

Decision No. 89315 SEP 6 1978**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for authority, among other things, to increase its rates and charges for electric service.

(Electric)

Application No. 55509
(Filed February 25, 1975;
amended October 16, 1975)

Application of Pacific Gas and Electric Company for authority, among other things, to increase its rates and charges for gas service.

(Gas)

Application No. 55510
(Filed February 25, 1975;
amended October 16, 1975)

(Appearances are listed in Appendix A.)

O P I N I O N

PROCEEDINGS

Background

On February 25, 1975, Pacific Gas and Electric Company (PG&E) filed Applications Nos. 55509 and 55510 requesting authorization to increase its electric and gas rates. At the time the applications were filed, hearings were still being held by this Commission on PG&E's Applications Nos. 54279, 54280, and 54281, by which PG&E requested electric, gas, and steam general rate increases.

At Commission direction, PG&E filed on October 16, 1975 amended Applications Nos. 55509 and 55510 with supporting exhibits to reflect the rates and charges authorized by Decision No. 84902 dated September 16, 1975 in Applications Nos. 54279, 54280, and 54281.

Following a prehearing conference on October 16, 1975, hearings on these amended applications began on December 3, 1975.

During the proceedings it became apparent that the question of rate design was dependent to some extent upon determinations that the Commission would make in other proceedings pending before it. It also became apparent that the issue concerning the effectiveness of PG&E's 1976 conservation programs could be more adequately examined at a later time. Consequently, the proceeding was divided into two phases with conservation, cost allocation, and rate design issues to be considered in Phase II. On August 24, 1976, the Commission issued Decision No. 86281, which considered all issues not reserved for Phase II and authorized PG&E to file rates found fair and reasonable by the Commission in that decision on a 1976 test year basis. Decision No. 86346, issued August 31, 1976, corrected certain electric tariff schedules. By Decision No. 86360 dated September 1, 1976, the Commission ordered that the issue of the reasonableness of the allowance for income taxes would be considered further in Phase II of the proceedings, that rates authorized in Decision No. 86281 are subject to reduction and refunds may be ordered if the allowance shall be found to be excessive.

The first prehearing conference on Phase II of these applications was held on September 27, 1976. At that time a second prehearing conference was scheduled for December 15, 1976, to enable PG&E to complete the distribution of its exhibits, provide the staff with additional information required by it, and enable the staff to make distribution of its exhibits. At the second prehearing conference Commissioner Ross, to whom the proceedings had been jointly assigned with Commissioner Holmes, described his ideas of what Phase II should encompass. He indicated that while the stress in Phase II would be on the evaluation of PG&E's 1976 conservation programs, he also wanted showings on the measurement of the effects of those programs and on various innovative rate structures, including marginal costs. The Commission staff indicated that it would not be able to distribute its electric rate structure materials until March 31, 1977. Representations made by third party appearances indicated that approximately 66 witnesses would be involved in Phase II of the case. Many of the appearances intended to make presentations on rate structure after distribution of the staff materials on the subject.

Phase II Issues

Because of the apparent time that would be required to hear all of the issues to be covered in Phase II of the proceedings, PG&E on January 5, 1977, filed a petition with the Commission requesting that it adopt in its final decision the rate structure

adopted in Decision No. 86281 (the decision on Phase I of these proceedings) and limit Phase II issues to conservation and income taxes. In this petition PG&E stated that if the petition were granted, PG&E would file on or about April 30, 1977, electric and gas general rate applications in which it would make full rate structure showings in accordance with the desires expressed by Commissioner Ross. On March 1, 1977, the Commission issued Decision No. 87018 which ordered that the Phase II issues be limited to the reasonableness of the allotments for income taxes and the evaluation of PG&E's conservation efforts, including voltage reduction. The order indicated, however, that it did not preclude the assigned Commissioner and presiding examiner from taking evidence on other issues, which in their opinions, should be considered by the Commission in this proceeding. In response to the city of Palo Alto's (Palo Alto) opposition to PG&E's petition, the Commission subsequently decided that it would include as a Phase II issue the question of whether PG&E's Schedule G-60, under which PG&E sells gas to Palo Alto, is reasonable or whether the rate should be reduced as urged by Palo Alto.

During the proceedings, it was decided that the issue of whether the Commission should order PG&E to terminate its employee discount rates should be included in Phase II. The issues finally included in Phase II of these proceedings are (1) the evaluation of PG&E's 1976 conservation efforts, including its voltage reduction program, (2) the reasonableness of the allowance for income taxes for ratemaking, (3) the reasonableness of PG&E's Gas Rate Schedule G-60

to Palo Alto, and (4) the reasonableness of PG&E's Electric Rate Schedule DE and Gas Rate Schedule G-10, which provide a 25 percent discount to PG&E employees for electric and gas service, respectively.

Phase II Hearings

Phase II hearings commenced on November 16, 1976 with consideration of a motion by Toward Utility Rate Normalization (TURN) to obtain information by discovery and concluded on June 14, 1977 after 32 days of hearing in San Francisco. The main presentations of testimony were made by PG&E, TURN, the Environmental Defense Fund (EDF), and the Commission staff (staff). Others contributed to the record either by short presentations or by cross-examination.

The entire record in these proceedings encompasses three prehearing conferences, 74 volumes and 8002 pages of transcript, and 198 exhibits. Of this total record, Phase II contributed 32 volumes and 4,103 pages of transcript, and 123 exhibits.

The Phase II issues of this proceeding were submitted after the receipt of concurrent opening and closing briefs on June 13 and July 1, 1977.

Briefs were received from TURN, EDF, State Energy Resources Conservation and Development Commission (ERCDC), Local 1245, International Brotherhood of Electrical Workers (IBEW), American G. I. Forum and 39 others (Forum), city of Oakland, (Oakland), Palo Alto, California Farm Bureau Federation (Farm Bureau), the staff, and PG&E.

The presiding officer assigned to these proceedings has at various times been Commissioner Robert Batinovich, Commissioner D. W. Holmes, Commissioner Leonard Ross, and Commissioner Richard Gravelle. Throughout the proceedings the hearing officer has been Carol T. Coffey.

On June 13, 1977, TURN petitioned the Commission that a proposed report in this proceeding be issued by the presiding officer. The petition was supported by the city and county of San Francisco, IBEW, and the EDF. The EDF also requested the proposed report be issued in advance of oral argument which it requested in its brief.

