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Decision 92-03-086 March 31, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND
ELECTRIC COMPANY for a Certificate
of Public Convenience and Necessity
to Construct and Operate an Expansion
of Its Existing Natural Gas Pipeline
System.

ORIGINAL

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

I N D E X

<u>Subject</u>	<u>Page</u>
OPINION	2
Summary	2
Decisional History	2
Review Denied	4
Procedural Background	4
1. Petition of DRA and TURN for Modification and Stay of CPCN	4
2. Application of Altamont for Modification of Decisions and Request for Stay Pending Rehearing	6
3. Motion of TURN for Order to Show Cause	7
Discussion	8
1. Interpretation of "Firm Transportation Contracts"	9
a. Purpose and Effect of Filing Requirement	9
b. Definition of "Firm" Transportation Contracts	11
2. Required Amount of Capacity for Subscription	12
a. Status of PG&E's Shipper Contracts	12
b. Percentage of Capacity "At Risk" Under Contract	12
c. Finding Whether or Not the Expansion has been "Subscribed"	12
3. Revisiting the Issue of Need	13
Conclusion	15
Findings of Fact	16
Conclusions of Law	20
ORDER	20

OPINION

Summary

This decision denies the requests of several parties to suspend the certificate of public convenience and necessity (CPCN) granted Pacific Gas and Electric Company (PG&E) to construct an expansion of its natural gas pipeline system (Expansion Project or Expansion). The following claims for relief are denied:

- (1) The joint petition of the Division of Ratepayer Advocates (DRA) and Toward Utility Rate Normalization (TURN) for modification of Decision (D.) 90-12-119 and D.91-06-028 and stay of approval of the CPCN,
- (2) The petition of Altamont Gas Transmission Company (Altamont) for modification of D.90-12-119, D.91-06-028, D.91-06-017, and D.91-06-053 by staying the decisions pending rehearing, and
- (3) TURN's Motion for an order that PG&E show cause why its construction of the Expansion Project is not in violation of D.90-12-119.

Decisional History

D.90-12-119

The application of PG&E for a CPCN to expand its natural gas pipeline decision was granted, subject to conditions, by D.90-12-119. In addition to finding that approval of the Expansion Project was needed to allow market forces to respond to public demand for incremental interstate gas supplies, the decision determined that setting rates for Expansion transportation as a stand-alone operation, on an incremental basis, would protect ratepayers from the risk of underutilization of capacity. Stringent conditions were imposed to minimize the impact of construction on the environment.

D.91-06-028

Applications for rehearing of D.90-12-119 were filed by Altamont, Amoco Canada Petroleum Company (Amoco), Kern River Gas Transmission Company (Kern River), the Attorney General of California, and TURN. In response to those applications, the Commission stayed D.90-12-119 on April 24, 1991. After review of the various claims of legal error, the Commission issued D.91-06-028, denying rehearing and removing the stay. D.91-06-028 also clarified the Commission's findings on the need for the Expansion Project, the objectives of the various competing interstate gas transmission projects, and the feasibility of the alternative pipelines.

D.91-06-017

DRA's petition for modification of D.90-12-119 was disposed of by D.91-06-017, which modified the rate design holdings of D.90-12-119 in several respects. The Commission determined that in the absence of a negotiated agreement between the Expansion Project sponsor and the shipper, the rate design for firm transportation service over the Expansion should consist of the following two-part rate: a volumetric rate which, most significantly, recovers 100% of the equity-related revenue requirement and a residually set demand charge.

D.91-06-053

The petition of PG&E for modification of D.90-12-119 to allow a change in construction practices was granted by D.91-06-053. By that decision, the CPCN was modified to authorize the Expansion Project to cross rivers by boring instead of trenching and to permit construction over a two-year period. This decision also provided that shippers on the Pacific Gas Transmission (PGT) interstate expansion (the out-of-state continuation of the Expansion Project) may not "cross over" to existing PG&E intrastate facilities to avoid tariffs for service on the PG&E intrastate Expansion Project.

Review Denied

Altamont and Kern River each filed a Petition for Writ of Review of the foregoing decisions on July 8, 1991. Both petitions were denied by the California Supreme Court on September 27, 1991 (Case Nos. S021873 and S021867).

