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OPINION

Today we adopt rules for gas utility brokering of interstate pipeline capacity. Capacity brokering programs are anticipated to become effective October 1, 1992 following implementation hearings in this proceeding and the Federal Energy Regulatory Commission's (FERC) granting of capacity brokering certificates to the interstate pipelines. We also address a settlement filed in this proceeding and a petition to modify Decision (D.) 90-09-089 filed by the Division of Ratepayer Advocates (DRA).

I. Summary

Our decision adopts rules for the implementation of capacity brokering on interstate pipelines by Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E).

In general, the rules are designed to provide maximum access to interstate pipeline capacity. The new rules:

> Provide noncore customers access to unbundled firm interstate pipeline capacity, allocated equally between the pipeline systems;
>
> Reserve 1200 million cubic feet per day (mmcf/d) on PG&E's system and 1397 mmcf/d on SoCalGas' system for the core and wholesale customer classes;
>
> Retain the existing core subscription service for noncore customers who do not seek to participate in competitive gas markets;
>
> Establish firm and interruptible levels of intrastate transportation service for noncore customers at rates equal to the fully allocated costs of service. Interruptible rates may be discounted;

Require utility electric generators (UEGs) to bid competitively for firm capacity but permit UEGs to elect core subscription service for up to 50% of their average annual loads in the first two years of the program and decreasing percentages thereafter; and

Reserve firm interstate capacity for the core loads of wholesale customers of PG&E and SoCalGas.

We dismiss as moot a petition to modify D.90-09-089 filed by DRA to require PG&E to offer capacity brokering on the Pacific Gas Transmission (PGT) pipeline concurrent with the implementation of capacity brokering on other pipelines.

We also order implementation hearings and propose a schedule for those hearings.

II. Background

We initiated this rulemaking in August, 1988 to consider utility gas procurement practices and transportation service reliability. We have issued several decisions addressing these issues. Throughout, we have stated our commitment to allocating firm pipeline capacity in ways which would promote competition in gas markets and to move quickly toward developing capacity brokering programs. However, we interrupted our investigation of such programs in 1990 when we issued Rulemaking (R.) 90-02-008. That rulemaking addressed certain elements of our regulatory program which guided gas procurement by the utilities, and which some parties alleged permitted anti-competitive activity by the local distribution companies (LDCs). We believed these matters required our immediate attention.

R.90-02-008 initially sought to address procurement issues and to defer transportation matters to the capacity brokering proceeding. However, we ultimately adopted certain rules which were part of a settlement reached by several parties in that

proceeding and which affect transportation. The transportation rules adopted in D.90-09-089 established several levels of transportation services. Service reliability would depend upon the commitments customers were willing to make in terms of time, take-or-pay obligations, and payment levels. Under the program, noncore customers could identify their gas supplies and have them purchased and then transported by the utilities using the utilities' firm rights over the interstate system. As we stated in D.90-09-089, these services were to serve as a transition to capacity brokering programs and would be interim pending the outcome of this proceeding. Following issuance of new gas rules in R.90-02-008, we proceeded to complete our review of capacity brokering programs in this docket.

Prior to hearings, several parties filed a settlement proposing resolution of most major issues regarding capacity brokering. Signatories to the settlement are PG&E, SoCalGas, Southern California Edison Co. (Edison), Southern California Utility Power Pool and Imperial Irrigation District (SCUPP), California Industrial Group, California Manufacturers' Association and California League of Food Processors (CIG), Toward Utility Rate Normalization (TURN), Division of Ratepayer Advocates (DRA), California Gas Producers' Association (CGPA), the City of Palo Alto (Palo Alto), Indicated Producers, and Southwest Gas Corporation (Southwest Gas). At a later date, SDG&E joined with the settlement parties after the settlement was modified to address SDG&E's circumstances.

Several other parties filed testimony, including the Canadian Petroleum Association (CPA), Alberta Petroleum Marketing Commission (APMC), Independent Producers' Association of Canada (IPAC), the California Cogeneration Council (CCC), Cogenerators of Southern California (CSC), Department of General Services (DGS), Texaco Inc. and Texaco Exploration and Production Company (Texaco), the State of New Mexico (New Mexico), Transwestern Pipeline Company

(Transwestern), Sunrise Energy Company and Sunpacific Energy Management, Inc. (Sunrise), and Kern River, Sycamore, Harbor, and Midway-Sunset Cogeneration Companies (Kern River). Several additional parties filed comments or briefs. Hearings were held on the settlement and other proposals in April and May 1991.

A petition to modify D.90-09-089 in R.90-02-008 was filed by DRA on March 4, 1991. The petition asked the Commission to reconsider its treatment of access to Canadian gas supplies over the PGT pipeline. This issue is appropriately considered in the context of issues relating to capacity brokering. The two dockets are therefore consolidated for the purpose of addressing the issue.

After the issuance of the ALJ's proposed decision, we held an en banc hearing on September 25, 1991. The parties participating in the en banc were PG&E, SoCalGas, DRA, TURN, CIG, SCUPP, Edison, Kern River, CPA, APMC, IPAC, Indicated Producers, New Mexico, Sunrise, and Gas Mark Inc.

This decision addresses dozens of issues relating to capacity brokering and intrastate transportation. More than twenty parties participated actively in the proceeding. Because of the many issues raised in this proceeding and the many comments we received on those issues, the positions of all parties on all issues are not presented in this decision. For the sake of brevity, the decision highlights the positions of the parties in the course of discussing the issues.

III. Commission Policy Objectives

In recent years, we have stated our commitment toward improving competition in gas markets in order to lower the price of gas and promote more efficient use of the pipeline system. The extent of competition in gas markets depends in large part on customer access to reliable gas transportation. Under existing arrangements, noncore shippers do not have access to firm

transportation to move their gas. The problem has been particularly acute on the interstate system because interstate pipeline capacity is currently scarce. Capacity brokering programs allow access to firm capacity to customers or shippers who purchase or transport their own gas.

Capacity brokering serves our objective of promoting competition in the natural gas market by increasing the number of buyers and sellers who gain access to various levels of transportation service. We have generally believed that the best way to allocate capacity would be through a market bidding system: customers who pay the highest prices for transportation would receive the most reliable services. The bidding, however, must be limited by the maximum rates charged by the interstate pipelines for firm capacity ("as-billed caps") to be consistent with FERC rules. As discussed below, we have considered other ways of assuring equitable access to pipeline capacity, including limiting the role of LDCs in procuring gas for noncore customers.

Several policy objectives recur throughout our recent decisions and rulemakings on natural gas, including value-based pricing, core reliability, firm transportation over the PGT line, equal treatment of noncore customers, the role of long-term contracts, parity and curtailment priority for cogenerators, and LDC procurement roles. These objectives are briefly summarized below. Each is designed to promote competition in natural gas markets while balancing the interests of ratepayers.

<u>Transportation Prices Should be Based on the Value of Service</u>

We have frequently stated that capacity should be allocated competitively, so that the price paid reflects the value of the capacity to the customer. We initially were attracted to a proposal in this docket for allocating pipeline capacity through a priority auction, stating that it would be an innovative and

economically efficient means to open access to the pipeline capacity that serves California (R.88-08-018; D.88-12-099).

D.90-09-089 reiterated our support for value-based pricing by adopting a surcharge for firm service to offset rates for interruptible services.

Core Customers Should Continue to Receive the Most Reliable Gas Services

We have consistently held that core customers, who have no fuel alternatives, and core loads of wholesale customers should have top priority for pipeline capacity (D.88-12-099; R.88-08-018).

Noncore Customers Should Have Access to the PGT Line

One of our goals for capacity brokering has been to open access to the Pacific Gas Transmission (PGT) line (R.90-02-008).

The Utilities' Role in Gas Supply Markets Should be Limited

We have recognized the potential for anti-competitive activity by the utilities when they sell gas in competitive markets, while at the same time controlling access to the pipeline system necessary to transport reliably the gas sold. To prevent such anti-competitive behavior, we limited supplies in the noncore portfolio to short-term purchases because supply competitors have not had long-term access to firm pipeline capacity (D.88-12-099). We stated the utilities should not be permitted to market long-term gas supplies to noncore customers until a capacity brokering program was in place to provide long-term access to firm transportation.

More recently, D.90-09-089 eliminated the noncore portfolio and limited utility gas sales to core customers and those noncore customers willing to make two-year commitments to a "core subscription" service. The same decision established rules guiding the gas procurement activities of utility affiliates.

Noncore Customers Should have Equal Opportunities to Compete for Transportation Services

We have stated our intent to give all noncore customers an opportunity to receive firm capacity on a non-discriminatory basis, to the extent possible. In the context of this objective, we have stated that the UEG departments of combined utilities should be treated on the same basis as noncore customers. In R.90-02-008, we stated that equal treatment would mean that UEGs could not have superior access to capacity under our final capacity brokering program.

Parity and Priority for Cogenerators

The Public Utilities Code Section 454.7 requires that cogenerators receive rate parity with UEGs. The capacity brokering policy we set recognizes this mandate.

D.90-09-089 stated that the efficient use of scarce resources requires that customers be served according to the value they place on those resources. Therefore, under capacity brokering programs, UEG volumes may receive priority ahead of cogenerators' volumes if the UEGs pay more for the same service. On the other hand, when UEGs and cogenerators pay the same price for capacity, cogenerators would receive priority ahead of UEGs.

IV. Federal Energy Regulatory Commission Policy

The natural gas pipeline systems used by PG&E and SoCalGas and their customers traverse several states and are therefore subject to the jurisdiction of the FERC.

Although the FERC has jurisdiction over capacity brokering on interstate pipelines, its decisions clearly recognize that the states have authority to allocate firm transportation capacity acquired by the local distribution companies (*Texas Eastern*, 48 FERC ¶ 61,378 at 62,551 (1989)). We are therefore

within our authority to require the utilities to broker firm interstate transportation capacity and to set the terms under which capacity will be brokered as long as our adopted programs do not conflict with FERC guidelines.

On March 20, 1991, the FERC approved capacity brokering programs for El Paso and Transwestern which the Commission and others had presented as part of general rate case settlements for the pipeline companies. (El Paso Natural Gas Company, 54 FERC ¶ 61,318 (1991); Transwestern Pipeline Company, 54 FERC ¶ 61,319 (1991)).

The FERC's capacity brokering orders require that interstate programs and complementary rules set by the states conform with several general policies:

> "As-billed cap." The FERC requires that firm transportation rates paid to the pipeline companies by customers, and to parties brokering capacity to others, will not exceed the pipeline companies' tariffed rates charged to the utilities;
>
> Not "unduly discriminatory" access. The FERC requires that access to brokered capacity be equitable. As part of this requirement, the FERC requires that capacity be allocated on a "first come-first served" basis;
>
> Unbundled rates. The FERC requires that rates for interstate services be unbundled from rates for intrastate services. This guideline appears designed to guard against contravention of the rule prohibiting rates above the as-billed cap and to prevent tying arrangements.

More recently, on August 14, 1991, the FERC vacated its orders granting capacity brokering certificates to El Paso and Transwestern. (El Paso Natural Gas Company, 56 FERC ¶ 61,289 (1991); Transwestern Pipeline Company, 56 FERC ¶ 61,288 (1991)). This action is currently the subject of rehearing requests filed by this Commission and other parties. We believe

our capacity brokering program guidelines are consistent with FERC rules and policy. Therefore, we intend to move forward with developing our capacity brokering programs while our pleadings before the FERC are pending.

V. The Settlement

A. Description. The settlement filed in this proceeding proposes resolution of most issues related to capacity brokering. The major elements of the settlement are as follows:

> Noncore Transportation Service Levels. The settlement would replace existing service levels with firm and interruptible services for interstate and intrastate transportation. "Bundled" firm intrastate and interstate transportation service would be available to customers (not marketers or brokers) whose annual demand is less than 60 million therms. The interstate portion of the bundled service could be brokered to any shipper. Firm interstate service would be available separately and could be brokered. Firm and interruptible intrastate service would be available on a tariffed basis.

> Noncore Gas Procurement. The settlement would replace the core subscription service adopted in D.90-09-089 with unbundled gas procurement and transportation services. Customers who subscribe to bundled service would be eligible to purchase gas from the serving utility. Utility gas sales to noncore customers would be from the same portfolio as that of core customers. Noncore gas procurement customers would be required to make a time commitment equal to the period between utility cost allocation proceedings.

> Rates for Transportation Services. Intrastate firm service rates would be set at the "default" rate, based on fully allocated embedded costs. Intrastate interruptible services would also be set at the default rate, subject to discounting. Interstate rates would be set by a bidding process (highest bids

receiving capacity), not to exceed the FERC "as-billed cap."

Reservations of Firm Interstate Capacity for Core Customers of LDCs, including Wholesale Customers. The settlement would reserve 1,200 mmcf/d for PG&E's core customers, and those of its wholesale buyers, allocated equally between the two pipeline systems. For SoCalGas, it would reserve 1397 mmcf/d for core customers, including those of wholesale buyers.

Reservations of Firm Interstate Capacity for Brokering. The settlement reserves for capacity brokering 90 million cubic feet per day (mmcf/d) of firm capacity on El Paso into PG&E's territory and 315 mmcf/d on El Paso into SoCalGas' territory. The settlement also reserves for capacity brokering 263 mmcf/d of SoCalGas' firm capacity rights on Transwestern's pipeline. Capacity brokering on the PGT line would not begin until 1994 and was anticipated to be 90 mmcf/d.

Reservations of Firm Interstate Capacity for Bundled Noncore Transportation. 400 mmcf/d of firm interstate capacity is reserved for bundled service on PG&E's system; 225 mmcf/d is reserved for this service on SoCalGas' system. The bundled service would combine firm interstate transportation with firm intrastate transportation.

Reservations of Firm Interstate Capacity for Utility Electric Generation (UEG). The settlement reserves 400 mmcf/d of firm capacity for PG&E's electric department. This reservation would be allocated equally between the two major pipeline systems.

Curtailments and Service Quality Provisions. The settlement would replace the existing system of end use priorities with one which provides for curtailments according to contractual commitments and prices paid for service. SoCalGas has the option to guarantee to firm customers that they will experience no more than one curtailment in ten years. The guarantee confers a penalty payment from

SoCalGas to firm customers who are curtailed more frequently.

<u>Allocation of "Stranded Costs."</u> The settlement anticipates that certain utility costs, including interstate pipeline charges, will not be recoverable from certain noncore customers. These costs would be allocated to core and noncore customers.

<u>Bidding and Evaluation Criteria for Interstate Brokering.</u> PG&E and SoCalGas would offer medium-term and long-term firm transportation service on the interstate system (defined differently for each company) and would allocate the capacity by way of a bidding system during an open season.

<u>Existing Gas Supply Contracts.</u> The settlement directs SoCalGas to file a report regarding outstanding liabilities under contracts with PITCO and POPCO (affiliates from whom SoCalGas purchases gas supplies). It directs PG&E to file a report regarding outstanding liabilities to Canadian gas producers under contract with PG&E's affiliate, Alberta and Southern (A&S).

<u>Balancing and Standby Services.</u> The settlement would retain the balancing and standby service rules adopted in D.90-09-089, as modified.

Under the terms of the settlement, existing capacity is allocated from 1992 to 1995 as follows (in mmcf/d):

	SoCalGas	PG&E
Core (cold year)	1067	1200
Bundled noncore	225	400
Wholesale	330	(incl. under core)
UEG	0	400
Brokered capacity	578	180

Additional capacity may be available on a short-term basis during off-peak periods due to reduced demand by customer groups such as core customers, for which capacity is reserved in advance.

B. Discussion

The settlement is a comprehensive document that addresses most of the major issues concerning capacity brokering. It is signed by parties of widely varying interests, including utilities, consumers, and producers. We applaud the parties' efforts to reach a mutually satisfactory result. Our policy is to continue to encourage settlements with Commission oversight.

The settlement declares that its signatories support the document "on the premise it will not be modified in the approval process." Several of the settlement parties have testified that the Commission should adopt the entire settlement and not select parts of it. We therefore address early in this decision whether it is possible to adopt the settlement.

In its comments to the ALJ's proposed decision, SoCalGas urges us to adopt the settlement on the basis that it "reflects a true market-based resolution of the issues since the give-and-take of extensive negotiations between market segments strikes the same delicate compromise of competing interests as a negotiated contract between parties in the marketplace." SoCalGas goes on to state that neither the ALJ nor the Commission is in a position to "substitute their judgement for that of the marketplace."

SoCalGas asks us to adopt a settlement on the basis that several parties with differing interests have signed it. Forgetting for a moment that numerous parties actively opposed the settlement, we respond that we are not in a position to abandon our statutory obligations in deference to a settlement on the basis that it was negotiated like a contract.

This Commission was created in large part to redress market failures. Our enabling legislation assumed that utility markets would not be competitive because utility services are public necessities and their providers have characteristics of natural monopolies. Put simply, customers and providers of

utility services have unequal bargaining power in setting prices and service levels.