The proposed report of the hearing officer was issued on November 17, 1977. After the receipt of exceptions on December 7, 1977 replies to exceptions fifteen days thereafter and oral argument on January 13, 1978, these matters were submitted for decision.

EVALUATION OF PG&E's 1976 CONSERVATION EFFORTS

Introduction

Decision No. 84902 dated September 16, 1975 on PG&E's general rate Applications Nos. 54279, 54280, and 54281 contained the following policy statement on conservation and alternate energy sources:

"CONSERVATION AND ALTERNATE ENERGY SOURCES

"We regard conservation the most important task facing utilities today. Continued growth of energy consumption at the rates we have known in the past would mean even higher rates for customers, multi-billion dollar capital requirements for utilities, and unchecked proliferation of power plants. Energy growth of these proportions is simply not sustainable. Nor is it necessary in order to achieve overall economic growth and full employment. Reducing energy growth in an orderly, intelligent manner is the only long-term solution to the energy crisis.

"At present, the financial incentives for utilities are for increased sales, not for conservation. Whatever conservation efforts utilities undertake are the result of good citizenship, rather than profit motivation. We applaud these efforts, but we think the task will be better accomplished if financial and civic motivations were not at cross-purposes.

"To this end, we intend to make the vigor, imagination and effectiveness of a utility's conservation efforts a key question in future rate proceedings and decisions on supply authorization. Where available, we plan to develop quantitative measures of these efforts (for example, the number of homes insulated as a result of a company's programs); where quantification is impossible, we plan to make an informed subjective evaluation of the utility's conservation efforts. The effort we expect is not limited to exhortation,

advertising, and traditional means for promoting conservation. We expect utilities to explore all possible cost-effective means of conservation, including intensive advisory programs directed at large consumers, conservation-oriented research and development, subsidy programs for capital-intensive conservation measures, providing customers with detailed, intelligible information on appliance energy use by brand name ('shoppers guides'), appliance service, repair, or retrofit by utility representatives.

"Similarly, we expect utilities to work aggressively for the development of alternate energy sources, including solar and geothermal energy, and we will consider these efforts in rate and supply decisions. We solicit suggestions from the utilities, conservation and consumer groups, and other interested parties as to appropriate financial incentives to encourage new sources of energy.

"To further these efforts, we are establishing a conservation group within the Commission. The first task of the conservation group will be to work with the State Energy Resources Development and Conservation Commission to develop an integrated program for encouraging and evaluating the efforts of utilities."

In discussing the reasonableness of the rate of return adopted to test the reasonableness of the rates authorized at the end of Phase I of these proceedings, the Commission said in Decision No. 86281:

"After considering all of the evidence, we have concluded that a reasonable rate of return for PG&E is 9.20 percent, which provides an allowance of 12.83 percent for common equity; interest coverage after income taxes is 2.61 times; and combined coverage for interest and preferred stock dividends is 2.06 times.

"This authorized rate of return reflects that on a comparable risk basis PG&E is entitled to a higher rate of return than a company which does not flow-through its tax savings. We have set

this rate of return at the highest point of the staff recommendation on an interim basis only. In the future, it will be our practice to require an affirmative showing of vigorous and successful conservation efforts for any increase in return on equity. In this case, because it is the first in which the Commission has considered the relationship between conservation efforts and rate of return, we have postponed that consideration until the second phase. In view of our choice of the highest range of the staff recommendation, we explicitly leave open the possibility of a reduction in the rate of return depending on the evidence forthcoming in Phase II."

PG&E's 1976 Conservation Program

PG&E's conservation efforts in 1976 were divided between programs designed to motivate customers to conserve, programs designed to achieve conservation on its own system if the cost of energy conserved is less than the cost of supplying the additional energy required, and development of co-generation and waste heat utilization.

PG&E maintains that its total conservation effort in 1976 was reasonable and well-balanced for a year that was an early year of major conservation emphasis. PG&E does not claim that its efforts were perfect, particularly when viewed in retrospect. PG&E argues that neither PG&E, this Commission, the ERCDC, nor any other group had all of the answers to basic questions concerning

conservation in 1976; that knowledge was and is still being gained as to what constitutes cost-effective conservation efforts; and that questions are still being asked as to the meaning of "cost-effectiveness" and as to how the conservation which resulted from PG&E's efforts can be separated from the other factors that affect sales of energy and be reasonably measured.

PG&E recognizes that some might argue that PG&E should have started implementing full scale programs and spent more money in the name of conservation in 1976. To this PG&E answers that such a course might have been popular and even acceptable with the increased emphasis on conservation. In the final analysis, however, such a course would not have been in the best interests of the ratepayer. It would not have been in compliance with the directives from the then president of the Commission nor would it have been consonant with the realities of what was known about cost-effective conservation in 1976. PG&E maintains that its presentation shows that PG&E's total conservation efforts were reasonable, that in many areas PG&E was ahead of all or most other utilities and governmental agencies in conservation, and that this is confirmed by an objective assessment of most of the testimony of the other witnesses in this proceeding.

This record is so complex that we will not set forth here all of the views and arguments so well set forth in the briefs of PG&E, TURN, EDF, ERCDC, the city of Oakland, and our staff; the concerned appearances. Each brief contains recommended findings of fact and conclusions which are the distilled essence of their arguments, views, and interpretation of the record.

The proposed report sets forth in detail the proposed findings and conclusions that have been submitted by the parties; they need not be repeated here. The proposed report also embodies a comprehensive discussion of conservation voltage regulation, its history, and implementation by PG&E.

We shall require continued action on the part of PG&E to ensure that the maximum potential of Conservation Voltage Reduction (CVR) is implemented consistent with economic feasibility and cost-effectiveness.

Discussion of PG&E's Conservation Efforts

For years utility managers have been motivated to increase sales and revenues. Prime examples of such long-term objectives are the efforts to eliminate customer-owned generation, to centralize and control the market by utility ownership, and the operation of all generating and transmission facilities. Now the Commission has, in effect, forced a conflict of interest on utility management. There should be no surprise that all parties commented adversely on PG&E's conservation efforts, as we could also.

At expense to customers we have directed PG&E to expand its conservation efforts. The Commission was not staffed at the onset of the energy crisis to effectively direct such efforts so we hoped that the ability, ingenuity, and resources of utility personnel could be marshalled effectively to the task. To motivate utility management we made our proposal to reflect the effectiveness of conservation efforts in the allowed rate of return. We now consider modifying these stopgap measures.

