

Decision 90 03 072 MAR 28 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND  
ELECTRIC COMPANY for authority,  
among other things, to increase its  
rates and charges for electric and  
gas service.

Application 88-12-005  
(Filed December 5, 1988)

Order Instituting Investigation into  
the rates, charges and practices of  
the Pacific Gas and Electric Company.

I.89-03-033  
(Filed March 22, 1989)

O P I N I O N

This opinion addresses the interpretation of certain Commission rules regarding the extension of service by Pacific Gas and Electric Company (PG&E). This opinion concludes that the specific recommendations of Utility Design Inc. (UDI)<sup>1</sup> would require revision of Rules 15, 16, and 20. This decision consolidates the issues raised in the prepared testimony of UDI with UDI's complaint (Case (C.) 89-10-054) for the purpose of further proceedings.

<sup>1</sup> UDI is a consulting engineering and management firm.

Procedural Background

On April 6, 1989 UDI filed extensive testimony questioning PG&E's current practices and interpretation of the line extension rules.<sup>2</sup> UDI's testimony includes more than 1,000 pages of exhibits. UDI's testimony alleges that:

"PG&E's rule interpretations and policies (i) effectively prohibit its ratepayers from performing Design Implementation Engineering/Engineering Estimating of the costs for the construction of the facilities to be provided under the Extension Rules and (ii) have curtailed competition in the installation of line extension facilities."

UDI's testimony requested that the Commission:

- "1. Allow PG&E to own and operate a non-regulated engineering and construction company for the purpose of designing and constructing additions to its plant under Option #2 of Gas and Electric Rule 15. This is a longer term recommendation. It is offered in order to eliminate the anti-competitive activities of PG&E favoring its own construction crews to the disadvantage of UDI and other contractors.
- "2. In the absence of such divestiture, UDI urges that the Commission require PG&E to include all costs it will incur in its own competitive bids for installing gas and electric extension facilities and prohibit them submitting below cost bids. In order to provide a direct economic incentive to below cost bids, UDI urges that the

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<sup>2</sup> Rule 15 governs the general extension of electric distribution lines, both overhead and underground extensions, of standard voltages necessary to furnish permanent electric service to applicants. Rule 15.1 pertains specifically to underground extensions within new residential developments, and Rule 15.2 pertains to underground extensions within new commercial and industrial developments. Rule 16 governs service connections and facilities on customer's premises. Rule 20 pertains to replacement of overhead electric facilities with underground facilities.

Commission permit PG&E to book to rates the lower of its actual costs or the sum bid in a competitive bidding process.

- "3. Allow developers to provide Design Implementation Engineering that is completed by outside engineering firms of their choice, thereby separating the actual implementation of 'canned specifications and design standards' from the transmission and distribution system planning activities. UDI does not propose to supplant PG&E's transmission or distribution system planning or PG&E's creation of standardized designs and specifications. UDI's recommendations would allow PG&E to reduce its engineering work force. For Design Implementation Engineering provided by independent firms, PG&E would provide plan checks, like used in most counties for compliance with County building requirements.
- "4. Prohibit PG&E from engaging in anti-competitive behavior by requiring it to charge the same inspection fees for Option #1 (PG&E installed) or Option #2 (competitive bidding) Line Extension installations. PG&E must be ordered to discontinue the current practice of waiving fee's for PG&E installed line extensions and not waiving those fees for applicant installed line extensions and similar activities.
- "5. Require PG&E to properly calculate for and differentiate between system betterments and applicant required changes in Rule 15/20 projects, prohibit PG&E from assessing special facilities charges for underground switching and/or protective devices installed in a residential Rule 15/16 project, and prohibit PG&E from applying Rule 15(d) standards when wire must be pulled through existing duct systems.
- "6. Require PG&E to calculate all refunds to include all authorized indirects and overheads that it normally assesses to

other parts of its plant in calculating refunds (i.e., material stores expense, AFUDC, etc.)."