Procedural Background

1. Petition of DRA and TURN for Modification and Stay of CPCN

On August 13, 1991, DRA and TURN filed their "Petition for Modification of Decisions 90-12-119 and 91-06-028 and Request for Stay" (DRA/TURN Petition).

DRA and TURN wish the Commission to suspend the CPCN until certain post-approval developments in the gas market are resolved in a manner that furthers the Commission's objectives. They would have PG&E show that Alberta and Southern Gas Co. Ltd. (A&S)¹ producer contracts have been satisfactorily reformed and that all shippers are provided equitable access to existing PGT capacity through a Commission-approved capacity allocation program.

DRA and TURN also fear that stranded investment or an underrecovery of costs on the existing pipelines serving California may result from shipper overcommitment to new pipelines. These parties argue that the question of need for the Expansion Project has been resurrected by Federal Regulatory Energy Commission's (FERC) indications that it may consider rolled-in rates for the PGT portion of the Expansion Project.

¹ A&S is an aggregator which has contracted with numerous Canadian natural gas producers. A&S is a wholly owned subsidiary of PG&E. Currently, nearly all of the firm capacity on the existing PGT interstate system to the California border is used in conjunction with PGT's firm sales to PG&E. PGT's supply of gas comes from A&S.

Altana Exploration Company, a producer of natural gas in western Canada that sells gas to A&S under long-term agreements, Amoco, another A&S producer but one that has executed agreements to transport gas on the proposed Altamont pipeline, Santa Fe Energy Resources, an enhanced oil recovery gas consumer, and Altamont filed their support of the DRA/TURN Petition. These parties claim that the potential for excess pipeline capacity to California requires suspension of the CPCN pending further review of the current pipeline capacity supply/demand situation.

PG&E responds that its A&S producer contracts are being renegotiated; the Expansion Project, which is a transportation-only project, would only further gas-on-gas competition; the existence of the Kern River and Mojave projects was taken into consideration in the CPCN decision; and the issue of the Expansion Project's rolled-in pricing is being debated by the CPUC in the pending rehearing on rate design.

Southern California Edison Company (Edison) supported PG&E. Edison points out that the question of stranded investment in capacity is related to the cost allocation issues being addressed in the capacity brokering proceeding; the controversy over stranded capacity should not be permitted to disadvantage any particular interstate pipeline proposal.

The Alberta Petroleum Marketing Commission and the Independent Petroleum Association of Canada also opposed the DRA/TURN Petition. They claim there is no reason to link construction of the Expansion Project to the restructuring of PG&E's existing Canadian supply arrangements; as a transportation-only pipeline, the Expansion Project will provide market access to suppliers outside the A&S supply pool.

2. Application of Altamont for Modification of Decisions and Request for Stay Pending Rehearing

On October 2, 1991, Altamont filed its "Petition for Modification of Decisions (90-12-119, 91-06-028, 91-06-017, and 91-06-053) and Request for Stay Pending Rehearing"² (Altamont Petition).

Altamont points out that the Commission has granted rehearing of D.91-06-017 and D.91-06-053 which deal with cost allocation and Expansion/existing system issues, but has not stayed any of the decisions. According to Altamont, unless a stay is issued, PG&E would begin construction of the Expansion. Altamont argues that a stay of construction is needed until the Commission has disposed of the issues that are currently pending on rehearing for the following reasons:

- (1) The Commission should demonstrate how seriously it takes the concerns expressed in the FERC order of August 1, 1991 (Pacific Gas Transmission Co., 56 FERC Par. 62, 192, slip op. at 98-99 (Appendix B)),
- (2) PG&E has failed to file its contracts with the PG&E Expansion shippers, and thus cannot lawfully begin construction,
- (3) There is no need for PG&E to begin construction in the fall of 1991, since construction could be delayed until 1992 without jeopardizing the proposed November 1993 commencement of operations, and
- (4) It is unclear whether the interstate portion of the Expansion Project will

² A separate document, the "Application of Altamont Gas Transmission Company for Stay of Decisions Pending Rehearing," was served on parties but was never filed with the Commission. Except for the caption on the pleading, the application for stay is identical to the filed petition for modification.

obtain FERC approval - PGT has not eliminated the "anticompetitive tie-ins between interstate and intrastate gas transportation services" as required for certificate approval by the FERC's August 1, 1991 order.