Basic to any evaluation of the effectiveness of conservation programs is some methodology of measuring the amounts of energy conserved both by individual and systemwide programs. Despite the attention of very competent professional personnel to this problem, this record does not contain much more than the promise that total conservation might, with further study and collection of basic data, be measured systemwide by the application of multiple correlation techniques. For individual public awareness programs, marketing analysis and hardware counts for the individual programs involving hardware or system modifications appear the most promising.

Decision No. 86281 on these applications authorized rates estimated to produce \$2,529,532,000 of operating revenues. The maximum proposed rate of return reduction, \$15,100,000, is less than 0.6 percent of the foregoing estimated operating revenues. Since at present it is difficult to design rates to produce operating revenues within an accuracy of 1.0 percent, the effect of this proposed rate of return reduction may be lost in the inherent inaccuracies of the estimating process.

We do not, however, feel that this should be the only means by which we should encourage conservation efforts. At the onset of the energy crisis, the Commission was not staffed to effectively direct specific utility conservation programs, thus primary reliance was placed upon the resources of utility personnel and management. Now that we have reorganized and manned our staff to effectively address conservation issues, we will undertake a much more active role in establishing and directing, as well as monitoring, specific utility conservation programs. Such Commission leadership exercised in conjunction with appropriate rate of return adjustments should prove more effective in achieving energy conservation than the rate of return sanction ^{alone} ~~along~~. *7/6/7*

We are of the opinion that relying on national industry organizations for conservation hardware testing and development may not be the most fruitful course. This Commission has little control over such activities, but we can limit allowances for such expenditures. We have been impressed with PG&E's engineering and testing capabilities. We expect PG&E to rely primarily on its own resources for the prompt testing and developing of conservation concepts, equipment, and programs and will fund such that are deserving.

In system energy conservation, PG&E's efforts could stand improvement. As was discussed at length in the proposed report PG&E was reluctant to adopt and did place obstacles in the way of CVR. Despite the favorable recommendation of its engineers, PG&E's management moved slowly to implement CVR. ✓

Co-generation is another example of a source of great potential energy savings in which management efforts should intensify. We recognize the difficulties of identifying and reconciling the diverse problems and interests. However, progress should improve. We shall expect our staff to take a much more active role in coordinating the development of co-generation projects.

In the area of load management, EDF presented a number of creative witnesses who presented many long-range conservation recommendations; by and large during the hearing these were recognized to be outside of the basic issue of what adjustment should be made to PG&E's rate of return for its test year conservation efforts. Many of these recommendations cannot be implemented as a result of this proceeding because the excellent theoretical concepts were not supported by data applicable to PG&E's system. These recommendations will, however, be most

useful to our staff and this Commission as we evaluate proposed future generating additions to PG&E's system.

We conclude that voluntary conservation produced encouraging results, but there remains much to be done in this area. In the future it appears that the utility may need to receive specific regulatory direction if it is to be most effective in conserving energy.

PG&E's conservation efforts during 1976 were adequate. This is not to say that we are totally satisfied. Encouraging conservation and producing results is a relatively new undertaking. Daily, we are sure, PG&E, as does our staff, becomes aware of new approaches and conservation concepts. We fully expect PG&E to stay abreast of state-of-the-art conservation concepts, and to apply those which are reasonable and cost-effective. A rate of return adjustment because of inadequate conservation efforts is not, in our opinion, reasonable for the test year 1976. But we will continue to closely scrutinize PG&E's conservation efforts, with an eye toward a rate of return adjustment if the utility is not discharging its obligation to effect energy conservation.

The suggestions and proposals of the numerous parties to these proceedings on what PG&E should do to effect energy conservation are invaluable. Many of these suggestions should prove helpful to PG&E and our staff. We appreciate the extensive participation by all parties in the conservation phase of these proceedings. TURN, for example, presented extremely competent testimony which we trust is as educational and stimulating to PG&E as it is to us. We commend the initiative TURN took to contribute significantly to the continuing evolvement of effective conservation programs and policies.

Findings

1. PG&E should be required to continue investigating, testing, and implementing CVR.
2. PG&E should be required to revise its tariffs to include the voltage ranges customers will be served under CVR.
3. Decision No. 84902, dated September 16, 1977, in Applications Nos. 54279, 54280, and 54281, directed PG&E to undertake vigorous conservation efforts. An issue in this proceeding is the adequacy of PG&E's compliance with that directive for 1976.

4. PG&E's effort to comply with our directive to bring about energy conservation during 1976 was reasonable. PG&E should, however, be directed to vigorously continue and improve its conservation efforts.

Conclusion

PG&E's 1976 conservation efforts are adequate and PG&E's last authorized rate of return should not be adjusted downward.

Palo Alto Resale Gas Rate

Determining a reasonable rate for resale customers is always difficult. Palo Alto is a unique resale customer because it is surrounded by PG&E's service territory. The significance of that unique situation will be discussed later. Preliminarily, however, we will elaborate on difficulties in establishing resale customer rates.

We could establish resale rates by attempting to fully allocate PG&E's costs of service as they pertain to resale customers. However, it is extremely difficult to quantify a utility's incremental expense components for distributing gas that may or may not apply to particular resale customers. For example, utility expense for account servicing, uncollectibles, maintenance, and customer service may not be fully applicable to certain resales, and such expenses theoretically should not be passed on to them.

Another approach, one proposed by PG&E and staff in this proceeding, is to analyze projected results of operations for resale customers at present and various proposed rate levels. While that has some logical appeal, the problem is that a utility's general rate proceeding could become bogged down into a multitude of mini-rate cases involving the various non-utility resale customers who do not maintain books and accounts as prescribed by the Uniform System of Accounts requiring allocating, and recasting their operating experience (historical and projected) on a ratemaking basis is burdensome.

Traditionally, we have established resale rates based on our judgment of reasonableness, considering a multitude of factors. They have not been established based on a particular methodology.

The Commission recognizes that recent innovations in retail gas rate design have had significant implications for wholesale rates as well. The traditional approach of simply increasing wholesale (resale) rates by the system average increase may be no longer adequate in every instance. The Palo Alto situation presents exceptional circumstances that require a deviation from the general practice.

