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Decision 92-10-056 October 21, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Application of PACIFIC GAS AND ELECTRIC COMPANY for a Certificate of Public Convenience and Necessity to Construct and Operate an Expansion of its Existing Natural Gas Pipeline System. (U 39 G)	Application 89-04-033 (Filed April 14, 1989)

(See Appendix A for appearances.)

O P I N I O N

I. Summary of Decision on Rehearing

Today we reaffirm our earlier determinations in Decision (D.) 90-12-119, 39 Cal.P.U.C.2d 69 (1990), D.91-06-017 and D.91-06-053, __ Cal.P.U.C.2d __ (1991), which required incremental rate treatment for the Pacific Gas and Electric Company (PG&E) Expansion Project. We base our decision today in large part on the conclusion that the PG&E's certificate of public convenience and necessity (CPCN) granted in D.90-12-119 was not predicated on a finding of need but on our "let the market decide" policy of allowing competitive forces to determine whether pipeline capacity should be constructed and on our oft-stated conclusion that the cost of new facilities should be borne by those customers for whose benefit the facilities are constructed. We accordingly reject the contention that the cost of the PG&E Expansion should be partially or wholly "rolled-in" to the transportation rates charged to existing PG&E customers. We nevertheless leave the actual ratemaking tariffs and accounts to be proposed and adopted in the Expansion's first general rate case.

We reaffirm our intent, first expressed in D.90-12-119, that PG&E's shareholders shall bear the risk of revenue recovery for the Expansion as a condition of our "let the market decide" policy for approving PG&E's CPCN. The risks of undersubscription and underutilization of the Expansion are risks that have been undertaken by PG&E's shareholders. We will not impose those risks on PG&E's ratepayers in consideration of their receipt of small or incidental benefits from the construction of Expansion capacity. Unlike in a traditional CPCN proceeding, it is the applicant that has here undertaken to determine the need for its proposed facilities; it is therefore the applicant that must bear the consequences if its determination proves to be wrong.

was granted by D.90-12-119.[1] That decision was modified by D.91-06-017 and D.91-06-053.[2]

Rehearing of D.91-06-017 and D.91-06-053 was granted by D.91-09-035 for the purpose of examining the following issues:

1. Whether the use of incremental transportation rates for the delivery of Expansion gas within PG&E's service territory should be replaced with a system of rolled-in prices;

2. Whether D.91-06-053's prohibition against incremental loads "crossing over" from the interstate PGT Expansion system to obtain non-incremental PG&E existing system transportation rates within California should be eliminated;

3. Whether the postage stamp rate design is just and reasonable; and

4. How duplicative backbone transmission charges for northern California shippers can best be eliminated.

B. Record on Rehearing

An evidentiary hearing on rehearing issues was held from November 13 through December 13, 1991, and the record includes 119 exhibits.

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1 PG&E and its interstate pipeline subsidiary, PGT currently own and operate facilities that transport natural gas from Alberta, Canada, to PG&E's service territory. The Expansion would increase the capacity of the PG&E/PGT line by looping existing facilities.

2 In D.91-06-017, the Commission confirmed the use of a statewide Expansion tariff ("postage stamp") rate based on the incremental cost of service for the entire Expansion Project. In D.91-06-053, the Commission determined that shipments on the interstate portion of PG&E's and PGT's expanded gas transmission facilities may not be transported within California at the existing PG&E transportation rate to avoid the intrastate Expansion Project tariff ("crossover ban").

CORRECTION

THIS DOCUMENT HAS BEEN REPHOTOGRAPHED TO ASSURE LEGIBILITY

OPINION

I. Summary of Decision on Rehearing

Today we reaffirm our earlier determinations in Decision (D.) 90-12-119, 39 Cal.P.U.C.2d 69 (1990), D.91-06-017 and D.91-06-053, __ Cal.P.U.C.2d __ (1991), which required incremental rate treatment for the Pacific Gas and Electric Company (PG&E) Expansion Project. We base our decision today in large part on the conclusion that the PG&E's certificate of public convenience and necessity (CPCN) granted in D.90-12-119 was not predicated on a finding of need but on our "let the market decide" policy of allowing competitive forces to determine whether pipeline capacity should be constructed and on our oft-stated conclusion that the cost of new facilities should be borne by those customers for whose benefit the facilities are constructed. We accordingly reject the contention that the cost of the PG&E Expansion should be partially or wholly "rolled-in" to the transportation rates charged to existing PG&E customers. We nevertheless leave the actual ratemaking tariffs and accounts to be proposed and adopted in the Expansion's first general rate case.

We reaffirm our intent, first expressed in D.90-12-119, that PG&E's shareholders shall bear the risk of revenue recovery for the Expansion as a condition of our "let the market decide" policy for approving PG&E's CPCN. The risks of undersubscription and underutilization of the Expansion are risks that have been undertaken by PG&E's shareholders. We will not impose those risks on PG&E's ratepayers in consideration of their receipt of small or incidental benefits from the construction of Expansion capacity. Unlike in a traditional CPCN proceeding, it is the applicant that has here undertaken to determine the need for its proposed facilities; it is therefore the applicant that must bear the consequences if its determination proves to be wrong.

We also adhere to our requirement that volumes of gas transported on the incremental PGT Expansion outside of California are subject to the incremental PG&E Expansion transportation rate within California. This requirement -- which has come to be known as the "crossover ban" because it precludes incremental volumes transported to the Oregon/California border from "crossing over" at the border to the lower intrastate existing facilities rate -- appears necessary to ensure that the cost of incremental facilities is borne by incremental customers and not by existing customers.

We further reaffirm the "postage stamp" rate for Expansion deliveries, to ensure consistency with our existing intrastate transportation rates and to avoid potentially significant administrative difficulties. The Expansion's rates will be based not on the mileage from the Oregon/California border to the point of delivery, but on the cost of the facilities that constitute the entire Expansion.

Finally, we eliminate the double recovery of charges for intrastate transportation from the Oregon/California border to load centers in California by adopting PG&E's proposal to eliminate "duplicative backbone charges" on the PG&E system.

II. Procedural History

A. Grant of Rehearing

The application of PG&E for a CPCN to construct an expansion of its natural gas pipeline facilities from Malin, at the Oregon-California border, to Kern River Station, in Kern County,

was granted by D.90-12-119.[1] That decision was modified by D.91-06-017 and D.91-06-053.[2]

Rehearing of D.91-06-017 and D.91-06-053 was granted by D.91-09-035 for the purpose of examining the following issues:

1. Whether the use of incremental transportation rates for the delivery of Expansion gas within PG&E's service territory should be replaced with a system of rolled-in prices;

2. Whether D.91-06-053's prohibition against incremental loads "crossing over" from the interstate PGT Expansion system to obtain non-incremental PG&E existing system transportation rates within California should be eliminated;

3. Whether the postage stamp rate design is just and reasonable; and

4. How duplicative backbone transmission charges for northern California shippers can best be eliminated.

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2 In D.91-06-017, the Commission confirmed the use of a statewide Expansion tariff ("postage stamp") rate based on the incremental cost of service for the entire Expansion Project. In D.91-06-053, the Commission determined that shipments on the interstate portion of PG&E's and PGT's expanded gas transmission facilities may not be transported within California at the existing PG&E transportation rate to avoid the intrastate Expansion Project tariff ("crossover ban").