PG&E responded that Altamont's petition is an application to stay a CPCN decision that is already final and no longer subject to appeal. According to PG&E, the CPCN authorized PG&E to construct and operate the Expansion Project; this is what Altamont sought to challenge before the Supreme Court; the Supreme Court's rejection of that challenge is res judicata. PG&E also objects that Altamont's request to stay a CPCN that has withstood judicial challenge is hardly within the scope of Rule 43 of the Commission's Rules of Practice and Procedure, which states: "Petitions for modification...shall only be filed to make minor changes in a Commission decision or order. Other desired changes shall be by application for rehearing or by a new application."

3. Motion of TURN for Order to Show Cause

On November 14, 1991, TURN filed its "Motion for Order to Show Cause" (TURN Motion). TURN seeks a Commission order requiring PG&E to present evidence that its contracts with Expansion Project shippers are "finalized, firm transportation contracts that do not have provisions or side agreements that could negate their effectiveness," and that use of all of the Expansion Project's capacity is governed by such contracts.

TURN cites Ordering Paragraph 12 of D.90-12-119, modified by D.91-06-053, which requires that at least 30 days prior to construction, PG&E shall file its finalized firm transportation contracts with Expansion Project shippers with the Commission. According to TURN, the purpose of the condition was to insure that the market has determined which competing interstate pipeline is to be built and that existing PG&E customers are not burdened with the cost of stranded capacity.

TURN asserts that despite this condition, the contracts that have been submitted to the Commission either contain provisions that can be invoked by the shipper to negate the contract's effectiveness, or that there is a separate side-letter between PG&E and the shipper which has the same effect; a substantial portion of the PG&E Expansion capacity is not committed under firm transportation contracts; and PG&E has stated that it would undertake pipeline construction in late 1991. Thus, in TURN's view, PG&E will not fulfill the conditions of its CPCN and will thereby jeopardize its existing ratepayers.

Kern River and Altamont support TURN's Motion.

In its opposition to TURN's Motion, PG&E asserts that TURN is asking the Commission to place new conditions on the start of construction. That is, TURN demands that construction be conditioned on submittal of shipper contracts for 100% of the Expansion's volume and on Commission review of contracts to determine if the contracts can be renegotiated or terminated.

PG&E points out that in D.91-06-053, the Commission rejected the claim of Kern River and Altamont that "it is necessary to review the agreements to establish sufficient need for the project such that PG&E's existing ratepayers are protected from the risk of underutilization." PG&E also noted that the California Supreme Court denied review of D.91-06-053.

PG&E argues that since orders to show cause are available only to enforce and not to change Commission decisions, TURN's Motion should be denied.

Discussion

The primary objective shared by the various petitions for modification, requests for stay, and motion for order to show cause is to halt PG&E's construction of the Expansion Project.

Generally, the parties' ancillary objections to the CPCN are being addressed in pending Commission proceedings. PG&E's allocation of its firm capacity rights on the existing PGT system

is being addressed in the Commission's investigation into capacity brokering (Rulemaking (R.) 88-08-018).

The petitioners' reliance on developments before the FERC to forestall intrastate construction is misplaced. Petitioners, among others, have previously brought those developments to our attention. We acknowledged FERC's concerns and determined that a grant of rehearing to review specific issues was the proper response of this Commission (decision granting limited rehearing, D.91-09-035). Rehearing was held and the matter has been submitted.

Finally, Altamont fails to support its claim that construction need not begin until 1992. We have already determined that construction of the Expansion at river crossings should begin during the 1991-92 winter season due to the experimental nature of PG&E's environmentally preferred construction techniques.

Thus, the substantive matters raised by the pleadings are limited to the following:

- (1) The interpretation of the phrase, "finalized Firm Transportation Contracts,"
- (2) The amount of capacity that would constitute adequate subscription to the Expansion Project for the purpose of compliance with Ordering Paragraph 12 of D.90-12-119, and
- (3) Whether the Commission's determination of need for the project must be reopened to allow interested parties to address the impact of recent FERC orders on the Commission's incremental rates and the construction of competing pipelines on the issue of the need for the Expansion.