Surrounded entirely by PG&E, Palo Alto for years has adopted PG&E's corresponding tariffs so that Palo Alto retail customers have been charged the same rates as PG&E retail customers in surrounding areas. We find that this practice is reasonable and should be allowed to continue. Although we have no control over what Palo Alto charges, we should not adopt policies of pricing the gas Palo Alto resells such that Palo Alto could not maintain rates comparable to PG&E's. ✓

The problem that has developed is that Palo Alto's gross operating margin^{1/} has been seriously eroded by the traditional approach to wholesale rates. The erosion has occurred because Palo Alto's customer mix is predominately residential, compared to PG&E's system average. As a result, the revenues derived from rate increases that have been applied to nonlifeline residential sales have been inadequate in Palo Alto's system to cover increases in the wholesale rate calculated on a system average basis.

We can find no satisfactory alternative in this case to adjusting the wholesale rate to allow a greater differential. Continuing the traditional method of increasing Palo Alto's rates based on the system average increase would foreseeably either put Palo Alto entirely out of the gas business or require that

^{1/} This should be distinguished from the margin as defined in D.88835 and is hereinafter referred to as a differential.

Palo Alto depart from its policy of adopting PG&E's tariffs. For, as a practical matter, if Palo Alto's rates exceeded PG&E's rates for very long a move to sell Palo Alto's gas distribution system would logically result.

While the result that we reach here may be required by an interpretation of the "effects" on competition pursuant to Northern Cal. Power Agency v PUC (1971) 5 C 3d 370, we conclude that the simple public policy considerations that support this Commission's approach to gas rate design require such a result without resort to rigorous antitrust analysis.

We find that the reasoning in our recent Supply Adjustment Mechanism (SAM) decision (D.88835) also applies to the Palo Alto situation. The extraordinary measures taken to preserve the gas utilities' operating margins in the face of uncertain supplies, unsettled prices for alternative fuels and unrelenting conservation efforts are analogously appropriate here.

The record in this proceeding includes an exhaustive inquiry into Palo Alto's entire utility operations. We conclude that it is not reasonable to adjust the wholesale rate to reflect earnings or losses incurred in other enterprises. We accordingly do not place weight on the results of operations of Palo Alto's gas department. If Palo Alto can enjoy favorable earnings on the rates adopted hereby, we commend their efficiency. We are not interested in burdening general rate cases with miniature cases to consider the detailed results of operations for each resale customer.

We conclude that the actual differential should be set at a somewhat lower level than allowed PG&E considering Palo Alto's primarily high priority noninterruptible gas customers and differences in the costs of PG&E. Consequently, the adopted rate is intended to allow a 20 percent differential between gross revenues and purchased gas expense, compared to the 25.7 percent differential remitting for PG&E.

The 20 percent differential between gross revenues and purchased gas expense is equivalent to \$0.0458/therm of Palo Alto's purchases. We intend that the level of differential is a proper subject for reexamination in general rate cases. The wholesale rate should be modified in purchased gas adjustment cases by application of the \$0.0458/therm differential.

Findings

1. Palo Alto is a resale customer served gas by PG&E under Schedule G-60.
2. Palo Alto is a municipal gas company which is totally surrounded by PG&E's service territory.
3. Historically, Palo Alto has maintained general service rates consistent with PG&E's general service rates.
4. In 1969 (pre-lifeline), Palo Alto realized a 27 percent differential between gross gas sale revenues and purchased gas expense. In 1978, at present G-60 rates, Palo Alto estimated an 8 percent differential.
5. The present G-60 rate is unreasonable for the future.
6. Palo Alto should not be allowed the 25.7 percent differential PG&E realizes because Palo Alto customers are primarily high priority and noninterruptible and Palo Alto does not have a comparable system and experience the same costs as PG&E.
7. The G-60 rate established prospectively should allow Palo Alto a 20 percent differential between its gross gas sale revenues and purchased gas expense. This revised G-60 rate will be revised in the decision on A.57285, also issued today.

Conclusion

PG&E's G-60 schedule resale rates for Palo Alto should be established until further order of the Commission to allow Palo Alto a differential of \$0.0458/therm sales above purchased gas expense.

EMPLOYEE DISCOUNTS

Introduction

In Decision No. 84902 dated September 16, 1975 in PG&E's last general rate cases (Applications Nos. 54279, 54280, and 54281) the Commission indicated potential elimination of PG&E's employee discount rates with the following comments:

"For many years PG&E's electric and gas tariffs have contained special rate schedules that allow employees to receive a twenty-five percent discount for domestic electric and gas service. These discounts were, in a time of abundant energy and stable utility rates, countenanced as an innocuous tax free fringe benefit and rationalized as a substitute for monetary compensation that would be subject to personal income taxes. Under present conditions, however, these discounts tend to discourage conservation and, as they apply to the employee's total gas and electric bill, act to increase compensation each time rates are increased, whether by the operation of the electric fuel cost adjustment and gas offset procedures, or by general rate increases.

"We recognize that the employees consider the discounts as part of their total pay package. Under present conditions, however, employee discounts for gas and electric service are no longer appropriate. It is our intention, at the first opportunity, consistent with allowing sufficient time for consideration of the elimination of discounts in collective bargaining negotiations, to cancel Schedules DE and G-10."

The initial showings in this proceeding relating to the employee discount issue were made at the evening hearings held in these proceedings in Red Bluff, Stockton, Fresno, and San Francisco by hundreds of PG&E employees, some of whom are representing additional hundreds of employees, both active and retired, protesting the

elimination of the employee discount rate. In addition, presentations were made by representatives for the Central Labor Council, AFofL/CIO, in many counties in PG&E's service area protesting the potential elimination of the employee discount and objecting to interference with the employer-employee relationship as it relates to collective bargaining concerning wages and fringe benefits. Representatives of IBEW, the union which represents most PG&E employees, appeared protesting the possible elimination of the employee discount. Exhibits 1 and 2 in this proceeding were prepared by such PG&E employees. Additionally, PG&E's manager of the Rate Department and the assistant business manager, IBEW, both presented prepared testimony with attachments on the employee discount issue (Exhibits 50 and 180, respectively). Toward the end of Phase II hearings, the Forum subpoenaed information from three PG&E executives pertaining to the employee discount and PG&E employees who earn over \$40,000 per year (Exhibits 182-185).

Briefs on this issue were filed by PG&E, IBEW, Forum, and the staff.

Position of Parties

PG&E maintains there is no justification for discontinuing the employee discount rate for any PG&E employee. It argues that the evidence does not show that because of the employee discount PG&E employees are deterred from conserving energy and that the opposite is shown. Finally, the elimination of the discount rates will require negotiation of a replacement benefit which will be more costly to the ratepayer.

