discriminate against core aggregation customers and their suppliers because the waiver of the OFO and EFO penalties, and the reduced involuntary diversion charge do not apply to core aggregators and their customers. Thus, the proposals benefit PG&E and its core sale customers, and provide them with a competitive advantage as compared to other gas suppliers.

Coral contends that the proposals of ORA/TURN do not solve the fundamental problem of PG&E's lack of credit to purchase sufficient core gas supplies for its customers. Coral recommends that the Commission take steps to ensure that PG&E "stream" the revenues from PG&E's core gas sales to PG&E's gas suppliers. This will assure gas suppliers of full and timely payment for the gas sold to PG&E. By doing so, Coral contends this should mitigate the concerns of ORA/TURN since gas supplies will continue to flow, and there will be no need for diversions.

Duke Energy North America (DENA) agrees with ORA/TURN that PG&E's Gas Rule 14 is not designed to address the current circumstances facing PG&E. DENA asserts that the provisions of Rule 14 were designed only to apply to short-term supply-demand imbalances resulting from an event such as unseasonably cold weather. Diversions under Rule 14 were not contemplated as a result of PG&E's financial condition, nor was it contemplated that gas diversions might reduce deliveries to gas-fired generation plants during electricity shortage warnings by the Independent System Operator (ISO). If diversions occur, DENA states that PG&E should not be permitted to apply Rule 14 to divert gas from gas-fired electric generation facilities, whose output is needed to avoid electricity blackouts. DENA recommends that the Commission order PG&E to modify Rule 14, or to administer the rule, in a way which exempts gas-fired electric generators from gas diversions during periods when the ISO has declared a Stage 1, 2 or 3 emergency.[11]

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[11] ORA/TURN state in their reply that electricity generators should not be exempted from a noncore gas diversion. They contend that more rolling blackouts are preferable to a gas service outage because rolling blackouts pose less of a threat to the public health and safety.

DENA notes that several recent developments have occurred which may allow PG&E to avoid diversions, or to at least delay them for several weeks. The Commission should consider the petition in light of these developments. DENA first points to the finding of a natural gas supply emergency made by President Clinton on January 19, 2001, and the Secretary of Energy's order that gas suppliers continue to provide gas. Second, on January 22, 2001, PG&E filed an expedited petition for modification of D.00-12-064, seeking authority to give natural gas suppliers a security interest in PG&E's accounts receivable, which may provide suppliers with a measure of financial reassurance. The third development is that the state is involved in negotiations and legislative efforts to solve the problems in the electricity market. These efforts may improve PG&E's financial position.

Enron North America Corp. and Enron Energy Services, Inc. (collectively "Enron") are opposed to the petition on two grounds. Enron's first objection is that it is unwise to make changes to tariffs that were carefully designed to accommodate system supply shortages and related emergency situations without considering the impact on all customer classes. When the rule was first being considered, Enron contends that all customer classes and all segments of the industry provided input. To make substantial modifications to the rule without allowing parties a fair opportunity to address the consequences of such changes would be unwise. Enron contends that ORA/TURN are simply seeking to minimize the financial consequences of diversions on core customers, and shifting more of the costs and consequences of diversion to noncore customers. Instead of rushing to change the rule, Enron asserts that the existing tariffs should be used to divert gas.

Enron's second objection is that a reduction in the diversion penalties could leave noncore shippers at risk for substantial out-of-pocket costs caused by the diversion, while providing the utility with a perverse incentive to divert more gas. Under ORA/TURN's proposal, they seek to reduce the $50/Dth diversion charge that core customers pay when noncore gas is diverted to core use. ORA/TURN propose that the charge be reduced to the current market price of gas up to a cap of $50/Dth. Enron contends that such a change could impose substantial losses on noncore customers because the noncore customer is likely to have paid interstate transmission rates to move gas to the California border, and possibly other costs, such as storage withdrawal charges. Also, if the diversion caused the non-core customer's operations to be curtailed or shut down, the customer also incurred substantial consequential damages. Compensating the noncore customer only for the commodity price of the gas does not begin to cover the noncore customer's costs.

Enron also asserts that by reducing the diversion credit, this might cause PG&E's core procurement department to rely more heavily on diversions as opposed to finding other means to improve PG&E's ability to purchase gas on its own account. Enron contends that the Commission should not provide an incentive for PG&E to rely on the noncore customers' ability to purchase gas and to have that gas diverted for core customers.