In response to UDI's testimony, The Engineers and Scientists of California MEBA, AFL-CIO, (ESC)<sup>3</sup> prepared and served the testimony of six witnesses. This testimony opposes the proposal by UDI to allow applicants to hire consultants for design or engineering of line extensions. ESC contends that use of independent consultants to perform engineering design would be inappropriate as a matter of public policy and could be slower, less accurate, less efficient, and more expensive.

The extensive testimony of UDI and ESC was too voluminous to be heard within the limited period for hearings provided for this general rate case. Therefore, Administrative Law Judge (ALJ) Wheatland issued a ruling, dated April 20, 1989, which referred the testimony by UDI and ESC to the parallel investigation, I.89-03-033. The ruling also permitted the parties to file briefs on two legal questions which will have a significant effect on the scope of the Commission's investigation into the issues raised by UDI. ALJ Wheatland's ruling asked the parties to address two specific questions:

Do PG&E's current practices regarding extension of service of which UDI complains comply with the Commission's line extension rules?

Would the specific proposals of UDI require a change in the line extension rules?

In response to the ALJ's ruling, briefs were filed by UDI, PG&E, ESC, DRA, Southern California Gas Company, and Southern California Edison Company.

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<sup>3</sup> ESC is a labor organization representing employees of PG&E engaged in the performance of engineering and estimating work.

On October 31, 1989, UDI filed a complaint, C.89-10-054. This complaint alleges that (1) PG&E will not allow an applicant to perform its own design work even though PG&E estimators make numerous errors and cause project delays, (2) PG&E fails to comply with its own estimator's manual and standard practices, and (3) PG&E's bids do not represent the actual or correct costs of the jobs. UDI contends that PG&E's practices are anticompetitive and a restraint on trade. PG&E filed an answer to the complaint on December 14, 1989. The complaint is pending before ALJ Patrick.

Positions of the Parties

It is UDI's position that a developer should be entitled to provide "design implementation engineering" and "engineering estimating work" with the consultant of its choice in accordance with PG&E's design. UDI describes this service as applying predefined engineering and construction standards and specifications to particular projects. This work would involve the preparation of "Utility Improvement Plans", under the stamp of a registered civil engineer. UDI proposes that these plans be checked by PG&E's engineering staff for conformance with its standard design and planning constraints.

According to UDI's brief, UDI is requesting authorization to do the work that PG&E's estimators currently perform. UDI contends that this is not design work: "This is simply the application of canned designs and specifications, contained in various manuals to the specific situation."

UDI argues that its proposal to perform this work does not run afoul of the line extension rules:

"Each of the Extension Rules contains a provision that any installation shall be completed in accordance with '...the utility's design and specifications.' UDI intends on using the 'utility's design and specifications.' This is not in dispute. Under UDI's proposal, PG&E will still provide the design and specifications, just like it does now. The design is 'canned' and

'standardized.' UDI simply wants to implement PG&E's designs and specifications in a timely manner.

"UDI proposes that the applicant's Design Implementation Engineering and the corresponding engineering estimating work be accomplished via the applicant's use of PG&E's system planning and PG&E's standardized designs. This would result in labor and cost savings to the ratepayers since fewer PG&E employees would be required. No degradation of service would occur since the Utility Improvement Plans would be stamped by a registered civil engineer and PG&E would provide any necessary plan check services.

"UDI cannot find language which would prohibit its proposed interpretation. Similarly, UDI cannot find information to indicate that the Commission was aware of the standardized designs used by PG&E or the method in which contractors would interface with the utility in this process. Much of what UDI seeks is thus not specifically contained in the tariffs. Rather, they are matters which typically go on behind the regulatory scene and are thus not issues likely to have been previously discussed."