IBEW summarizes its argument as follows:

"...we believe that eliminating the employee discounts would benefit no one and harm many. Data shows that discounts have no bearing on

conservation of energy. Employee discounts as a fringe benefit are common with many other benefits in that their value increases when rates or premiums are increased. Replacing the employee discounts would cost an additional 2.5 million which the ratepayer would ultimately have to pay and finally, the retiree, who can ill afford it, will have his income reduced if the discounts are eliminated."

Forum asks the following:

1. That the employee rate discount maintained by PG&E be immediately discontinued, except for retired nonmanagement employees;
2. That PG&E and other public utilities institute a bonus system for its employees which rewards them for conservationist practices;
3. That independent ombudspersons be appointed to investigate potential abuses by each utility;
4. That reparation be made to all California consumers for the increase in their rates due to the employee rate discount;
5. That the money recovered through payment of reparation be placed in a fund to be used to finance this and similar suits against utilities for wasteful energy practices; and,
6. That Public Members be put on the PG&E Board of Directors.

The staff suggests that employee discounts be phased out over a period of 2 to 4 years and strongly recommends that the discount be retained for present retirees and those who retire within the beforementioned 2- to 4-year period. If the Commission should decide to retain the employee discount, the staff indicates that consideration could be given to discontinuing the discount for nonunion personnel.

We will not summarize all of the statements presented by the many PG&E employees, both active and retired, during the public witness hearings at the outset of these proceedings. Generally, the employees, beyond protesting the potential elimination of the employee discount rates, stressed the fact that as PG&E employees they are more conservation-conscious when it comes to electric and gas use than are nonutility persons and expressed their beliefs that the employee discount does not in any way deter them from efficient use of electricity and gas.

Discussion

The particular problem confronting retired employees was well summed up by William E. Johns, representing 350 retired PG&E employees in the East Bay Division, who pointed out that retired employees are not covered by collective bargaining agreements between PG&E and the union. During the employment of retired employees their monetary compensation was lower than it would have been had they not received, as partial compensation, the employee discount. The pension of retired employees is fixed on the basis of wages during the last five years of employment; consequently, pensions are lower than they would have been had there been no employee discount. Elimination of such discounts after retirement takes away from retired employees one of the benefits that they have earned and which has vested.

Inasmuch as the policy enunciated in Decision No. 84902 was made without notice and without a supporting record, the hearing officer required PG&E to place in the record (Exhibit 50) the following information:

1. A comparison of PG&E employee and nonemployee gas and electric usage.

2. A history of PG&E employee discount practices and a comparison with those of other utilities.
3. Cost to PG&E's ratepayers to compensate employees for the loss of their discount.
4. Conditions and application of the PG&E employee discount.
5. Discount practices in the transportation industry.
6. A comparison of the wages, salaries, and benefits received by PG&E employees with those in other utilities in California, both privately and publicly owned.

Attachment A to Exhibit 50 compares in 36 cities the electric and gas usage of PG&E employees with nonemployee customers. In 25 cities the employee electric usage exceeded nonemployee usage, and in 20 cities the employee gas usage exceeded nonemployee usage. The system average usage of gas by employees is one percent less than nonemployee usage. System average usage of electricity by employees is 5 percent greater than that of nonemployees. The usage of PG&E employees is compared to that of nonemployees without consideration of such variables as income, economic circumstances, housing size, family size, or style of living. It can safely be assumed that as a group of wage and salary earners, PG&E employees have a higher average income, better average economic circumstances, and a better average style of living than nonemployees. From this it follows that consumption per employee can be expected to exceed that of nonemployees. We conclude from this record that the energy consumption of PG&E employees on the average approximates that of nonemployees. We find no evidence in this record that discounts discourage conservation.

We do note that relative consumption of energy in some cities substantially exceeds the system average. This might be explained by the standards for availability of discounts being variously applied.

Attachment C to Exhibit 50 indicates that, if employees were willing to trade their discounts for the same real income, PG&E would be required to generate \$1.79 of revenue through increased rates to compensate employees for each dollar of discount. For 1976 the value of discounts is estimated to be over \$3 million. Thus, PG&E would need to collect from its customers an additional \$2.5 million per year in order to generate sufficient revenue to compensate employees for the loss of the discount. However, this additional customer cost is unavoidable since a recent U.S. Supreme Court decision held that meals furnished to employees are taxable. The Internal Revenue Service has apparently begun a campaign to eliminate the tax benefits of virtually all employee fringe benefits.

Attachment F to Exhibit 50 compares PG&E hourly wage rates for benchmark jobs with those of the Los Angeles Department of Water and Power and the Sacramento Municipal Utility District which do not give employee discounts. PG&E hourly rates are lower in six of the seven comparisons presented.

Considering this record we shall not at this time eliminate employee discounts, but we shall require PG&E to eliminate the discount to new employees and to phase out the discount to current employees over a five-year period. Current employees when they retire within the next five years and presently retired employees shall continue to receive the discount.

This record indicates that the employee discount has been permitted at more than one home for an individual. The relative electric usage of employees and nonemployees ranges from 89 percent in one city to 134 percent in another area, and gas usages range from 90 percent to 118 percent. Schedules DE and G-10 (Attachment D to Exhibit 50) provide for discount for domestic purposes to employees "provided they reside in their own home" (singular) or "living with and constituting the support of a mother, father, or other relation". It appears that the

conditions of Schedules DE and G-10 may not be correctly or uniformly applied. We shall require PG&E to review the actual conditions under which employee discounts are being granted and to take appropriate action to ensure that the conditions of Schedules DE and G-10 are met.

Forum made a detailed offer of proof at page 6539 of the transcript that it would document through the testimony of PG&E executive personnel a number of energy-wasting actions by PG&E employees. Forum was afforded opportunity to produce the evidence by examining at the hearing those PG&E executives who had received the largest amounts of discount. Forum failed to prove any of the items it had offered to prove. This record indicates that the three individuals examined regularly followed recommended conservation practices. "Large usage" and "wasteful use" are not synonymous terms and large usage is not proof of wasteful use. Forum's requests are rejected.