Testimony and briefs which generally supported rolled-in pricing were submitted by PG&E, PGT, Indicated Expansion Shippers (IES), Canadian Transportation Customers Group (CTCG), and California Utility Shippers (CUS).

Testimony and briefs which supported retention of incremental rates were submitted by Altamont Gas Transmission Company (Altamont), Kern River Gas Transmission Company (Kern River), El Paso Natural Gas Company (El Paso), California Industrial Group, California League of Food Processors and California Manufacturers Association (collectively, CIG), California Gas Producers Association (CGPA), Toward Utility Rate Normalization (TURN), and Division of Ratepayer Advocates (DRA).

C. Proposed ALJ Decision

On July 28, 1992, assigned Administrative Law Judge (ALJ) Evelyn Lee, who presided at the hearing, circulated a proposed decision which adopted a partial roll-in of the costs of the Expansion into PG&E's system gas transportation rates, excluding the transportation rates charged PG&E's core class of customers. The partial roll-in would have equalized the rates of Expansion non-core and UEG customers and existing non-core and UEG customers and would thus have eliminated the need for the "crossover ban." The proposed decision also retained the "postage stamp" rate design and eliminated duplicative backbone charges.

For the reasons that follow, we reject the proposed decision insofar as it authorizes rolled-in rate treatment and eliminates the crossover ban, but we adopt the decision in all other respects.

D. Procedural Matters

1. SMUD's Request for CPCN Modification

Sacramento Municipal Utility District (SMUD), a shipper over the PGT (interstate) portion of the Expansion, expressed the concern that rolled-in pricing will impair its ability to connect directly to the Expansion and thereby avoid PG&E's LDC service.

SMUD requests a modification to the CPCN that requires PG&E (1) to permit direct connection to the Expansion and (2) to connect the Expansion directly to the Mojave Pipeline. These claims for relief are significantly beyond the scope of this proceeding on rehearing and are summarily denied.

2. El Paso's Motions

The motion of El Paso to file its reply brief one day out of time is granted. We believe El Paso has made the requisite showing of good cause. El Paso's reply brief is accordingly deemed filed on February 24, 1992. On the other hand, we find El Paso's motion to strike portions of the reply briefs of PG&E and IES or, alternatively, for an opportunity to present a supplemental response, to be meritless. Contrary to El Paso's assertions, the reply briefs of PG&E and IES do not create a new set of cost shift figures, and we perceive no basis for granting El Paso's motion to strike any portion of the briefs. Moreover, there is no reason to grant El Paso's alternative request for a supplemental response opportunity since it had the opportunity to address the PG&E and IES computations in its own reply brief. El Paso's motion is therefore denied.

3. TURN's Request for Eligibility for Compensation

TURN's timely-filed "Request for Finding of Eligibility for Compensation" pursuant to Rule 76.54 of the Commission's Rules of Practice and Procedure (Rules) is granted. TURN has shown that its participation in the proceeding would impose a significant financial hardship by satisfying both prongs of the significant

financial hardship test of Rule 76.52(f).[3] We accept TURN's allegations that it represents the residential customer class and that such representation is necessary to a fair determination of the issues identified for rehearing. In this connection, we note that the DRA represents all customer classes and must therefore balance the interests of residential ratepayers against the interests of all other categories of ratepayers before it can formulate its positions. We also find that the economic interests of the individual customers represented by TURN is small in comparison to the costs of effective participation in the proceeding. Our finding of significant financial hardship will be in effect for the remainder of 1992 pursuant to Rule 76.54(a)(1). In addition, based on its summary of finances under Rule 76.54(1), we find that intervenor compensation constitutes a significant portion of TURN's discretionary income. Absent eligibility for such awards, TURN's resources would be inadequate to cover the costs of effective participation in our proceedings. Finally, TURN has provided an adequate statement of the issues that it intended to raise in the proceeding (Rule 76.54(a)(2) as well as an adequate

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3 (f) "Significant financial hardship" means both of the following:

(1) That, in the judgment of the Commission, the customer has or represents an interest not otherwise adequately represented, representation of which is necessary for a fair determination of the proceeding; and,

(2) Either that the customer cannot afford to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation and the cost of obtaining judicial review, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

estimate of the compensation sought and a budget for its participation (Rule 76.54(a)(3) and (4)). No party responded to TURN's request for finding of eligibility for intervenor compensation. As TURN has met all of the requirements of Rule 76.54(a), it is eligible for an award of compensation in this proceeding.

III. Discussion

A. Rolled-In versus Incremental Rates

The primary issue before us in this rehearing proceeding is whether the cost of the intrastate Expansion should be rolled in to PG&E's system transportation rates or priced incrementally to Expansion shippers.

After careful consideration of the ALJ's proposed decision and extensive review of the record, we conclude that we will adhere to our policy of incremental pricing for the intrastate Expansion. In our view, the public benefits of fulfilling our long-held policy of allowing competitive market forces in appropriate circumstances to determine which and how much pipeline capacity should be constructed to serve California markets are best achieved by utilizing an incremental approach for the Expansion.

This proceeding presents a good example of Justice Holmes' aphorism that "a page of history is worth a volume of logic." New York Trust Co. v. Eisner, 256 U.S. 345, 349 (1921). In our Interstate Pipeline OII proceeding (I.88-12-027), we determined that the rates for new capacity to serve California markets should be set on an incremental basis and, assuming that the criteria we established to protect existing customers were met, that the market should decide which and how much pipeline capacity should be constructed. See generally D.90-02-016, 35 Cal.P.U.C.2d 196, 213 (1990) ("As proposed, shippers who receive transportation service through the expansion will pay the full cost of the

project. Customers not utilizing any of the expansion facilities will not pay the costs of the project.").

In large part, our adoption of this "let the market decide" approach was compelled by our desire to harmonize our intrastate regulatory policy with developments in interstate gas pipeline regulation at the federal level. Under regulations established pursuant to its open access transportation rule, Order No. 436, the Federal Energy Regulatory Commission (FERC) had certificated competing interstate natural gas pipeline projects to serve California markets without the traditional showing of need required under Sections 7(c) and 7(e) of the Natural Gas Act, 15 U.S.C §§ 717f(c) and 717f(e). See, e.g., Wyoming-California Pipeline Co., FERC Docket No. CP87-479-000, certificate affirmed, California PUC v. FERC, 900 F.2d 269 (D.C.Cir. 1990), Mojave Pipeline Co., FERC Docket No. CP89-1-000, and Kern River Gas Transmission Co., FERC Docket No. CP89-2047-000. The FERC had authorized these competing projects under its then-existing optional expedited certificate (OEC) regulations, see FERC Regs., Part 157, Subpart E, 18 C.F.R. §§ 157.100-157.106 (1990), relying on the theory that the applicants were assuming the risk of project failure or underutilization and hence would not construct capacity which was not needed or desired by the market. See Associated Gas Distributors v. FERC, 824 F.2d 981, 1030-38 (D.C.Cir. 1987); California PUC v. FERC, supra, 900 F.2d at 277-80. The OEC regulations prohibited cost-shifting to customers of services other than those for which the new facilities were proposed to be constructed. See 18 C.F.R. § 157.103(d)(8) (1990).