1. Interpretation of "Firm Transportation Contracts"

a. Purpose and Effect of Filing Requirement

Unlike traditional CPCNs, the certificate for the Expansion Project imposes the risk of revenue recovery upon PG&E's

shareholders absent a finding that PG&E's decision to construct was a reasonable one. (D.90-12-119, mimeo. p. 16.) The Commission declared, "None of the revenue requirements of the Expansion Project may be recovered from non-expansion shippers. This will prevent the (contract) negotiations from shifting risk from the project sponsor and shippers to PG&E's existing ratepayers." (D.91-06-017, adding Finding of Fact No. 204 to D.90-12-119.)

The CPCN decision did not spell out the criteria for finding that construction was reasonable. However, the Commission's refusal to place responsibility for revenue recovery on non-expansion ratepayers until a reasonableness finding has been made is merely a restatement of the existing two-part procedure that utilities must follow in order to collect in rates the revenue requirement for major utility plant additions.³

The Commission distinguished the Expansion Project from the typical large utility addition, however. The Expansion Project was certificated as a stand-alone entity, with rates established to recover the Expansion's cost of service. Those rates will be established subsequent to the reasonableness review that will take place in the Expansion's first general rate case. Under the terms of the CPCN decision, all of the Expansion's costs will be borne by Expansion shippers; none of the costs will be passed on to PG&E's existing ratepayers unless they ship gas over the Expansion. Thus, even if the Expansion is undersubscribed, existing ratepayers will not be affected by the Expansion's rates.

3 For major plant additions such as the San Onofre Nuclear Generating Station or Diablo Canyon Nuclear Power Plant, the Commission first issued a CPCN. Utility expenditures on the certificated plant were at shareholder risk. The utility could recover its capital investment in plant only if the plant was found to be "used and useful" and the investment was found to be reasonably incurred.

If PG&E's decision to construct is found to be reasonable, the amount of prudently incurred construction cost would be rate-based; this would establish the cost of service to be collected in Expansion rates. At that point, PG&E and the Expansion shippers would share the risk of revenue recovery.

Since the Commission explicitly imposed the risk on shareholders and a reasonableness review of the Expansion will not occur until its first rate case, the contract requirement simply protects PG&E shareholders against the potential risk of permanently bearing 93%⁴ of the Expansion's cost of service.

b. Definition of "Firm"
Transportation Contracts

The reference to "firm transportation contracts" meant that shareholders could mitigate their risk for 93% of the Expansion's cost by filing contracts for firm transportation with the Director of Commission Advisory and Compliance Division (CACD) prior to construction.

According to TURN, PG&E's filed contracts which either contain an explicit regulatory-out provision or which are subject to such a provision in an undisclosed side-letter are neither final nor firm.

There is no support anywhere in D.90-12-119 for TURN's proposition. In fact, the history of the CPCN shows otherwise. The Commission reviewed PG&E's Precedent Agreements prior to granting the CPCN and found that those agreements did not impose an irrevocable obligation on the shipper to use the Expansion pipeline; they provided no insurance against

⁴ Only 93% of the Expansion's annual cost of service is allocated to firm transportation rates. The remaining 7% would be collected through interruptible rates, as the CPCN granted PG&E's proposal to allocate interruptible revenues directly to its shareholders.

underutilization of capacity. Nonetheless, the Commission did find that the agreements constitute evidence of market interest in the Expansion Project. On this basis, the Commission finds today that contracts with "regulatory-out" or other contingency clauses provide evidence of continuing market interest in the Expansion. That is all the evidence the Commission required when it imposed the condition that PG&E file its shipper contracts.

2. Required Amount of Capacity for Subscription

If TURN's Motion were granted, construction could proceed only after 100% of the Expansion's capacity was reserved by filed transportation contracts that met TURN's standards for contract certainty.

a. Status of PG&E's Shipper Contracts

The Commission has reviewed the scope and number of shipper contracts received by the Director of CACD as of this date. The Expansion is designed to accommodate 755 million cubic feet per day (MMcf/day) of gas. Contract obligations are expressed in thousands of million British thermal units per day (thous. MMBtu/day). The equivalent maximum pipeline capacity is 739.7 thous. MMBtu/day. Contracts representing 564.7 thous. MMBtu/day have been executed. Thus, 76% of the Expansion's capacity has been reserved by shippers under firm transportation contracts.