Findings

We find that:

1. Elimination of the PG&E employee discount rates may require PG&E to provide employees with offsetting compensation.
2. Although there was no demonstrated correlation between PG&E employee discount rates and employee effort to conserve energy, it is in the public interest to phase out the potential incentive to maintain traditional usage patterns caused by employee discounts.
3. The employee discount rates are a form of partial compensation to PG&E employees.
4. PG&E does not appear to apply uniformly the standards for availability of discounts.
5. It is reasonable to discontinue employee discount rates to new employees and to progressively reduce the discount rate to current employees to zero at the end of a five-year period.
6. It is reasonable for PG&E to provide retired employee discount rates only to current employees when they retire during the next five years and currently retired employees.

Conclusions

We conclude that:

1. Discounts for new PG&E employees should terminate at this time.
2. Discounts for current PG&E employees should be 25 percent for 1978, 20 percent for 1979, 15 percent for 1980, 10 percent for 1981, 5 percent for 1982, and zero percent thereafter. Discounts for current employees when they retire within the next five years and presently retired employees should be 25 percent.
3. PG&E should review the actual conditions under which employee discounts are being granted.
4. PG&E should take appropriate action, including obtaining employee statements under penalty of perjury and dismissal, to ensure compliance with the conditions of Schedules DE and G-10.

Test Year Income Tax Expense

Arriving at an estimate of federal and state income tax expense for a future test year is one of the most complex and troublesome issues in ratemaking. A test year is an estimated results of operations, comprised of various ratemaking revenue, expense (including taxes), and rate base estimates, which is adopted by the Commission as a basis for determining prospective revenue requirement and the reasonableness of proposed rates. We anticipate that the estimated test year components we adopt will reasonably approximate actual operating results. But given the multitude of variables in the real world of utility operation, we recognize, as does anyone who observes the ratemaking process, that projected test year results can never exactly correlate with actual experience. The income tax component of the results of operation is particularly sensitive to many variables. For example, unusual expenses unanticipated when the operating expense (non-tax) component is established will mean less tax liability, because more expense deductions will be available to the utility. Likewise,

higher than estimated revenues will mean a higher tax bill. And the situation gets more complex for energy utilities given the deferral of expense recovery for energy costs (Purchased Gas Adjustment and Energy Cost Adjustment balancing account expense recovery procedures). Interested parties have expressed the view that we should strictly allow for "taxes as paid" when setting rates. Arriving at an adopted test year tax expense estimate that will reflect taxes "as paid", or exactly correlate with actual expense during the prospective test year, is as difficult as estimating exactly the revenues to be realized by the utility.

The hearing officer's proposed report points out another complexity. In regulatory ratemaking the adopted income tax allowance depends on what types of expense deductions are or are not considered in arriving at the estimated income tax liability. Appendix B is a table (taken from the hearing officer's proposed report) which illustrates the impact that such deductions can have on tax expense.

The proposed report recommended that PG&E be ordered to reduce rates \$56.5 million annually, and make refunds, on the basis that actual tax expense differed from the expense allowed in the Phase I decision. We are of the opinion that it would be unreasonable to adopt this recommendation, and we will discuss why. We appreciate the efforts of the interested parties who developed the record and made recommendations, which brings to our attention issues that should be fully explored and addressed. Ratemaking, to operate in the public interest, should be based on estimates that as accurately as possible reflect a reasonable allowance for income tax expense.

If we were to adopt the recommendations put forth in the proposed report, there could be a substantial effect on post-tax interest coverage and the utility's earnings. We adopted a reasonable rate of return and return on equity for PG&E in the Phase I decision which recognized a certain interest coverage.

Further, the rates authorized (based on our authorized rate of return) were determined by our traditional methodology of calculating and estimating income tax expense. To unilaterally change the method used to estimate income tax expense without considering the effect on post-tax interest coverage and return on equity (in a proceeding where authorized rate of return could, if warranted, be adjusted) would not be fair or in the best interests of maintaining financially sound utilities. Therefore, Phase II of these proceedings is simply not the forum where we can make drastic changes in calculating income tax expense. In fact, a general rate proceeding involving only one utility is not the best forum in which to obtain the most fully developed record on such proposed sweeping policy changes. For that reason, we are today issuing Order Instituting Investigation No. 24, joining all major utilities as respondents, to consider recommendations similar to those presented in the proposed report, and other recommendations on how we should estimate income tax expense for ratemaking. We expect full participation by our staff divisions, the respondent utilities, consumer interest groups, and the financial community on these important policy issues. Whatever we adopt as policy upon completion of the investigation will be implemented in appropriate proceedings affecting each utility's rates. This procedure is, we again stress, adopted so that we do not play blindman's buff, with possible adverse ramifications, on a less than adequate evidentiary record.

Findings

We find that:

1. The income tax expense adopted by the Commission for ratemaking purposes in Decision No. 86281, as corrected by Decision No. 86348, was estimated and computed consistent with traditional Commission practices.

2. TURN and the proposed report recommend that the Commission substantially modify the method used to determine test year income tax expense, resulting in a rate reduction and refunds.

3. Adopting the recommendations set forth in the proposed report without considering the effect on earnings, return on equity, and past tax interest coverage (and in a proceeding where compensating adjustments to rate of return could be made) would foreseeably have potential for a detrimental effect on PG&E's financial health, and would not be in the public interest.

4. A more complete evidentiary record, developed through participation by major utilities, staff divisions, consumer groups, and the financial community, is necessary before the Commission should decide whether to change long-standing methodology and policy with respect to determining reasonable ratemaking income tax expense; Order Instituting Investigation No. 24 will provide such a forum. ✓

5. As the order in these proceedings should be made effective on the same date as the orders in the decisions issued in Applications Nos. 57284, 57285, 57978, and 58033 of PG&E, the order herein should be made effective on the date hereof.

Conclusion

We conclude that rates established for PG&E in Decision No. 86281 and corrected by Decision No. 86348 are reasonable.

O R D E R

IT IS ORDERED that:

1. Within thirty days after the effective date of this order, Pacific Gas and Electric Company (PG&E) shall revise its tariff titled "Rule No. 2, Description of Service" to include the following:

() Customer Service Voltages:

Under all normal load conditions, distribution circuits will be operated so as to maintain secondary service voltage levels to customers within the voltage ranges specified below:

<u>Nominal Two-Wire And Multi-Wire Service Voltage</u>	<u>Minimum Voltage To All Services</u>	<u>Maximum Service Voltage On Residential And Commercial Distribution Circuits</u>	<u>Maximum Service Voltage On Agricultural And Industrial Distribution Circuits</u>
120	114	120	126
208	197	208	218
240	228	240	252
277	263	277	291
480	456	480	504

() Exceptions to Voltage Limits. Voltage may be outside the limits specified when the variations:

- (a) Arise from the temporary action of the elements.
- (b) Are infrequent momentary fluctuations of a short duration.
- (c) Arise from service interruptions.
- (d) Arise from temporary separation of parts of the system from the main system.
- (e) Are from causes beyond the control of the utility.

