

JUN 21 1991

Decision 91-06-053 June 19, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Application of PACIFIC GAS AND ELECTRIC COMPANY for a certificate of public convenience and necessity to construct and operate an expansion of its existing Natural Gas Pipeline System.

Application 89-04-033 (Filed April 14, 1989)

OPINION

This opinion addresses and resolves three petitions for modification of Decision (D.) 90-12-119, which granted a certificate of public convenience and necessity (CPCN) to Pacific Gas and Electric Company (PG&E) for the expansion of its gas transmission facilities (Expansion Project). The petition of Southern California Gas Company (SoCal Gas) and the two petitions of PG&E are granted in part. This decision authorizes a gas local distribution company such as SoCal Gas to file an application for approval of facilities it must construct to interconnect the Expansion Project to its existing facilities; allows the Expansion pipeline to cross rivers by boring instead of trenching and for construction to occur over a two-year period; and provides that shippers on the Pacific Gas Transmission Company (PGT) interstate expansion may not "cross-over" to existing PG&E intrastate facilities to avoid tariffs for service on the PG&E intrastate Expansion Project.

1. Petition for Modification of SoCal Gas

On March 11, 1991, SoCal Gas filed its petition asking the Commission to clarify how the state's gas utilities can submit proposals, prior to construction, for investments in utility facilities that are necessary to interconnect the utility with additional interstate pipeline capacity.

In its Comments on the ALJ's Proposed Decision, SoCal Gas had sought assurance that the Commission would entertain a request to include interconnection costs in rates, pending a post-construction reasonableness review.

D.90-12-119 stated that the utility's decision to incur pre-construction costs would be deemed reasonable, but that the recovery of costs in rates would still be subject to a post-construction reasonableness review. Since D.90-12-119 was issued, SoCal Gas has filed an application to recover costs incurred to interconnect another interstate pipeline and wishes that application, A.90-11-035, to be designated a model on which later applications for other additions can be based.

It would be premature to designate SoCal Gas's application as a model, since the proceeding is in its nascent stages. Moreover, the parties should be aware that the Commission needs flexibility to respond to anticipated changes in gas infrastructure. Our flexibility is especially important since our gas capacity brokering program is about to be implemented.

In the petition at hand, SoCal Gas has proposed language modifications to D.90-12-119. Those modifications are consistent with the Commission's intent that a utility's costs of interconnection be recovered only after CPUC review of its formal application for cost recovery. The utility's tender of an application to recover costs preserves the Commission's flexibility to consider the application separately or as part of a larger proceeding. The proposed language should be adopted.

## 2. Petition of PG&E

On March 29, 1991, PG&E filed its request to modify D.90-12-119 to amend the construction schedule from a one-year schedule to a two-year schedule. Construction of the pipeline over a two-year period would enable PG&E to cross Delta rivers by drilling underneath the rivers and installing the pipeline

underground, rather than submerging the pipeline in a trench on the bottom of the rivers.

On May 22, 1991, PG&E filed an amendment to its March 29, 1991 petition for modification. The applicant requests permission to submit engineering drawings relating to the river crossings 60 days, rather than 180 days, prior to the start of construction. D.90-12-119 had required the submittal to provide the biological monitor sufficient notice and opportunity to protect special status plants occurring at the crossing site.

D.90-12-119 had limited construction to the periods for which the environmental impacts of construction were analyzed in the Final Environmental Impact Report (EIR). The Final EIR was based on PG&E's application, which had proposed that rivers be crossed using the standard trenching method over a one-year construction schedule. However, the Final EIR concluded that boring under the rivers would be preferable and adopted that construction practice as a mitigation measure.

To comply with these mitigation requirements, PG&E must attempt to install the bored crossing between September 1, 1991, and May 1, 1992, to allow for open cutting the crossings during the October-to-January river crossing window of the following year if boring is not successful. The two-year construction schedule will enable PG&E to pursue the mitigation measure efficiently. If construction commences in September of 1991, the 180-day deadline for submittal of engineering drawings would have expired in March of 1991. Thus, it is reasonable to reduce the notice period to 60 days prior to construction.