b. Percentage of Capacity "At Risk" Under Contract

Since only 93% of the Expansion's cost of service could potentially shift to PG&E's Expansion ratepayers, ratepayers would be concerned with reservation of only 93% of the 739.7 thous. MMBtu/day. That amount is 687.9 thous. MMBtu/day. Firm transportation contracts have reserved 82% of that capacity.

c. Finding Whether or Not the Expansion has been "Subscribed"

Before we decide today whether or not the pipeline has been "fully subscribed," we must consider what purpose such a

finding would serve at this point in the Expansion's regulatory history. PG&E is at risk for showing that its decision to proceed with construction of the Expansion is a reasonable one. The Commission stated, "It must appear that sufficient demand for PG&E's proposed service will exist at the time the Expansion is scheduled to commence operations, based on the facts known or reasonably knowable to PG&E at the time of its decision to build." (D.90-12-119, mimeo. p. 96.) Since no application for reasonableness review has been filed at this time, PG&E's shareholders, and not the Commission, must conclude whether the Expansion is adequately "subscribed" to justify its construction.

PG&E will not file a request for reasonableness review until approximately six months before the Expansion begins operation. Additional firm transportation contracts may be signed by that time. Practically speaking, the decision whether PG&E was prudent in going forward with construction will consider the amount of capacity subscribed at that later date. The fact that the Expansion is 82% subscribed today is but one factor to be considered in the reasonableness review.

3. Revisiting the Issue of Need

Petitioners argue that all of the Expansion's capacity must be reserved by firm transportation contracts in order to demonstrate need for the Expansion and that without that showing of need, the CPCN is not valid.

Altamont and TURN have misinterpreted the CPCN decision, which clearly differentiated between need for the Expansion and demand for Expansion services. The Commission deliberately refrained from basing its finding of need on evidence that shippers have contracted for 100% of the Expansion's capacity. Instead, the Commission stated:

Issuance of a CPCN at this time is reasonable in light of the current need for 330 MMcf/d of firm capacity demonstrated by Edison, SDG&E, and municipalities. The Precedent Agreements provide evidence that demand for the remaining

425 MMcf/d of capacity may arise in the future. In the meantime, allocating the risk of underutilization of capacity on PG&E's shareholders and Expansion shippers provides PG&E's existing ratepayers with the protection against increased rates that the establishment of current need for the entire capacity of the Expansion would otherwise provide. Finally, we conclude that the public necessity would be served by the authorization to construct the Expansion because such authorization is needed to activate our market-based approach to incremental interstate capacity. (D.90-12-119, mimeo. p. 6.) (Emphasis added.)

Since the Commission found that Precedent Agreements, which did not impose an irrevocable obligation on the shipper to use the Expansion, were evidence of market interest, PG&E's management would also be justified in relying on transportation contracts subject to limited contingency clauses as evidence of market demand.

Concerns aired in the FERC's August 1, 1991 order certificating the PGT (interstate) portion of the Expansion were the subject of rehearing before this Commission.⁵ The Commission has explained to the California Supreme Court that its decision to grant rehearing on the issue of rate design in no way calls into question its determination of need underlying the issuance of the CPCN. The resolution of rate design issues did require the receipt of evidence of estimated demand, since revenues divided by forecasted demand equals rates. However, the evidentiary issue of

⁵ The Commission identified the following issues for rehearing: (1) incremental versus rolled-in pricing, (2) requirement that PGT Expansion shippers pay for intrastate transportation at PG&E Expansion rates, (3) elimination of duplicative charges for backbone transmission, and (4) postage stamp versus other forms of rates.

The record on rehearing was submitted on February 24, 1992.

demand forecasts is distinct from the question of need for the pipeline.

The relation between the issue of need for the Expansion and the use of a particular type of rate design is a matter under litigation in rehearing. The outcome of the rehearing would be prejudiced if the Commission indicated any intent to revisit the finding of need that underlies issuance of the CPCN. Parties might misconstrue that message to mean that the Commission intends to abandon incremental ratemaking, which was a factor in protecting existing ratepayers from potential Expansion costs. It would be counterproductive to suspend the CPCN based on the possibility that the Expansion's rate design may be amended in such a way as to affect the public's need for the Expansion.

