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**ORIGINAL**Decision 82 04 072 APR - 8 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS & ELECTRIC  
COMPANY for authority effective  
April 1, 1982 to implement an  
electric rate stabilization plan,  
to decrease its ECAC rates in accord-  
ance with the ECAC tariff, to  
establish an Electric Revenue  
Adjustment Mechanism rate pursuant  
to Decision 93887 and to make other  
adjustments.

(Electric)

Application 82-02-09  
(Filed February 4, 1982;  
amended March 19, 1982)

Application of PACIFIC GAS AND ELECTRIC  
COMPANY for authority to revise its gas  
rates and tariffs effective April 1,  
1982, under the Gas Adjustment Clause.

(Gas)

Application 82-02-10  
(Filed February 4, 1982;  
amended March 19, 1982)

INTERIM OPINION

By Decision (D.) 82-03-117 dated March 29, 1982 in  
Application (A.) 82-02-09, we, in summary, ordered that:

1. PG&E show why we should not require  
PG&E to suspend deliveries of  
residual fuel oil.
2. PG&E provide to the Commission and  
the parties certain economic data, and
3. Any party to the proceeding be allowed  
to inspect the PG&E-Chevron U.S.A. oil  
purchase contract.

In response to the order to show cause PG&E has made the  
following filings:

1. An application filed March 31, 1982  
for a stay and rehearing of that portion  
of D.82-03-117 that provided that any  
party to the proceeding could review  
the contract.

2. A petition filed April 1, 1982 for a protective order, partial stay, and modification of that portion of D.82-03-117 regarding service of economic data.
3. A response to the order to show cause dated April 5, 1982.

In response to the first of those filings, we issued D.82-04-027 which granted a partial stay of D.82-03-117 as requested pending consideration of the petitions. After carefully considering each and every allegation of error and request for modification in the first two filings, we are of the opinion that good cause for granting rehearing has not been shown. All three elements of the order to show cause are now ready for resolution.

I. Suspension of Deliveries of Residual Fuel Oil

The entire thrust of the show cause order goes to this issue. As noted in the show cause order our analysis of the PG&E-Chevron contract revealed that it contained a contingency provision that relieves PG&E of its obligation to purchase fuel oil in order to effect,

"...compliance, voluntary or involuntary, with a direction or request of any government, instrumentality thereof or person purporting to act with authority of any government..." (Section 4.3.2.)

In addition to the contract provision allowing for suspension of deliveries of fuel oil, our analysis of PG&E's data and testimony in A.82-02-09 indicated that in order to maximize ratepayer benefit there was a need to suspend fuel oil deliveries. That analysis revealed that PG&E would, under the existing contract, purchase at least six million barrels of residual oil that it did not require for electric generation during the remainder of 1982. Once in inventory, this oil would cost PG&E and its ratepayers

further expense in additional storage costs and quite possibly losses on sales of such excess oil. Burning this excess oil in place of less expensive natural gas would also increase the energy costs imposed on the ratepayers. The order to show cause was the opportunity for PG&E to rebut our analysis.

PG&E's response rebuts neither aspect of our prior analysis. Rather, the revised updated economic data and response by PG&E acknowledges the fact that there is a need for PG&E to suspend fuel oil deliveries.

PG&E does, however, make an argument that while we can request such an action, we are without jurisdictional authority to direct such an action. However, this issue need not be resolved at this time because only a "request of a governmental agency" is required to implement the contingency provision. Our decision in this matter at this time will be to request PG&E to suspend deliveries of fuel oil under the PG&E-Chevron U.S.A. oil purchase contract.

It is important to note that the Commission is not dictating the terms and conditions of any contract entered into by PG&E. The Commission is simply referring to the provisions of an existing agreement, freely negotiated between PG&E and Chevron, which has been agreed to and executed without any interference or intervention from the Commission.

The Commission also intends by this interim decision to obtain a temporary, not a permanent, suspension of deliveries of oil. This suspension should remain in effect only so long as such deliveries of oil are uneconomic for PG&E and are in excess of PG&E's prudently calculated needs for fuel oil.

It should also be understood that the Commission reserves the right to exercise its authority to disallow for ratemaking purposes all unreasonably incurred expenses of the utility's operations. This could, of course, include expenses incurred by PG&E as a result of the Chevron contract, including facilities charges. These costs will be examined in full at the annual review ECAC proceeding for PG&E, currently set for an August 1, 1982 revision date.

## II. Disclosure of Contract and Economic Data

The issues raised by the second and third items of the order to show cause can be treated as one. The issue is to what degree the contract itself and other relevant economic data should be opened to the public.

PG&E's allegations and arguments for nondisclosure can be summarized as follows:

1. PU Code Section 583 favors nondisclosure.
2. Our past policy has been not to disclose fuel contracts (GO 66-C).
3. Requiring PG&E to disclose its contracts would be inequitable because other utilities are not so required.
4. Disclosure of the contracts and sensitive economic data places PG&E in a very disadvantageous negotiating position in seeking additional fuel supplies or seeking to dispose of excess fuel.

Our response to these arguments will proceed in order but first we must state that the foundation of these ECAC proceedings is that only prudently incurred fuel expenses may be incurred. Another basic principle of our ratemaking procedures is that our proceedings are not restricted to PG&E, ourselves, and staff. The public has a right to appear and test the reasonableness of alleged facts.

### A. Section 583 Favors Nondisclosure

Section 583 reserves authority to the Commission or Commissioners during the course of a hearing to determine what information should be disclosed. In our order to show cause we have simply made the judgment that both the contracts and the enunciated information should be made public.