The CACD has reviewed the potential environmental impact of the proposed river boring and two-year construction schedule. Its study and conclusions are contained in the "Addendum to PGT/PG&E Natural Gas Pipeline Project Environmental Impact Report: Modification of Pipeline Schedule to Allow Directional Drilling of the Delta Crossings to Occur from September 1, 1991 to May 1, 1992".

1992" and the "Addendum to PGT/PG&E Natural Gas Pipeline Project's Environmental Impact Report: Extension of Pipeline Schedule Over a 2-year Period." The Addendum notes that construction in any one segment would be completed in one year, within the same seasonal windows analyzed in the Final EIR. It concludes that the impacts of the request are the same as, or less than, those of the original project. No important new issues or significant effects on the environment are raised by the proposed changes. Therefore, the proposed revisions do not require the preparation of a subsequent EIR or any supplement to an EIR.

### 3. Second Petition of PG&E

#### 3.1 Requested Relief

On April 23, 1991, PG&E filed a second petition for modification of D.90-12-119. In this pleading, PG&E requests the Commission "to clarify that the Expansion Project is certificated as the intrastate means for taking gas away from the PGT Expansion and that PG&E's existing Line 400 facilities and the intrastate rates related to them will not be available for "cross-over" from the PGT Expansion" and to "shorten the required period between contract filing and start of construction to thirty days."

This request arises from the relationship between the interstate PGT Expansion and intrastate PG&E Expansion, which were conceived by PG&E as a single project to bring Canadian gas from Kingsgate, B.C., to Kern River Station in San Joaquin County, California.<sup>1</sup> PG&E asserts that this Commission's procurement and

<sup>1</sup> On January 22, 1991, the Federal Energy Regulatory Commission (FERC) issued a Preliminary Determination approving the PGT portion of the Expansion Project but ordering that capacity on the PGT Expansion be allocated through a new "open season" bid process that would award capacity only as far as the Oregon-California border. That open season has now taken place. PGT bidders must now enter into arrangements to have their gas delivered to points within California.

capacity brokering initiatives (R.90-02-008; R.88-08-018) have caused certain bidders for PGT Expansion capacity to question whether they might "cross-over" from their PGT Expansion capacity to existing PG&E facilities at the California border. PG&E claims that since such a hypothetical cross-over might avoid the PG&E Expansion project's tariffs, uncertainty on this point threatens to delay execution of some of the Expansion Project's transportation agreements. PG&E also seeks a shortening of time between its filing of firm transportation agreements and the start of construction from ninety days to thirty days. The shortening of time is crucial to enable PG&E to bore under rivers, since that process must begin no later than September 1, 1991 and it is now less than 90 days prior to that date.

### 3.2 Responses by Intervenors and Reply of PG&E

Responses to PG&E's April 23 petition for modification were received from intervenors Kern River Gas Transmission Company (Kern River), Altamont Gas Transmission Company (Altamont), and the Indicated Expansion Shippers (Indicated Shippers).<sup>2</sup> The intervenors oppose PG&E's petition for modification.

Kern River urges the Commission to explicitly require PG&E to allow non-core shippers on its system free choice, consistent with the Commission's rules, among the transportation services PG&E provides. Kern River relies heavily on the FERC's finding that PGT/PG&E protected the market of PG&E from competition by allowing deliveries of expansion capacity to Kern River Station only, thereby by-passing the market area of PG&E. Kern River also highlights the FERC's suggestion that PGT and PG&E may have created

<sup>2</sup> Kern River and Altamont are competitors of the PGT/PG&E Expansion and have previously appeared in this proceeding. The Indicated Shippers are an ad hoc group of six Expansion shippers who together have contracted for approximately 236 MMcf/d of the Expansion's 755 MMcf/d total capacity.

an "illegal tying arrangement between interstate and intrastate transportation." Kern River argues that the Commission's grant of PG&E's petition for modification would constitute an endorsement restricting PGT shippers only to Kern River Station, would enhance PG&E's standing in the competition for southern California markets, and would preserve PG&E's dominant position in Northern California.