A stay of the CPCN would instantly undermine the Commission's market-based policy for the development of new interstate pipelines. A stay would simply rebuff market demand for the Expansion, now evidenced by signed contracts for 76% of the firm transportation capacity of the Expansion. Utility management would be divested of discretion to determine whether there exists sufficient market interest in the Expansion to proceed with construction at shareholder risk. This alone is good reason to deny the request for a stay.

Conclusion

No action is needed on the question of PG&E's compliance with the requirement that it file shipper contracts. Issuance of an order to show cause is not necessary to protect ratepayer interests. Neither PG&E's existing ratepayers nor Expansion ratepayers are at risk, regardless of any utility decision to proceed at any level of contract commitment, because the risk of underutilization of Expansion capacity has been allocated to PG&E's shareholders pending a finding of reasonableness. Review of the contracts as sought by TURN would place the Commission in the position of vouching for the reasonableness of PG&E's management's

decision to construct when 82% of the capacity has been subscribed. This is not the strategy the Commission embraced when it adopted the policy of encouraging utilities to respond to market signals.

The DRA/TURN Petition, the Altamont Petition, and the TURN Motion are denied. The uninterrupted issuance of the CPCN is necessary to allow the market to respond to PG&E's Expansion proposal.

Findings of Fact

1. DRA and TURN claim that the lack of open access on PGT to non-A&S suppliers, shipper overcommitment to new pipelines, and FERC's consideration of rolled-in rates for PGT could frustrate the realization of the Commission's objectives for the Expansion Project.

2. The controversy over stranded investment in capacity is related to the cost allocation issues being addressed in the capacity brokering proceeding and should not be permitted to disadvantage any particular interstate pipeline proposal.

3. The existence of the Kern River and Mojave projects was taken into consideration in the CPCN decision.

4. The issue of rolled-in pricing for the Expansion Project is being debated in the pending rehearing on rate design.

5. The potential for excess pipeline capacity to California does not require suspension of the CPCN pending further review of the current pipeline capacity supply/demand situation.

6. On October 2, 1991, Altamont filed its "Petition for Modification of Decisions (90-12-119, 91-06-028, 91-06-017, and 91-06-053) and Request for Stay Pending Rehearing."

7. Altamont argues that a stay of construction is needed until the Commission has disposed of the issues that are currently pending on rehearing to demonstrate how seriously the Commission takes the concerns expressed in the FERC order of August 1, 1991, because PG&E has failed to file its contracts with the PG&E Expansion shippers, because there is no need for PG&E to begin

construction in the fall of 1991, and because it is unclear whether the interstate portion of the Expansion Project will obtain FERC approval.

8. A petition for modification seeking to stay a CPCN that has withstood judicial challenge is not within the scope of Rule 43 of the Commission's Rules of Practice and Procedure on petitions for modification.

9. On November 14, 1991, TURN filed its "Motion for Order to Show Cause."

10. TURN claims that Ordering Paragraph 12 of D.90-12-119, modified by D.91-06-053, requires PG&E to present evidence that its contracts with Expansion Project shippers are "finalized, firm transportation contracts that do not have provisions or side agreements that could negate their effectiveness," and that the entire capacity of the Expansion Project is subject to such contracts.

11. In D.91-06-053, the Commission rejected the claim of Kern River and Altamont that "it is necessary to review the agreements to establish sufficient need for the project such that PG&E's existing ratepayers are protected from the risk of underutilization."

12. TURN is asking the Commission to place new conditions on the start of construction of the Expansion Project.

13. The primary objective shared by the various petitions for modification, requests for stay, and motion for order to show cause is to halt PG&E's construction of the Expansion Project.

14. The parties' ancillary objections to the CPCN are being addressed in pending Commission proceedings.

15. The allocation of existing PGT capacity and the allocation of the cost of existing pipeline capacity are being addressed in the Commission's rulemaking for capacity brokering (R.88-08-018).

16. Developments before the FERC are being reviewed for impact on the CPCN decisions in the rehearing of D.91-06-017 and D.91-06-053. Rehearing was held and the matter has been submitted.