The "marketplace" is not necessarily synonymous with open and unimpeded competition. Utility markets, even those with competitive features, may require some regulation. Similarly, negotiated settlements, even those between diverse interests, require our scrutiny. A negotiated settlement is not comparable to a contract formed in a truly competitive market until and unless the settling parties have comparable bargaining power. No party to this proceeding suggests that the settling parties--primarily the utilities and their customers--have equal bargaining power. Therefore, although we encourage settlements we must exercise our independent judgment. We therefore proceed to consider the terms of the settlement on the basis of whether it fulfills the regulatory objectives we have established.

In general, the settlement proposes a program which would provide noncore customers several service options--including brokering of interstate capacity--to improve access to firm gas transportation. In that way, it moves regulation in the direction we have established in earlier decisions. The settlement also anticipates the effects of capacity brokering and other industry changes by providing for allocation of certain costs among various customer groups. Certain of its provisions seek to protect core customers from the effects of industry changes by reducing core customer liability for firm transportation, and providing backup service for the core in periods when core demand exceeds capacity reserved for the core.

On balance, the settlement's provisions fail to meet the objectives we have set forth in previous decisions. First, the settlement would not go far enough in promoting competition. It would delay capacity brokering on the PGT line until 1994 (discussed further in Section XI of this decision). Even after 1994, little of PG&E's capacity would be made available for

brokering under the terms of the settlement largely because of the preferences the settlement would provide to PG&E's electric department (discussed in Section XII of this decision). In addition, the noncore transportation services the settlement proposes are unlikely to encourage many noncore customers to participate in capacity brokering because short-term brokering is not offered and because bundled services are likely to be relatively attractive for all but the largest customers (discussed in Section VIII of this decision).

We are also concerned about rate structuring under the terms of the settlement. The settlement proposes intrastate transportation rates based on the cost of service and subject to discounting rather than on value of service. It thereby establishes a rate structure under which revenue shortfalls for intrastate capacity are certain to occur. FERC rules for interstate capacity pricing similarly assure revenue shortfalls. The settlement would allocate portions of these shortfalls to core customers. We are not convinced that core customers should bear the cost of capacity brokering which primarily benefits noncore customers.

Finally, the settlement would establish a program which is inconsistent with our policy regarding cogenerators. Under the terms of the settlement, PG&E's electric department would have preferential access to firm transportation services and gas supplies. The record does not support a retreat from our longstanding policy that electric utilities should not be granted preferences which are not available to cogenerators or that cogenerator loads should be curtailed ahead of UEG loads.

Although the settlement is thoughtful and has the support of a broad range of interests, we cannot adopt it as offered to us in total. Rather we adopt portions of it and reject others. Issues related to capacity brokering are complex and their resolution will have a dramatic effect on the gas industry in

California for years to come. In order to assure that the capacity brokering programs fulfill our regulatory objectives, our decision sets forth new rules for gas services based on the evidence adduced in the proceeding. It also considers each major element of the settlement on its own merits as jointly sponsored testimony of the settlement signatories.

VI. Reservations and Service Reliability for Core Customers

In developing a capacity brokering program, the Commission must assure that the utilities retain enough capacity to provide reliable service to core customers.

The settlement proposes to reserve for PG&E 1200 mmcf/d (which includes some capacity for wholesale use as discussed in Section XV) of firm interstate capacity for core customers based upon average year peak month requirements for 1995. The SoCalGas reservation under the settlement for the core is 1067 mmcf/d, based upon cold year requirements for 1995. Both reservations take into account the use of utility storage and utility purchases of California gas to meet core needs.

The settlement also proposes ways to assure that the core demand is met during periods when demand exceeds these reservations. First, the utilities would curtail interruptible customers. To the extent such curtailments are inadequate, the settlement provides for voluntary and involuntary diversions of gas purchased by noncore customers with firm service.

Voluntary diversions would be negotiated with shippers subject to a cap of 150% of the core weighted average cost of gas (WACOG). The price for involuntarily diverted firm supplies is set at the higher of the cost of the customer's alternative fuel, the customer's actual cost of gas, or 150% of the core WACOG.

DRA and TURN believe these reservations balance the future benefits of retaining capacity on the existing depreciated

system against the costs of holding too much capacity. They also believe the settlement adequately and fairly protects the core from service interruptions. The cost of the voluntary and involuntary supply diversions, according to DRA, will be more than offset by the lower demand charges the core would have to pay to reserve higher levels of capacity.

The testimony in this proceeding suggests that excess capacity is likely to develop on the interstate system in the near future. For this reason, it makes sense to adopt a conservative estimate for core demand and promote the most efficient use of the remaining capacity on the existing system. The settlement's estimates of core demand balance the risk of too little capacity with the cost of retaining capacity. We adopt the proposed reservations for the core of 1200 mmcf/d for PG&E and 1067 mmcf/d for SoCalGas.

The settlement provisions for voluntary and involuntary diversions may be subject to abuse. For example, a utility could treat its own electric department with preference. We adopt the proposed rules with the assurance of TURN and DRA that, from the standpoint of core customers, they are preferable to higher core capacity reservations. We will review these transactions in reasonableness reviews. We will also direct Commission Advisory and Compliance Division (CACD) to monitor complaints associated with the transactions.

VII. Interstate Capacity Available for Brokering

Under the terms of the settlement, the amount of firm interstate capacity available for brokering is 180 mmcf/d on PG&E's system, allocated equally between the northern (PGT) system and the southwestern (El Paso and Transwestern) systems. For SoCalGas, the amount of firm capacity available for brokering is 578 mmcf/d, allocated equally between the El Paso and Transwestern systems.

These amounts are derived after reserving capacity for core customers, customers of bundled transportation services, and wholesale customers. A reservation is also made on PG&E's system for PG&E's UEG.

Under the terms of the settlement, firm capacity would be offered by way of an "open season," during which noncore customers would have the opportunity to bid for blocks of capacity. The utilities would also offer interstate capacity on a short-term firm or interruptible basis as the capacity becomes available, primarily during off-peak periods.

We agree that capacity should be brokered by way of open seasons, that capacity should be allocated equally on the pipeline systems, and that capacity should be offered on a short-term firm or interruptible basis as it becomes available.

We are concerned, however, about the amount of capacity to be brokered, especially on PG&E's system. We are not convinced that 180 mmcf/d--less than 20% of PG&E's noncore capacity--will go very far to promote competition in gas markets. That amount may dampen customer interest in brokering and encourage use of bundled services. The reason so little capacity is offered for brokering on the PG&E system is that, under the settlement, most capacity is reserved for other customers or services. We address the appropriateness of those reservations below.

VIII. Noncore Customer Services

An important objective in this proceeding is to improve the reliability of noncore customer transportation services by requiring the utilities to broker capacity which they do not require for core customers.

As described above, the settlement would replace existing noncore services with certain new service options:

Unbundled firm and interruptible intrastate services offered pursuant to utility tariffs;

Bundled firm interstate and intrastate service to customers whose demand is less than 60 million therms;

Optional gas procurement service for customers who subscribe to the bundled transportation service.

The bundled service is described by the settlement parties as a transitional offering which would be withdrawn as competitive markets develop. Customers who subscribe to bundled transportation service and PG&E's UEG department would be eligible for utility procurement, termed by the settlement parties "core subscription service." Utility sales to noncore customers would be made from the same gas portfolio as that applied to core customers.

We are troubled by several elements of the noncore transportation services proposed by the settlement. By maintaining the utilities' control of the system, it appears to restrict competitive activity on the pipeline system rather than expand it. The package of services, especially as it applies to PG&E, does not appear to promote the use of brokered capacity.

A. Unbundled Transportation Services

The settlement does not propose brokering of intrastate capacity; instead it retains a tariffed structure under which end-use customers, but not brokers or marketers, may purchase service. Those end-use customers would not be able to "trade" priority among themselves. They could, however, delegate authority to marketers and brokers to purchase service for them.

PG&E supports this provision. PG&E states that only end-use customers should purchase intrastate service because for intrastate service, unlike interstate service, the utilities need the identity of the end user to deliver gas.

IPAC, CPA, New Mexico, and Altamont object to elements of the settlement which would prohibit marketers and producers from obtaining intrastate service which they could resell to customers or other brokers. New Mexico argues that the restriction will deny

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ORIGINAL

Decision 91-11-025 November 6, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into natural gas procurement and reliability issues.	R.88-08-018 (Filed August 10, 1988)
Order Instituting Rulemaking on the Commission's own motion to change the structure of gas utilities' procurement practices and to propose refinements to the regulatory framework for gas utilities.	R.90-02-008 (Filed February 2, 1990)

such shippers an opportunity to offer services comparable to those of the utilities.

Sunrise proposes that customers be permitted to "broker" their rights on the intrastate system with each other. A customer with firm service could therefore contract with an interruptible customer who valued the firm service during a curtailment period. TURN makes a similar proposal.

As SoCalGas and other parties point out, allowing marketers to broker intrastate capacity could compromise our obligation to protect customers because we have no jurisdiction over brokers and marketers. If intrastate capacity were to become scarce with the addition of new interstate pipelines, holders of intrastate capacity could command economic rents (profits above those a competitive market would permit) for use of their rights. Although conceivably, a handful of shippers could control the intrastate system, we believe that it is possible to design a program which would prevent such an outcome and which would permit more efficient use of the intrastate system by customers and other shippers.

We do not order brokering on the intrastate system at this time. Only end-use customers will be able to subscribe to intrastate delivery from the utility. However, we will direct the utilities to propose mechanisms whereby holders of firm capacity could sell their priority to other customers in the event of a curtailment. Further, we will consider a more flexible way to allocate intrastate capacity, if and when, capacity becomes constrained in the future.

In the meantime, we believe it appropriate that customers be permitted to delegate to non-customer shippers intrastate transportation rights. This mechanism will provide some additional flexibility for customers and other shippers.

B. Core Subscription and Bundled Transportation Service

Among the transportation services proposed by the settlement, the service option which bundles interstate and intrastate transportation services is the most controversial.

Proponents of the settlement believe that the bundled service would provide all but the largest customers with a "safety net" which would assure noncore customers have firm transportation and the option to purchase gas from the utilities. They also believe the bundled service will assure that holdings of firm interstate capacity do not become concentrated in the hands of a few large brokers and customers.

Canadian gas producers argue that the bundled service unlawfully restricts competition. APMC argues that no party during the course of the proceeding was able to demonstrate that marketers or brokers might dominate the market in the absence of a bundled service. APMC suggests that the best way to preclude market concentration is to offer short-term capacity brokering. APMC also argues that the bundled service ties interstate and intrastate services in contravention of FERC policy.

IPAC argues the bundled service, in combination with other elements of the settlement, actually promotes a concentrated market for brokered capacity because so little capacity is offered and the bundled utility service is so attractive. IPAC recommends retaining the existing core subscription service as a "safety net" for customers who do not wish to compete for gas supplies.

For the several reasons stated above, we will not adopt a bundled transportation service. Instead, we will retain a premium service for noncore customers who do not seek competitive alternatives. We believe the existing core subscription service offered to noncore customers fulfills this objective. We will not amend core subscription rules to add new limitations or conditions. We believe such conditions are unnecessary in the context of other

rules we adopt today which should increase noncore customer access to interstate capacity. These rules should go further than the terms of the settlement in providing opportunities for customers to procure their own gas supplies.

Two years after the introduction of capacity brokering, we will consider eliminating or further restricting the core subscription service if we find that the market would permit smaller customers to compete. At the same time, we will consider whether holdings of capacity are so concentrated that they might be damaging to competition. If they are, we will take steps to further improve access to capacity by, for example, placing size limitations on customers who might qualify for short-term capacity.

In the meantime, we direct the utilities to broker one third of their available interstate capacity for one to two-year periods. This provision should preclude market concentration by making capacity brokering a more attractive option to small and medium-sized customers. Because we reject bundled transportation service, buyers of interstate services may purchase any type of intrastate service.

Finally, the initial reservation of interstate capacity for core subscription service shall not be increased in subsequent years unless the utilities can show that both existing brokered interstate capacity cannot be sold at the as-billed rate and demand for core subscription has increased. Such a showing may be submitted in an advice letter or application. SDG&E may propose a level of core subscription service for its noncore customers in recognition that it does not hold firm rights on the interstate system. Such a proposal should be made in the implementation phase of these hearings.

Is a bundled service needed as a "backstop" service for small customers?

As we stated in R.90-02-008 and in companion decisions, we believe a utility supply service should be available for noncore customers who do not seek competitive options. However, we continue to believe that the utilities should not participate in natural gas procurement markets which are competitive or potentially competitive.

We agree with the settlement proponents that small customers require a highly reliable, premium service. Smaller customers may not be able to compete with marketers, brokers, and large customers for capacity and reasonably priced gas supplies. Moreover, the administrative costs associated with procuring gas and capacity may be prohibitive for some customers during the early stages of a capacity brokering program.

The record, however, does not provide justification for the 60 million therm cut-off for bundled service. Although CIG and others argue that the bundled service is required for small customers who do not seek competitive options, the 60 million therm cut-off would permit all but eight PG&E customers and ten SoCalGas customers to take advantage of the service. The parties provided no evidence as to why customers with demand as high as 60 million therms should be considered "small" customers or why 18 of the state's largest customers should not be offered the most reliable noncore service. The cut-off is arbitrary and unduly discriminatory.

What are the possible effects of bundled service on competition in gas markets?

The proposed bundled service does not merely provide a safety net for customers who do not seek competitive alternatives to utility service. The proposed bundled service is one of a set

of service options offered by the utilities to most noncore customers, and is certain to undermine competition.

Under the terms of the settlement, smaller customers do not have very attractive alternatives to bundled service. As APMC and Altamont suggest, the settlement provisions discourage small and medium-sized customers from signing up for firm interstate service by failing to provide an option for short-term firm capacity offerings. Because short-term service is not offered, the settlement may actually promote concentration of firm capacity holdings by a few large shippers, contrary to the stated intent of the settlement parties.

The bundled service also provides its subscribers with an option for purchasing gas from the utilities, an option which is not available to subscribers of other services under the terms of the settlement. This option might not in itself be anti-competitive. It is, however, likely to encourage subscription to PG&E's bundled service in combination with the settlement's restrictions on noncore customers' access to Canadian supplies.

Because brokering is not offered on the intrastate system, intrastate services are not offered to shippers who are not utility customers. This provision, especially as it applies to the bundled service, puts the utilities at a distinct advantage over other gas suppliers who would be unable to provide services comparable to those offered by the utilities. The settlement parties explain that this requirement is necessary in order to prevent market concentration by non-customers. As discussed previously, unless some limits are placed on how marketers obtain use of the system, those groups may command excessive profits for capacity through the prices they charge for gas supplies delivered at the California border.

On the matter of market concentration, some protections may be required to assure that a handful of unregulated marketers do not control the pipeline system. We are not convinced, however,

that the bundled service envisioned by the settlement is required to accomplish that objective.

Are the proposed reservations for bundled service reasonable?

The reservations for the bundled service are not consistent with our policy objectives. DRA, CIG, and PG&E argue that the 400 mmcf/d of capacity reserved on PG&E's system for bundled service is justified on the basis that core subscription (called core election until August 1, 1991) on PG&E's system has been high historically. Settlement signatories support the reservation on SoCalGas' system on the basis that 225 mmcf/d is the total demand for all of SoCalGas' industrial and commercial customers. PG&E's core subscription, however, has been high because PG&E has monopolized access to gas supplies in Canada, making its procurement service highly attractive. The settlement retains this set of conditions by restricting access to PGT, by reserving 400 mmcf/d of firm capacity for PG&E's UEG, and by permitting the UEG to take core subscription service for all of its demand. If these barriers to competition on PG&E's system are removed, core subscription will not be such an attractive service option.

Moreover, it is not our intent to encourage all industrial and commercial customers to take bundled service. We would prefer a program which encourages customers to participate in competitive markets and which provides an alternative service for those who do not seek competitive options.

Is the bundled service proposed by the settlement consistent with FERC guidelines?

Under the terms of the settlement, the only way a customer may obtain short-term access to firm interstate service on SoCalGas' system is to purchase firm intrastate service by subscribing to a bundled product. This tying arrangement violates

the spirit if not the letter of FERC policy prohibiting bundled intrastate and interstate capacity. In prohibiting bundling, the FERC has emphasized its concern that bundling may be improperly used to collect rates which exceed the "as-billed" cap. However, the FERC appears concerned with bundling more generally. It has clearly stated that "A firm shipper or assigner may not condition a capacity assignment upon the bundling with any other services." (El Paso Natural Gas Co., 54 FERC, ¶ 61,318 at 61,993 (1991).)

For the several reasons stated above, we will not adopt a bundled transportation service. Instead, we will retain a core subscription service for noncore customers who do not seek competitive alternatives.

C. Intrastate Services to Customers of New Pipelines

The settlement proposes that issues relating to interconnection with and cost allocation for new pipeline facilities be deferred to other proceedings. Parties to this proceeding who may provide service over new pipelines object to the settlement because it fails to address how new pipeline facilities will interconnect with existing pipelines. Kern River and Altamont argue that the inability of marketers and brokers to purchase intrastate services would make it impossible for shippers on new interstate pipelines to compete on an equal footing with holders of existing capacity. The result, according to Kern River and Altamont, would be to diminish the value of new capacity to individual customers and to all ratepayers who would benefit from the increased competition the pipelines are designed to provide. They argue that the utilities should be required to interconnect customers of new pipelines. Altamont recommends that, at the very least, shippers must be able to bid competitively for intrastate capacity.