B. Do Past Policies Favor Nondisclosure?

PG&E is correct that our past policies favor nondisclosure. In D.93120 in OII 62, we found that:

"Public disclosure of fuel oil price information might place utilities at a competitive disadvantage relative to oil suppliers..." and "...might inhibit the flexibility sought by utilities as an integral part of their procurement practices..." (Findings 5, 6 on p. 5 mimeo.)

The order which follows represents a clear change of that policy. Only full disclosure of the contracts and the sensitive economic data will allow meaningful participation by all parties in the regulatory process. Moreover, public confidence in the regulatory process will be served by disclosure. Finally, the incentive for utilities to seek aggressively the most favorable contract terms may be strengthened by the knowledge that the results of their negotiations will be made available to all interested parties. We believe that these benefits of full disclosure clearly outweigh any disadvantages.

C. Is Disclosure by PG&E Inequitable?

PG&E argues that our direction that the contracts and economic data be disclosed is inequitable in that other utilities are not also required to do so.

We conclude, however, that fuel contracts and the relevant economic data for all electric utilities should in future ECAC-type proceedings be discoverable information available to all parties.

D. Does Disclosure Place PG&E in a Disadvantageous Negotiating Position?

We believe that the benefits of disclosure outweigh any possible disadvantages in PG&E's negotiating position with potential buyers and sellers. In fact, it is possible that public disclosure will in some cases strengthen PG&E's bargaining position.

Findings of Fact

1. The PG&E-Chevron U.S.A. fuel oil purchase contracts allow for suspension of deliveries upon the request of a governmental body.

2. PG&E will possess excess fuel oil under the current contract unless deliveries are suspended.

3. Suspension of fuel oil deliveries will result in a more economic fuel mix which will inure to the benefit of the ratepayer.

4. By D.93122 in OII 62, issued on June 2, 1981, we declined to change our policy which has been not to disclose utilities' fuel oil purchase contracts, except upon a very limited basis, because we concluded that the possible disadvantages of public disclosure outweighed any possible advantages.

5. Since that time utilities' fuel costs have risen dramatically and both this Commission and the public at large have expressed great concern over how such costs may be kept as low as possible.

6. Full disclosure of fuel oil purchase contracts and related economic data is required for meaningful public participation in our purchased fuel clause proceedings.

7. Full disclosure is required to ensure public confidence in the ratemaking process at a time of escalating utility rates.

8. Full disclosure is required to increase utilities' incentive to bargain aggressively for the most favorable contract terms.

9. PG&E's application for rehearing alleges and argues that such disclosure would not be in the public interest.

Conclusions of Law

1. After weighing the possible disadvantages of the disclosure of PG&E's fuel oil contracts with Chevron U.S.A. and related economic data against the possible advantages, we are of the opinion that such disclosure is in the public interest and should be ordered.

2. This policy of full disclosure should be applied in ECAC proceedings.

3. PG&E should be requested to suspend deliveries of low sulfur fuel oil under its recently executed contract with Chevron U.S.A.

4. The following order is issued without notice on the public agenda because it can result in less expense for PG&E and lower rates for consumers; as such this constitutes an emergency.

INTERIM ORDER

IT IS ORDERED that:

1. PG&E is requested to suspend as soon as possible further deliveries and purchases of low sulfur residual fuel oil for the remainder of 1982 or until the cost and supply of oil, natural gas, and other fuels change to such an extent that it is economically beneficial to PG&E and its ratepayers to resume such purchases of oil. Before any such resumption of oil purchases takes place, PG&E is requested to present to the Commission staff a full and detailed explanation of the economic analysis that convinces PG&E that purchases of oil should resume.

2. This request is issued for the purpose of promoting the use of the most efficient fuel mix available to PG&E and for the purpose of allowing PG&E to use the most economical fuels in generating electricity as well as to promote other legitimate goals of utility regulation.

3. This request will be reviewed at the regularly scheduled annual review ECAC for PG&E at which time the Commission will hold a hearing on the advisability of further residual fuel oil purchases by PG&E and issue an order to PG&E directing it to take appropriate action with regard to further such purchases.

4. The Executive Director of the Commission shall serve copies of this interim order upon all parties to A.82-02-09.

5. PG&E shall make available the PG&E-Chevron U.S.A. contract to any party upon request.

6. The economic data listed in Ordering Paragraph 2 of D.82-03-117 shall be served on all parties to this proceeding.

7. Rehearing of D.82-03-117 is denied.

8. The request for a protective order is denied.

9. The request for modification of D.82-03-117 is denied.

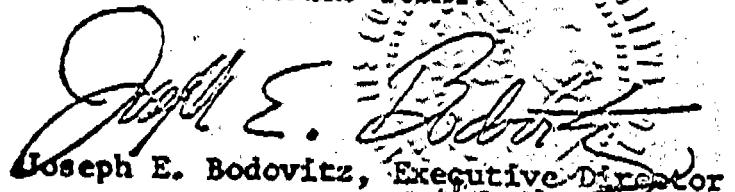
10. The partial stay of D.82-03-117, granted by D.82-04-027, is terminated. ✓

This order is effective today.

Dated April 8, 1982, at San Francisco, California.

JOHN E. BRYSON  
President  
RICHARD D. GRAVELLE  
LEONARD M. GRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. GREW  
Commissioners

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

  
Joseph E. Bodovitz, Executive Director