PG&E contends that the specific proposals of Utility Design would require a change in the rules. According to PG&E:

"The authority for design of systems is clearly shown in the tariffs by the language which says:

"The Applicant shall pay to the Utility, subject to refund, any Utility costs associated with the extension, including the estimated costs of design, administration, and installation of any additional facilities and labor necessary to complete the extension. (Exhibit 27.)

"This authority is consistent with the tariffs, and the underlying policy which they are intended to implement. The language was added as discussed in the staff motion in CPUC Investigation No. 84-07-045, to clarify the utility's responsibility, despite the fact that

the staff thought it clear that the utility had responsibility for design of interconnection facilities, even without the added language."

ESC also filed a brief on the interpretation of the line extension rules. ESC explains how the rule regarding evolved:

"In its initial draft of a proposed rule, the PUC staff proposed that the relevant portion of the rule read that the installation could be installed 'in accordance with the utility's specifications.' However, after the comments were received, the staff revised its proposed rule to state (see Decision p. 34) that the installation would be 'in accordance with the Utility's design and specifications.' In short, the words 'design and' were specifically and intentionally added to the rule. The staff comment on this was reproduced by the PUC in its decision at page 35:

"(c) The words 'design and' have been added prior to 'specifications.' Utilities' personnel are adamant that design responsibility should be spelled out in the tariff. Staff is of the opinion that utilities had and continue to have such responsibility without specific language. Staff has added 'design' since making such responsibility explicit does not materially change the way the tariff will work."

"In other words, the staff's view was that it was obvious that the design work was to be performed by the utility. However, in order to help the tariffs be completely clear, the extra wording was inserted.

"Finally, the decision was issued which contained in it, in Appendix A, standard tariff language which was to be inserted into each respondent utility's extension rule. The language, in relevant part, is as follows:

**"APPLICANT INSTALLATION**

"Subject to the refund and free footage provisions of this rule, an extension may be installed by an applicant's qualified

contractor/subcontractor in accordance with the Utility's design and specifications. Upon acceptance by the Utility, ownership of all such facilities shall transfer to the Utility, subject to refund, any Utility costs associated with the extension, including the estimated costs of design, administration and installation of any additional facilities and labor necessary to complete the extension...."

"This is, of course, the exact language at issue in the PG&E rules. It is impossible to read it, with the complete background of Case 85-08-043 in mind, and contend anything else other than that the design and specifications are the 'utility's' and clearly belong to it, under its control.

"Thus, the current practice of PG&E, which is to insist on maintaining such matters under its control, is clearly in accord with the intent of the statute, as effectuated by the Public Utilities Commission in this case."

ESC's interpretation of the rules is confirmed by DRA:

"The Commission's Decision 85-08-043 clearly states that an applicant intending to install an extension must abide by the utility's design and specifications. There is no language in Senate Bill 48, Public Utilities Code Section 783, or in Decision 85-08-043 which mandates PG&E to accept an applicant's design of utility service. As discussed previously, it was the Commission that decided to include the word 'design' in the tariffs. Utility Design in its fourth proposed interpretation is challenging the Commission's own finding in Decision 85-08-043 that the term 'specifications' implies 'designing' as well. Therefore Utility Design is requesting a change in Decision 85-08-043 as well as in the rules. Had the Commission not specifically added the term 'design' to the tariffs then Utility Design could have argued that the utility was only required to provide very general specifications thereby allowing the applicant more flexibility in designing and engineering."



Edison believes that the proposals of Utility Design, Inc. would require changes in the rules:

"Edison believes that the proposals of Utility Design, Inc., if adopted by the Commission, would require changes in Rules 15, 15.1, 15.2, 16, and 20. Those rules designate both the cost and administrative responsibilities of the utilities and of the applicants for service; they do not specifically state that a developer or his authorized consultant has the right to design additions to or changes in a utility's electric system. In fact, they specifically provide that any applicant-installed facilities shall be in accordance with the utilities design and specifications. Further, as stated above, the Commission has confirmed in Decision No. 82-04-006 the correct applicant of those rules. For these reasons, the Rules would have to be amended if the Commission determines to grant that right to applicants for service."