Customers of new pipelines should not be isolated from the intrastate system and the utilities should not be permitted to

restrict access over the intrastate system to affect the value of new interstate pipelines relative to the existing system. We have stated that:

> "...if as we suspect, brokering alone proves to be insufficient to facilitate the intrastate transportation of gas delivered to California by new interstate pipelines, we would expect the LDCs to construct sufficient intrastate capacity to match the interstate expansions." (D.90-02-016 at p. 94.)

Today we adopt a policy whereby the California utilities are required to interconnect with new pipeline facilities. Allocation of associated costs is properly the subject of other proceedings and will be considered in the context of policies we have already established.

IX. Curtailments of Noncore Services

A. Elimination of End-Use Priorities

Under current rules, customers with highly reliable levels of service are curtailed according to end-use priorities which we have set in past proceedings. End-use priorities have been set according to such criteria as a customer's ability to switch fuels.

The settlement essentially eliminates the existing end-use priority system. It provides instead that interruptible customers would be curtailed according to level of payment. Those customers paying the same rates would be curtailed "pro rata," that is, the utilities would curtail all such customers on an equal percentage.

The settlement also provides that firm capacity, once assigned, cannot be recalled under any circumstances during the term of the assignment. Instead, the utilities would be required to purchase gas supplies from holders of interstate rights. Those purchases may be either voluntary or involuntary. If involuntary

diversions are necessary, they would be imposed on a pro rata, rotating block, basis. (The appropriateness of voluntary and involuntary diversions has already been discussed in Section VI).

CSC and CCC object to the elimination of the end-use priority designations to the extent cogenerators might be curtailed ahead of UEGs. DGS objects to elimination of the end-use priority system on the basis that state facilities are likely to provide more important benefits than those of other customers. DGS also believes the curtailment provisions of the settlement serve mainly to benefit large UEG customers at the expense of other customers.

DRA and Edison argue that the change in curtailment policy, whereby cogenerators would no longer have priority ahead of UEGs, is justified on the basis of air quality benefits which would occur with more reliable service to UEGs.

We agree with the parties that the end-use distinctions within the noncore class should be eliminated except as indicated below. The current system was created to protect certain customers during a period when demand for capacity exceeded its availability. Certification of several new interstate pipeline projects may result in excess capacity. The elimination of the end-use priority system will also assure more efficient use of capacity. It is therefore appropriate that noncore customers receive service according to their level of payment. More specifically, curtailments would be undertaken according to the percentage of default rate paid by the customer as a way to recognize that different customers impose different costs on the system. Where customers pay equal amounts, curtailment should be pro rata.

We make one exception to this change. In eliminating the end-use priority system, the settlement would also eliminate the provision adopted in D.90-09-089 whereby UEG volumes are always curtailed ahead of cogenerator volumes where the UEG and the cogenerator pay the same rate for those volumes. D.90-09-089 adopted this rule in recognition that cogenerators are to be

granted the "highest possible" priority for gas service under Public Utilities Code Section 454.7 and consistent with Commission policy. The record does not support a finding to change this policy and we will therefore retain it.

We note that air quality regulations may place similar or equal constraints on the use of non-gas fuels by UEGs and cogenerators. We therefore decline to establish a system which grants preference to UEGs on the basis that UEGs face air quality constraints. Moreover, a cogenerator's production is likely to be more environmentally sound than that of a UEG's gas-fired generator because cogenerators generate electricity as part of an integrated production process. The appropriate forum for evaluating relative environmental benefits of resource alternatives is the Biennial Resource Plan Update Proceeding (I.89-07-004).

We will not, as DGS proposes, grant special preferences to state facilities. The record does not demonstrate that they provide greater benefits to the public than other facilities such as private hospitals, federal and local government facilities, or day care centers.

B. SoCalGas' Service Interruption Credit

Under the terms of the settlement, SoCalGas agrees to provide a "service interruption credit" payment, at shareholders' expense, to any firm customer who suffers more than one intrastate curtailment in any ten-year period. SoCalGas proposes to withdraw this warranty if it seeks, but does not receive, Commission authority to build additional capacity. The purpose of the mechanism is to assure customers that firm intrastate service is a highly reliable service. Edison states it needs such a guarantee because of air quality regulations under which it must operate. No party opposes the credit.

We have no objection in principle to the credit proposed by SoCalGas since it is borne by shareholders. We do object to the credit's terms.

We observe that the assurance of SoCalGas' shareholders appears elusive in that SoCalGas may withdraw its offer at any time "if the CPUC refuses to authorize the construction and appropriate cost recovery of facilities needed to maintain firm noncore transmission service." Normally, such a refusal by the Commission would follow an assessment, for example, that such facilities would not be needed or should not be paid for by certain classes of ratepayers. Therefore, although SoCalGas may offer the credit, we expressly disapprove the practice of conditioning an offer of service upon our subsequent regulatory action. For this reason, SoCalGas may offer the service interruption credit without the condition relating to Commission approvals. In that case, it may apply to withdraw the credit if its facilities become constrained. Otherwise, it should not offer the credit.

We also note that TURN points out that the purpose of the Service Interruption Credit is to assure that Southern California UEGs do not have to invest in costly alternative fuel facilities. That purpose, according to TURN, would be frustrated if UEGs must always be curtailed ahead of cogenerators. We believe, however, that the utilities may fulfill our directive regarding curtailments of UEGs and cogenerators if they curtail all UEGs once during the ten-year period before curtailing any cogenerator. Once the UEGs have been curtailed one time within the 10-year period, further curtailments must be according to the percentage of default rate. Of course, if the gas utility were to withdraw its offer of a Service Interruption Credit, the ten-year curtailment period would be suspended and priorities would be applied during each curtailment. If the credit program were to be suspended, the ten-year period would begin anew with the program's reinstatement. In the absence of a service interruption credit, a cogenerator will be given priority over a UEG during each curtailment period if the cogenerator pays the same or a higher percentage of the default

rate than the UEG. As so modified, SoCalGas may offer the Service Interruption Credit.

C. Rotating Block Curtailments

The settlement provides that the utilities will rotate curtailments among firm transportation customers. SoCalGas states that it must rotate curtailments in order to meet its guarantee that it will curtail firm customers only once in ten years.

SoCalGas does not provide any information about how it will formulate the order in which customers would be curtailed and states it might negotiate with large customers in order to avoid curtailing many small customers.

Rotating curtailments of firm customers may promote more efficient use of the pipeline system. However, we are concerned that such rotations might leave the door open for discriminatory treatment of customers. We direct the utilities to present a detailed description of how they will develop customer lists and how the lists will be used. Tariffs should also specify how customers would be curtailed under the rotating block scheme.

X. Access to Canadian Gas Supplies

The issue of access to Canadian supplies over the PGT pipeline is among the most controversial in this proceeding. We reviewed this matter in considering new procurement rules in R.90-02-008. In D.90-09-089 we approved certain provisions of a settlement which permit PG&E's noncore customers to arrange for purchases of Canadian gas supplies from A&S producers and to receive firm service for this gas over the PGT and PG&E lines. The settlement provided that the arrangement would be in effect until 1994.

On March 4, 1991 DRA filed a petition to modify D.90-09-089, seeking open access over PGT as soon as capacity brokering programs are in place. DRA's petition alleges that no

legal barriers exist to opening access of the PGT line to noncore customers and that the arrangement referenced in D.90-09-089 contravenes Commission and FERC policies to promote competition in gas markets.

APMC, CPA, the Canadian Producer Group (CPG), and PG&E responded to DRA's petition. PG&E opposes the petition on the grounds that A&S needs until 1994 to restructure its contracts with Canadian supplies in the context of the new regulatory environment. PG&E also claims that regulations which damage A&S' contractual obligations to Canadian producers potentially infringe upon PG&E's property rights. CPA and CPG believe that granting DRA's petition would violate the PGT/A&S contract.

DRA's petition to modify misconstrues our prior decision and we dismiss it as moot. Any fair reading of our decision will reveal that we did not embrace 1994 as a date certain. To the contrary, we used that proceeding to adopt transitory procurement rules pending the implementation of capacity brokering.

The record in this proceeding provides substantial evidence regarding the complex web under which gas supplies are purchased and transported from Canada. We consider the issue of open access over PGT from the standpoint of whether legal or other barriers would preclude such access.

Does PG&E have contractual obligations which preclude open access over PGT?

We first consider whether PG&E has contractual obligations which preclude open access over PGT.

PGT owns the pipeline which moves gas from Canada to PG&E's service territory. PGT is an affiliate of PG&E and is subject to FERC jurisdiction. Currently, PG&E purchases Canadian gas from PGT under a "firm sales service" agreement. The sales agreement provides that PGT will purchase Canadian gas for PG&E and transport it to California. Pursuant to a recent FERC decision,

PG&E has no minimum take commitment or minimum bill commitment to PGT under the terms of the sales agreement (Pacific Gas Transmission Co., 50 FERC ¶ 61,067 (1990)). PG&E has no obligation under FERC-approved tariffs to purchase gas or transportation services from PGT.

PGT purchases its gas from another PG&E affiliate, A&S, under contract. The contract imposes a 50% take-or-pay obligation on PGT, an obligation which requires the use of about half of the capacity of the PGT pipeline. A&S purchases gas from a consortium of Canadian gas suppliers. The contracts between A&S and its Canadian suppliers are confidential and were not introduced as part of the record in this proceeding. A&S is not regulated by either the FERC or the Commission.

The record in this proceeding demonstrates that A&S has contractual obligations to Canadian producers and that PGT has contractual obligations to A&S. The record provides no evidence that PG&E has legal obligations to purchase gas from any Canadian producer or A&S. PG&E therefore has failed to prove the existence or terms of contractual obligations which preclude access over PGT.

Do FERC rules or orders of other governmental agencies preclude open access over PGT?

We next consider whether FERC rules or orders of other governmental agencies preclude open access over PGT.

PGT is an open access pipeline pursuant to FERC decisions. PG&E currently purchases gas from PGT under FERC-approved tariffs. PG&E may, however, convert its associated firm sales rights to firm transportation rights pursuant to FERC rules (18 CFR, Section 284.10). In order for PG&E to broker capacity, PGT must have a brokering certificate from the FERC. Given the FERC's commitment to open access and competition, we are convinced any brokering certificate to PGT would not limit access to only A&S producers.

CPA points out that the service agreement between PG&E and PGT cannot be changed by Commission action pursuant to a recent FERC decision (Pacific Gas Transmission Co., 51 FERC ¶ 61,362, 62,175, (1990)). We do not intend to attempt to supersede the FERC's jurisdiction in this matter. However, we have authority to require PG&E to broker capacity to the extent its program does not conflict with FERC rules. In addition, under FERC rules, PG&E may convert certain of its rights at any time.

Canadian producers (represented by IPAC, APMC, CPG, and CPA) argue that other governmental authority stands in the way of open access on the PGT line. They point to orders of the Canadian National Energy Board (NEB) which grants export licenses to A&S. While these orders find that exports of Canadian gas under the A&S contracts are reasonable, they do not demonstrate that other arrangements with third-party shippers would be unacceptable. To the contrary, the testimony of CPA's own witness suggests that most gas exported from Canada, with NEB's approval, moves under agreements which do not mirror the A&S contracts.

Does the Access Agreement Prevent the Commission from Requiring Brokering over PGT prior to 1994?

As we have noted, Canadian gas producers argue that capacity brokering over the PGT line may not now be implemented given the terms of an "Access Agreement" formed among numerous interests who are also parties to this proceeding. The Access Agreement provides that 250 mmcf/d of capacity will be made available to noncore customers as bundled transportation services. Gas transported under the terms of the agreement must be purchased from A&S producers until August 1, 1994.

It is true that D.90-09-089 makes reference to the Access Agreement, a document submitted to the Commission only days before our decision. Given the belated hour, the agreement was not received into evidence, was not embraced by non-signatories, and

was not tested in the hearing process. Notwithstanding, we are confronted with the contention that our reference constrains, if not dictates, our decision in this proceeding. In rejecting this contention we do not rest upon the procedural defects in the submission of the Agreement. To do so, while justified, would obscure the fundamental fact that we did not adopt it. Rather, our order embraced interim rules of an explicitly transitory nature pending the establishment of capacity brokering.

Our language in that decision cannot be reconciled with the current view that the interim provisions would remain in place after a capacity brokering program was implemented. We declared:

> [w]e cannot anticipate by the record in this proceeding how the settlement's provisions would dovetail with final brokering rules or the effects the new service levels may have on capacity brokering programs. Moreover, the reliability of 'firm' service adopted today is unclear because noncore customers must rely on the utilities' 'best efforts' to purchase identified gas supplies. A FERC-approved capacity brokering program will operate better to promote competition, and assure noncore customers get the reliability they pay for. **The new transportation services will be interim pending final resolution of capacity brokering; however, we encourage parties to propose ways to integrate the interim rules with a permanent capacity brokering program.**[1]

Any doubt concerning the interim nature of rules labeled "interim" could not have survived the rehearing sought by Indicated Producers. That request was premised upon the contention that our rule excluded them from any direct participation unless they were end-users in California. In response we justified the exclusion on grounds that the rules were only interim in nature:

1 D.90-09-089, at 45-46 (emphasis added).

> [w]e expect that once capacity brokering programs are approved, they will supersede these transportation rules, which are, therefore, interim in nature. **These rules merely represent a transitional phase from the prior system,** when LDCs procured gas for certain noncore customers, to a time when noncore customers must procure their own gas supplies.[2]

These decisions clearly anticipate that capacity brokering would supersede the settlement in D.90-09-089 and the Access Agreement. The message was clear that all producers and marketers would have an opportunity to participate in capacity brokering programs of the California LDCs. There is neither a logical nor a moral reason to allow all domestic producers and marketers to participate in these capacity brokering programs on El Paso and Transwestern while limiting access on PGT to only A&S producers. Such a step would fail to implement a true open access, nondiscriminatory capacity brokering program as well as discriminate against those Canadian producers and marketers who are not A&S suppliers.

There remains a procedural point. APMC contends that we may not lawfully change the terms of our decision in D.90-09-089 absent compliance with Public Utilities Code § 1708. We have two reactions. First, we are not changing D.90-09-089 but instead take the step which it clearly anticipated. Second, we have been scrupulous in according all interested parties an opportunity to be heard in this proceeding on all subjects relating to PGT transportation.

Should "PGT costs" be examined
<u>in a later phase of this proceeding?</u>

The settlement also proposes that PG&E file, by December 31, 1991, a report "regarding its efforts to minimize any

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2 D.91-02-022 at 7 (emphasis added).

costs that may be associated with the reduction of its gas procurement function..." The settlement anticipates a second phase of this proceeding to review this report. We see no benefit to a review of matters relating to PGT costs in this proceeding. A report such as that envisioned by the settlement is more appropriately considered in PG&E's next reasonableness review.

XI. The Time for Capacity Brokering

The settlement provides that if the FERC issues brokering certificates, the California LDCs will assign their excess capacity on El Paso and Transwestern by August 1, 1992 or such other date as may be found appropriate by the Commission. The settlement also provides that noncore customers may purchase Canadian gas supplies over the existing PGT line provided that they purchase gas from producers under contract with A&S until August 1, 1994, but subject to the Commission's resolution of DRA's petition to modify D.90-09-089, discussed above. Under the settlement, only customers who purchase bundled transportation service from PG&E may purchase Canadian gas because the settlement does not provide for capacity brokering over PGT until August 1, 1994.

PG&E and CIG argue that the Access Agreement provides a reasonable transition to full capacity brokering over PGT. For the reasons which we have detailed, we have concluded that capacity brokering on PGT should not be delayed until 1994. Instead, the program should be implemented as soon as the FERC takes the necessary steps to certificate the interstate pipelines.[3] There

3 With respect to the El Paso and Transwestern pipelines, such FERC action will be in the context of rehearing on orders which vacated the previously granted certificates. If the FERC

(Footnote continues on next page)

is a step which we can take today. We order PG&E to convert its firm sales right to firm transportation rights over PGT as soon as possible, but in no event later than October 1, 1992.[4]

Based upon the above discussion, we order PG&E to implement a nondiscriminatory capacity brokering scheme on the PGT system by October 1, 1992 or within 60 days of a FERC rehearing order authorizing capacity brokering on the PGT system, whichever is later. It is our intent to have PG&E implement capacity brokering on PGT by October 1, 1992.

With this deadline for implementation of capacity brokering, we are not requiring PG&E to resolve by a certain date any litigation against it or its affiliates brought by Canadian producers. However, we will not allow obstacles within our control to complete competition and open access between Canada and northern California to persist. Therefore, regardless of the status of any settlements or litigation in Canada, our decision today puts PG&E on notice that as of October 1, 1992, or within 60 days of the FERC order on rehearing authorizing capacity brokering on PGT, whichever

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(Footnote continued from previous page)

re-authorizes capacity brokering for El Paso and Transwestern, we do not anticipate any barriers to the California LDCs implementing capacity brokering on those pipelines by our target date of October 1, 1992.