Consistent with the FERC's OEC program and our policy established in D.90-02-016, we issued a CPCN for the PG&E Expansion in D.90-12-119, 39 Cal.P.U.C.2d 69 (1990), without subjecting the project to the traditional regulatory "need" test. Instead, we relied on PG&E's determination of market demand and placed the utility's shareholders at risk for the cost of unneeded or

underutilized facilities. In the absence of a regulatory finding of "need" underlying PG&E's CPCN, it is now difficult for us to justify granting PG&E the protection that a rolled-in approach would afford, and we decline to do so.[4]

The Expansion is economically justified only to the extent that incremental shippers, and not existing ratepayers, have determined that they need the capacity it affords and have committed themselves to bearing its cost. Since PG&E has begun construction of certain segments of the Expansion based on existing signed firm transportation contracts, PG&E obviously believes the market supports the Expansion.

Incremental pricing for the Expansion serves at least two important objectives. First, as we have noted in our previous decisions, the incremental pricing of new facilities assures that those for whose benefit the facilities are constructed will bear the cost. Conversely, it assures that existing customers who have no need for such incremental facilities will not be saddled with costs or risks they have not chosen to incur. Second, we believe that under the particular circumstances presented in this proceeding our "let the market decide" policy necessitates that rates for the Expansion be established by a method which facilitates the market's making an apples-to-apples comparison of competing proposals to construct pipeline capacity and a "level playing field" among competitors. In this connection, we reject the notion that PG&E may properly recharacterize the primary

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4 In D.90-12-119, we conditioned the Expansion's CPCN on a market-based "pure incremental" allocation method using a separate Expansion rate base to ensure that PG&E's existing ratepayers would not bear any costs of the Expansion. Thereafter, in D.91-06-017, we adopted an "allocated incremental" method for the Expansion so that jointly used facilities are allocated between existing and Expansion ratepayers. We adhere to this later approach to incremental pricing.

purpose of the Expansion as serving northern California customers and then seek an alteration of rate treatment for the Expansion based on such a fundamental recharacterization. It is not the purpose of this rehearing proceeding to relitigate the fundamental theory on which PG&E's CPCN is predicated. Under our policy, the need for the Expansion for which the CPCN was granted is best tested by ascertaining whether there is a sufficient market committed to the project to pay its incremental cost.

We perceive no undue discrimination in the distinction we make between customer classes. We find it entirely appropriate that existing customers who have no clear need for new facilities and will receive little or no benefit from such facilities should be protected from bearing the cost of those facilities. We find it equally appropriate that incremental customers who need the new facilities and will use them should pay for them. We find that the incremental nature of these customers is amply demonstrated both from the customers' willingness to enter into Expansion contracts to pay the incremental rate and from their utilization of the incremental interstate PGT Expansion facilities to transport their volumes to the Oregon/California border.

DRA argues that many of the Expansion contracts with northern California delivery points give PG&E the option of offering the relevant customers the "economic equivalent" of rolled-in pricing for a five-year period. Asserting that under such contracts the shippers must accept such an offer if it is made, DRA expresses the concern that PG&E would exercise this right and then seek full recovery of Expansion costs from non-Expansion ratepayers. We find that PG&E's contractual assumption of the difference between rolled-in rates or their "economic equivalent" and incremental rates is fully consistent with our previous assignment of market risk to PG&E's shareholders in D.90-12-119. We will not countenance any attempt by PG&E to collect that rate differential from ratepayers using existing facilities in a

subsequent proceeding. If PG&E must discount its rates below incremental cost in order to maximize the revenues it recovers from capacity it has voluntarily chosen to construct, the revenue shortfall thus occasioned may not be recovered from core customers or other existing customers who have little or no need for the newly constructed facilities.

PG&E's witness testified that PG&E had assumed the risk of underutilization only at the commencement of construction and thus PG&E may attempt to pass on the cost of underutilization in subsequent Commission proceedings. We take exception to this testimony. We have given PG&E the discretion to undertake construction of the Expansion at its shareholders' risk, premised on PG&E's assessment of the need for the Expansion. In the absence of a truly extraordinary showing, based on clear and convincing evidence that the public interest so requires, we will reject out of hand any attempts by PG&E to pass on the costs of underutilization of constructed facilities to existing customers in subsequent Commission proceedings. A contrary ruling would unduly undercut our "let the market decide" policy and would inappropriately relieve PG&E of the responsibility for its market-based decisionmaking.

In D.90-12-119, we emphasized that existing ratepayers should not be burdened with the risk of underutilization or undersubscription of the Expansion. We adhere to that view. Thus PG&E may recover no more than its Expansion cost of service times the ratio of throughput subject to firm transportation contracts to the total firm transportation capacity of the Expansion. We will protect non-Expansion ratepayers from subsidizing Expansion transportation rates where PG&E is unable to fill Expansion capacity or must discount the incremental transportation rates to do so. As provided in D.90-12-119, PG&E remains free to collect the revenues not included in firm contracts by providing interruptible service on the Expansion and the appropriate cost for

that service is to be determined in the first general rate case for the Expansion Project.

Our treating the PG&E Expansion as a project intended to benefit incremental shippers is fully consistent not only with the assumptions underlying our grant of a CPCN and our "let the market decide" policy but with the FERC's treatment of the corresponding interstate Expansion by PGT. The PGT Expansion will have incrementally-based initial rates and its delivery capacity to the Oregon/California border will be precisely matched to the take-away capacity of the PG&E Expansion. Moreover, incremental pricing appears fully consistent with FERC policies in other cases. For example, in Great Lakes Gas Transmission Limited Partnership, 57 FERC ¶ 61,140 (1991), rehearing pending, the FERC rejected rolled-in rates because such an approach would have resulted in the existing customers cross-subsidizing the proposed expansion project. And in Algonquin Gas Transmission Co. v. FERC, 948 F.2d 1305, 1312-14 (D.C.Cir. 1991), the U.S. Court of Appeals for the D.C. Circuit held that rolled-in treatment cannot be justified by conclusionary assertions and may only be utilized where there is substantial evidence that expansion facilities will provide specific, system-wide benefit. We do not believe such a showing has been made here.[5]

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5 True, in Northwest Pipeline Corp., 59 FERC ¶ 61,289 (1992), the FERC issued a declaratory order authorizing Northwest to utilize rolled-in rates for a proposed expansion, but that case is plainly distinguishable. There the FERC noted that the expansion alleviated specific existing capacity constraints which had limited Northwest's ability to meet the full contract demand of its existing customers. Id., at p. 62,057. The FERC also relied on the fact that all but one of Northwest's existing firm transportation customers either supported or did not oppose rolled-in pricing, which resulted in an increase in firm transportation rates of approximately $.05/MMBtu. Id., at p. 62,058. Notably,

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Moreover, as the FERC has correctly observed on several occasions, see, e.g., Pacific Gas Transmission Co., 56 FERC ¶ 61,192 (1991), at pp. 61,699, 61,711-12; Pacific Gas Transmission Co., 57 FERC ¶ 61,097 (1991), at p. 61,360, our resolution of the "incremental versus rolled-in" issue for the intrastate Expansion is one within our exclusive jurisdiction under the Hinshaw Amendment to the Natural Gas Act, 15 U.S.C. § 717(c). Thus, despite our desire and considerable effort to harmonize our regulation of the intrastate PG&E Expansion with FERC regulation of the corresponding interstate PGT Expansion, we are required in the final analysis to resolve this issue of "essentially local concern" based on our state perspective as to what constitutes "just and reasonable" rate treatment for the intrastate Expansion. We have conscientiously attempted to do so in this decision.