Edison describes D.82-04-006 as follows:

"In Case No. 10829, Pacifica Corporation and Pardee Construction Company vs. Southern California Edison Company, the Commission specifically upheld Edison's right to design its own electrical system. The Complainants were developers of a residential subdivision falling within the provisions of Rules 15 and 15.1, who had hired a consultant to testify regarding Edison's design of the electrical distribution system to serve the subdivision and adjacent areas. Edison contended that Complainants were seeking the redesign of Edison's electrical system. Although Complainants disagreed with Edison's contention, the Commission found that:

"Edison correctly assesses Complainants' proposal as a redesign of its system. A developer should not be permitted to design the system, but it may question Edison's design."

Discussion

UDI contends that certain functions performed by PG&E's engineering estimators<sup>4</sup> are not design work within the terms of Rules 15, 16, and 20. Instead, UDI characterizes these tasks as the "application of 'canned' designs and specifications, contained in various manuals to specific tasks." UDI contends that the applicants' own contractors should be permitted to "implement" the utility's designs and specifications. UDI suggests that it cannot find language which would prohibit its proposed interpretation.

Rule 15.E.8 provides that an extension may be installed by an applicant's "qualified contractor/subcontractor in accordance with the utility's design and specifications." The applicant is required to pay to the utility any utility costs associated with the extension, including the costs of design.

Clearly the tasks characterized by UDI as "Design Implementation Engineering" are part of the process of designing a line extension. In Rule 15, we allow the utility to perform the design work and to collect from the applicant the costs of design. While an applicant must be permitted to elect the option of installing the extension, the rules do not allow the applicant to elect whether to design the extension. If the utility desires to delegate one or more of the design functions to the applicant acting under the utility's supervision, it may do so. However,

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4 These tasks as described by UDI include (1) preparation of an intent map that shows the proposed location of utility corridors in a new project, (2) design of the interface between the new project and PG&E's existing distribution system, (3) calculation of the wire and pipe sizes necessary for the facilities to be constructed in the new project, (4) preparation of the "Gas and Electric Working Drawings", and (5) development of the material summary and job instruction report and related cost estimates of the extension. UDI characterizes these tasks collectively as "Design Implementation Engineering" work.

Rules 15, 16 and 20 do not require PG&E to allow design functions to be performed by the applicant.

We conclude therefore that Rule 15 assigns to PG&E full responsibility for the design and specifications of the extensions, and reserves to PG&E the sole discretion to determine whether such responsibilities may be delegated to the applicant.

We now turn to consider whether UDI's specific requests would require a change in the existing rules.

UDI first asks that we "allow" PG&E to own and operate a non-regulated engineering and construction company for the purpose of designing and constructing additions to its plant under Option #2 of Gas and Electric Rule 15.

As we explain above, Rules 15, 16, and 20 assign certain administrative and cost responsibilities to the utility. In order for the Commission to allow, much less require, these responsibilities to be performed by a non-regulated company, we would need to revise the rules.

UDI's requests 2 through 6 ask that the Commission require PG&E to undertake certain actions or prohibit PG&E from undertaking other actions, including the manner in which PG&E presents competitive bids, books the costs of such bids, permits applicant design work by outside firms, charges inspection fees, calculates system betterments and applicant required changes in Rule 15/20 projects, prohibit PG&E from assessing special facilities charges for underground switching and/or protective devices installed in a residential Rule 15/16 project, applies Rule 15(d) standards when wire must be pulled through existing duct systems, and calculates refunds.

UDI submits that these matters are generally not addressed by the rules and UDI does not believe that these requests would violate Public Utilities (PU) Code § 783.<sup>5</sup> UDI's response that these matters are "generally" not addressed by the rules begs the question of whether it would be necessary to revise the rules in order to explicitly invoke the specific requirements or prohibitions requested by UDI.