() Customer Utilization Voltages:

- (1) All customer-owned utilization equipment must be designed and rated in accordance with the following utilization voltages specified by the American National Standard C84.1 if customer equipment is to give fully satisfactory performance:

<u>Nominal Utilization Voltage</u>	<u>Minimum Utilization Voltage</u>	<u>Maximum Utilization Voltage</u>
120	110	125
208	191	216
240	220	250
277	254	289
480	440	500

- (2) The differences between service and utilization voltages are allowances for voltage drop in customer wiring. The maximum allowance is 4 volts (120 volt base) for secondary service.
- (3) Minimum utilization voltages from American National Standard C84.1 are shown for customer information only as the Company has no control over voltage drop in customer's wiring.
- (4) The minimum utilization voltages shown in (1) above, apply for circuits supplying lighting loads. The minimum secondary utilization voltages specified by American National Standard C84.1 for circuits not supplying lighting loads are 90 percent of nominal voltages (108 volts on 120 volt base) for normal service.
- (5) Motors used on 208 volt systems should be rated 200 volts or (for small single phase motors) 115 volts. Motors rated 230 volts will not perform satisfactorily on these systems and should not be used. Motors rated 220 volts are no longer standard, but many of them were installed on existing 208 volt systems on the assumption that the utilization voltage would not be less than 187 volts (90 percent of 208 volts).

2. PG&E shall actively continue its investigation and testing of distribution circuits, loads, motors, and appliances to maximize the saving of energy through control of voltage regulation. Priority shall be given to the analysis of agricultural and industrial services. PG&E shall file in writing, progress reports on or before June 30 and December 31 of each year, setting forth detailed engineering data of individual investigations and tests.

3. PG&E shall systematically and periodically review the service voltages of all of its distribution circuits to ensure that all service voltages are as close to the minimum voltages specified in Ordering Paragraph 1 above, as is cost-effective and will maximize energy savings. Records shall be maintained of all distribution circuit voltage regulator control settings including bandwidth, voltage level, and line-drop compensator.

4. PG&E shall review the design and operation of all of its distribution circuits and determine for each circuit the cost effectiveness of maximizing conservation of energy by optimizing service voltages. On or before December 31, 1978, PG&E shall report in writing the results of this review including the regulator operating voltage levels for each circuit at the beginning and end of the review and the proposed circuit changes to maximize conservation of energy by optimizing service voltage for those circuits found to be cost-effective.

5. PG&E is hereby directed, in cooperation with our Energy Conservation Branch, to implement during the next twelve months a voltage surveillance program to assure that those feeder circuits which have been adjusted to the new service voltage range under the Conservation Voltage Regulation Program remain within the voltage range prescribed herein.

6. PG&E shall, within one hundred twenty days after the effective date of this order, and annually thereafter, request authorization to continue to operate any residential and commercial distribution circuits that do not conform to the minimum and maximum secondary service voltage levels prescribed herein. The request for authorization shall list each circuit for which a deviation is requested, the factors which impede compliance, the status of the design and operation review, and any proposed circuit changes. ✓

7. PG&E shall continue vigorous conservation efforts, and is put on notice that the Commission will in future rate proceedings examine and evaluate such conservation efforts. If it is determined in future proceedings that PG&E has taken inadequate measures to encourage and implement energy conservation, its authorized rate of return will be reduced.

8. Until further order of this Commission, PG&E's G-60 gas resale rate (for the city of Palo Alto) shall be established to allow Palo Alto a \$0.0458/therm differential above purchased gas expense, (assuming Palo Alto's general service rates are identical to PG&E's rates). This basis of setting the G-60 schedule shall be implemented in the decision on PG&E's Application No. 57285.

9. PG&E shall file tariffs, in compliance with General Order No. 96-A, within thirty days from the effective date of this order which limits rate discounts to all current employees to 25 percent for 1978. PG&E shall file tariffs, effective January 1, 1979, which limit the employee discount to 20 percent; it shall file tariffs effective January 1, 1980, which limit the discount to 15 percent; it shall file tariffs, effective January 1, 1981, which limit the discount to 10 percent; it shall file tariffs, effective January 1, 1982, which limit the discount to 5 percent; and after December 31, 1982, its tariffs shall reflect no discounts for current employees.

10. PG&E shall not allow any energy rate discount to new employees hired after the effective date of this order.

11. PG&E shall continue to allow retired employees and employees who retire prior to January 1, 1983, a 25 percent energy rate discount.

12. PG&E shall allow no discounts to employees who retire after December 31, 1982.

13. PG&E shall take appropriate measures, including obtaining employee statements under penalty of perjury or dismissal to ensure compliance with the conditions of Schedules DE and G-10 of its tariffs including a review and investigation of the conditions under which employee discounts are being granted.

14. The rates authorized by Decision No. 86281 (and corrected by Decision No. 86348⁶), and ordered collected, subject to refund, by Decision No. 86360, are reasonable, and shall no longer be collected subject to refund. *that*

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 6th day of SEPTEMBER, 1978.

Rolent Batmouil
President

I dissent:
William Synovs Jr

Vernon L. Sturgeon
Richard W. Shalle
Clare T. Schreide
Commissioners

I concur

I will file a
written concurrence

Vernon L. Sturgeon

APPENDIX A
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LIST OF APPEARANCES
(July 1, 1977)

Applicant: Malcolm H. Furbush, Robert Ohlbach, and Kermit R. Kubitz,
Attorneys at Law, for Pacific Gas and Electric Company.

Protestants: Robert Spertus, Attorney at Law, and Sylvia M. Siegel, for Toward Utility Rate Normalization; N. S. Waltenspiel, for Windsorland Mobile Park and Russian River Gas Company; Jeffrey M. Haney, Deputy City Attorney, for the City of Oakland; Leroy L. Vukad, for Contra Costa County; G. Sarkar, for the City of San Jose; and Robert Snaizda and Gary J. Near, Attorneys at Law, for American G.I. Forum, League of United Latin-American Citizens, Mexican-American Political Association, and San Francisco Consumer Action.