In contrast to El Paso and Transwestern, PGT has never been issued a capacity brokering certificate by the FERC. We cannot determine at this time how soon a FERC order may be finalized certificating capacity brokering on the PGT system.

4 Today we also issue Resolution G-2967 requiring PG&E to provide core aggregators with access to Canadian supplies, including supplies outside of the A&S pool. Resolution G-2967 mandates that PG&E immediately convert some of its firm sales rights to firm transportation rights and purchase the core aggregators' identified gas.

is later, PG&E can no longer restrict access to California on the PGT line.

XII. Treatment of UEGs

A. Capacity Reservations for PG&E's UEG

The settlement proposes to reserve in advance 400 mmcf/d of firm interstate capacity for PG&E's UEG. That capacity reservation is about 80% of PG&E's electric load during an average year. PG&E and TURN defend this reservation on the basis that PG&E's UEG is a component rather than a customer of PG&E. As part of PG&E, the UEG retains property rights over the capacity it holds on the pipeline system. TURN adds that the provision protects PG&E's electric customers.

DRA believes the reservation is reasonable in consideration of PG&E's UEG baseload requirements. DRA suggests that other shippers should get a "first shot" at brokered capacity in consideration of this reservation for PG&E's UEG and in order to prevent PG&E's UEG from monopolizing firm capacity.

Cogenerators and interstate pipeline companies object to the reservation as contrary to Commission policy and law.

Should PG&E be permitted to reserve capacity for its UEG on the basis that the capacity belongs to PG&E?

The settlement proposes to reserve 400 mmcf/d for PG&E's UEG because the capacity, according to PG&E, belongs to it. This explanation begs the question. The gas utilities did not apply to the Commission for approval of capacity brokering programs. The Commission directed them to submit proposals. If we accept PG&E's arguments about its property rights on the interstate system, we would simultaneously concede that we have no legal authority to require brokering of <u>any</u> of PG&E's capacity.

The FERC has recognized that state regulatory agencies have jurisdiction to determine how capacity held by the utilities is allocated to customers and other shippers. (Texas Eastern Corporation, Docket No. CP88-136-014 et al, 48 FERC ¶ 61,378 (1989)).

Under California law, PG&E has an obligation to serve its customers and the Commission has an obligation to assure that utility services are reasonable. PU Code § 761 provides that:

> "Whenever the commission, after a hearing, finds that the rules, practices, equipment, appliances, facilities, or service of any public utility, or the methods of manufacture, distribution, transmission, storage, or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate, or insufficient, the commission shall determine and, by order or rule, fix the rules, practices, equipment, appliances, facilities, service, or methods to be observed, furnished, constructed, enforced, or employed. The commission shall prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility..."

Transportation of natural gas is a service and a method of transmission under Section 761. The Commission has found that a vertically integrated industry, whereby a utility purchases, transports and distributes all gas used in its service territory, does not serve the best interests of California customers under existing circumstances. The Commission has also found that certain classes of customers should have an opportunity to purchase their own supplies. We have also stated that the utilities' exclusive access to firm interstate pipeline capacity does not serve the best interests of customers. Therefore, pursuant to Section 761, the Commission has the authority to require PG&E to change the way it offers transportation service and to require PG&E to assign firm capacity rights to noncore customers.

PG&E's rights over the interstate pipelines are rights associated with PG&E's status as a customer of the interstate pipeline companies. Associated rates for transportation services are tariffed. PG&E receives service on behalf of its customers who pay the full tariffed costs of the service. We find meritless PG&E's assertion that such pipeline transportation service is a property right.

Should PG&E's UEG be granted preference over cogenerators in the reservation of capacity?

We have consistently stated our policy of providing a regulatory environment that will allow cogenerators an opportunity to compete on an equal footing with UEGs. Nothing in the record of this proceeding convinces us that we should change this policy or that PG&E's UEG provides more important public benefits than cogenerators.

We reject the settlement's preference for PG&E's UEG over cogenerators as supported by the record. Public Utilities Code Section 454.7 requires that the Commission shall provide cogenerators with the "highest possible priority for the purchase of natural gas," consistent with Public Utilities Code Section 2771. Section 2771 provides that customers providing the most important public benefits shall receive highest priority. We have found that cogenerators provide the state with an efficient source of energy and that cogenerators should, accordingly, receive priority equal to or ahead of UEG customers. D.90-09-089 provided that cogenerators would have priority over UEGs where cogenerators' rates are higher than or equal to UEGs, and that cogenerators would have the same opportunities as UEGs to bid for various levels of service.

By setting aside 400 mmcf/d of capacity for PG&E's UEG, the settlement would deny cogenerators an equal opportunity to compete for firm transportation service. This provision is not

justified by its proponents on the basis of policy or law. Protecting PG&E's electric customers does not require that PG&E's UEG receive a service option that is not available to cogenerators.

Should PG&E's UEG be granted preference over all noncore customers in the reservation of capacity?

Several parties, including the State of New Mexico (New Mexico), Altamont Gas Transmission Company (Altamont), Kern River Gas Transmission Company (Kern River), CCC, Sunrise, and CSC, argue that the reservation for PG&E's UEG unfairly denies transportation access to noncore customers. They argue that if PG&E brokers interstate capacity, it must do so on a nondiscriminatory basis pursuant to FERC rules and that the reservation for PG&E's UEG is unduly discriminatory.

Reserving capacity for PG&E's UEG in advance of offering it to others who must compete is contrary to our stated policy objectives of protecting core ratepayers and promoting competitive gas markets. We stated in R.90-02-008 that:

> "(A)n industry structure that treats UEGs solely as noncore customers will most effectively achieve (Commission) goals... Equal treatment would also mean that UEGs could not have superior access to capacity under our final capacity brokering system. Electric departments of combined utilities holding rights to interstate capacity could not be assigned those rights except through the workings of an open capacity brokering mechanism. If we fail to ensure that all noncore market participants have equal access to capacity, we suspect that many of the benefits of open access transportation, and the generally more open and flexible industry structure, will flow into the hands of the few UEGs, rather than the many noncore customers. Some benefits, such as greater price competition within individual producing regions, might not materialize at all."

Recognizing that UEGs have an obligation to serve, and that they face increasingly restrictive air quality rules, R.90-02-008 proposed that UEGs could nominate between 25 to 50% of their demand as core subscription customers.

Ultimately, D.90-09-089 permitted PG&E's UEG to nominate up to 65% of its demand in the highest levels of service. In spite of our earlier intent to treat PG&E's UEG as any other noncore customer, we adopted this provision as a "reasonable next step toward a more equitable and efficient gas supply system." We also stated that the effects of the UEG's participation in the market are likely to be reduced with changes in the environment, including capacity brokering.

The settlement proposes a program which does not reduce the potentially harmful effects of permitting PG&E's UEG to dominate access to transportation. In fact, the settlement would increase the preference available to PG&E's UEG by permitting the UEG to nominate about 80% of its average demand in the highest priority transportation, rather than the 65% adopted in D.90-09-089.

The parties who support this preference provide little justification for it except to say that it is "reasonable." PG&E comments that it is able to negotiate lower gas prices with the higher load factor associated with service to its UEG and that the UEG's demand complements those of core gas customers. PG&E's UEG is one of the largest gas customers in the state. As such, it should have no problem negotiating for low priced gas supplies.

We observe that UEGs other than PG&E's electric department appear satisfied to participate in capacity brokering without preference. PG&E distinguishes its electric department from other UEGs by stating that it reserved capacity on the interstate pipeline system to meet its service obligation to both its electric and gas customers. It also argues that the FERC approved construction of the El Paso and PGT pipelines in

consideration of PG&E's gas and electric demand. These facts, however, do not distinguish PG&E's UEG from other UEGs in the state.

Nothing in the record of this proceeding changes our view that competition in the gas markets is likely to be suppressed if UEGs are granted undue preference on the interstate system.

B. <u>Capacity Reservation for SDG&E's UEG</u>

Resolution G-2921 approved a contract between SoCalGas and SDG&E under which SDG&E receives a capacity reservation for its electric department. The resolution and D.90-09-089 stated that the contract would be reconsidered during review of capacity brokering.

The settlement parties propose that the terms of the SDG&E contract be retained. The record does not justify this reservation. For reasons stated in our discussion of PG&E's UEG, we believe that SDG&E's UEG should bid for capacity as any other customer. We will therefore direct SoCalGas and SDG&E to modify their contract to delete reservations of capacity for SDG&E's electric department. Corresponding contractual changes may also be required, for example, the amount of interstate demand charges allocated to SDG&E.

C. <u>UEG Election of Supply Contracts</u>

The settlement proposes to permit PG&E's electric department to reserve specific supply contracts for its use. Sunrise, Northern California Power Agency and Turlock Irrigation District (NCPA/TID), and CCC oppose this provision. NCPA/TID argues that the provision sets no standard for such action and could be anti-competitive. CCC believes the provision will put cogenerators at a disadvantage because cogenerators would not have access to the contracts, even as core subscription customers.

We see no reason why PG&E's UEG should be able to pick and choose from among PG&E's supply contracts. The contracts were entered into on behalf of all of PG&E's gas customers. Their

reservation by PG&E's UEG could increase rates to PG&E's gas customers and disadvantage competitors who produce electricity. We will require PG&E's UEG to purchase gas supplies under separate arrangements from those made for the utility system supply except where PG&E would otherwise avoid penalties in existing contracts. In such cases, PG&E should allocate a pro rata share of contract costs to its UEG. It should not enter into new contracts assuming that its UEG will share contract liabilities.

D. Access to California Supplies by PG&E's UEG

CIG comments that the settlement places no limit on the amount of California-produced gas that PG&E's electric department can take. It suggests the Commission may need to place some restrictions on the extent to which PG&E's electric department can use intrastate transportation facilities as a means of acquiring locally produced gas and that the issue should be addressed during the implementation phase of this proceeding.

We concur with CIG that the matter of access to California supplies requires further consideration and direct PG&E to submit a proposal for review in further hearings. While the issue of access to California supplies more generally was not raised in this part of this proceeding, we invite parties to address the issue in the implementation phase of this proceeding.

E. Notice by UEGs of Service Elections

The gas procurement rules adopted in R.90-02-008 require the utilities to provide advance notice to cogenerators regarding the service elections made by UEGs in utility open seasons. This rule was adopted to permit cogenerators to compete effectively with UEGs. We adopt a similar provision in today's rules.

F. UEG Nominations of Core Subscription Service

The settlement would permit UEGs to nominate unlimited core subscription service. We do not believe this is a wise or necessary course at this time. Core subscription service is

intended as a premium service for customers who may be unable to compete for firm transportation and gas supplies. UEGs are not in this category. During this transition period, however, we recognize that PG&E's UEG might better serve its customers by electing some core subscription service because of its historic reliance on PG&E's gas department. Accordingly, we will permit UEGs to elect core subscription service for up to 50% of their average annual loads in the first two years of the program. Beginning in the third year of the program UEGs may purchase core subscription for up to 25% of their loads through the end of the fourth year. Beginning in the fifth year, UEGs may not purchase any core subscription service assuming that service is still offered. Of course, UEGs who opt for core subscription service must justify their purchases as economic in reasonableness reviews.

XIII. Pricing, Rate Design, and Cost Allocation

The adoption of new services and associated changes in regulation require rate design adjustments. Because we are constrained by FERC rules, interstate service rates may not exceed the rate billed to the utility by the pipeline company, pursuant to FERC tariffs. However, the FERC rules provide some flexibility in the rate structure that may be used to comply with this "as-billed" cap. The issue raised in this proceeding is whether the utilities should assign their interstate capacity using a reservation charge rate structure or purely volumetric rates.

In addition, we must determine rates for (1) core subscription; (2) unbundled firm intrastate transportation; (3) interruptible intrastate transportation and; (4) UEG and cogenerator services. As part of rate design for these services, we must also consider allocation of "transition costs."

A. Rate Design for Firm Interstate Capacity

The settlement proposes that the Commission adopt either an all-volumetric rate for firm interstate services or a two-part rate with a reservation charge. The utilities are concerned that the current FERC rules for the volumetric rate may lead to underrecovery of the utilities' costs. This could occur because the volumetric rate must be based on the load factor of the interstate pipeline, not on the utility's own load factor for the customer class. DRA points out that if the pipeline's system load factor were higher than a gas utility's, the utility would not recover the as-billed demand charges from that customer. SoCalGas states it has requested a waiver of this provision at FERC, but recommends using a two-part rate to assure revenue recovery. CIG proposes that customers have a choice between a volumetric rate and a two-part rate structure.

We agree with DRA and SoCalGas that the two-part rate will better reflect the allocation of capacity between noncore customers and will avoid disputes over load factors. We direct the utilities to develop tariffs with two-part rate structures and which include reservation charges. As CIG proposes, the reservation charge should not exceed the as-billed interstate pipeline demand charges. We also agree with CIG that reservation charges should be waived in cases where service is interrupted to serve higher priority customers. In those cases, the reservation charge should be borne by higher priority customers.

B. Core Subscription Rates

Core subscription rates are currently set equal to the utility's highest noncore transportation rate plus the core weighted average cost of gas (WACOG). Core subscription customers must make a two-year commitment to the service and agree to a 75 percent take-or-pay requirement. The rate includes a brokerage fee.

In order to provide appropriate price signals to noncore customers, core subscription rates should continue to reflect the level of reliability the service provides. The intrastate portion of core subscription rates should be equal to the firm intrastate transportation rate because priority under the two services are the same. Similarly, core subscription service should include a rate element equal to the "as-billed" interstate rate. Finally, core subscription customers should continue to pay a procurement rate equal to the core WACOG plus a brokerage fee. We will also retain the two-year commitment, 75 percent take-or-pay requirement, and other conditions of service adopted in D.90-09-089. We address transition cost liability for core subscription below.

C. Unbundled Intrastate Transportation Rates

Under the terms of the settlement, both interruptible and firm intrastate transportation would be priced at the same tariffed "default" rate. Interruptible services could be discounted. The rates would be based on the costs allocated to noncore transportation service plus "transition costs" (discussed separately in Section XIIIE.). Firm service would include a 75% use-or-pay provision. No use-or-pay requirement would apply to the interruptible service. Interstate demand charges would no longer be included as part of intrastate transportation rates.

Intrastate services proposed by the settlement are not priced according to the value customers place on them. Instead, the proposed intrastate service rates would be limited to costs, just as the FERC's "as-billed" cap. We have consistently stated our preference for a market-based pricing system. Contrary to the arguments of some parties, market-based pricing is the most efficient way of allocating a scarce resource. It would not permit the utilities to "profiteer" from ownership of that resource as long as high utility rates of return are unaffected.

Some of the same parties who argue that value-based pricing for noncore customers would be "unfair" propose that core

customers pay for underrecovery of noncore costs which result from stranded capacity or discounts on intrastate transportation. In so doing, they propose value-based pricing for captive core customers while admonishing against such pricing for noncore customers.

CIG states that the existing 1.2 cent per therm differential between firm and interruptible services should be eliminated because D.90-09-089 considered it a "transition" mechanism. As CIG states, the number was temporary. The concept, however, was to set prices based on the value of service. While we continue to prefer setting rates based on the value of service, the existing price differential is probably unrealistic. The service levels adopted in D.90-09-089 bundle interstate and intrastate services. The 1.2 cent rate differential is more likely to reflect the value of constrained interstate service than intrastate service. For intrastate service, customers are unlikely to place such a premium on firm transportation because intrastate service is currently adequate.

The record in this proceeding does not support a market-based pricing scheme. Moreover, the evidence suggests that the introduction of market-based pricing on the intrastate system may be administratively difficult because of the many lines and receipt points. We will consider value-based pricing if and when intrastate capacity becomes constrained.

In the meantime, our main concern is that noncore transportation costs are not borne by core customers. The rate structure proposed by the settlement guarantees that a revenue shortfall will occur because the intrastate transportation rate cap is set at cost and the rate may be discounted below costs. We adopt the settlement's rate design proposal for intrastate transportation with the condition that revenues which are not recovered from individual noncore customers be borne by the noncore class only. We will continue to take into account the effects of

discounting through the use of the Discount Adjustment Mechanism in utility cost allocation proceedings.

D. UEG and Cogenerator Rates

Under current practice, UEG and cogeneration customers are treated as separate classes for determining cost responsibility. Costs are allocated to each class according to the costs they impose on the system. After costs are allocated, the UEG and cogeneration customers' transportation rates are adjusted to achieve parity in accordance with Public Utilities Code Section 454.4. This lowers the average cogeneration customers' rate and increases the average UEG customers' rate on a forecast basis. The settlement proposes to retain this ratemaking methodology.

CCC proposes that cogenerators pay no more than the average rate paid by the UEG, weighted according to amount of transportation the UEG uses in each service. CCC also asks the Commission to require that the utilities offer to cogenerators any discounts offered to UEGs for interruptible service.

DGS objects to settlement provisions which would base rates on costs while affording UEG customers a higher priority. DGS proposes that all firm service customers pay a levelized rate regardless of the cost of service. Edison opposes this change, arguing that customer rates should reflect cost of service.