17. Altamont has failed to support its claim that construction need not begin until 1992.

18. Since the Commission explicitly imposed the risk on shareholders and a reasonableness review of the Expansion will not occur until its first rate case, the requirement that PG&E file its contracts for firm transportation 30 days prior to construction with the Commission simply protects PG&E shareholders against the risk of permanently bearing 93% of the Expansion's cost of service.

19. All of the Expansion's costs will be borne by Expansion shippers; none of the costs will be passed on to PG&E's existing ratepayers unless they ship gas over the Expansion. Thus, even if the Expansion is undersubscribed, existing ratepayers will not be affected by the Expansion's rates.

20. There is no support anywhere in D.90-12-119 for TURN's proposition that Expansion construction can proceed only after 100% of the Expansion's capacity is reserved by filed transportation contracts that are not subject to an explicit regulatory-out provision.

21. Contracts with "regulatory-out" or other contingency clauses provide evidence of continuing market interest in the Expansion. That is all the evidence the Commission required when it imposed the condition that PG&E file its shipper contracts.

22. Contracts representing 564.7 thous. MMBtu/day have been executed; 76% of the Expansion's capacity has been reserved by shippers under firm transportation contracts.

23. Firm transportation contracts have reserved 82% of maximum capacity for which Expansion ratepayers are at risk.

24. Since no application for reasonableness review has been filed at this time, PG&E's shareholders, and not the Commission,

must conclude whether the Expansion is adequately "subscribed" to justify its construction.

25. The decision whether PG&E was prudent in going forward with construction will consider the amount of capacity subscribed when PG&E seeks to recover the cost of the Expansion Project in rates. The fact that the Expansion is 82% subscribed today is but one factor to be considered in the reasonableness review.

26. Petitioners argue that all of the Expansion's capacity must be reserved by firm transportation contracts in order to demonstrate need for the Expansion and that without that showing of need, the CPCN is not valid.

27. Since the Commission found that Precedent Agreements which did not impose an irrevocable obligation on the shipper to use the Expansion were evidence of market interest, PG&E's management would also be justified in relying on transportation contracts which had contingency clauses as evidence of market demand.

28. The relation between the issue of need for the Expansion and the use of a particular type of rate design is a matter under litigation in rehearing.

29. If the Commission were to revisit the finding of need, it might give the impression that the Commission intends to abandon incremental ratemaking, which was a factor in protecting existing ratepayers from potential Expansion costs.

30. A stay of the CPCN would instantly undermine the Commission's market-based policy for the development of new interstate pipelines.

31. A stay of the CPCN would divest utility management of its discretion to determine whether there exists sufficient market interest in the Expansion to proceed with construction at shareholder risk.

32. It would be counterproductive to suspend the CPCN based on the possibility that incremental rate design might be abandoned.

33. This order should be effective as soon as possible to foreclose the collateral litigation of the question of need for the Expansion Project in any docket other than Application 89-04-033.

Conclusions of Law

1. The "Petition for Modification of Decisions 90-12-119 and 91-06-028 and Request for Stay" filed by DRA and TURN on August 13, 1991 should be denied.

2. The "Petition for Modification of Decisions (90-12-119, 91-06-028, 91-06-017, and 91-06-053) and Request for Stay Pending Rehearing" filed by Altamont on October 2, 1991 should be denied.

3. The "Motion for Order to Show Cause" filed by TURN on November 14, 1991 should be denied.

ORDER

IT IS ORDERED that:

1. The "Petition for Modification of Decisions 90-12-119 and 91-06-028 and Request for Stay" filed by DRA and TURN on August 13, 1991 is denied.

2. The "Petition for Modification of Decisions (90-12-119, 91-06-028, 91-06-017, and 91-06-053) and Request for Stay Pending Rehearing" filed by Altamont on October 2, 1991 is denied.

3. The "Motion for Order to Show Cause" filed by TURN on November 14, 1991 is denied.

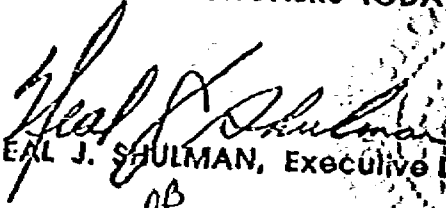
This order is effective today.

Dated March 31, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President

JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director