B. Disposition of Crossover Ban

We also adhere to our requirement that volumes of gas transported on the incremental PGT Expansion outside of California are subject to the incremental PG&E Expansion transportation rate within California. This requirement -- which has come to be known as the "crossover ban" because it precludes incremental volumes transported to the Oregon/California border from "crossing over" at the border to the lower intrastate existing facilities rate --

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(Footnote continued from previous page)
the FERC stated that its decision was "limited to the specific circumstances and facts" presented in that case. Id.

The narrowness of the Northwest decision and the fact that it does not alter the FERC's incremental rate policy is confirmed by the FERC's decision in Colorado Interstate Gas Company (CIG), 59 FERC ¶ 61,364 (1992), decided 21 days after Northwest. In CIG, the FERC explicitly denied CIG's request on rehearing for pre-approval of rolled-in rate treatment for its project.

appears necessary, in the absence of assigned property rights for existing intrastate facilities, to ensure that the cost of incremental facilities is borne by incremental customers and not by existing customers. Notably, the only gas volumes to which the crossover ban would apply are those clearly-incremental volumes which have reached the PG&E system through the incremental (and incrementally-priced) PGT Expansion facilities.

We stress that the crossover ban in no way connotes a limitation on a shipper's physical access to particular facilities; the PG&E Expansion facilities will be fully integrated with the existing PG&E system and gas will flow through a single expanded intrastate system. What the crossover ban does connote, however, is our determination that different classes of customers will pay different rates. Such a determination is hardly extraordinary. We commonly establish economic classifications for ratemaking purposes, and our determinations are uniformly upheld by the California Supreme Court so long as there is "a reasonable relationship between the classifications drawn and the purpose for which they are made." E.g., Wood v. Public Utilities Comm'n, 4 Cal.3d 288, 294 (1971); Toward Utility Rate Normalization v. Public Utilities Comm'n, 22 Cal.3d 529, 544 (1978). We believe that our commonly-drawn distinction between incremental and existing customers, which serves our "let the market decide" policy and assures that the cost responsibility for new facilities should be allocated to those who benefit from the facilities, plainly meets this standard.

The crossover ban is merely a feature of our incremental rate design which is intended to ensure that existing customers are not forced to pay for incremental facilities which are not being constructed primarily for their benefit. As previously noted, PGT's existing system delivery capability to Malin at the Oregon/California border is matched precisely to PG&E's existing take-away capability at Malin, and PGT's Expansion delivery

capability to Malin is matched precisely to PG&E's Expansion take-away capability at Malin. There is clearly insufficient capacity on the existing PG&E system to receive and transport on a firm basis incremental volumes transported over the PGT Expansion without the construction of the PG&E Expansion. Without a requirement such as the crossover ban, some incremental volumes would surely "migrate" to existing facilities, potentially forcing non-Expansion customers to utilize and pay for PG&E Expansion facilities. Without a requirement such as the crossover ban, our incremental rate design, and our policy that incremental facilities be paid for by the customers for whose benefit they are constructed, would be largely unenforceable.

It has been suggested by some that the crossover ban may constitute an unlawful tying arrangement in violation of the federal antitrust laws. To the contrary, the crossover ban is merely a legitimate exercise of our exclusive authority over the "rates, services and facilities" of a Hinshaw Pipeline under the Hinshaw Amendment to the Natural Gas Act, 15 U.S.C § 717(c). The crossover ban merely constitutes a rate design and cost allocation methodology which enables PG&E, a state-regulated public utility, to recover its costs consistently with our regulatory policy. The circumstances involved here simply do not establish an unlawful tying arrangement in violation of the antitrust laws. See, e.g., Jefferson Parish Hosp. Dist. v. Hyde, 466 U.S. 2, 12 (1984); Times-Picayune Pub. Co. v. United States, 345 U.S. 594, 614 (1953); Jack Walters & Sons Corp. v. Morton Bldg., Inc., 737 F.2d 698, 703 (7th Cir. 1984); Washington Gas Light Co. v. Virginia Elec. & Power Co., 438 F.2d 248, 253 (4th Cir. 1971).

Moreover, the State of California has a compelling interest in the fair and effective regulation of its public utilities. See, e.g., Pacific Gas & Elec. Co. v. Public Utilities Comm'n of California, 475 U.S. 1, 19 (plur. opin.), 25 (opin of Marshall, J.) (1986); Pacific Gas & Elec. Co. v. Energy Resources

Comm'n of California, 461 U.S. 190, 205 (1983), and cases there cited. And the conduct of PG&E in accordance with our clearly articulated state policy and under our active supervision is exempt from the federal antitrust laws under the state action doctrine. See, e.g., Southern Motor Carriers Rate Conf. v. United States, 471 U.S. 48, 63-64 (1985); Arkansas Elec. Coop. Corp. v. Arkansas Public Service Comm'n, 461 U.S. 375, 390-95 (1983); Parker v. Brown, 317 U.S. 341 (1943); Washington Gas Light Co., supra, 438 F.2d at 251-52.

In our view, no adequate justification for elimination of the crossover ban has been shown, and we therefore adhere to that requirement.

C. Retention of Postage Stamp Rate Design

We reaffirm our "postage stamp" rate design for Expansion deliveries. Virtually all unbundled gas transportation rates in California are "postage stamp" rates. Our adherence to a "postage stamp" rate design will ensure consistency with our existing intrastate transportation rates and avoid significant administrative difficulties in establishing and overseeing a mileage-based system. Moreover, it is not clear that the administrative difficulties of establishing mileage-based rates or northern California/southern California differential cost-based rates for the Expansion would result in a real difference from "postage stamp" rates since the vast majority of Expansion facilities are situated north of Panoche Junction, California.

In D.91-06-017, we found that "the interests of all ratepayers in this state would be served by allocating efficiencies of scale and scope to incremental users of natural gas in southern California," id., at 13, and that the "postage stamp" rate is "supported by public policy promoting economic development of the state as a whole," id. We reaffirm those findings.

We also find persuasive in this case the arguments of some parties to the effect that distance is not a reasonable proxy

for cost responsibility for the Expansion, since there is no direct relationship between distance and cost incurrence. In addition, we agree that other factors, including the operation of the Expansion and PG&E's existing backbone transmission system as an integrated pipeline system, the fact that Expansion supplies could physically flow either north or south from Panoche Junction and the use of displacement as a primary means of delivering Expansion gas to southern California, undermine any direct relationship between distance and cost and thus would likely make a mileage-based system the subject of charges of irrationality and discrimination. On balance, we see no strong justification for altering our "postage stamp" approach at this time, and we believe that such a change to our existing transportation rate structure could create significant administrative, measurement and verification problems for the Commission, for PG&E and for Expansion shippers.