Nabisco Brands, Inc. (Nabisco) filed a protest to ORA/TURN's petition. Nabisco first questions whether PG&E is even permitted under PG&E's Rule 14 to divert gas. Nabisco contends that gas suppliers are refusing to sell gas to PG&E because of its current credit rating. Nabisco asserts that Rule 14 only refers to operational conditions and events of force majeure, two conditions that do not include PG&E's credit rating. Nabisco suggests that the Commission dismiss the petition for lack of ripeness since the diversions should not occur. Nabisco also recommends that the Commission make clear that PG&E can only divert gas in accordance with Rule 14, that is, when operational conditions such as unusually high gas demand, or force majeure, warrant the diversions.

Nabisco objects to ORA/TURN's proposal because it unfairly burdens large customers by substantially increasing their penalty exposure under Rule 14. Their proposal calls for the waiver of core customer EFO and OFO penalties, and reducing or limiting the diversion charges applicable to core customers. These penalties and compliance charges are used to fund the compensation that is owed to noncore customers whose gas is diverted.

Nabisco also states that if PG&E is allowed to divert gas under Rule 14 to address PG&E's lack of credit, it is likely that diversions will occur with more frequency. This may put noncore customers in the position of not being able to stop or reduce gas usage in the amount requested by PG&E, which will force noncore customers to incur significant noncompliance penalties.[12]

Nabisco asserts that ORA/TURN's proposal will result in a windfall to core customers. By eliminating the EFO penalties and reducing the diversion charge, core customers will reap the benefits of using the gas while paying an unrealistically low price for it.

Nabisco also contends that ORA/TURN's proposal ignores the fact that if gas is diverted, PG&E must still pay for the gas that it sells to end users,

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[12] ORA/TURN state in their reply that noncore customers should not be subject to penalties if they elect to replace diverted gas since there is adequate capacity to accommodate the replacement supplies.

regardless of whether it is obtained through normal supply channels or diversions.

Nabisco states that the Commission should consider solutions that do not penalize whole classes of customers and which ignore marketplace realities. Nabisco recommends that the Commission require PG&E to segregate its gas revenues from other PG&E revenues, and use the gas revenues to pay for gas procurement and related expenses. Thus, there may be no need for diversions to solve a credit-related supply issue.

The Northern California Generation Coalition (NCGC) oppose the proposals of ORA/TURN and recommend that the proposals be rejected, or at a minimum, deferred.

NCGC contends that if noncore customers were asked to continue to procure gas, only to have the gas diverted by PG&E with no compensation beyond the market price, noncore customers would quickly cease nominating gas supplies. NCDC asserts that noncore customers would have no other alternative because if they continued to nominate gas, they would have to pay their suppliers for the gas and expose themselves to the risk that PG&E, as a potential bankrupt company, would be unwilling or unable to reimburse them for the gas in a timely manner. Also, these noncore customers would have to bear carrying costs between the date they paid their suppliers and the date they received compensation from PG&E.

NCGC contends that, contrary to ORA/TURN's position that the penalties serve no purpose other than to unnecessarily increase the cost of natural gas to core customer, the EFO penalties and the current diversion charge provide some incentive to noncore customers to bear the risk and carrying costs they would incur if they continue to nominate gas in spite of the diversions. Even at inflated

January 2001 gas prices, diversion compensation of $50 per Dth provides an incentive that is likely sufficient to encourage noncore customers that are subject to diversion charges to continue nominating gas during the diversions. Also, some customers may view the prospect of receiving a portion of the EFO penalty dollars as compensation for being curtailed.

Another benefit of retaining the EFO penalties and diversion charges is that it sends a price signal to core customers to reduce their demand for gas.[13] Any elimination or reduction in the EFO penalties and diversion charges would only subsidize core customers and encourage gas consumption to go unabated.

NCGC contends that ORA/TURN's proposal would impair electricity generation because gas that is nominated by electric generators would be subject to diversion without any payment of EFO penalties and diversion charges. Electricity generators would then be forced to curtail their generation of electricity, which would only exacerbate the electricity crisis. NCGC argues that electricity generation should be assigned a higher priority than other noncore uses for the duration of the current crisis.[14]

NCGC also asserts that various phrases in ORA/TURN's proposal are so vague, that the proposals could not be administered. One example is that ORA/TURN has not defined what constitutes "the actual market price of gas."