Altamont's objections to PG&E's proposal focus on the impact of the tying arrangement on shippers' ability to deliver Expansion gas to northern California.

The Indicated Shippers also object to the designation of the Expansion as the California carrier of PGT expansion supplies because as currently designed, PG&E's tariffs would require Expansion shippers to pay twice for transportation over the length or "backbone" of the state. According to the Indicated Shippers, transportation to Kern River Station is imputed in Expansion rates; the cost of transportation over lines 400, 2, and 300, which parallel the Expansion, is imputed in PG&E's existing rate for intrastate transportation. The Indicated Shippers suggest the Commission declare as its policy that Expansion Shippers seeking delivery in northern California need not pay twice for "backbone" transportation and recommend that the Commission amend PG&E's tariffs to be consistent with this policy in the Expansion's first general rate case.

On June 7, 1991, PG&E filed its reply to the response of the Expansion Shippers. PG&E argues with the Expansion Shippers that the costs of line 400, 300, and 2 should not be included in their underlying intrastate rate. PG&E offers to eliminate costs related to the facilities paralleled by the Expansion Project from the off-Expansion rate to be paid by Expansion Shippers into PG&E's service area, but it does not specify how this would be authorized by the Commission.

PG&E's reply to the Expansion Shippers' response to the Commission's decision in the Expansion's first general rate case is dated June 7, 1991. PG&E's reply is filed in the Commission's file in the Expansion's first general rate case. PG&E's reply is filed in the Commission's file in the Expansion's first general rate case.

3.3 Discussion

Kern River and Altamont's major complaint is founded on their interpretation of our authorization for PG&E's service to intrastate service. Apparently, the FERC interprets the tariff for a "single delivery point" as prohibiting delivery of Expansion gas anywhere other than Kern River Station. If PG&E Expansion service is required for PGT Expansion shippers wishing to bring gas into California, then, according to this interpretation, the interstate shipments cannot be received anywhere besides Kern River Station. According to the intervenors, this routing of PGT gas to the Expansion Project becomes a "tying arrangement" because it would prevent Expansion gas from being delivered to northern California, thus protecting PG&E's market from competition.

No unlawful tying arrangement will result from requiring PGT expansion gas to be transported within California under the PG&E Expansion Project tariff. That misconception is based on the presumed lack of delivery to points within PG&E's service territory. In fact, Expansion shippers will be able to deliver their gas anywhere in PG&E's service territory under PG&E's existing tariff for intrastate transportation. The "single delivery point" refers to the need for the Expansion Project transportation rate to recover the cost of service for the entire facility, which includes transportation to Kern River Station. This rate is the same for all Expansion Shippers, regardless of their ultimate delivery point. Thus, even though the rate for Expansion Project service is based on service to Kern River Station, any shipper can have its gas delivered anywhere within PG&E's service territory.

Requiring the PGT interstate shipper to pay the tariffed rate for intrastate Expansion Project service does not unlawfully protect PG&E from competition, as asserted by Kern River and Altamont.

Let us assume that PG&E's "competition" consists of PG&E's customers who wish to broker their firm capacity rights on the existing PG&E system. The requirement that PGT Expansion shipments be transported at PG&E Expansion Project rates if delivery by PG&E from the California border is desired does not result in economic harm to competition. That is because Expansion volumes are incremental. The demand for brokered capacity which existed before the advent of the Expansion Project will still exist after the Expansion begins operation. That is because the Expansion will deliver incremental volumes and 100% of the firm capacity on the Expansion will be allocated according to precedent agreements. Thus, the competition against PG&E for brokering firm capacity is neither harmed nor restrained by a requirement that PGT Expansion gas be subject to PG&E Expansion tariffs if the gas is to be delivered by PG&E from Malin to points in California. If, on the other hand, we assume that PG&E's competition consists of shippers who wish to sell gas in PG&E's service territory, we find that competition to be equally safe from harm. Transportation to points within PG&E's service territory is offered all shippers by PG&E's existing intrastate transportation tariffs. Expansion shippers are free to compete with PG&E in the sale of gas.