We therefore reaffirm the "postage stamp" approach. Expansion service, like all transportation service provided by California's state-regulated LDCs, will be priced on a uniform statewide basis, and Expansion service to southern California will be priced the same as service to northern California.

We wish to make clear, however, that the "postage stamp" rate design does not connote a limitation on a northern California shipper's ability to receive gas at any delivery point of its choosing. However, an Expansion shipper's rates will be predicated not on the mileage from the Oregon/California border to the point of delivery but on the cost of the facilities that constitute the entire Expansion.

D. <u>Elimination of Duplicative Backbone Charges</u>

In our earlier decisions, we identified the problem of northern California Expansion shippers having to pay the "postage stamp" rate and an additional existing system transportation charge to cover the cost of re-transporting the gas from the Kern River Station terminus of the Expansion to the northern California

delivery point. The duplicative charges we refer to involve mainline or "backbone" transportation charges but not local distribution charges specific to the particular delivery point involved. The inclusion of duplicative backbone demand charges in the rates for Expansion deliveries to northern California would cause Expansion customers to incur costs for facilities that they do not use. Moreover, although we have determined to retain "postage stamp" rather than mileage-based rates for Expansion deliveries, our adherence to these duplicative backbone transportation charges would create the anomaly of PG&E's recovering more from some customers whose deliveries necessitate contruction of less than all of the Expansion facilities than from customers whose deliveries require the construction of all Expansion facilities. We have long been sensitive to the inequitable nature of these duplicative charges, and we take this opportunity to remove them from the transportation rates for northern California Expansion deliveries. We find merit in PG&E's proposed method for eliminating duplicative backbone charges, and we adopt that method. Should problems arise necessitating modification of that method, we will consider any such problems and any proposed mechanisms to correct them in the Expansion's first general rate case.

IV. Conclusion

In sum, we conclude that incremental pricing will continue to be utilized for firm transportation of natural gas over the PG&E Expansion. The crossover ban will remain in place, since we view that ratemaking classification requirement as being necessary to protect incremental rates, to further our "let the market decide" policy and to ensure that customers for whose benefit the Expansion is constructed assume its cost. We will retain the Expansion's postage stamp rate design for reasons of

administrative convenience, to ensure consistency with other transportation rates used in California and because the PG&E gas distribution system will operate in a physically integrated manner after the Expansion begins operation. Finally, we prevent PG&E's recovery of duplicative backbone transmission charges for northern California Expansion shippers by adopting the utility's proposed backbone transmission charge methodology.

V. Related Petitions

A. Joint Petition of Edison and SDG&E for Clarification of D.92-03-086 in A.89-04-033

In their Joint Petition for Clarification of D.92-03-086, Edison and SDG&E have asked us to clarify that any loss of subscription on the Expansion that occurs because of a shipper's exercise of a contractual "out" will not result in a shift of additional Expansion costs to other Expansion shippers. Petitioners claim that those volumes should be treated as "unsubscribed volumes" such that PG&E would bear the burden of those revenues.

We clarify that by PG&E's undertaking construction of the Expansion, its shareholders have assumed the risks of undersubscription and underutilization of the Expansion. PG&E cannot shift those risks on to Expansion shippers or other PG&E ratepayers by means of contracts which absolve the contracting parties of penalties for nonperformance due to a failure of their economic expectations to materialize.

The revenue mechanisms for this rate burden will be addressed in the Expansion's rate case proceeding. Today's disposition of the Joint Petition is entirely consistent with our adoption, and PG&E's embrace, of a "let the market decide" approach for the Expansion. The Joint Petition of Edison and SDG&E is granted.

B. Joint Petition of the DRA and TURN for Modification of D.92-03-086 and for Emergency Stay

The Joint Petition of DRA and TURN for Modification of D.92-03-086 and for Emergency Stay is denied. We are concerned that the additional access to interstate capacity will decrease the value of interstate capacity held by PG&E and other California LDCs. If an LDC does not make use of that capacity, pre-existing capacity held by the LDC will become "stranded capacity." The burden of excess interstate capacity must be weighed against the benefit of increased gas-to-gas competition before the Commission can judge the reasonableness of LDC subscription to Expansion capacity. That analysis will be undertaken in the appropriate gas reasonableness review.

As noted by DRA and TURN, we have an ongoing proceeding to implement capacity brokering. Furthermore, the capacity procurement decisions of Edison and SDG&E are subject to reasonableness review. This decision further delimits the ability of PG&E to assign the burden on Expansion underutilitization to ratepayers. Thus, sufficient safeguards of ratepayer interests already exist so that a stay of the Expansion CPCN is not necessary on the grounds asserted by DRA and TURN.

C. Petition of Conoco, et al. to Intervene

The Petition of Conoco, Inc., Meridian Oil, Inc., Texaco, Inc., and Union Pacific Fuels, Inc. to Intervene is denied. The petitioners, domestic producers of natural gas who have been actively involved in R.90-02-008, R.88-08-018, and A.90-03-039, seek a stay of construction of the PG&E Expansion, citing the same reasons as those advanced by the Southwest suppliers in response to the Joint Petition of Edison and SDG&E.

The petition is tardy, its sole purpose is to interject into this proceeding an issue not identified for rehearing, and if granted it would likely result in a presentation unnecessarily

cumulative to that of other similarly-situated parties. We have already entertained and denied three separate requests for a stay of the Expansion CPCN. It would be unreasonable to revisit a CPCN each time a competitor suggested an alternative to the project for which the CPCN had been granted.

__Findings of Fact__

1. Rehearing of D.91-06-017 and D.91-06-053 was granted by D.91-09-035 for the purpose of examining the following issues:

> 1. Whether the use of incremental rates for the delivery of Expansion gas within PG&E's service territory should be replaced with a system of rolled-in prices;
>
> 2. Whether D.91-06-053's prohibition against crossover from the Expansion system to the existing system should be eliminated;
>
> 3. Whether the postage stamp rate is just and reasonable; and
>
> 4. How duplicative backbone transmission charges for northern California shippers can best be eliminated.

2. The request of SMUD for a modification to the CPCN that would require PG&E (a) to permit direct connection to the Expansion and (b) to connect the Expansion directly to the Mojave Pipeline is beyond the scope of this rehearing proceeding.

3. TURN timely filed its "Request for Finding of Eligibility for Compensation" pursuant to Rule 76.54 on January 27, 1992.

4. TURN has met both prongs of the significant financial hardship test, since TURN represents the residential customer class, which would not otherwise be adequately represented in this proceeding, and the economic interest of the individual customers represented by TURN is small in comparison to the costs of effective participation in the proceeding.

5. Absent eligibility for intervenor compensation awards, TURN's resources would be inadequate compared to the costs of effective participation in Commission proceedings.

6. TURN has opposed PG&E's proposal for partial rolled-in rate treatment for the Expansion Project; this and other issues have been detailed in TURN's testimony.

7. TURN has estimated a budget of approximately $60,000, based on its estimate of attorney time, the attorney's hourly rate, and other incidental expenses.

8. TURN has met all of the requirements of Rule 76.54(a) and is eligible for an award of compensation in this proceeding.