As we stated above, we are still not convinced that we should abandon value-of-service pricing. At this time, however, cost-based pricing is equitable. This decision provides that cogeneration customers continue to be curtailed after UEG loads. With this rule, the settlement's pricing provisions for UEGs and cogenerators are reasonable.

E. Treatment of Stranded Costs

The settlement anticipates that capacity brokering will result in costs which cannot be recovered. Such costs would include those associated with PITCO/POPCO contracts and with surplus interstate capacity that the utility is unable to broker at

the full as-billed rate. Transition costs such as these which the Commission finds to be reasonably incurred would be recovered through an "Interstate Transition Cost Surcharge" (ITCS).

Under the settlement, for stranded costs associated with capacity reserved for the bundled service, the revenue requirement would be recovered from all customers on an equal cents per therm basis in SoCalGas' territory. The settlement provides that for PG&E, these costs would be allocated to customers of the bundled service up to a 10 percent increase. Higher level increases would be recovered from all retail customers on an equal cents per therm basis.

The settlement also addresses higher interstate rates which could occur if a pipeline is unable to resell, at the full as-billed rate, capacity relinquished by the utilities. If firm transportation rates increase in such circumstances, the settlement proposes a "Service Comparability Surcharge." Customers of interruptible interstate service would be charged the difference between the previous as-billed rate and the new as-billed rate as part of their intrastate service. The revenues from this mechanism would be distributed to all utility customers with firm interstate service.

The settlement does not set forth specific allocation of other stranded costs, recommending instead that the Commission address these issues in a subsequent proceeding.

Lawfulness of the ITCS

New Mexico and Texaco argue that the ITCS violates the as-billed cap because a surcharge would be added to customer bills in order to recover revenues which fall short of the as-billed cap. The surcharge would be added to bills of all noncore customers, including those paying the as-billed rates for interstate firm service.

We disagree with New Mexico and Texaco. Nothing in the FERC rules precludes a state regulated gas utility from recovering

its lawful revenue requirement. Payments to pipeline companies are part of the gas utilities' revenue requirement and they may therefore be recovered in rates. We agree that the utilities may not charge more than the as-billed cap for interstate services. The settlement provides, however, that the ITCS would be levied on all members of designated customer classes of intrastate services, not individual customers who purchase firm interstate service.

Treatment of Stranded Costs Associated with Core Subscription

Reserving interstate capacity for core subscription service imposes a risk that the capacity will eventually be unneeded for core subscription customers. In that case, the utilities would attempt to broker the capacity. If the utilities could not broker such capacity at the as-billed rate, however, a revenue shortfall would occur.

The settlement proposes that such stranded costs be allocated to all customers (for PG&E, after increases to bundled customers exceed 10 percent). The allocation would be billed by way of the ITCS.

SoCalGas argues that the allocation to customers other than those of the bundled service should bear the higher costs in order to avoid a "death spiral" whereby bundled rates increase and encourage customers to leave the service. SoCalGas believes this result would undermine the service which is conceived as a way of protecting small customers from more powerful suppliers.

CIG believes core customers receive some benefit from the bundled service because capacity will be available for core customer growth.

We decline to adopt the bundled service proposed by the settlement, but retain core subscription. The cost allocation principles applied by the settlement to the bundled service apply also to the adopted core subscription service.

We are committed to moving toward capacity brokering and increased competition for noncore customers in a way that affects core customer rates the least. Core customers should not bear the costs and risks of every potential shortfall of the program. Where core customers may benefit from a program change, it is reasonable for the core to assume some liability. In this case, it is not clear that captive ratepayers should share costs associated with noncore customer services or under the rules we adopt today whether unused capacity allocated to core subscription services would be the most economic capacity to accommodate core growth. Moreover, core customers are giving up access to Canadian supplies, which will reduce the costs of gas service to noncore customers and possibly increase costs to core customers at least in the near term.

If core subscription rates increase because of costs associated with that service, some core subscription customers may consider that they are better off selecting other service options, as SoCalGas predicts. This customer behavior is consistent with our view that customers pay for the services they receive and bear the risk associated with those services. Core subscription service is a premium service. We do not intend to keep core subscription rates artificially low in order to encourage customers to use it. Therefore, costs associated with stranded capacity reserved for core subscription should be allocated to noncore customers (including core subscription customers).

The record in this proceeding is not adequate to determine the extent to which core customers should bear the costs of unrecovered costs associated with core subscription service. We will revisit this issue in the implementation phase of this proceeding.

Treatment of Stranded Costs Associated with Firm Interstate Capacity

The utilities may be unable to recover their revenue requirement to the extent that the utilities are unable to broker firm interstate capacity at the full as-billed rate. The settlement proposes that these costs be recovered through the ITCS but that the allocation of these costs between customer classes be determined at a later date.

TURN argues that a share of the costs associated with stranded interstate capacity (for customers of unbundled service) should be borne by utility shareholders. It also argues that the core in general should not bear the costs associated with market decisions made by noncore customers.

We agree with TURN that shareholders should assume some risk for unmarketable firm capacity reservations. Allocating some risk to shareholders will assure that utility managers retain only the capacity they believe is required to serve core and core subscription customers. CIG argues that we should not address this issue now but address it as such costs occur. Retroactive review, however, is unlikely to provide a predictable incentive for the utilities to release unneeded capacity.

As stated above, we are uncomfortable allocating costs associated with noncore service to core customers. In the past, we have allocated to core and noncore customers a share of "transition costs" which result from major program or industry changes. We have done so on the basis that the utilities had made certain commitments which were intended to benefit both core and noncore customers. In the case of interstate capacity, however, we are adopting capacity reservations for core customers which are consistent with historic use during peak periods. If core demand exceeds those reservations, core customers will pay a premium for diverted gas owned by noncore customers. Remaining capacity has

been historically reserved for the noncore classes. Moreover, it is unclear whether core customers will directly benefit from capacity brokering programs, although their risks are likely to be increased with pro rata access to pipeline systems and somewhat limited access to firm capacity overall.

We do not share utility concerns that the costs of stranded investment will promote uneconomic bypass of the intrastate system. We authorize discounting of interruptible rates which should discourage uneconomic bypass. We also direct the development of an incentive for the utilities to release unneeded interstate capacity which should help to keep stranded costs down. Finally, we believe the value of the utilities' intrastate capacity will increase as new interstate facilities come on line.

In sum, we do not know whether core customers should bear the costs imposed on the utility system by stranded interstate pipeline costs. We will address this matter further in the implementation portion of this proceeding. We will also direct the utilities and DRA to propose an incentive mechanism and cost allocation proposals for review at a later date in this proceeding.

Service Comparability Surcharge

The purpose of the SCS is to recover pipeline demand charges which may occur under certain specific conditions. These conditions require that capacity be relinquished by the utility to the pipeline which the pipeline is not able to resell at the full, as-billed rate. Then, if the relinquished capacity is used to provide interruptible service of substantially the same reliability as that provided to firm customers and the firm pipeline demand charges are subsequently increased as a result, the difference between the interruptible rate and the higher pipeline rates would be billed to interruptible customers. Associated revenues would be redistributed among the utility's customers and marketers who purchase firm interstate capacity.

The settlement parties state this mechanism is unlikely to be needed. SoCalGas comments that it is a fair way to prevent shifting of costs away from interruptible customers and onto firm customers. Texaco and New Mexico oppose the SCS.

While we agree with the settlement parties that the Commission is within its jurisdiction to adopt an ITCS, we cannot say the same for the SCS. Unlike the ITCS, the SCS is not required to allow the utility to recover its revenue requirement. Unlike the ITCS, the SCS explicitly shifts cost responsibility from one group of _inter_state customers to another group of _inter_state customers. The SCS would require customers of interruptible interstate transportation to pay more for interruptible service than the as-billed rate, in violation of FERC rules.

We agree with the settlement parties that interruptible transportation customers who receive reliable service should not be, in effect, subsidized by firm transportation customers. Should the circumstance arise, we do not believe the FERC rules permit us to adopt the SCS.

XIV. Criteria for Evaluating Bids for Interstate Capacity

The settlement provides exemplary bidding criteria for SoCalGas. PG&E proposed separate guidelines during the course of the hearings.

PG&E proposes the following:

- A choice of medium-term or long-term commitments.

  Medium-term commitments are for two years. Long-term commitments may be as short as two years and as long as the remaining term of PG&E's underlying service agreements with pipelines.

- A weighting system for bid parameters which gives primary weight to price expressed as a percentage of the as-billed rate. Minimum

acceptable bids would be 70% of the as-billed rate. Other criteria include term length, creditworthiness, and on the PGT system, the bidder's willingness to allow PG&E to reaquire all or part of the capacity after the year 2000.

- An earnest money deposit in the amount of $2.00 per mmcf of total capacity bid, forfeited if the bidder refuses capacity awarded in conformance with the bid.

The settlement proposes the following rules for SoCalGas:

- A choice of medium-term or long-term commitments.

  Medium-term commitments are about three years (assuming that capacity brokering is implemented in late 1992). Long-term commitments are no less than five years and no longer than the term of SoCalGas' service agreement with the interstate pipeline.

- A weighting system which treats price and term length equally. The minimum bid is 70% of the as-billed rate.

  Other terms include the right to reacquire capacity beginning in 1996.

- An earnest money deposit in the amount of $2.00 per mmcf of total capacity bid, forfeited if the bidder refuses capacity awarded in conformance with the bid.

We find the bidding proposals of the utilities acceptable with one exception. As we stated previously, the utilities should offer shorter term brokering. For PG&E, customers should have the option to purchase firm capacity for one year as well as two years. For SoCalGas, customers should have the option to purchase firm capacity for one to two years, as well as the longer terms proposed by the settlement. These shorter term arrangements will encourage more customers to bid for capacity during the early years of the

program. Each utility shall make one-third of its available capacity available for these shorter term periods.

We expect the details of these proposals to be specified more precisely in a later phase of this proceeding and should be consistent with current practices as set forth in Rule 6.

XV. Treatment of Wholesale Customers

The settlement reserves about 50 mmcf/d for the core loads of PG&E's wholesale customers, Southwest Gas being the largest among them. For SoCalGas, it reserves capacity for SDG&E's gas operations consistent with an existing contract between SDG&E and SoCalGas. About 150 mmcf/d of this is required for core customers subject to review by the Commission. The remaining is for SDG&E's UEG (which has already been discussed in Section XII.B) and industrial customers. SDG&E states its intention to survey its noncore customers to determine whether it requires the total amount of reserved capacity and will relinquish to SoCalGas capacity for which it perceives no demand. The settlement also reserves 75 mmcf/d of SoCalGas' capacity for Long Beach. The settlement provides that SDG&E and Long Beach may purchase gas from SoCalGas but may not purchase bundled service.

New Mexico objects to reservations of capacity for noncore loads of wholesale customers. New Mexico contends that such reservations are discriminatory and thereby violate FERC rules. Since we have found that firm capacity cannot be reserved for noncore customers of LDCs, we see no reason why firm capacity should be reserved for noncore customers of wholesale customers. These noncore customers have the opportunity to sign up for brokered capacity or for the core subscription option. If the result of our action is that all of the noncore load of wholesale customers ends up as core subscription, we can revisit this issue in the future (e.g., at the end of the core subscription

commitment). However, based upon the present record, there is no justification for reserving firm capacity for the noncore load of wholesale customers.

On the other hand, neither the parties nor we question reserving firm capacity for the core load of wholesale customers. The core has always enjoyed firm service and the highest priority service. For this reason, it is not unduly discriminatory to reserve firm capacity rights for the core load of wholesale customers, or, for that matter, for core aggregators.[5]

XVI. Treatment of Pacific Interstate Transmission Company and Pacific Offshore Pipeline Company (PITCO/POPCO) Costs

Currently, SoCalGas has long-term gas supply contracts with two affiliates, PITCO and POPCO. PITCO gas comes from Canada. POPCO purchases offshore gas from Exxon. These contracts, which were signed during the 1970s, commit SoCalGas to gas supplies which are priced well above market prices. DRA estimates PITCO gas costs SoCalGas' ratepayers $73 million more during 1990 than other Canadian supplies. In 1989, SoCalGas paid POPCO $5.40 per MMBtu with substantial increases expected during the life of the contract.

The settlement proposes that SoCalGas file a report with the Commission by December 31, 1991 which will describe past and anticipated cost reductions associated with the PITCO/POPCO projects. In a subsequent proceeding, the costs of PITCO/POPCO would be compared against other supplies and allocated "equitably." Costs allocated to the noncore would be billed through the ITCS.

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5 Reservations of capacity for core aggregators and the core loads of wholesale customers should be included in amounts reserved for the core.

TURN states excess PITCO/POPCO costs must be identified and allocated before unbundling rates in order to protect core ratepayers. It recommends that issues related to the SoCalGas report required by the settlement be considered separately from allocation issues because capacity brokering is likely to be implemented before the reasonableness issues can be resolved.

Long Beach argues that customers should not have to pay the cost of PITCO capacity without being able to use it. Long Beach also believes there is no justification in the record for SoCal's exclusive use of PITCO.

The record in this proceeding does not allow us to assess the effects of PITCO/POPCO contracts on access to Canadian or offshore gas supplies. The investigation proposed by the settlement is a reasonable first step in such a determination. We direct SoCalGas to file a report by December 31, 1991, regarding the steps it has taken to reduce PITCO/POPCO contract obligations and steps it may take in the future to reduce its obligations. SoCalGas shall also include in the report an explanation of when it expects PITCO to apply to FERC for open access status, and when it expects to be able to broker capacity over PITCO and POPCO. That report will be subject to hearings at which parties such as Long Beach may address issues related to transportation access. Whether SoCalGas has taken reasonable steps to reduce liability for overpriced supplies is appropriately the subject of reasonableness reviews.

As TURN suggests, we will also require that SoCalGas submit cost information in implementation hearings in this proceeding so that excess costs may be allocated before transportation rates are unbundled.

Finally, it is appropriate that costs of unmarketable PITCO and POPCO supplies be allocated to core and noncore customers because those costs were incurred on behalf of core and noncore customers. We will address this cost allocation matter in more

detail after considering the extent to which costs of the PITCO and POPCO gas supplies exceed market prices.

XVII. Treatment of Existing Long-Term Intrastate Transportation Contracts

The utilities have several long-term intrastate transportation contracts with large customers. Most of these contracts are with Enhanced Oil Recovery (EOR) customers and provide discounted rates. The contracts were signed during a time when capacity was adequate and therefore do not specify any particular priority of service, with the exception of a contract with Shell Oil Company which specifies interruptible service. The contracts are not subject to modification by the Commission, with the exception of a contract with Texaco.

The settlement does not address the contracts, but several parties proposed ways to treat the contracts. SoCalGas proposes that these customers be offered firm transportation if they are willing to pay the ITCS. SCUPP and DRA propose that if contract customers seek firm service, they should pay the full rate because the contract customers now receive interruptible service which is the level of service anticipated by the contracts.

CCC opposes regulatory changes which might change the level of service offered to cogenerators under long-term contracts. It proposes that if the Commission effectively considers the contract services to be interruptible that they be deemed "full default rate" contracts. Similarly, CSC proposes that, at a minimum, contract cogenerators deemed to be paying the default rate should be curtailed last.

Texaco argues that its contract with SoCalGas is unique because it results from the settlement of litigation and can therefore not be modified by the Commission. It believes the contract should continue to offer it the equivalent of Priority 3-A service at the contractual discounted rate.

In D.90-09-089, we stated that we have no desire to retract our promise to honor transportation contracts which were exempted from the provisions of General Order 96-A. We also stated that the Commission has made the contracting parties aware that our gas policies may change as circumstances warrant. We cited D.86-12-009, which approved the contracts, but noted that "In the longer term, EOR customers may have to pay rates above variable transmission cost in order to assure the same high level of reliability that exists today." The contracts anticipate changed circumstances by providing that "priority charges" may be levied if they are adopted by the Commission.

In this decision we do not adopt priority charges. But we do adopt the equivalent of priority charges by requiring that customers be curtailed according to the level of payment they make for transportation service. As we anticipated in D.90-09-089, circumstances have changed. Demand for capacity exceeds its availability. If customers of long-term contracts seek firm intrastate transportation, they will have to make the same commitments as other customers for those services. The Shell contract specifies the lowest priority service and Shell would therefore be subject to the same rule. Contracts may also be renegotiated in order that they comport with the needs of customers under the new rules.

XVIII. Storage

Currently, storage costs are allocated to core, core subscription, and noncore customers. Sunrise proposes that storage costs should be "unbundled" and removed from noncore customers' rates because, as Sunrise states, those customers do not benefit from storage. Sunrise comments that if storage costs are not unbundled, noncore customers will subsidize core customers and private storage facilities will not become economic.

DRA objects to Sunrise's proposal, arguing that all customers benefit from storage facilities because noncore customers pay nothing for balancing services when their deliveries are up to 10% higher or lower than their consumption levels. APMC makes similar comments, adding that this proceeding is not the proper forum for reviewing allocation issues which are not directly related to interstate transportation.