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[13] ORA/TURN reply that gas prices are already five times the price of gas last year, and that these price increases are already reflected in a PG&E customer's monthly bill.

[14] NCGC filed an emergency petition to modify D.97-08-055 and Resolution G-3288 on January 26, 2001. The petition seeks to grant electric generation usage a higher priority than other noncore end uses for purposes of applying PG&E's curtailment and supply diversion rules.

NCGC agrees with ORA/TURN that PG&E should be directed to immediately inform the Commission, and provide reports for the duration of the crisis, of the current storage and supply situation, and how PG&E intends to ensure that the demand of core gas customers are met.

PG&E supports the proposal of ORA/TURN that core procurement customers should be excused from having to pay OFO and EFO noncompliance charges in the event of a diversion of noncore gas during the current gas supply emergency.[15] PG&E contends that no legitimate purpose would be served by imposing these noncompliance charges on PG&E's core ratepayers.

PG&E believes that the proposed modification to the diversion payments to noncore customers is not well-advised. PG&E believes that CIG/CMTA have persuasively argued that reducing the level of the diversion payment to the noncore suppliers, whose gas is diverted to meet core needs, would not be fair to the noncore suppliers and the noncore customers. PG&E agrees with CIG/CMTA that the diversion payment should be kept at $50/Dth. PG&E contends that reducing the level of the payment to noncore suppliers increases the risk that these suppliers will simply stop sending gas to California, which will only worsen the supply crisis. PG&E also agrees with ORA/TURN that it would be unfair to impose the full burden of these diversion payments on PG&E's core ratepayers.

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[15] PG&E suggests that the Commission should define the end of the current gas supply emergency as the point when PG&E's credit is restored, the confidence of the gas suppliers return and they agree to sell gas to PG&E without any special payment terms or credit assurances, and there are no longer any Department of Energy emergency orders or other governmental intervention.

PG&E proposes that if diversion payments are made to noncore customers pursuant to Gas Rule 14 during the current gas supply emergency, that the payments be recouped as follows:

> "First, PG&E core customers should pay the market price for the gas that is diverted (up to $50/Dth), which shall be based on a daily border gas price index. Therefore, this market price should be booked to the Purchased Gas Account. Second, the difference between the market price for the gas and the $50/Dth paid to the noncore supplier then should be booked to a balancing account, and recovered from PG&E's on-system backbone transmission customers, via a special surcharge, on an equal-cents-per-therm basis. This will spread the cost of the above-market portion of any diversion charges as widely as possible across the entire market, rather than imposing this cost solely on PG&E's core or noncore ratepayers." (PG&E Response, p. 8, footnote omitted.)

PG&E also notes that it has two related emergency requests pending before the Commission. The first is PG&E's January 22, 2001 petition to modify D.00-12-029 in A.00-10-029, which seeks authority for PG&E to use its accounts receivable and customer accounts to provide a security interest for purposes of securing gas purchases on behalf of core customers. The second is PG&E's January 18, 2001 application seeking an order directing SoCalGas to provide emergency assistance to PG&E during the current gas supply emergency. PG&E urges prompt action on both to avert a serious gas shortage that would require diversions of noncore supplies during February.

The City of Palo Alto (Palo Alto) operates a municipal gas utility which supplies 27,000 core customers. Palo Alto opposes the request of ORA/TURN to modify the involuntary diversion usage charge. Palo Alto states that the $50/Dth charge is not a penalty, but rather is an essential means of compensating noncore customers for the cost of the diverted supplies as well as an incentive to ensure that suppliers continue flowing gas to PG&E's service area during a diversion. Palo Alto agrees with the response of CIG/CMTA that lowering the diversion usage charge will increase the likelihood that noncore customers and their suppliers will sell the gas elsewhere rather than to transport it to California.