As explained in our decision on DRA's petition for modification of D.90-12-119, the prohibition against "cross-over" from PGT Expansion to existing PG&E facilities is a necessary adjunct to our decision to use allocated incremental cost based rates instead of rolled-in rates.<sup>3</sup> PG&E asserts that there is

<sup>3</sup> The term "cross-over" suggests that some Expansion Shippers wish their gas molecules to be diverted to PG&E's existing line 400 at the Oregon border. The issue is not which facilities will be used, but what rates should be paid. PG&E's existing intrastate transportation rate is less than the estimated Expansion rate, and thus, is more desirable to PGT Expansion Shippers.



currently no excess capacity available on its mainline facilities for moving Canadian gas. That assertion was not challenged by any party. Thus, if PGT expansion shippers were to pay PG&E's rates for intrastate transportation over existing facilities, they would force those seeking firm transportation of non-PGT Expansion gas to pay Expansion rates. The result would be rolled-in pricing and a shift of risk to existing ratepayers. We intended to avoid this very result by adopting allocated incremental cost based rates in D.90-12-119; see also, D.91-06-017, (re: DRA Petition for Modification of D.90-12-119) modifying and affirming the Expansion's rate design.

Given our desire to protect PG&E's ratepayers from the risk of underutilize of Expansion capacity, the lack of unlawful and anticompetitive effect, and our desire to foster competition among interstate pipelines for the Southern California gas market, it is reasonable to designate the Expansion Project tariff as the rate for transportation of PGT Expansion gas through California, if PGT shippers wish to have PG&E deliver their gas to points in California. Rate design is one of the issues reserved for further consideration in the first Expansion Project general rate case. (See, D.90-12-119, Ordering Paragraph 14g.) By that time, the market for intrastate transportation should be developed well enough to allow for evaluation of the Expansion Projects' allocated incremental cost based rates. Depending on how capacity on the Expansion Project is actually used, it may be reasonable to reallocate the cost of the project among PG&E's customers.

The Indicated Shippers object to paying twice for transportation over the length of PG&E's service territory, once through the Expansion Project rate and again through PG&E's rate for intrastate transportation, which recovers the cost of service of PG&E's existing mainline. We have explained that the Expansion Project tariff must collect the cost of the entire facility, since delivery to northern California over the Expansion would not be

possible without the operation of Expansion facilities at the southern end of PG&E's system. The Indicated Shippers' concerns cannot be reflected in amendments to the Expansion Project's rate design. However, the cost of backbone transmission is also not collected in PG&E's gas transportation tariff.

We should explore whether it would be consistent with our rate design policy to adjust the existing PG&E transportation rate and offer a revised rate to Expansion shippers. The Indicated Shippers and PG&E should present their positions in the form of testimony in the next PG&E gas rate design proceeding. All classes of ratepayers would then have an opportunity to comment on the reasonableness of an intrastate transportation rate for volumes of gas transported over the PGT interstate Expansion Project which excludes a portion of the cost of service associated with mainline transportation.

Finally, we grant PG&E's request to reduce the time period between PG&E's submittal of firm transportation agreements and the beginning of construction from 90 days to 30 days. This reduction in time will enable PG&E to use the least environmentally-damaging technique for crossing rivers. Kern River and Altamont claim it is necessary to review the agreements to establish sufficient need for the project such that PG&E's existing ratepayers are protected from the risk of underutilization. In our earlier decision on DRA's petition for modification, we declared unequivocally that all risk of revenue recovery lies with PG&E and its shareholders; no Expansion Project costs may be recovered in rates from existing ratepayers. The arguments of Kern River and Altamont are not persuasive.