DRA does propose that the Commission consider one storage related issue. It recommends that the Commission order PG&E to study the costs and advantages of enhancing its storage capacity in order to increase the available amount of firm capacity.

We concur with DRA and APMC that noncore customers receive some benefit from storage and should therefore pay some of the costs of storage. Whether allocations of storage costs between core customers and noncore customers reflect the relative benefits they receive is an issue which is more appropriately considered in I.86-06-005 in which we intend to review cost allocations more generally, or in utility biennial cost allocation proceedings.

Like DRA, we are concerned about PG&E's statements that it cannot offer storage banking services if it offers capacity brokering services. As DRA suggests, we direct PG&E to submit a study of the costs and advantages of enhancing its storage capacity.

XIX. Implementation Issues

The parties suggest that a second phase of hearings be held in this proceeding to address unresolved issues and to review utility tariff filings. We concur with this recommendation and adopt the following schedule, which may be modified by the assigned administrative law judge:

December 6, 1991	Utilities submit testimony
December 20, 1991	Utilities submit tariffs to DRA and parties who request them
January 10, 1992	Parties submit testimony
Jan. 20 - Feb. 14, 1992	Hearings
March 10, 1992	Briefs
April 10, 1992	Proposed ALJ Decision
May 10, 1992	Final Decision
October 1, 1992	Implementation of capacity brokering and related rules

This schedule is more compressed than that proposed by TURN. Given experience with changing gas rules in R.90-02-008, we believe the utilities will need several months between a final Commission decision and program implementation to conduct open seasons. The amount of capacity that will be made available for brokering under this decision is undoubtedly more than would be made available under the proposed settlement, but cannot be determined at this time. The exact amount will depend upon the resolution of issues in the implementation phase of this proceeding and upon the amount of capacity that will be required to meet core subscription requirements.

Outstanding matters in this proceeding which will require resolution in the implementation hearings include:

- Unbundling intrastate and interstate rates;
- Appropriate restrictions on full-requirements service;
- Procedures for rotating customer curtailments;
- An appropriate reservation of core subscription service for SDG&E;

- Sales of firm intrastate transportation between customers in event of a curtailment;
- The costs of PITCO and POPCO gas supplies and allocation of the costs of unmarketable supplies between core and noncore customers;
- The extent to which PG&E's electric department should have access to California supplies and the nature of that access;
- The appropriate allocation of unrecovered costs associated with core subscription service and interstate pipeline capacity; and
- The costs and benefits of PG&E enhancing its storage facilities.

The utilities shall also file tariffs which implement today's decision. SDG&E shall also file tariffs, consistent with this decision, for allocating the capacity it purchases from SoCalGas. Tariff filings should not attempt to expand the scope of this proceeding: we will not consider changes to existing rules except as required to implement the rules adopted today. In addition, tariff filings should employ current adopted forecasts. We caution the utilities to avoid securing commitments from customers before final tariffs are approved. This will avoid the customer confusion which occured with premature marketing of services adopted in R.90-02-008.

Finally, the implementation phase of this proceeding will explore rules for core customers who aggregate loads in order to qualify for transportation-only services. The record in this proceeding does not permit specific treatment of such customers. We direct the utilities to propose rules which conform to our policy toward "core aggregators" and rules we adopt in this proceeding.

XX. Conclusion

In this decision we adopt a capacity brokering program which will provide new transportation choices for noncore customers while protecting the interests of core customers and small noncore customers.

Under the terms of the program, interstate capacity is reserved for core customers in amounts which are estimated to be adequate during peak periods. Core capacity which is not required during periods of low demand will be offered to noncore customers on a short-term firm or interruptible basis. During periods when core demand exceeds the core reservation, interruptible service will be curtailed first. If more capacity is required, the utilities will purchase gas from firm service customers. Interstate capacity is also reserved for core loads of wholesale customers and core aggregators.

Under the program, noncore customers will have several service options. Those who do not wish to compete in gas markets may purchase core subscription service from the utilities, which would provide highly reliable transportation service plus gas procurement. Alternatively, noncore customers may purchase unbundled transportation services. Under a bidding program, firm interstate capacity will be offered to any shipper for periods as short as one year and as long as the remaining service agreement between the utility and the pipeline company. The utilities will offer interruptible interstate service when it is available.

The utilities will sell intrastate transportation under tariffs to their noncore customers. Firm and interruptible intrastate service will be offered at the same rates, but customers of firm service will be required to make two-year commitments and a use-or-pay commitment. Interruptible service may be discounted for customers who might otherwise bypass the utility system.

When demand for transportation exceeds supply, customers will be curtailed according to the level of payments they make. Customers who pay equal amounts will be curtailed "pro rata." The only exception to this order of curtailment is where cogenerators pay the same as UEGs. In those cases, all UEG load would be curtailed before any cogenerator load consistent with the code and our current policy.

Like any new venture, the program we adopt today presents some risk. In the next few years we will be attentive to whether the program is fulfilling Commission goals. Indications that the program is not working would include concentrated holdings of interstate capacity, high levels of stranded costs, frequent curtailments, relatively high gas prices, and high percentages of customers who opt for core subscription services. If we observe these signs of trouble, we will not hesitate to reconsider the rules adopted today.

We believe, however, that the program we adopt today will promote competition in gas markets in a way that balances the interests of customers, utility shareholders, producers and brokers.

Findings of Fact

1. Several parties to this proceeding filed a settlement which was the subject of hearings. The settlement addresses most of the major issues concerning capacity brokering.

2. DRA filed a petition to modify D.90-09-089 on March 4, 1991, which asks the Commission to order capacity brokering over PGT concurrent with capacity brokering over other pipelines.

3. The FERC has set forth broad guidelines relating to capacity brokering.

4. The Commission has set forth policy objectives relating to capacity brokering in decisions issued in this docket and in R.90-02-008.

5. The settlement fails to satisfy the objectives the Commission has set forth in previous decisions in this docket and in R.90-02-008.

6. The reservations of firm interstate pipeline capacity for core customers of PG&E and SoCalGas proposed by the settlement are reasonable estimates of core demand during peak periods of the year.

7. The settlement's provisions for voluntary and involuntary diversions of gas from firm interstate transportation customers will provide core customers with a backup source of gas supply if firm reservations for the core are inadequate and interruptible noncore transportation does not satisfy additional core demand during peak periods.

8. Brokering of capacity is most advantageous when capacity is constrained. Intrastate capacity is not currently constrained.

9. Absent carefully crafted rules, allowing marketers to broker intrastate capacity could compromise the Commission's obligation to protect utility customers from unduly high rates. The record in this proceeding does not permit the development of rules which would prevent such an outcome.

10. Some noncore customers may require a highly reliable, premium noncore service.

11. The settlement's proposal to restrict core subscription to customers with demand not to exceed 60 million therms per year is not supported by the record in this proceeding because there is no evidence to suggest that customers with demand over up to 60 million therms per year are "small" customers. Nor does the record support a finding that 18 of the state's largest customers should be denied the most reliable noncore service.

12. The settlement's provisions encourage customers to subscribe to bundled utility services rather than to compete for interstate capacity.

13. Under the terms of the settlement, the only way SoCalGas' customers may obtain short-term access to firm interstate service is to purchase firm intrastate service.

14. A utility's refusal to interconnect a new pipeline could affect the value of new interstate pipelines and dampen competition.

15. Ordering curtailments according to level of payment made by the customer, rather than according to end-use priorities, will promote more economically efficient use of capacity.

16. The record does not support a reversal of the Commission's policy to require that cogenerators be curtailed after UEGs in cases where the cogenerator pays the same or more than the UEG for transportation service.

17. The record does not support granting priority for transportation service to state facilities over other facilities.

18. PGT is an affiliate of PG&E and subject to FERC jurisdiction.

19. PG&E purchases Canadian gas from PGT under a "firm sales service" agreement with PGT which imposes upon PG&E no minimum take commitment or minimum bill commitment.

20. PGT purchases gas from A&S under a contract which imposes a 50% take-or-pay obligation on PGT.

21. A&S, an unregulated affiliate of PG&E, purchases gas from a consortium of Canadian suppliers under contracts which were not introduced as evidence in this proceeding.

22. PG&E has no contractual obligation to purchase gas from PGT, A&S, or Canadian producers.

23. PG&E may convert its firm sales rights on the PGT line to firm transportation rights, pursuant to FERC rules.

24. The record does not support a finding that the Canadian National Energy Board's approval of gas exports to PG&E would restrict access over PGT by parties other than PG&E and its affiliates.

25. The Access Agreement which guides sales of Canadian gas to noncore customers in California is not binding on the Commission and does not preclude brokering over PGT.

26. The rules adopted in D.90-09-089 were explicitly interim in nature, pending the establishment of capacity brokering programs.

27. The record in this proceeding does not support a finding that UEGs provide more important public benefits than cogenerators or that the Commission should change its policy that cogenerators should be able to compete on an equal footing with UEGs.

28. UEGs are large and sophisticated energy users which should be capable of competing fairly with noncore customers, brokers, and marketers for interstate capacity and gas supplies on the phased schedule in this decision.

29. The settlement's reservation of firm interstate capacity for the electric departments of PG&E and SDG&E would have provided those utilities with a preference over noncore customers and cogenerators which is not justified by the record.

30. The settlement provision which permits PG&E's UEG to choose from among PG&E's gas supply contracts could disadvantage PG&E's gas customers and could afford an advantage to PG&E's UEG over its competitors.

31. A noncore firm interstate transportation rate structure which incorporates volumetric rates and reservation charges will appropriately reflect the allocation of capacity between noncore customers and will avoid disputes over load factors.

32. The existing rate structure for core subscription service, adopted in D.90-09-089, will reasonably reflect the reliability of the service relative to other noncore services.

33. Setting noncore transportation rates at cost and allowing them to be discounted assures a revenue shortfall.

34. The Interstate Transition Cost Surcharge proposed by the settlement would recover reasonably incurred transition costs,

including costs associated with gas supply contracts and with firm interstate pipeline capacity which cannot be brokered at the rates billed to the utilities by pipeline companies.

35. The Service Comparability Surcharge proposed by the settlement would require customers of interruptible interstate transportation to pay more for interruptible service than the rates billed to the utilities by pipeline companies.

36. The settlement proposes that the utilities reserve firm capacity for their wholesale customers consistent with Commission policy to provide wholesale customers access to such capacity.

37. The record in this proceeding does not support a finding regarding the reasonableness of SoCalGas' contracts with PITCO and POPCO or the desirability of providing noncore customers and other shippers access to those gas sources.

38. Existing transportation contracts between the utilities and certain large customers, which the Commission exempted from the provisions of GO 96-A, provide low priority transportation service and anticipate the application of priority charges if the Commission should adopt them.

39. The contract between Texaco and SoCalGas is subject to Commission modification pursuant to GO 96-A.

40. Existing contracts between the utilities and certain large customers were entered into during a period of excess supply of capacity.

41. PG&E believes it cannot offer storage banking services if it offers capacity brokering.

42. The allocation of storage costs between core and noncore customers is appropriately considered in utility cost allocation proceedings or I.86-06-005.

<u>Conclusions of Law</u>

1. The Commission should reject the settlement filed in this proceeding on March 22, 1991, because its provisions would not adequately fulfill Commission policy objectives.

2. The Commission should adopt firm interstate pipeline reservations of 1200 mmcf/d for PG&E's core and wholesale customers and 1067 mmcf/d for SoCalGas' core customers.

3. The Commission should adopt the rules proposed by the settlement for voluntary and involuntary diversions of gas from firm interstate transportation customers and should direct CACD to monitor complaints associated with the transactions.

4. The Commission should permit customers to delegate intrastate capacity to non-customer shippers, as proposed by the settlement. The Commission should not require brokering of intrastate capacity at this time.

5. The bundled services envisioned by the settlement are contrary to FERC policy which prohibits bundling of firm interstate capacity with any other service.

6. The Commission should retain the existing core subscription service for noncore customers who do not seek to participate in competitive gas markets.

7. The utilities should be permitted to increase the capacity reserved for core subscription service beyond the initial allocation only if they can show that brokered interstate capacity cannot be sold at the as-billed rate and demand for core subscription has increased. Such a showing should be made by way of advice letter.

8. The utilities should be required to interconnect with new interstate pipelines. Liability for associated costs should be considered in other proceedings.

9. The Commission should adopt the settlement's provisions for curtailments except that cogenerator loads should be curtailed ahead of UEG loads only in cases where the UEG pays more for transportation service than the cogenerator, as set forth in D.90-09-089.

10. Under Section 1708, the Commission may, following notice and after providing parties an opportunity to be heard, change a decision.

11. The Commission should order PG&E to open access over the PGT line once there is a FERC rehearing order authorizing capacity brokering on the PGT line or on October 1, 1992, whichever is later.

12. Under FERC policy, the Commission has the authority to determine how capacity held by the utilities shall be allocated to customers and other shippers as long as Commission rules are consistent with FERC orders.

13. Section 761 gives the Commission authority to prescribe rules for the performance of any service and to require PG&E to change the way it offers transportation service.

14. Requiring PG&E to broker interstate capacity does not represent an unconstitutional taking of PG&E's property.

15. PG&E and SDG&E's UEG requirements should not be granted reservations of firm interstate capacity ahead of other noncore customers. However, for the first two years of this program, UEGs may elect core subscription service for up to 50% of their average annual loads, declining to up to 25% in years 3 and 4. Beginning in year 5, UEGs may not purchase any core subscription service, assuming that service is still offered.

16. The Commission should require PG&E's UEG to purchase gas supplies under separate arrangements from those made for the utility system supply except where PG&E would otherwise avoid penalties in existing contracts. In such cases, PG&E should allocate a pro rata share of contract costs to its UEG.

17. The Commission should consider in a later phase in this proceeding whether and the extent to which PG&E's UEG should have access to California gas supplies.

18. The Commission should retain the provision adopted in D.90-09-089 requiring the utilities to provide advance notice to

cogenerator as regarding the service elections made by UEGs in utility open seasons.

19. The Commission should retain the existing rate structure for core subscription service, adopted in D.90-09-089, as modified.

20. Revenue shortfalls resulting from intrastate transportation rate discounts to noncore customers and stranded costs associated with noncore transportation services should be considered in a later phase of this proceeding. Revenue shortfalls associated with noncore services should also be considered in a later phase of this proceeding.

21. FERC rules do not preclude a utility from recovering its lawful revenue requirement from intrastate noncore customer classes, and the ITCS is therefore lawful.

22. The Service Comparability Surcharge proposed by the settlement is contrary to FERC rules.

23. The Commission should adopt the capacity brokering bidding and evaluation criteria proposed by the settlement for SoCalGas and by PG&E for its own operations, except that both utilities should offer one-third of their available capacity to customers willing to make one or two-year service commitments.

24. The Commission should adopt provisions of the settlement which reserve firm interstate capacity for core loads of wholesale customers.

25. The Commission should order SoCalGas to submit, by December 31, 1991, a report regarding the steps it has taken and will take to reduce its liability under the contracts with PITCO and POPCO, and the desirability of providing to noncore customers and other shippers access to gas supplies on associated pipeline systems.

26. The Commission should order SoCalGas to submit for review in a later phase of this proceeding information regarding the cost of PITCO and POPCO gas supplies and their competitiveness with other gas supplies.

27. The Commission should order PG&E to submit for review in a later phase of this proceeding information regarding the desirability of enhancing PG&E's storage capability.

28. The Commission should hold hearings in this proceeding prior to the implementation of capacity brokering. The hearings should review unresolved issues and utility tariff filings made pursuant to this order.

29. The Commission should adopt the rules set forth in Appendix B of this decision.

30. The rules adopted in D.90-09-089, as modified, should be amended as set forth in this decision. Those rules which are not explicitly changed by this decision should remain in effect.

O R D E R

IT IS ORDERED that:

1. The motion to adopt the settlement filed in this proceeding on March 22, 1991 is denied.

2. The petition to modify D.90-09-089 filed by the Division of Ratepayer Advocates on March 4, 1991, is dismissed as moot as set forth herein.

3. The rules set forth in Appendix B of this decision are adopted and supersede rules adopted in D.90-09-089, as modified, only to the extent set forth in this decision.

4. Pacific Gas and Electric Company, Southern California Gas Company (SoCalGas), and San Diego Gas and Electric Company shall serve on DRA and all parties who request them, by December 20, 1991, pro forma tariffs consistent with the rules set forth in Appendix B of this decision. The tariff sheets shall identify changes incorporated with bold typeface. On December 6, 1991, they shall serve on all parties testimony on unresolved issues as set forth in this decision.

5. SoCalGas shall file, by December 31, 1991, a report in this proceeding which addresses steps it has taken and will take to reduce its liability under the contracts with Pacific Interstate Transmission Company and Pacific Offshore Pipeline Company, and the desirability of providing to noncore customers and other shippers access to gas supplies on associated pipeline systems.

6. This proceeding shall remain open to consider unresolved issues and utility tariff filings made pursuant to Ordering Paragraphs 4 and 5 of this decision.