Palo Alto supports the proposal of ORA/TURN to modify the EFO penalty for core customers during a diversion. Palo Alto states that this modification should apply to all core customers in PG&E's service area, including wholesale core customers and retail customers supplied by core aggregators. Although Palo Alto has contracted for firm gas deliveries from its supplier, Palo Alto is not certain if the gas will actually be delivered to Palo Alto in the event of a gas supply emergency. Palo Alto states that no one knows how PG&E will implement the diversion provisions of PG&E's Rule 14 if a gas supply emergency were to occur. Palo Alto contends that if less than 100% of the gas were delivered by PG&E to Palo Alto, and Palo Alto could not expeditiously reduce its usage, or if there were a lag in determining the amount of supplies available to its customers, Palo Alto could be charged the $50/Dth EFO penalty despite its best efforts to flow gas equal to or greater than its load. Such a penalty would unfairly penalize Palo Alto for PG&E's failure to obtain sufficient gas supplies for its core portfolio customers.

Palo Alto believes that a more appropriate EFO penalty should not exceed $5 per Dth. Such a penalty would provide an incentive for customers to comply with an EFO, and would not unduly burden customers for problems outside their control.

PanCanadian Energy Services Inc. (PCES) urges the Commission to reject ORA/TURN's petition on the following grounds: (1) that the relief is inappropriate, temporary in nature, and ineffective in dealing with the underlying problem; (2) that the proposed action would actually increase the problems of gas supply reliability in PG&E's service territory, and that it has the potential for creating longer-term negative consequences; and (3) that there are other remedies that are more lasting, effective and appropriate.

PCES states that the fundamental issue is a lack of creditworthiness. PG&E is now in the position of not being able to provide gas suppliers with any confidence that the suppliers will be paid for gas sold to PG&E, even if PG&E can recover its gas costs from ratepayers. That is because the gas revenues may be claimed by companies which sold electricity to PG&E. Due to a lack of segregation of electric and gas revenues, PG&E is unable to provide gas suppliers with assurances that they will be paid.

PCES states that gas is available at the market price, so PG&E's problem is not a gas supply issue. Although the cost of gas is higher than it was in the past, it is available to anyone who can pay for it. PCES also points out that this is not a transportation capacity issue, for which the OFO and EFO penalty provisions were adopted. PCES asserts that there is enough intrastate pipeline transmission capacity to deliver gas to both the core and noncore under current gas demand conditions. PCES contends it is therefore inappropriate to attempt to deal with a creditworthiness issue by reallocating the supply that is still entering the market, or to waive the penalties.

PCES contends that ORA/TURN's proposal would offer no lasting relief because all flows of noncore gas would probably stop. Instead of continuing to flow gas, PCES asserts that noncore customers will not risk their good credit to replace PG&E's bad credit to buy gas for core customers. PCES contends that the diversion of noncore gas supplies will cause noncore customers to cease operations. PCES contends that the $50 per Dth diversion payment is, in most cases, too small to reimburse noncore customers for lost production and profits, and other operating costs.

PCES states that the Department of Energy's emergency gas order has increased the financial exposure of the gas suppliers by effectively forcing the suppliers to continue sales to a virtually bankrupt customer. PCES states that this has long term detrimental implications for California because suppliers must consider the regulatory risks in deciding whether they should sell gas in California.

PCES also contends that there are serious legal issues with the proposal of ORA/TURN. These include taking, discriminatory treatment, due process, and notice issues.

PCES contends that ORA/TURN have also failed to explore more promising solutions. One solution, is PG&E's second expedited petition to modify D.00-12-064 and to obtain authorization under Pub. Util. Code § 851 to securitize its gas revenues, which will allow gas suppliers to have access to gas revenues. Another solution is to have the state buy gas for the core at market prices and then sell that gas to PG&E. This setup would be similar to the role that the state has assumed on the electric side. A third alternative is to organize through the state a core gas purchasing agency, which would sell commodity gas directly to core customers, and collect the payment from core gas ratepayers. A fourth alternative is for the Commission to order an immediate spin-off of PG&E's gas department from the electric department. This would create a creditworthy entity on the gas side. If the federal government offers assistance, PCES proposes possible exchanges of gas to be delivered to PG&E at the California border in exchange for federal royalty gas that is delivered elsewhere.

PCES contends that all of its proposed alternatives directly address the problem of PG&E's creditworthiness, rather than creating new problems.

PCES does agree with ORA/TURN that everyone should have better information about PG&E's storage situation.