Conclusion

Based on the above discussion, the petition of SoCal Gas should be granted in part and the two petitions of PG&E should be granted. D.90-12-119 should be modified to indicate that a local distribution company (LDC) such as SoCal Gas is authorized to file

an application for authority to include in-rate based facilities needed to connect interstate pipelines to the LDC, that PG&E may wish use river boring over a two-year period to cross rivers, and that PG&E must assign PGT Expansion shippers who wish their gas to be delivered within northern California to the Expansion Project and pay its tariff.

Findings of Fact

1. The filing of an application for reasonableness review is the appropriate means by which SoCal Gas and other local distribution companies may seek post-construction review of the reasonableness of their decision to add facilities to accommodate interstate pipeline deliveries.

2. It is premature to designate any proceeding as a model case for reasonableness review of facilities additions because the Commission must retain its flexibility to respond to changes in the gas infrastructure, particularly in view of the gas capacity expansion brokering program we are to implement.

3. PG&E must provide engineering drawings of its proposed river crossings to the Commission's designated biological monitor to enable the monitor to assess the impacts on special status plant species and to require whatever route changes are necessary to avoid jeopardizing the species.

4. Boring under the rivers will impose less threat to endangered plant species than standard pipeline trenching procedures.

5. Boring will be accomplished most efficiently if PG&E constructs its river crossings over a two-year schedule.

6. The first river crossing by boring should be undertaken in September 1991.

7. The 180-day deadline for submittal of engineering drawings for construction in September of 1991 has passed.

8. Since boring is the environmentally preferred means of crossing a river, the deadline for engineering drawings should be reduced to 60 days.

9. The Commission has prepared an addendum to the Final EIR that was adopted in D.90-12-119 to evaluate the potential environmental impact of PG&E's proposal to construct its river crossings over a two-year schedule. An addendum was also prepared to study the potential environmental impact of crossing rivers identified in the Department of Fish and Game's Biological Opinion by boring under them, as opposed to burying the pipeline in a trench.

10. PG&E's proposal to construct its river crossings over a two-year schedule, as opposed to a one-year schedule, does not introduce significant new information. Also, the proposal does not constitute a substantial change in the project that would involve new significant environmental impacts that were not analyzed in the EIR.

11. The rate for transportation on the Expansion Project must recover the cost of service for the entire facility, which originates at Malin, Oregon and terminates at Kern River Station, California.

12. Although the Expansion Project transportation rate is based on delivery at Kern River Station, use of the Expansion Project does not preclude delivery elsewhere in PG&E's service territory.

13. Shippers who desire some or all of their PGT Expansion volumes to be delivered in Northern California may arrange for that delivery pursuant to PG&E's existing intrastate transportation tariffs.

14. Use of the Expansion Project does not preclude shippers from marketing gas delivered over the PGT expansion in PG&E's service territory.

15. The reluctance of some PGT expansion shippers to acquire additional capacity on the PG&E Expansion Project based on the possibility that they may be foregoing the opportunity to acquire capacity on the existing PG&E facilities demonstrates a demand for gas transportation capacity at the lowest possible price; it does not demonstrate a lack of demand for the Expansion Project.

16. There is currently no capacity available to incremental users on existing PG&E transportation facilities.

17. Designation of the PG&E Expansion Project as the intrastate carrier of gas shipped on the PGT expansion does not require shippers on the PGT expansion to use any intrastate transportation.

18. Allowing PGT expansion shippers who wish to deliver gas in any part of California, including northern California, to pay rates for the use of PG&E's existing transmission facilities would nullify the Commission's decision to protect existing ratepayers from the risk of overcapacity by adopting allocated incremental cost based rates.

19. The requirement that PGT Expansion shipments be transported at PG&E Expansion Project rates if delivery by PG&E from the California border is desired does not result in economic harm to competition.

20. PG&E's intrastate transportation rate recovers the cost of service associated with PG&E's gas transmission mainlines, that is, lines 400, 2, and 300.

21. Expansion shippers who require delivery by PG&E for northern California destinations would twice pay the cost of mainline transportation down the length of California, once in the Expansion rate and once in PG&E's existing intrastate transportation rate.