9. El Paso has shown good cause for the late-filing of its Reply Brief.

10. There is no basis for granting El Paso's motion to strike portions of the Reply Briefs of PG&E and IES because those briefs do not create a new set of cost shift figures.

11. There is no reason to grant El Paso's alternative request for relief, that is, an order establishing an additional round of briefing or a reopening of the record because El Paso had the opportunity to address the issue of cost shifts in its own reply brief.

12. It is appropriate to retain incremental pricing as a market test for the PG&E Expansion.

13. The public benefits of fulfilling our long-held policy of allowing competitive market forces in appropriate circumstances to determine which and how much pipeline capacity should be constructed to serve California markets are best achieved by utilizing an incremental approach for the Expansion.

14. Consistent with the FERC's OEC program and our policy established in D.90-02-016, we issued a CPCN for the PG&E Expansion in D.90-12-119 without subjecting the project to the traditional regulatory "need" test.

15. In the absence of a regulatory finding of "need" underlying PG&E's CPCN, it is inappropriate for us to grant PG&E the protection that a rolled-in approach would afford.

16. The Expansion is economically justified only to the extent that incremental shippers, and not existing ratepayers, have determined that they need the capacity it affords and have committed themselves to bearing its cost.

17. Incremental pricing for the Expansion assures that those for whose benefit the facilities are constructed will bear the cost.

18. Incremental pricing for the Expansion assures that existing customers who have no need for such incremental facilities will not be saddled with costs or risks they have not chosen to incur.

19. Incremental pricing for the Expansion is consistent with our "let the market decide" policy and results in rates for the Expansion being established by a method which facilitates the market's making an apples-to-apples comparision of competing proposals to construct pipeline capacity as well as a "level playing field" among competitors.

20. PG&E may not properly recharacterize the primary purpose of the Expansion as serving northern California customers and then seek an alteration of rate treatment for the Expansion based on such a fundamental recharacterization.

21. It is not the purpose of this rehearing proceeding to relitigate the fundamental theory on which PG&E's CPCN is predicated.

22. Under our policy, the need for the Expansion for which the CPCN was granted is best tested by ascertaining whether there is a sufficient market committed to the project to pay its incremental cost.

23. There is no undue discrimination in the distinction we make between customer classes.

24. It is appropriate that existing customers who have no clear need for new facilities and will receive little or no benefit from such facilities should be protected from bearing the cost of those facilities.

25. It is appropriate that incremental customers who need the new facilities and will use them should pay for them.

26. The incremental nature of these customers is amply demonstrated both from the customers' willingness to enter into Expansion contracts to pay the incremental rate and from their utilization of the incremental interstate PGT Expansion facilities to transport their volumes to the Oregon/California border.

27. Incremental pricing for the PG&E Expansion is just and reasonable.

28. PG&E's shareholders have commenced construction of the Expansion at their own risk in response to what they perceive to be the market's interest.

29. PG&E's contractual assumption of the difference between rolled-in rates or their "economic equivalent" and incremental rates is fully consistent with our previous assignment of market risk to PG&E's shareholders in D.90-12-119.

30. We will not countenance any attempt by PG&E to collect that rate differential from ratepayers using existing facilities in a subsequent proceeding.

31. If PG&E must discount its rates below incremental cost in order to maximize the revenues it recovers from capacity it has voluntarily chosen to construct, the revenue shortfall thus occasioned may not be recovered from core customers or other existing customers who have little or no need for the newly constructed facilities.

32. In the absence of a truly extraordinary showing, based on clear and convincing evidence that the public interest so requires, we will reject out of hand any attempts by PG&E to pass on the

costs of underutilization of constructed facilities to existing customers in subsequent Commission proceedings.

33. Existing ratepayers should not be burdened with the risk of underutilization or undersubscription of the Expansion.

34. PG&E may recover no more than its Expansion cost of service times the ratio of throughput subject to firm transportation contracts to the total firm transportation capacity of the Expansion.

35. We will protect non-Expansion ratepayers from subsidizing Expansion transportation rates where PG&E is unable to fill Expansion capacity or must discount the incremental transportation rates to do so.

36. PG&E remains free to collect the revenues not included in firm contracts by providing interruptible service on the Expansion and the appropriate cost for that service is to be determined in the first general rate case for the Expansion Project.

37. We are required to resolve the issue of incremental versus rolled-in rates based on our state perspective as to what constitutes just and reasonable rate treatment for the intrastate Expansion.

38. The rate classification requirement which has come to be known as the "crossover ban" appears necessary to ensure that the cost of incremental facilities is borne by incremental customers and not by existing customers.

39. The only gas volumes to which the crossover ban would apply are those clearly-incremental volumes which have reached the PG&E system through the incremental (and incrementally-priced) PGT Expansion facilities.

40. The crossover ban in no way connotes a limitation on a shipper's physical access to particular facilities; the PG&E Expansion facilities will be fully integrated with the existing PG&E system and gas will flow through a single expanded intrastate system.

41. The crossover ban does connote that different classes of customers will pay different rates.

42. Such a determination is hardly extraordinary; we commonly establish economic classifications for ratemaking purposes, and our determinations are uniformly upheld by the California Supreme Court so long as there is "a reasonable relationship between the classifications drawn and the purpose for which they are made."

43. Our commonly-drawn distinction between incremental and existing customers which serves our "let the market decide" policy and assures that the cost responsibility for new facilities will be allocated to those who benefit from the facilities.

44. The crossover ban is merely a feature of our incremental rate design which is intended to ensure that existing customers are not forced to pay for incremental facilities which are not being constructed primarily for their benefit.

45. PGT's existing system delivery capability to Malin at the Oregon/California border is matched precisely to PG&E's existing take-away capability at Malin, and PGT's Expansion delivery capability to Malin is matched precisely to PG&E's Expansion take-away capability at Malin.

46. There is insufficient capacity on the existing PG&E system to receive and transport on a firm basis incremental volumes transported over the PGT Expansion without the construction of the PG&E Expansion.

47. Without a requirement such as the crossover ban, some incremental volumes would "migrate" to existing facilities, potentially forcing non-Expansion customers to utilize and pay for PG&E Expansion facilities.

48. Without a requirement such as the crossover ban, our incremental rate design, and our policy that incremental facilities be paid for by the customers for whose benefit they are constructed, would be largely unenforceable.

49. The crossover ban does not constitute an unlawful tying arrangement in violation of the federal antitrust laws; it is merely a legitimate exercise of our exclusive authority over the "rates, services and facilities" of a Hinshaw Pipeline under the Hinshaw Amendment to the Natural Gas Act, 15 U.S.C § 717(c).

50. The crossover ban merely constitutes a rate design and cost allocation methodology which enables PG&E, a state-regulated public utility, to recover its costs consistently with our regulatory policy.

51. The State of California has a compelling interest in the fair and effective regulation of its public utilities.

52. The conduct of PG&E in accordance with our clearly articulated state policy and under our active supervision is exempt from the federal antitrust laws under the state action doctrine.

53. No adequate justification for elimination of the crossover ban has been shown, and continuation of the ban is just and reasonable.

54. Our "postage stamp" rate design for Expansion deliveries is just and reasonable.

55. Virtually all unbundled gas transportation rates in California are "postage stamp" rates.

56. Our adherence to a "postage stamp" rate design will ensure consistency with our existing intrastate transportation rates and avoid significant administrative difficulties in establishing and overseeing a mileage-based system.