The School Project for Utility Rate Reduction (SPURR) opposes the petition on the grounds that the relief requested by ORA/TURN will not solve PG&E's credit issue. SPURR also objects to the proposal to waive the penalties associated with EFO and OFO conditions. If these penalties are waived, SPURR asserts that PG&E's core procurement department will not be encouraged to purchase enough gas supplies on a daily basis to remove an EFO or OFO condition.

SPURR does not object to a significant reduction in the level of EFO and OFO penalties, but believes that the Commission should not eliminate the penalties for EFO or OFO noncompliance. If the penalties are reduced, SPURR recommends that the reduction in penalties be made applicable to both the core procurement department and to all core aggregators. This will ensure that core aggregation customers are not disadvantaged because of their decision to purchase gas from a supplier other than PG&E.

SPURR is also opposed to ORA/TURN's proposal to reduce the penalty for diverted gas supplies to the market price of the gas. SPURR contends that a penalty over and above the market price is necessary in order to provide an incentive for PG&E to purchase gas supplies for its own core portfolio.

SPURR also supports lowering, but not eliminating, the diversion charge. If the diversion charge were eliminated entirely, that is likely to discourage shippers from delivering gas onto the PG&E system. That would likely result in a downward supply reduction spiral, which would affect all end-users on the system to their detriment. SPURR estimates that a diversion fee surcharge of $10 per Dth above the price of gas is likely to prevent suppliers from leaving the market.

SPURR states that the gas suppliers' confidence could be restored if the Commission takes action to assure that all gas revenues received by PG&E will be applied exclusively to pay for PG&E's gas purchases.

V. Discussion

The events of the last several weeks have unfolded at a rapid pace. The utilities, interested parties, and the Commission have all tried to stay abreast of recent developments.

As the electricity crisis evolved, PG&E as a provider of both electricity and natural gas, began to feel the financial effects on the gas side of its business. PG&E took a series of actions at the state and federal levels in an attempt to prevent the electricity crisis from affecting gas service to PG&E's customers. On January 18, 2001, PG&E filed A.01-01-024, which seeks a Commission finding of an imminent gas supply emergency in PG&E's service territory. The application also seeks a Commission order directing SoCalGas to provide mutual assistance to supply PG&E with core gas supplies. This was followed by the January 22, 2001, PG&E filing of its petition to modify D.00-12-064 to allow it to pledge its gas and electric customer accounts receivable. In response to A.01-01-024, and the increasing likelihood of noncore gas diversion and curtailments, ORA/TURN filed the emergency petition that is before us today.

The Commission in D.01-01-062 acted on PG&E's petition to modify D.00-12-064. D.01-01-062, which was issued on January 31, 2001, authorized PG&E to pledge its current and future gas customer accounts receivable and core gas inventory for the purpose of procuring gas supplies for PG&E's core customer and storage gas for core customers.

Pursuant to Ordering Paragraph 7 of D.01-01-062, the Energy Division has informed us that PG&E has been able to enter into some gas supply contracts with suppliers using the pledge of the gas accounts receivable and core gas inventory credit tools. Although some core gas supplies will flow as a result of these contracts, it is still uncertain at this point in time whether the diversion of noncore gas supplies will be necessary in order to serve the demands of core customers. In preparation of a "worst case" scenario, i.e., diversions are needed, we address ORA/TURN's emergency petition.

The action we take today is based on the extraordinary circumstances and events taking place. The situation remains fluid. If diversions of noncore gas are necessary as a result of PG&E's inability to procure core gas supplies, then the modifications described below should apply. If the situation turns more favorable, and no diversion of noncore gas is needed to fulfill the gas needs of PG&E's core customers, then our modifications detailed below should not apply.

By virtue of the Commission's adoption of the PG&E Gas Accord settlement in D.97-08-055, that settlement sets forth various rules pertaining to PG&E's intrastate transmission and storage systems. Among the rules covered are OFO, EFO, and diversion charges. (73 CPUC2d at pp. 806, 813-814.) The various rules contained in the Gas Accord settlement were implemented in Resolution G-3288.

Nabisco's contention that Rule 14 should not apply to the situation at hand is without merit. The adoption of the Gas Accord settlement restructured the way that PG&E provides natural gas service to its customers. The settlement specifically addresses the terms and conditions of PG&E's intrastate transmission and storage systems, including an involuntary supply diversion. (73 CPUC2d at pp. 806, 814.) Since the settlement covers all aspects of the operation of PG&E's

intrastate gas system, PG&E's Gas Rule 14 covers involuntary diversion of noncore gas supplies for whatever reason, including supply problems due to a lack of credit.