We conclude that it would be necessary to revise the rules to implement each of UDI's specific recommendations. Unless these recommendations were expressly reflected in PG&E's tariffs, they would simply not be enforceable.

Since it is necessary to revise Rules 15, 16, and 20 in order to implement the specific recommendations of UDI, we must determine the appropriate forum in which to consider such changes. As we have noted earlier, there is considerable overlap between the testimony which UDI filed in this proceeding and the issues raised in its complaint, C.89-10-054. We also note that PG&E's answer in C.89-10-054 raises as an affirmative defense that the legal issues of tariff interpretation and compliance raised by the UDI complaint would require a separate Commission proceeding in accord with the requirements of PU Code § 783.

Given the overlap of issues between this proceeding and C.89-10-054 and the need for full compliance with PU Code § 783, we conclude that it is appropriate to consolidate the matters raised

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<sup>5</sup> PU Code § 783 provides that whenever the Commission considers issuing an order or decisions amending the terms and conditions governing the services provided by gas and electrical corporations, the Commission shall make written findings on seven issues. The Commission must request the assistance of appropriate state agencies in undertaking any such proceeding to revise these rules. Moreover, any new order or decision issued pursuant to such proceeding shall become effective on July 1 of the year following the year in which the decision is adopted.

by UDI's testimony in this proceeding with the issues raised in C.89-10-054.

Findings of Fact

1. On April 6, 1989 UDI filed extensive testimony questioning PG&E's current practices and interpretations of the line extension rules.

2. In response to UDI's testimony, The Engineers and Scientists of California MEBA, AFL-CIO, (ESC) prepared and served the testimony of six witnesses. This testimony opposes the proposal by UDI to allow applicants to hire consultants for design or engineering of line extensions.

3. In response to an ALJ's ruling requesting comments on specific legal questions, briefs were filed by UDI, PG&E, ESC, DRA, Southern California Gas Company, and Southern California Edison Company.

4. The extensive testimony of UDI and ESC was too voluminous to be heard within the limited period for hearings provided for general rate cases.

5. On October 31, 1989, UDI filed a complaint, C.89-10-054, which raises issues which are closely related to those presented in UDI's prefiled testimony in this proceeding.

6. Rule 15.E.8 provides that an extension may be installed by an applicant's "qualified contractor/subcontractor in accordance with the utility's design and specifications." The applicant is required to pay to the utility any utility costs associated with the extension, including the costs of design.

Conclusions of Law

1. Rule 15 assigns to PG&E full responsibility for the design and specifications of the extensions, and reserves to PG&E the sole discretion to determine whether such responsibilities may be delegated to the applicant.

2. While an applicant must be permitted to elect the option of installing the extension, the rules do not allow the applicant

to elect whether to design the extension. Rules 15, 16, and 20 do not require PG&E to allow design functions to be performed by the applicant.

3. It would be necessary to revise the rules to implement each of UDI's specific recommendations.

4. Given the overlap of issues between this proceeding and C.89-10-054 and the need for full compliance with PU Code § 783, the Commission should consolidate the matters raised by UDI's testimony in this proceeding with the issues raised in C.89-10-054.

O R D E R

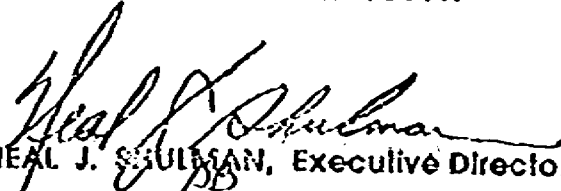
IT IS ORDERED that the issues regarding extension of Pacific Gas and Electric Company's electric service as set forth in the prefiled testimony of Utility Design, Inc. and The Engineers and Scientists of California MEBA, AFL-CIO, shall be consolidated with Case 89-10-054.

This order is effective today.

Dated MAR 28 1990, at San Francisco, California.

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY

  
NEAL J. SULLIVAN, Executive Director