57. It is not clear that the administrative difficulties of establishing mileage-based rates or northern California/southern California differential cost-based rates for the Expansion would result in a real difference from "postage stamp" rates since the vast majority of Expansion facilities are situated north of Panoche Junction, California.

58. The interests of all ratepayers in this state would be served by allocating efficiencies of scale and scope to incremental

users of natural gas in southern California, and the "postage stamp" rate is supported by public policy promoting economic development of the state as a whole.

59. Distance is not a reasonable proxy for cost responsibility for the Expansion, since there is no direct relationship between distance and cost incurrence.

60. Other factors, including the operation of the Expansion and PG&E's existing backbone transmission system as an integrated pipeline system, the fact that Expansion supplies could physically flow either north or south from Panoche Junction and the use of displacement as a primary means of delivering Expansion gas to southern California, undermine any direct relationship between distance and cost and thus would likely make a mileage-based system the subject of charges of irrationality and discrimination.

61. Alteration of our existing transportation rate structure could create significant administrative, measurement and verification problems for the Commission, for PG&E and for Expansion shippers.

62. Expansion service, like all transportation service provided by California's state-regulated LDCs, will be priced on a uniform statewide basis, and Expansion service to southern California will be priced the same as service to northern California.

63. The "postage stamp" rate design does not connote a limitation on a northern California shipper's ability to receive gas at any delivery point of its choosing; however, an Expansion shipper's rates will be predicated not on the mileage from the Oregon/California border to the point of delivery but on the cost of the facilities that constitute the entire Expansion.

64. Elimination of duplicative backbone charges for Expansion shippers is just and reasonable.

65. The duplicative charges we refer to involve mainline or "backbone" transportation charges but not local distribution charges specific to the particular delivery point involved.

66. The inclusion of duplicative backbone demand charges in the rates for Expansion deliveries to northern California would cause Expansion customers to incur costs for facilities that they do not use.

67. Our adherence to these duplicative backbone transportation charges would create the anomaly of PG&E's recovering more from some customers whose deliveries necessitate contruction of less than all of the Expansion facilities than from customers whose deliveries require the construction of all Expansion facilities.

68. We find merit in PG&E's proposed method for eliminating duplicative backbone charges, and we adopt that method.

69. Should problems arise necessitating modification of that method, we will consider any such problems and any proposed mechanisms to correct them in the Expansion's first general rate case.

70. The Commission's grant of CPCN in D.90-12-119 considered alternatives to the PG&E Expansion under the mandates of CEQA. The determination of alternatives to the PG&E Expansion is not a matter for which rehearing was granted.

71. Ratemaking for Expansion service should be guided by the policies announced in D.90-02-016.

72. The need for Expansion service will continue to be shown by market demand for incrementally priced Expansion service.

73. Consistent with D.90-12-119, we find that need for the Expansion has not been shown for any firm capacity beyond that governed by executed contracts for firm transportation.

74. The FERC's ultimate choice between rolled-in or incremental treatment of PGT Expansion costs cannot be predicted

and should not form the basis of this Commission's ratemaking decision on intrastate Expansion costs.

75. The Expansion was not subjected to a cost-benefit test prior to the issuance of its CPCN because the Commission allowed PG&E to respond to the market's need for the Expansion.

76. Under the facts shown here, incremental rates do not unduly discriminate between existing and new transportation customers.

77. PG&E should not be permitted to pass the risk of undersubscription, including the risk represented by the "option out" and "economic equivalent of rolled-in pricing" clauses in some of its firm transportation contracts with Expansion shippers, from its shareholders to its ratepayers.

78. PG&E should not be permitted to pass the risk of underutilization from its shareholders to ratepayers, whether by discounting Expansion firm transportation rates, forecasting error, or other means which result in a less than full rate recovery of the cost of service allocated transportation in D.90-12-119.

79. D.90-12-119 did not foreclose consideration of any proposal that revenues from interruptible transportation may be retained by shareholders.

<u>Conclusions of Law</u>

1. The PG&E Expansion should be characterized as an incremental intrastate natural gas pipeline.

2. The "let the market decide" approach adopted by D.90-02-116 for Commission approval of the PG&E Expansion is applicable to Expansion service.

3. It is reasonable to eliminate the double charge for transmission over the PG&E Expansion and its existing counterpart, PG&E Line 400 ("duplicative backbone charge").

4. It is reasonable to retain non-distance sensitive rates for Expansion transportation within PG&E's service territory and for Expansion service to southern California.

5. Our finding that TURN has met the significant financial hardship test in this proceeding will be in effect for the remainder of 1992, as provided in Rule 76.54(a)(1).

6. It is just and reasonable that incremental pricing continue to be utilized for firm transportation of natural gas over the PG&E Expansion.

7. It is just and reasonable that the crossover ban remain in place, since we view that ratemaking classification requirement as being necessary to protect incremental rates, to further our "let the market decide" policy and to ensure that customers for whose benefit the Expansion is constructed assume its cost.

8. It is just and reasonable to retain the Expansion's postage stamp rate design for reasons of administrative convenience, to ensure consistency with other transportation rates used in California and because the PG&E gas distribution system will operate in a physically integrated manner after the Expansion begins operation.

9. It is just and reasonable to prevent PG&E's recovery of duplicative backbone transmission charges for northern California Expansion shippers by adopting the utility's proposed backbone transmission charge methodology.

10. The joint petition of Edison and SDG&E for clarification of D.92-03-086 and A.89-04-033 should be granted.

11. The joint petition of DRA and TURN for modification of D.92-03-086 and request for emergency stay should be denied.

12. The petition of Conoco, Inc., Meridian Oil, Inc., Texaco, Inc., and Union Pacific Fuels to intervene should be denied.

ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) shall retain the allocated incremental rate design, the crossover ban, and postage stamp rates for its Expansion Project, as set forth in our previous decisions.

2. PG&E's methodology for eliminating duplicative backbone charges is adopted in principle.

3. PG&E will present testimony at the time of the Expansion's first general rate case concerning whether its method has effectively eliminated such duplicative charges.

4. The motion of El Paso Natural Gas Company (El Paso) to accept its reply brief one day out of time is granted. El Paso's reply brief is deemed to have been filed on February 24, 1992.

5. The motion of El Paso to strike portions of the reply briefs of PG&E and the Indicated Expansion Shippers is denied. The alternative request of El Paso for an order establishing an additional round of briefing or reopening of the record is also denied.

6. The request of Sacramento Municipal Utility District for a modification to the certificate of public convenience and necessity require PG&E (a) to permit direct connection to the Expansion and (b) to connect the Expansion directly to the Mojave Pipeline is denied.

7. Toward Utility Rate Normalization (TURN) has met all of the requirements of Rule 76.54(a) and is eligible for an award of compensation in this proceeding. Our finding that TURN has met the significant financial hardship test will be in effect during 1992.

8. The "Joint Petition of Southern California Edison Company and San Diego Gas and Electric Company for Clarification of Decision 92-03-086" is granted.