The next issue to address is whether the charges or penalties associated with an OFO, EFO, and involuntary diversion, should continue to apply in the situation that faces us today. ORA/TURN and others contend that at the time the Gas Accord was being negotiated and adopted by the Commission, no one ever contemplated that diversions of noncore gas might occur on a recurring or constant basis due to PG&E's financial condition. Others who oppose the petition contend that such an event was contemplated at the time, or that the charges and penalties should still apply since they are analogous to liquidated damages.

Our review of the Gas Accord settlement and the quotations provided by the parties lead us to conclude that the parties to the Gas Accord settlement and the Commission did not contemplate that the settlement, and the rules governing PG&E's gas system, were designed to address a scenario of frequent or constant diversions of noncore gas in order to protect gas service to core customers. PG&E Gas Rule 14-G states in pertinent part:

> "When operational conditions exist such that supply is insufficient to meet demand and deliveries to Core End-Use Customers are threatened, and subject to the obligations of Core Procurement Groups to utilize all available capacity associated with supply, PG&E may divert gas supply in its system from Noncore End-Use Customers to Core End-Use Customers. Emergency Flow Order (EFO) provisions will be deemed to apply under these conditions."

The above provision contemplates that core supply is insufficient to the gas demand, and that all available capacity must be utilized. In the situation that faces us today, the gas suppliers readily acknowledge that natural gas is available in the marketplace but that it is priced at the market rate. Thus, there is plenty of gas available at a certain price. In addition, there is no present capacity constraint on PG&E's system to prevent gas supplies from flowing. The diversion of noncore gas is viewed as a drastic measure in order to obtain gas supplies when there are no other supplies available, and capacity is being fully utilized. We can only conclude that a diversion of noncore gas, as contemplated in Rule 14-G, did not envision the set of circumstances under which PG&E may have to divert noncore gas supplies in order to meet the gas demand of its core customers.

In addition, we face highly, unusual circumstances. As widely reported, and cited in other proceedings related to the energy shortage facing California, on January 17, 2001, Governor Davis issued a Proclamation which declared a state of emergency regarding the shortage of electricity available to California utilities. On January 19, 2001, President Clinton declared a natural gas supply emergency in the central and northern regions of California. The Secretary of the Department of Energy issued a "Temporary Emergency Natural Gas Purchase and Sale Order" which expired on February 7, 2001 at 12:01 a.m. Thus, what faces us today is an energy shortage and a natural gas emergency. ORA/TURN's petition must be viewed within that context.

On January 26, 2001, in D.01-01-056, we granted a limited waiver of penalties for two customers on interruptible electric rate programs. We also suspended the penalty provisions in those tariffs for interruptible electricity service customers who fail to curtail at the request of the utility. The reason for suspending the penalties was because of the electricity crisis resulting from the unavailability of supply and the increases in price for electricity. The

Commission also stated that interruptible customers were experiencing more frequent curtailments than they thought they were going to be subject to. As a result, the penalties were forcing customers to decide whether to curtail their electric service on a more frequent basis, or to pay the significant penalties. Given the economic and social consequences of the interruptible customers' choices, the Commission decided to suspend these penalties for interruptible electric customers.

The situation described in D.01-01-056 is not unlike the situation that faces us now. If PG&E is forced to divert noncore gas supplies, the charges and penalties associated with an OFO, EFO, and involuntary diversion are required under PG&E's tariffs. We agree with ORA/TURN that the OFO and EFO charges, as well as the diversion charge, will only increase the cost of gas to core customers.

Consumers of gas have experienced significant increases in the price they pay for gas. If diversions of noncore gas become the rule rather than the exception in order to provide service to core customers, the charges associated with an EFO and involuntary diversion will add up quickly, which will impact core customers.