7. The rules set forth in this decision shall become final subject to the authorization of capacity brokering by the Federal Energy Regulatory Commission (FERC) and may be modified, if required, to be consistent with FERC orders or as the Commission deems necessary following the issuance of pertinent FERC orders.

8. PG&E shall make every reasonable effort to open access over the Pacific Gas Transmission (PGT) pipeline, including conversion of its firm sales rights to firm transportation rights. Its efforts shall be made with the objective of brokering PGT capacity by October 1, 1992.

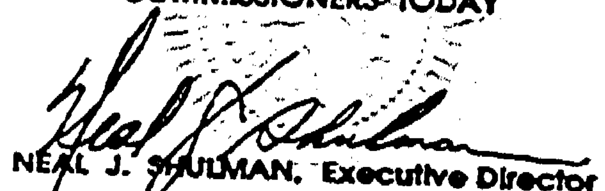
This order is effective today.

Dated November 6, 1991, at San Francisco, California.

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

I will file a written concurring opinion.

/s/ DANIEL Wm. FESSLER
Commissioner



APPENDIX A
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(END OF APPENDIX A)

RULES FOR NATURAL GAS TRANSPORTATION AND CAPACITY BROKERING

I. Applicability

This program applies to the following local distribution companies (LDCs): Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SoCalGas), and San Diego Gas & Electric Company (SDG&E). Some program elements recognize differences in operations between the LDCs.

II. Core Transmission and Procurement Services

LDCs shall offer the following services for core customers:

A. Core Transmission and Procurement Services

The LDCs shall offer the following services for core (P-1 and P-2A) usage:

Retail Customers: The LDCs shall offer firm interstate/intrastate transmission service and procurement service to retail end-use customers for core usage on a bundled basis.

Large Retail Customers: Each LDC shall offer bundled core interstate/intrastate transmission service to eligible large retail core end-use customers and aggregated retail core end-use loads on the serving LDC's system to the extent required by and subject to the provisions of Decision (D.) 91-02-040 and any subsequent CPUC decisions regarding core transmission service.

PG&E Wholesale LDCs: PG&E shall offer bundled core interstate/intrastate transmission service and core procurement service to wholesale LDCs on PG&E's system.

Wholesale LDC Unbundled Service: The primary LDCs shall offer unbundled core intrastate transmission service to wholesale LDCs to the extent to which the wholesale LDCs have obtained firm interstate pipeline transmission service or firm intrastate supplies on the primary LDCs' systems for core service.

B. Core Subscription Service

The LDCs shall offer core subscription transmission and procurement service to noncore customers. Utility electric generators may elect core subscription service for up to 50% of their average annual requirements in years 1 and 2 of capacity brokering. Utility electric generators may elect no more than 25% of their average annual requirements in years 3 and 4. Beginning with year 5, utility electric generators may not purchase any core subscription service, assuming that service is still offered.

Core subscription service shall be offered to noncore customers who must make a two-year commitment to the service and be subject to a 75% take-or-pay requirement pursuant to the provisions of D.90-09-089, as modified. It shall also be offered to SoCalGas' wholesale LDCs to the extent that the wholesale LDCs are assigned firm interstate capacity and obtain matching firm unbundled intrastate transmission service for the term of the core subscription service.

SoCalGas shall provide core subscription service on a pro rata basis across El Paso Natural Gas Company (El Paso) and Transwestern Pipeline Company (Transwestern) systems and paths. PG&E shall provide core subscription service on an equal basis across the Pacific Gas Transmission (PGT) and El Paso systems and paths. This rule shall become applicable coincident with issuance of valid capacity brokering certificates by the FERC.

C. Unbundled Noncore Intrastate Transmission Service

LDCs shall offer firm and interruptible intrastate transmission service on an unbundled basis.

1. Firm Service Eligibility: Firm unbundled noncore intrastate transmission service shall be available to customers as follows:

   a. Firm Interstate Customers: Firm unbundled noncore intrastate transmission service shall be available to customers who hold firm interstate transportation capacity rights or who purchase or receive (1) gas delivered to an LDC interconnection with an interstate pipeline on a firm basis, (2) intrastate California supplies that are delivered directly into the serving LDC's system, or (3) supplies which are delivered from storage facilities on the LDC's system, provided that the receiving LDC has adequate

capacity to receive and redeliver such volumes on a firm basis.

b. Interruptible, Existing Interstate: Firm unbundled noncore transmission service shall be available to customers or customers of shippers who deliver gas to the LDC on an interruptible basis through existing interstate pipelines, to the extent and so long as (1) the capacity of those interstate pipelines is not expanded so as to create a mismatch of interstate and intrastate capacity and (2) the receiving LDC has adequate capacity to receive and redeliver such volumes on a firm basis.

The LDC shall have no obligation to build new facilities to provide firm unbundled intrastate transmission service to customers who deliver gas to the LDC on an interruptible basis through existing interstate pipelines.

c. Interruptible, New Interstate: Firm unbundled noncore transmission service shall be available to customers who bring gas to the LDC on an interruptible basis across a new interstate pipeline or an expansion of an existing pipeline, provided that (1) the customer has given assurances acceptable to the LDC that the costs associated with any required enhancements of the LDC's system necessary to provide firm unbundled transmission intrastate service to the customer will be recovered by the LDC, (2) the required enhancements are approved by the CPUC and are constructed and placed in service, and (3) the LDC has determined that it can physically provide firm unbundled intrastate transmission service to the customer.

2. Interruptible Service Eligibility: All customers shall be eligible to receive interruptible unbundled noncore intrastate gas transmission service.

3. Shipper Options: Shippers who receive unbundled noncore intrastate transmission service shall be responsible for obtaining their own interstate pipeline transmission service or intrastate supplies that are delivered directly into the serving LDC's

system commensurate with their needs. Their interstate pipeline transmission options include:

a. New pipelines.

b. Brokered capacity.

c. Relinquished capacity.

d. Sales at LDC receipt points by marketers or producers.

4. Wholesale LDC End-Use Customers: A noncore end-use customer who is served by a jurisdictional wholesale LDC and who obtains its own interstate transmission service or obtains its own intrastate supplies on the system of the primary LDC serving the wholesale LDC shall receive intrastate transmission service from the wholesale LDC.

D. Interutility Transmission Service

LDCs shall continue to offer interutility transmission service on an interruptible basis.

E. Split Requirements

Noncore customers shall be permitted to split their requirements between core subscription and unbundled transmission service and between firm and interruptible transmission service.

F. Full Requirements

Noncore end-use customers may select firm unbundled transmission service for their full requirements, subject to the alternate fuel use restrictions adopted for such service in D.90-09-089 and such other restrictions as may be appropriate.

G. Shippers Other Than Customers

Shippers other than customers may receive unbundled noncore intrastate transmission service on behalf of specified customers.

1. Eligibility: A shipper which demonstrates that it has a contract to supply gas to a customer may, with the customer's approval, exercise the customer's rights to transmission service on behalf of the customer.

2. Aggregation: Such a shipper may aggregate the rights of several customers for purposes of contract administration, applicable use-or-pay requirements, or balancing requirements.

3. Recourse: The customer shall remain ultimately responsible to the LDC for payment of all applicable charges.

III. Reservation of Interstate Pipeline Capacity

A. Retail Core Reservations

Each LDC shall reserve firm interstate pipeline capacity sufficient to serve the requirements of its retail core customers.

1. SoCalGas' Core Reservation: SoCalGas' reservation for retail core service shall be 1,067 million cu. ft. per day (MMcf/d) on an annual average basis. Such reservation is based on SoCalGas' forecasted 1995 core cold year requirements.

2. PG&E's Core Reservation: PG&E's reservation for core service shall be 1,200 MMcf/d on an annual average basis, including forecasted wholesale core demand. Such reservation is based on PG&E's forecasted 1995 core average year peak month requirements and may be adjusted to reflect wholesale demands as discussed below.

3. Criteria: The LDCs' reservations of capacity for retail core service take into account the following:

   a. Firm storage dedicated to core service.

   b. California-source gas available for core service.

   c. Core protection purchase arrangements.

   d. In order to provide additional capacity for SDG&E's core growth, SDG&E may obtain additional capacity for core after 1996 through access to a proportionate share of the capacity obtained by SoCalGas through SoCalGas' reacquisition options with customers bidding into SoCalGas' long-term pool.

4. SDG&E's Core Reservation: SDG&E's reservation for core service shall be not less than 150 MMcf/d on an annual average basis, depending on access to long-term storage. Such reservation is based on SDG&E's forecasted 1995 core cold year requirements.

B. Core Subscription Reservations

Jurisdictional LDCs shall reserve interstate pipeline capacity in order to provide core subscription service to their retail customers for noncore usage.

1. Open Seasons: The capacity reserved by jurisdictional LDCs to provide core subscription service for retail customers shall be determined by each LDC through an open season process. There shall be an initial open season with subsequent open seasons being held every two years.

2. Additional Pipeline Capacity: An LDC shall not be required to obtain additional interstate pipeline capacity in order to provide core subscription service.

3. Subsequent Open Seasons: For open seasons held after the initial open season:

   a. Reduced Demand: If an LDC's retail demand for core subscription service drops to a level below the level established in the first open season, the resulting excess capacity shall be relinquished, brokered, or offered on an interruptible basis.

   b. Surcharge: The costs that are allocated as a result of this provision to SoCalGas or PG&E noncore customers shall be recovered through the Interstate Transition Cost Surcharge (ITCS).

   c. Increased Demand: If the retail demand for core subscription service rises above either the initial or a subsequent downward adjusted level, the LDC may acquire additional interstate pipeline capacity or reallocate to core subscription customers interstate capacity which cannot be brokered at the "as-billed" rate to serve such demand. The utility shall file an advice letter and gain Commission approval for such an acquisition. However, if the LDC does

acquire such capacity and demand subsequently drops, the cost of such capacity shall be allocated exclusively to retail customers taking core subscription service.

C. PG&E'S Wholesale Core Reservations

PG&E shall reserve firm interstate pipeline capacity so as to assign firm unbundled interstate pipeline capacity to wholesale LDCs served by PG&E to the extent such capacity is requested by the wholesale LDCs after consultation with PG&E.

1. Criteria: The volume of interstate pipeline capacity reserved by PG&E for a PG&E wholesale LDC shall be based on a reasonable planning horizon and shall take into account the wholesale LDC's use of storage.

2. Cost Allocation: The cost of such capacity shall be allocated to the wholesale LDC.

3. Adjustments: The volume of interstate pipeline capacity reserved by PG&E for a wholesale LDC may be adjusted upon request of the wholesale LDC and consent by PG&E to reflect changes in forecasted core demand on the wholesale LDC's system.

4. Unilateral Reductions: The reservation for the wholesale LDC shall not be subject to unilateral reduction by the wholesale LDC for the term of the primary LDC's contract with the relevant interstate pipeline.

D. SoCalGas' Wholesale Reservations

SoCalGas shall reserve firm interstate pipeline capacity so as to assign firm unbundled interstate pipeline capacity to its two wholesale customers, SDG&E and Long Beach, in accordance with the following provisions:

1. SDG&E Contract: The firm interstate pipeline capacity allocated to SDG&E's gas department under SDG&E's contract with SoCalGas shall remain allocated for the remaining term of the contract but only for SDG&E's core load.

2. SDG&E Assignment: At any time prior to five days before the commencement of SoCalGas' open season for brokering interstate pipeline capacity, SDG&E may give notice that it wishes to reduce the 300 MMcf/d

of firm interstate pipeline transportation rights provided to it under its contract with SoCalGas, as modified by the Commission. This reduction shall become effective at the expiration of the current contract on September 1, 1995. This reduction must be split on a pro rata basis between El Paso and Transwestern pipelines. SoCalGas shall make the relinquished capacity available in its open season.

a. Post-contract Reduction: Absent notification according to the above paragraph, SDG&E may later request such a reduction in its assigned capacity rights after the end of its contract. However, if it does so, SDG&E will be solely responsible for the difference between the as-billed pipeline demand charges for the capacity that is consequently released from assignment to SDG&E and any revenue SoCalGas obtains through brokering such capacity.

3. Long Beach Assignment: At any time prior to five days before the commencement of SoCalGas' open season for brokering interstate pipeline capacity, Long Beach may request an assignment of firm interstate pipeline capacity to meet its core requirement, split pro rata between El Paso and Transwestern, at the full as-billed rate, for a term from the implementation of capacity brokering to the expiration of SoCalGas' contracts with El Paso and Transwestern.

   a. Default Reservation: If Long Beach does not provide notification according to the above provision, SoCalGas shall reserve interstate pipeline capacity (70% of El Paso and 30% on Transwestern) to meet Long Beach's core load.

   b. Subsequent Relinquishment: Long Beach may subsequently relinquish all or part of this capacity back to SoCalGas. However, to the extent Long Beach does so, it will be solely responsible for any shortfall between the as-billed pipeline demand charges and the actual revenue that SoCalGas obtains from brokering the relinquished capacity.

4. Open Season Participation: SDG&E and Long Beach and their noncore customers may also participate in SoCalGas' capacity brokering open seasons for

unbundled interstate pipeline capacity on the same basis as all others. SDG&E's electric department shall obtain firm interstate capacity on the same basis as other noncore customers.

5. <u>Compliance</u>: The assignment of firm interstate pipeline capacity to SoCalGas' wholesale LDCs and the rates therefor shall be consistent with applicable Federal Energy Regulatory Commission (FERC) orders and regulations.

E. SoCalGas' Reservations on <u>El Paso and Transwestern</u>

1. <u>Pro Rata Reservations</u>: SoCalGas shall reserve capacity on the El Paso and Transwestern systems for core and core subscription service on a pro rata basis, with the proration being determined without consideration for any SoCalGas relinquishment of El Paso capacity.

2. <u>Relinquishable Capacity</u>: SoCalGas shall be responsible and put at risk for marketing all relinquishable (600 MMcf/d) El Paso capacity that SoCalGas opts to retain and that is not reserved for the retail core or core subscription markets or prudently assigned at as-billed rates.

3. <u>Stranded Cost</u>: The stranded cost of interstate pipeline demand charges associated with interstate pipeline capacity that is neither (1) reserved for core, (2) relinquishable, nor (3) marketable at as-billed rates shall be allocated to customers pursuant to further rules to be adopted in this proceeding.

F. <u>PG&E's Reservations on El Paso and PGT</u>

1. <u>Equal Reservations</u>: PG&E shall, as soon as possible, reserve capacity equally on the El Paso and PGT systems for both core and core subscription service.

2. <u>Stranded Cost</u>: The stranded cost of interstate pipeline demand charges associated with existing interstate pipeline capacity that is not (1) reserved for core transmission service, (2) relinquishable; or (3) marketable at as-billed rates shall be allocated to customers pursuant to further rules to be adopted in this proceeding.

a. Surcharge: To the extent that such costs are allocated to noncore customers, the costs shall be recovered through the ITCS.

G. General Provisions

1. Pipeline Paths: Capacity through specific paths on an interstate pipeline system shall be allocated in accordance with procedures, rules, and regulations established by the interstate pipeline, subject to the review and approval of the FERC.

2. Excess Capacity: Interstate pipeline capacity in excess of the core and core subscription service shall be available for brokering or relinquishment, at the LDC's option and subject to LDC reasonableness reviews.

3. Unused Reserved Capacity: The LDCs shall use best efforts to market any unused interstate pipeline capacity that has been reserved for core or core subscription service, with brokering revenue being credited against the cost of providing core or core subscription service, as appropriate.

IV. Quality of Service

The provisions of this section apply to intrastate transmission services provided by the LDCs.

A. Definitions

1. Definition of Noncore Transmission Service: Noncore transmission service is defined as the daily redelivery of an amount of gas by an LDC to a noncore customer's facilities or to storage for the customer's account, such amount being the amount of gas tendered to the LDC on behalf of the customer at receipt points into the LDC's system.

a. Delivery to Storage: Noncore transmission service shall include redelivery to storage for the customer's account only if the LDC offers a storage program authorized by the CPUC and the customer has arranged for storage with the LDC. Noncore transmission service shall not be considered to be interrupted if the amount of gas tendered for storage exceeds applicable

limitations on the LDC's ability to accept gas for the customer's storage account.

2. *Definition of Firm Noncore Transmission Service*: Firm noncore transmission service is defined as noncore transmission service from interstate pipelines, from California intrastate sources of supply which are directly connected to the LDC's system, or from storage facilities on the LDC's system which is provided in accordance with the LDC's priority of service rules and any applicable LDC-specific standards for firm noncore transmission service.

3. *Definition of Interruptible Noncore Transmission Service*: Interruptible noncore transmission service is defined as the redelivery of gas by the LDC to a noncore customer on a best efforts basis, subject to the LDC's priority of service rules, such gas having been delivered to receipt points on the LDC's system for the customer's account from interstate pipelines, from California sources including sources connected through interutility transmission service, or from storage facilities on behalf of that customer.