22. In the next PG&E gas rate design proceeding, PG&E and other interested parties should explore the reasonableness of amending PG&E's intrastate transportation tariff to provide a rate

for Expansion shippers whereby volumes of gas transported over the PGT expansion are not subjected to a double charge for intrastate and mainline transmission.

23. The shortening of the time period between PG&E's submission of firm transportation agreements and the beginning of construction from 90 days to 30 days will enable PG&E to use the least environmentally-damaging technique for crossing rivers, that is, boring under the river during certain seasons.

24. This order should be effective today to enable PG&E to proceed expeditiously with preparations for the directional drilling of river crossings and the execution of firm transportation contracts.

Conclusions of Law

1. The petition for modification filed by SoCal Gas should be granted in part.

2. The petition for modification filed by PG&E on March 29, 1991 and modified on May 22, 1991 should be granted.

3. The petition for modification filed by PG&E on April 23, 1991 should be granted.

4. The requirement that PGT Expansion volumes be transported pursuant to the PG&E Expansion Project tariff if delivery by PG&E from the California border is desired does not constitute an unlawful tying arrangement.

ORDER

IT IS ORDERED that:

1. Decision (D.) 90-12-119 is modified as follows:

a. The language on page 122 (mimeo.) at lines 10-20 of D.90-12-119 should be deleted and replaced with the following:

"It would be reasonable for SoCal Gas to incur pre-construction, construction, and post-construction costs to interconnect Expansion Project facilities regardless of

actual usage; however, we reserve our judgment on whether the specific costs of those undertakings are reasonable and should be recovered in rates until we have reviewed SoCal Gas' formal application for approval of capital expenses to interconnect with the Expansion Project.

"We will not initiate a separate proceeding to consider the allocation of costs incurred by an LDC to accommodate incremental deliveries of interstate gas. If SoCal Gas or any other LDC does in fact realize such costs, the matter may be presented for Commission review in a formal application for approval of interconnection capital expenses."

- b. Finding of Fact 126 of D.90-12-119 is deleted and replaced with the following:

"126. SoCal Gas' incurrence of pre-construction, construction, and post-construction costs to interconnect Expansion Project facilities would be reasonable regardless of actual usage, but the reasonableness of such costs must be reviewed in a SoCal Gas formal application for approval of capital expenses to interconnect with the Expansion Project. The reasonableness and allocation of these costs should be made as quickly as possible."

2. D.90-12-119 is modified to allow directional drilling of river crossings in the period September 1, 1991, to May 1, 1992, to modify the Expansion Project construction schedule to allow construction over a two-year period, and to allow Pacific Gas and Electric Company (PG&E) to submit engineering drawings relating to the river crossings 60 days, rather than 180 days, prior to the start of construction.

3. D.90-12-119 is modified to clarify that the Expansion Project is certificated as the means by which PG&E will take gas intended for delivery in California from the Pacific Gas

Transmission Company (PGT) expansion project. PG&E's existing Line 400 facilities and the intrastate rates related to them will not be available for the purpose of accepting gas delivered by the PGT expansion at Malin for delivery in California.

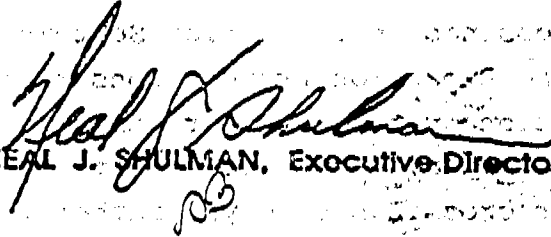
4. PG&E must file its contracts for firm transportation over the Expansion Project with the Director of the Commission's Advisory and Compliance Division no later than 30 days prior to the start of construction.

This order is effective today.

Dated June 19, 1991, at San Francisco, California.

PATRICIA M. ECKERT  
President  
G. MITCHELL WILK  
JOHN B. OHANIAN  
DANIEL Wm. FESSLER  
NORMAN D. SHUMWAY  
Commissioners

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

  
NEAL J. SHULMAN, Executive Director