We will waive the OFO and EFO noncompliance charges contained in PG&E's Gas Rule 14 for core procurement customers if diversion of noncore gas supplies occurs due to PG&E's lack of credit and its inability to procure core gas supplies directly from gas suppliers. The waiver of such charges is appropriate because a diversion will require an EFO to issue. (See PG&E Gas Rule 14-G.) An OFO may issue as well in the event the system needs to be protected. If PG&E is forced to divert noncore supplies in order to serve core customer needs, that will mean PG&E has very few options available to procure needed gas supplies. This is likely to result in frequent diversions of noncore supplies, and the issuance of EFOs and OFOs. Given the state of emergency, the declaration of a natural gas emergency, and the steps the Commission took in D.01-01-056 we believe that waiver of the OFO and EFO charges for core procurement customers is justified.

As for the involuntary diversion charge of $50 per Dth, we will not modify or reduce that amount. We agree that noncore customers should be compensated for the diversion, and that the $50 per Dth charge is an appropriate charge that should continue. We recognize that gas prices have risen dramatically, but we do not believe that lowering the diversion charge to the actual market price will fully compensate noncore customers and suppliers. Such a reduction is also likely to cause gas suppliers and noncore customers to cease the flow of gas into California. Given the few gas supply alternatives left to PG&E, this is not an attractive option. The amount of the charge provides a sufficient incentive for noncore customers and gas suppliers to decide whether they should continue to flow gas in order to help alleviate PG&E's predicament, or to curtail or shutdown their businesses.

We decline at this point to modify the other charges and penalties that the parties have raised.

The waiver of the OFO and EFO charges should not be viewed as a solution to PG&E's financial problems or to the gas supply issue that endangers the public health and safety of gas customers in PG&E's service territory. We urge the Governor and the Legislature to take all necessary and immediate action to ensure that natural gas supplies continue to flow to PG&E's service territory. If we are forced to rely on diverted gas in order to serve the needs of core customers, that will only cause the bills of core customers to increase.

To implement today's modification of PG&E's Gas Rule 14, PG&E shall file an advice letter within 10 days suspending the OFO and EFO noncompliance charges only if PG&E cannot directly procure sufficient quantities of natural gas to serve its core customers as a result of its current financial condition, and it has to divert noncore gas supplies in order to serve its core customers. The Director of the Energy Division (Director) will review the advice letter and tariff for compliance with this decision. Once approved by the Director, the advice letter and tariff will be effective as of today.

ORA/TURN have suggested that PG&E be directed to keep the Commission informed about the current storage and supply situation. That is currently being addressed in A.01-01-024.

Rule 47(d) of the Commission's Rules of Practice and Procedure provides that if more than one year has elapsed from the effective date of the decision, the petitioners must explain why the petition could not have been presented within the first year. The petitioners state that the basis for the modification is a result of PG&E's current financial crisis and its related deteriorating credit situation. They contend that these conditions did not exist prior to the current crisis and could not have been reasonably anticipated or contemplated when the Gas Accord settlement was negotiated and approved by the Commission. The petitioners have justified in their petition why the petition was not filed sooner.

Draft decisions are generally subject to a 30-day review and comment period as provided for in Public Utilities Code § 311(g)(1). However, § 311(g)(2) provides that this 30-day period may be reduced or waived in an unforeseen emergency situation. Rule 77.7(f)(9) provides that the Commission may waive the period for review if the Commission determines, on the motion of a party or on its own motion, that "public necessity" requires waiver of the 30-day period for public review and comment. Public necessity includes a situation where the failure to adopt a decision before the expiration of the 30-day review and comment period would cause significant harm to the public health or welfare. The failure to timely act on the petition to modification could result in the non-delivery of natural gas to core customers in the middle of the peak winter season. Such a situation endangers the public health and welfare of the citizens of this state. Therefore, the 30-day public review and comment period on this draft decision is waived.

Findings of Fact

1. On January 16, 2001, ORA/TURN filed their emergency petition to modify the decision regarding PG&E's Gas Accord and Resolution G-3288.
2. ORA/TURN request the Commission to take immediate action, or shorten the time for responses.
3. An ALJ issued shortening the time for responses to the petition.
4. The Commission provided notice in its agenda that action would be taken on this item at the February 8, 2001 Commission meeting.
5. Gas curtailment, diversion and constraint conditions are described in PG&E's Gas Rule 14.
6. Resolution G-3288 approved the specific tariff language in Rule 14.
7. Rule 14 addresses the conditions regarding an OFO, EFO, and diversion.
8. ORA/TURN propose that the OFO and EFO noncompliance charges to core procurement customers be waived, and that the involuntary diversion charge of $50 per Dth be reduced.
9. As the electricity crisis evolved, PG&E began to feel the effects on the gas side of its business.