B. *Priority of Service*

The priority of service on a jurisdictional LDC's system shall be revised to be as follows:

1. Priority 1 core service;

2. Priority 2A core service;

3. Firm noncore transmission service;

4. Interruptible noncore transmission service.

C. *Order of Service Interruption*

1. *Interruptible Noncore Transmission Service*: To the extent operationally feasible, before interruption of firm noncore transmission service, LDCs shall curtail interruptible noncore transmission service.

   a. *Percent of Default Rate*: Such curtailment shall be on a "percent of default rate" basis, with customers who pay the lowest percentage of default rates being curtailed first. Customers

paying the same percentage of default rates shall be curtailed on a pro rata basis with the exception that utility electric generation (UEG) loads shall be curtailed prior to cogenerator loads pursuant to D.90-09-089, as modified.

b. Compensation: If curtailment of interruptible noncore transmission service results in involuntary diversion of an interruptible customer's gas, (i.e., the transport gas is delivered to the LDC receipt point with the interstate but not delivered to the transport customer who caused the gas to be delivered to that point) the LDC shall compensate the interruptible customer in accordance with the provisions set forth below regarding compensation for involuntarily diverted gas.

c. Economic Diversion: LDCs shall not use such involuntary diversion as a supply option for economic purposes.

d. Voluntary Diversion: The LDCs may offer to purchase flowing supply from interruptible intrastate noncore shippers, provided that the price paid for gas that is thereby diverted does not exceed the price paid for involuntarily diverted gas.

2. Firm Noncore Transmission Service: Firm noncore transmission service shall be interrupted only if necessary to maintain service to core customers. Such interruption shall be effected through the diversion of gas supplies from firm noncore shippers. Volumes diverted from firm noncore shippers shall be purchased through (1) voluntary core protection purchase arrangements and (2) involuntary diversions.

   a. Voluntary Core Protection Purchase Arrangements: The LDCs may enter into voluntary core protection purchase arrangements with noncore firm shippers to provide a source of supply for core requirements.

   Price: The price paid by an LDC for voluntary core protection gas shall be determined through negotiation with the customer, subject to a price ceiling of 150% of monthly weighted average cost of gas (WACOG).

Purchase Sequence: Gas that is made available to LDCs through voluntary core protection purchase arrangements shall be purchased on a least-cost basis, with least expensive supplies being purchased first, to the extent operationally feasible.

b. Involuntary Diversions: To the extent that voluntary core protection purchases are inadequate for core protection, the LDCs shall be authorized to divert gas supplies from firm noncore transmission service customers:

Pro Rata: Such diversions shall be performed on a pro rata basis among firm noncore shippers with the exception that UEG loads shall be curtailed prior to cogenerator loads, pursuant to D.90-09-089, as modified.

Rotation: The LDCs shall rotate diversions among firm noncore transmission service customers.

Compensation: If a firm noncore transmission service customer's gas is involuntarily diverted, the customer shall be compensated by the LDC in accordance with the provisions set forth below regarding compensation for involuntarily diverted gas.

Economic Diversion: LDCs shall not use such involuntary diversion as a supply option for economic purposes.

Report to CPUC: Within one (1) business day following the initiation of any involuntary diversion, the LDCs shall notify the CPUC of the diversion.

c. PG&E's Electric Department: The above provisions concerning voluntary core protection purchase arrangements and involuntary diversions shall apply, as appropriate, if PG&E interrupts firm noncore transmission service to the PG&E's electric department.

Filing Requirement: Any voluntary core protection purchase arrangement with PG&E's electric department shall be filed with the Commission as an advice letter.

3. Compensation for Involuntarily Diverted Gas: A noncore transmission service customer whose gas is involuntarily diverted shall be paid the higher of (1) the cost of alternate fuel or replacement energy used by the customer during the diversion plus associated transportation costs actually incurred by the customer, (2) 150% of the LDC's WACOG for the month in which the curtailment occurred, or (3) the customer's actual cost of gas.

   a. Reasonableness: Compensation paid for involuntarily diverted gas in accordance with these provisions shall be presumed to be reasonable in CPUC proceedings, provided that the diversion was a prudent utility action.

   b. Audit: The LDC has the right to audit the customer's alternate fuel or replacement energy costs, the customer's actually incurred transportation costs, or the customer's actually incurred cost of gas. In the event of disagreement, these costs shall be determined by binding third party arbitration.

D. Operational Provisions

1. Load Balancing: The LDC shall provide the necessary hourly load balancing each day between supply and demand.

2. Shortfalls from Confirmed Nominations: Shortfalls of scheduled interstate gas deliveries shall be applied first to interruptible intrastate shippers, then pro rata among firm shippers.

E. SoCalGas-Specific Provisions

1. Performance Standard: Pursuant to Item E.2 below, SoCalGas may offer a performance guarantee under which SoCalGas shall maintain or improve the facilities needed to provide firm noncore transmission service without more than one curtailment episode per customer during any ten-year period.

   a. Definition: "One curtailment episode" is defined as being not more than 72 consecutive hours (three days) of full curtailment or the

volumetric equivalent of 72 hours of full curtailment spread throughout a five-day period.

b. Rotation: SoCalGas shall rotate curtailments among firm noncore transmission service customers in order to minimize the number of curtailment episodes experienced by any one customer. During the ten-year period, all UEG loads shall be curtailed at least once before any cogenerator loads are curtailed. If the performance guarantee in E.2 is suspended or not offered, all UEG loads shall be curtailed before any cogenerator loads are curtailed pursuant to D.90-09-089, as modified, and pursuant to this decision.

2. Performance Guarantee: If a customer suffers more than one curtailment episode in any ten-year period, then SoCalGas may, by way of tariffed offering, provide the customer with a Service Interruption Credit equal to $2.50 per dekatherm of gas during the curtailment episode.

   a. Maximum Credit: The maximum Service Interruption Credit obligation of SoCalGas in any calendar year will be $5 million. If SoCalGas' cumulative credit obligations to customers exceed this level, such credit obligations will be prorated so as to total $5 million.

   b. Recovery of Credit: SoCalGas shall not seek recovery of Service Interruption Credit payments in its rates.

   c. Force Majeure: SoCalGas shall not be required to provide the Service Interruption Credit for curtailment episodes that are the direct result of force majeure events.

   d. Negotiation: SoCalGas and interested SoCalGas customers agree to negotiate in good faith a mutually acceptable force majeure provision and a provision regarding suspension of the Service Interruption Credit in certain scheduled maintenance interruption situations.

3. Service to SDG&E: SoCalGas and SDG&E shall operate as independent gas systems to the extent operationally feasible. Noncore customers will be

curtailed by SDG&E or SoCalGas to the extent necessary to maintain service to each LDC's own core customers. SDG&E or SoCalGas will not curtail noncore requirements to serve the core requirements of the other except as provided by a mutual assistance agreement to be agreed to by the two utilities.

V. SoCalGas Pacific Interstate Transmission Company/Pacific Offshore Pipeline Company (PITCO/POPCO) Costs

A. Cost Allocation

The difference between the PITCO and POPCO total delivered cost of gas and a competitive price shall be allocated equitably. The portion that is allocated to the core shall be borne by the core through rates as determined by the Commission. The portion that is allocated to the noncore shall be recovered through the ITCS.

VI. Rates

A. Retail Bundled Core Transmission Service

Rates for bundled core transmission service to end-use customers shall be calculated to recover (1) the cost of interstate pipeline capacity reserved for such service plus (2) the intrastate costs and transition costs that are allocated to such service. Additionally, core procurement customers shall pay rates calculated to recover procurement costs.

B. Wholesale Core Transmission Service

Rates for core transmission service to wholesale LDCs shall be calculated to recover (1) the cost incurred by the primary LDC for interstate pipeline capacity reserved pursuant to the request of the wholesale LDC plus (2) the intrastate costs and transition costs that are allocated to such service. Additionally, core procurement customers shall pay rates calculated to recover procurement costs.

C. Wholesale Unbundled Core Intrastate Transmission Service

Rates for unbundled core intrastate transmission service to wholesale LDCs shall be calculated to recover the intrastate costs and transition costs that are allocated to such service and

shall exclude interstate pipeline demand charges, except to the extent that such costs are transition costs.

D. Core Subscription Service

Rates for core subscription service shall be calculated to recover (1) the cost of interstate pipeline capacity reserved to provide such service plus (2) the intrastate costs and transition costs that are allocated to such service, including transition costs that are allocated to such service for recovery through the ITCS. Additionally, core subscription rates shall be calculated to recover associated core procurement costs.

1. Discounting: Core subscription service rates shall not be discountable.

2. Rate Structure: The structure of core subscription service rates shall be a multi-part rate designed to recover all allocated costs, with all interstate pipeline demand charges and potentially, some portion of intrastate costs being recovered through a fixed reservation fee.

E. Unbundled Noncore Intrastate Transmission Service

Rates for firm and interruptible unbundled noncore intrastate transmission service for end-use customers and wholesale LDCs shall be calculated to recover intrastate costs, including transition costs that are allocated to such service for recovery through the ITCS.

1. Pipeline Demand Charges: The rate for firm and interruptible unbundled intrastate transportation service shall exclude interstate pipeline demand charges, except to the extent such costs are transition costs billed through the ITCS.

2. Interruptible Default Rate: The default rate for interruptible unbundled noncore intrastate transmission service shall be calculated to be equivalent to the fully allocated rate for firm unbundled noncore intrastate transmission service stated on a volumetric basis.

3. Discounting: Firm intrastate rates shall not be discountable. Interruptible intrastate rates may be discounted as appropriate.

F. Interstate Transition Cost Surcharge

The ITCS shall be a volumetric surcharge that shall apply to noncore customer services and shall serve to recover various interstate pipeline costs. The ITCS shall not be subject to discounting.

G. PG&E's Gas Supply Contracts

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

VII. Provisions for Qualifying Facilities (QFs)

A. Eligibility

QFs shall be eligible for core subscription service and for firm and interruptible unbundled noncore intrastate transmission service at the UEG rates for equivalent levels of service, including the ITCS.

B. Interstate Service

QFs may obtain interstate service from any of the resources available to unbundled noncore customers (e.g., new pipelines, brokered capacity, relinquished capacity, or city-gate sales by marketers or producers). The LDCs shall notify cogenerators of UEG interstate service elections at least five business days before cogenerators must elect their own transportation services, as set forth in D.90-12-100.

C. Interstate Service

Any discounted rates for interruptible intrastate transmission service offered the UEGs must be offered to cogenerators. The LDCs shall notify cogenerators of UEG intrastate service elections at least five business days before cogenerators must elect their own transportation services, as set forth in D.90-12-100.

VIII. Brokering Interstate Pipeline Capacity

A. Regulation

Interstate pipeline capacity shall be brokered by the primary LDCs and rebrokered by assignees of brokered capacity in accordance with applicable FERC and CPUC orders, FERC brokering certificates, and approved FERC and CPUC tariffs.

B. Term

The term of arrangements for long-term brokered capacity shall continue for a period of time established by the assignor, not to exceed the earlier of (1) the expiration of the applicable FERC brokering certificate or (2) the expiration of the assignor's rights to the interstate pipeline capacity involved in the transaction.

Each LDC shall offer one-third of available capacity on a short-term basis whereby noncore customers may select firm interstate capacity for one- or two-year periods.

C. Allocation Procedures

Each LDC shall first conduct an open season for core subscription service. Any remaining capacity shall be made available to all shippers, pursuant to other provisions in these rules.

IX. Schedule

Provided that FERC brokering certificates are effective in timely fashion, the LDCs shall assign interstate pipeline capacity in excess of core and core subscription needs and implement core subscription service and unbundled noncore transmission service in a manner consistent with these rules.

(END OF APPENDIX B)

FESSLER, COMMISSIONER, CONCURRING: It is with a measure of reluctance that I join the opinion and order of the Commission in this proceeding. My concern stems from a subject implicated in our business this day and which, I anticipate, will recur often in our future. The topic is a settlement agreement and the deference, if any, which my colleagues and I ought to display in disposing of the public's business.

In the yesterdecade of the Commission's affairs our mission was relatively straight forward. The entities subject to our jurisdiction were either monopolies or the functional equivalent in their ability to avoid the discipline of competition. Our task was to assume a regulatory role which would redeem the public interest by substituting for the discipline of enlightened competition. In performing this task we were guided by statutory provisions, Commission precedent, and decades of common law pronouncement by courts in California and our sister jurisdictions. In such a climate the concept of a settlement agreement was given scant attention. Our task was to formulate a decree not bargain for an outcome.

My brief experience reveals that I have been asked to function in a very different climate. Most vividly exemplified in the field of telecommunications, but mirrored in other industries subject to our regulation, the modern task is to re-examine the ancient assumptions respecting monopolies and the potential of competition as a disciplinary force. The moment a "competitor" is admitted to the field the regulatory climate changes. A Commission accustomed to dealing with individual charges suddenly finds itself assuming the role of a referee. An advance beyond a duopoly merely summons additional forces each with a real stake in both the substantive rules and procedural practices of a body such as ours. Unchecked, these forces foster an adversarial climate more noted for heat than light.

A term presiding over a forum for hotly adversarial proceedings poses an uncomfortable yet tolerable burden if, in the end, the public interest is vindicated. But the complications introduced in what some have termed the "new regulatory framework" go far beyond an offense to manners. Unless these energies are rechanneled, I fear that our proceedings will become hopelessly mired and our chances of arriving at an optimal order dramatically reduced.

Procedural disfunction is the more apparent casualty. Today, as in former times, Commission proceedings deal with substantial economic questions and involve the allocation of massive dollars whether measured in terms of present worth or future advantage. An unfortunate hallmark of the adversarial system used in civil litigation has already begun to characterize our proceedings. Time is not a neutral factor. It favors the interests of those who are advantaged by the *status quo*. Such parties trade on delay. The recent spate of procedural motions concerning discovery, the battles waged over what is essentially *quia timet* relief, and the bids for interlocutory appellate hearing presage a near term future which no rationale decision maker could favor. Such litigation tactics waste more than time. They deplete treasure and thus exacerbate the advantage enjoyed by those interests able or willing to support the fees of lawyers and the inevitable supporting litigation cast. An outcome dictated by the relative ability of a litigant to bear the corrosive forces of time and the costs of process may advance the public good, but such a result would be pure coincidence. The destructive potential of these stratagems in a civil trial are grievously magnified in our proceedings. Unlike the traditional trial court encounter between two adversaries, our proceedings frequently embrace a multitude of parties each a potential font of dilatory tactics.[1]

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There is an alternative. If the Commission can foster a cooperative attitude toward problem solving we may achieve substantial procedural economies while enhancing our ability to fashion general rules and specific outcomes which guard the public advantage. Broad participation settlements, such as the one tendered in this proceeding, afford us an opportunity to break out of the trial type litigation mould. Producing a regulatory climate which will foster such behavior will not be easy given our ultimate decision making responsibility.

Two factors are clearly in tension. Our challenge is to balance them. First, the members of this Commission may not surrender ultimate regulatory responsibility to the very persons whose actions or inaction are affected with a public interest. Second, for a settlement forum to be productive the participants must envision advantage as a consequence of open and committed participation. Excessive deference would betray our public trust. Refusal to value a settlement agreement would deprive the parties of any incentive to negotiate in good faith. In a worst case scenario, our use of alternative dispute resolution machinery with routine indifference to its suggested conclusions would leave parties with only two alternatives. They could either posture for position

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I have applied this methodology to the instant controversy. I am satisfied that, although it did not command unanimous allegiance, the settlement agreement was broadly supported by a cross section fairly representative of the many implicated interests. My problem is with the second criteria. The settlement's attempt to preserve the "Access Agreement" was clearly at variance with prior Commission decisions which had announced a different implementation agenda in the context of a clearly articulated identification of the public interest. Like my colleagues, I have not been convinced that the public interest requires an abandonment of those precedents. In such circumstances, I have joined in an order which, with minor modifications, accepts

the balance of the settlement agreement while rejecting that controversial provision.

In closing, I note that the use of multi-party regulatory negotiation has been discussed in recent literature,[2] and been used on an experimental basis by our sister commissions in a number of states.[3] The "workshops" which this Commission has utilized in recent years obviously fall within this experimentation. In the months and years to come I look forward to working with my colleagues and the broadest possible variety of parties and voices in refining what I instinctively perceive to be a superior approach to discharging our responsibility.

/s/Daniel Wm. Fessler

Daniel Wm. Fessler

November 6, 1991
San Francisco, California

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[2]See, Lawrence Susskind, *Regulatory Negotiation at the State and Local Levels*, DR FORUM, National Institute for Dispute Resolution, p. 6, January 1986.

[3]*Id.*

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D.91-11-025

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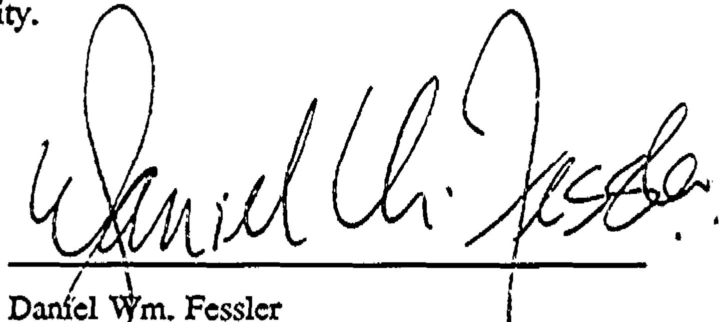

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