9. The "Joint Petition of the Division of Ratepayer Advocates and Toward Utility Rate Normalization for Modification of Decision 92-03-086 and Request for Emergency Stay" is denied.

10. The "Petition of Conoco, Inc., Meridian Oil, Inc., Texaco, Inc., and Union Pacific Fuels, Inc. to Intervene" is denied.

This order becomes effective 30 days from today.

Dated October 21, 1992, at San Francisco, California.

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

I will file a written concurring opinion.

/s/ PATRICIA M. ECKERT
Commissioner

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

NEAL J. SHULMAN, Executive Director

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List of Appearances

Applicant: Jack Fallin, Attorney at Law, for Pacific Gas & Electric Company.

Protestant: Sidley & Austin, by Frederic G. Berner, Jr. and James F. Bendernagel, Jr., Attorneys at Law, for Altamont Gas Transmission Company.

Interested Parties: C. Hayden Ames, Attorney at Law, for Chickering & Gregory; Locke, Purnell, Rain & Hanell, by James L. Armour, Attorney at Law, for Pan Canadian Petroleum Company; Del Borggard, for Bonus Gas Producers, Inc.; Brady & Berliner, by Roger Berliner, Attorney at Law, for Indicated Expansion Shippers (Chevron U.S.A., Inc., Chevron Canada, North Canadian Oils Ltd., Norcen Marketing, Inc., Petro-Canada Hydrocarbons, Inc.); Beth Bowman and James F. Walsh, Attorney at Law, for San Diego Gas & Electric Company; Rand Carroll, for the State of New Mexico; Steven M. Cohn, Attorney at Law, for California Energy Commission; Michel Peter Florio, Attorney at Law, for Toward Utility Rate Normalization (TURN); G.H. Giesbrecht, for Pan-Alberta Gas, Ltd.; Graham & James, by Peter W. Hanschen and Melissa S. Waksman, Attorneys at Law, and Wright & Talisman, by Harold L. Talisman and Michael J. Thompson, for Kern River Gas Transmission Company; Steve Harris, by Lisa Danyluk, for Transwestern Pipeline; Michael Hopkins, for the City of Glendale; David L. Huard, E. R. Island, Michael A. Casselli, Attorneys at Law, for Southern California Gas Company; Phyllis Huckabee and Phillip D. Endom, for El Paso Natural Gas Company; Adrian J. Hudson, for California Gas Producers Association; John W. Jimison, Attorney at Law, for Independent Petroleum Association of Canada; Dhruv Khanna, Attorney at Law, for Morrison & Foerster; Luce, Forward, Hamilton & Scripps, by John W. Leslie, for California Gas Marketers Group; Le Boeuf, Lamb, Leiby & McRae, by Frank R. Lindh, Attorney at Law, for Pacific Gas Transmission; Greg M. McGillivray, for Alberta Petroleum Marketing Commission; Rick B. Minter, for the Sacramento Municipal Utilities District; Jones, Day, Reavis & Payne, by Norman Pedersen, Attorney at Law, for Southern California Utilities Power Pool; Florence J. Piniqis, Attorney at Law, for Southern California Edison Company; Edward G. Poole, Attorney at Law, for Anderson, Donovan & Poole; Patrick J. Power, Attorney at Law, for Sacramento Municipal Utility District; E. Lewis Reid, Attorney at Law, for Marron, Reid & Sheehy; Rhonda Ryan, Attorney at Law, for Can West Gas Supply USA, Inc.; Jay D. St. Louis, for Pan-Alberta Gas, Ltd.;

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David J. Schultz, for Pacific Gas Transmission; Ed Small, for Suncor; Armour, Goodin, Schlotz & McBride, by James Squeri, Attorney at Law, for Kelco Division of Merck & Company; Ronald V. Stassi, for the City of Burbank; Alex Szabo, for the City of Pasadena; Robert B. Weisenmiller, for Morse, Richard, Weisenmiller & Associates; and Kevin D. Woodruff, for Henwood Energy Services, Inc.

Division of Ratepayer Advocates: Hallie Yacknin, Attorney at Law, and Natalie Walsh.

Commission Advisory and Compliance Division: Jonathon Lakritz.

(END OF APPENDIX A)

Commissioner Patricia M. Eckert, Concurring:

Our order today to continue to structure rates incrementally for the PG&E pipeline expansion indicates this Commission's consistent decision-making throughout this entire pipeline proceeding. Allowing PG&E to choose to build the pipeline, based on criteria the Commission set out in 1990, and market forces, was appropriate.

On the other hand, in allowing the market to play its hand, we, as regulators, must carefully consider subsequent actions as we begin to ascertain the market's reaction and industry impacts. Letting the market decide means just that. To later make artificial regulatory corrections to assuage localized impacts undercuts the foundation of market forces. So, today we held firm, taking into account a broad re-analysis of our rate design for the pipeline.

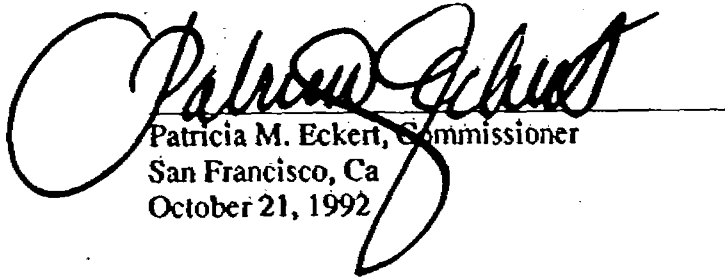
Market forces, however, while placing government and the industry in their appropriate roles, do not necessarily reduce my angst, or act as an antacid to ease my distress. If anything, allowing market forces to decide is more difficult than command and control regulation.

With that, I support today's order, but wish to articulate concerns I still harbor with respect to the crossover ban, incremental pricing impacts on non-A&S Canadian shippers, and the practical effects of our incremental rate structure.

The crossover ban, as I understand it, is an invisible restraint that prevents expansion shippers on PGT from crossing over to the existing, depreciated PG&E system rather than using the PG&E expansion. My initial concern was that we were establishing different rates for the same service, thus placing a "Proposition 13-like" mandate on all new customers who want to purchase Canadian gas. I am persuaded, however, that service on the expansion facility is a different class of service because it serves the new class of customers that demanded additional capacity to Canada. This is consistent with market forces. Further, I am comforted by Commissioner Fessler's directive that the Commission move expeditously to unbundle intrastate rates, which will moot the cross-over ban rate distinction issue altogether.

With respect to non-A&S shippers, I am concerned that while we have articulated our intent to attract additional shippers outside of the A&S pool to access Canadian supplies, incremental rates seem to dull those efforts by making it more expensive to transport Canadian gas to California over the expansion. I am convinced that non-A&S gas will flow over the expansion, but not as close to the spot price as we might have liked.

In general, I am disquieted about how the economics of this incremental rate structure affect the dynamics of the gas industry. As between incremental and rolled-in rates, the net effect on California may be zero. However, more important to me is the impact incremental rates will have on sending signals to new businesses seeking to enter California. If new businesses reliant on non-core gas perceive that they have the additional cost burden of "post Proposition 13-like" infrastructure treatment, this state will not be making itself very attractive to its potential suitors.



Patricia M. Eckert, Commissioner
San Francisco, Ca
October 21, 1992