10. D.01-01-062 authorized PG&E to pledge its current and future gas customer accounts receivable and core gas inventory for the purpose of procuring gas supplies for PG&E's core customers and storage gas for core customers.

11. The Energy Division has informed the Commission that PG&E has been able to enter into some gas supply contracts using the pledge credit tool.

12. It is uncertain at this point in time whether the diversion of noncore gas supplies will be necessary.

13. Various federal and state orders have been issued concerning the energy shortage in California.

14. D.01-01-056 suspended the penalties associated with the interruptible electric rate programs.

15. The situation described in D.01-01-056 is not unlike the situation that faces us.

16. If PG&E is forced to divert noncore gas supplies, the charges and penalties associated with an OFO, EFO, and involuntary diversion are required under PG&E's tariffs.

17. The OFO, EFO and the diversion charge will only increase the cost of gas to core customers.

18. Consumers of natural gas have experienced significant increases in the price they pay for gas.

19. If diversions of noncore gas become the rule, the charges associated with an EFO and involuntary diversion will add up quickly, which will impact core customers.

20. The $50 per Dth diversion charge is an appropriate charge that should continue because that amount provides a sufficient incentive for noncore

customers and suppliers to decide whether they should continue to flow gas or to curtail or shutdown their businesses.

Conclusions of Law

1. The argument that Rule 14 should not apply to PG&E's situation is without merit because Rule 14 covers involuntary diversion of noncore gas supplies.

2. The parties to the Gas Accord settlement and the Commission did not contemplate that the settlement, and the rules governing PG&E's gas system, were designed to address a scenario of frequent or constant diversions of noncore gas in order to protect gas service to core customers.

3. The Commission should waive the OFO and EFO noncompliance charges contained in PG&E's Gas Rule 14 for core procurement customers if diversion of noncore gas supplies occurs due to PG&E's lack of credit and its inability to procure core gas supplies directly from gas suppliers.

4. Given the state of emergency, the declaration of a natural gas emergency, and D.01-01-056, the waiver of the OFO and EFO charges under the conditions described is justified.

5. The involuntary diversion charge of $50 per Dth should not be modified or reduced.

6. PG&E should be directed to file an advice letter to implement this decision.

7. ORA/TURN has justified why their petition was not filed within the first year of the issuance of D.97-08-055.

8. On the Commission's own motion, the 30-day public review and comment period on today's decision is waived.

O R D E R

IT IS ORDERED that:

1. The January 16, 2001 emergency petition to modify Decision (D.) 97-08-055 and Resolution G-3288 that was filed by the Office of Ratepayer Advocates and The Utility Reform Network is granted in part as described below. All other relief requested in the petition and by other parties in connection with this petition is denied.

2. D.97-08-055 and Resolution G-3288 shall be modified to reflect the following:

    a. Pacific Gas and Electric Company's (PG&E) Gas Rule 14 shall be modified to waive the Operational Flow Order (OFO) and Emergency Flow Order (EFO) noncompliance charges for core procurement customers only if PG&E has to engage in a diversion of noncore gas supplies, and due to PG&E's lack of credit, it is unable to procure core gas supplies directly from gas suppliers.

    b. PG&E shall file within 10 days of this order, in conformance with General Order 96-A, an advice letter with a revised tariff. The revised tariff shall waive the OFO and EFO noncompliance charges when the aforementioned conditions exist.

    c. The Director of the Energy Division shall review the advice letter and tariff for compliance with this order, and may require supplemental advice letters as necessary to bring the tariffs into compliance with this order.

    d. The advice letter and revised tariff shall be effective today, unless suspended by the Director of the Energy Division.

3. The Commission, through a ruling of the President of the Commission, may require PG&E to withdraw the tariff based on the modification approved today, and submit an updated tariff, if the conditions surrounding the energy shortage situation in California changes.

This order is effective today.

Dated February 15, 2001, at San Francisco, California.

HENRY M. DUQUE
RICHARD A. BILAS
GEOFFREY F. BROWN
Commissioners

President Loretta M. Lynch, being necessarily absent, did not participate.

Commissioner Carl W. Wood, being necessarily absent, did not participate.