Interested Parties: John L. Matthews and Robert L. Leslie, Attorneys at Law, for Consumer Interests of the Executive Agencies of the United States; Thomas J. Graff and David B. Roe, Attorneys at Law, for Environmental Defense Fund; Norman Elliot and John W. McClure, Attorneys at Law, for Committee to Protect California Economy; Brobeck, Phleger & Harrison, by Gordon E. Davis and William H. Booth, Attorneys at Law, for California Manufacturers Association; Glen J. Sullivan and Ralph O. Hubbard, Attorney at Law, for California Farm Bureau Federation; Thomas M. O'Connor, City Attorney, and Robert R. Laughead, for the City and County of San Francisco; Morrison & Foerster, by Charles R. Farrar, Jr., Thomas R. Cochran, and James P. Bennett, Attorneys at Law, for Kerr-McGee Chemical Corporation; Alan Bruce, for the Town of San Anselmo; H. W. Carmack, for the City of Oakland; Vaughan, Paul & Lyons, by John G. Lyons, Attorney at Law, for Stuart Morshead; James F. Sorensen, for Friant Water Users Association, North San Joaquin Water Conservation District; Silver, Rosen, Fischer & Stecher, by John Paul Fischer, Attorney at Law, Edward Mrizek, Edward Aghjayan, George Thacher, and Robert T. Kyle, for the City of Palo Alto; Vernon Bown, Attorney at Law, for May 1st Workers Organization; Athearn, Chandler & Hoffman, by Donald H. Maffly, Attorney at Law, for Judson Steel Corporation; Gail Hamaker, for Santa Clara Valley Coalition; and Jerome M. Garchik, Attorney at Law, for IBEW, Local 1245, AFL-CIO.

APPENDIX A
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LIST OF APPEARANCES

A. A. Zavala, Attorney at Law, for Department of Consumers Affairs; Edward V. Sherry, for Air Products & Chemicals, Inc.; Daniel J. Reed, for Department of Defense; David N. Valkenaar, for the City of Campbell; Kenneth J. Hedstrom, for State of California Department of Water Resources; Agnew, Miller & Carlson, by William J. Bogaard, Attorney at Law, and Thomas S. Knox, for California Retailers Association; John D. Chandley and Bob Enholm, Attorneys at Law, for the State Energy Resources Development Commission; Graham & James, by Boris H. Lakusta and David J. Marchant, Attorneys at Law, for Western Mobilehome Association and California Hotel and Motel Association; Rodney L. Larson, for Southern California Edison Company; Henry R. Mac Nicholas, Attorney at Law, for Airco, Inc.; John K. Mc Nally for IBEW Local Union 1245; Sylvia M. Siegel and Robert Spertus, Attorney at Law, for Consumer's Co-op of Berkeley, San Francisco Consumer Action, Consumer Federation of California, Consumers of the City of San Anselmo, County of Marin, etc.; Vernon H. Waight, for the California Department of Transportation; Earl R. Sample, for Southern California Edison Company; Melvin E. Mezek, for Utility Research; Pettit, Evers & Martin, by Joseph Martin, Jr., Attorney at Law, for Owens, Corning Fiberglas; Kenneth M. Robinson, Attorney at Law, for Kaiser Steel Corporation, Kaiser Cement and Gypsum Corporation, and Kaiser Industries Corporation; Downey, Brand, Seymour & Rohwer, by Jeffery H. Speich and Philip A. Stohr, Attorneys at Law, for General Motors Corporation, Frazer E. Hilder, General Counsel, and Julius J. Hollis; and Tim Brackett, Albert Lewis Gielegem, and Carl H. Mandler, for themselves; Marc B. Mihaly, Attorney at Law, for Attorney General on behalf of the People of the State of California.

Commission Staff: Elinore C. Morgan, Attorney at Law, K. K. Chew, Certified Public Accountant, John D. Quinley, and George A. Amaroli, Professional Engineers.

APPENDIX B

TABLE III

Federal Income Tax Comparison
Tax Deductions Analysis
Decision No. 84902 Allowance - Actual Consolidated Tax Return
Year 1975

(Dollars in Thousands)

Regulatory Deductions

<u>Gas, Electric, Steam Util.</u>	
Oper., Maint. & Adm. Exp.	\$1,119,673
Depreciation Exp.	247,694
Interest Exp.	156,398
State Franchise Tax	24,968
Regulatory Disallowances	-
Total Reg. Deductions	\$1,548,733

Actual Deductions ReportedUtility

<u>Gas, Electric, Steam Util.</u>	
Oper., Maint. & Adm. Exp.	1,135,791
Depreciation Exp.	282,597
Interest Exp.	162,082
State Franchise Tax	13,710
Regulatory Disallowances	2,600
Subtotal - Gas, Elec., Steam	1,596,780
Fuel Offset Exp.	796,760

Water

Oper., Maint., & Adm. Exp.	2,403
Depreciation Exp.	499
Interest Exp.	223
State Franchise Tax	(169)
Subtotal - Water	2,956

Nonutility

Loss on Sale of Property	1,926
PG&E Progress	739
Loss - National Housing Partnership	30
Membership Dues	29
Nonoperating Property Taxes	507
Dividend Received Deduction	1,158
Intercompany Dividend Elimination	107
Preferred Dividend Credit	728
Interest Expense	41,071
State Franchise Tax	(2,246)
Subtotal - Nonutility	44,049

Subsidiary

Oper., Maint., & Adm. Exp.	1,696
Depreciation Exp.	381
Interest Exp.	275
Subtotal - Subsidiary	2,352

Total Deductions Reported 2,442,897

Actual Exceeds Regulatory Deduction

\$894,164

(Red Figure)

COMMISSIONER VERNON L. STURGEON, Concurring in part and
Dissenting in part.

While I concur with most of today's order, I must dissent from that portion of the order which directs PG&E to phase out its employee discount program.

I am truly at a loss to understand what motivates the majority to arrive at their conclusion with regard to this issue. They cannot be motivated by a desire to achieve greater conservation since they state in Finding No. 2 (at p. 23) that, "(w)e conclude from this record that the energy consumption of PG&E employees on the average approximates that of nonemployees. We find no evidence in this record that discounts discourage conservation." It is particularly significant that the majority rejects conservation as a basis for eliminating employee discounts. Decision No. 84902 which first raised the issue spoke exclusively in terms of conservation. With the elimination of the conservation argument, one must search for some other reason why the majority inexplicably continues to accept the conclusion of Decision No. 84902 after telling the world today that the argument supporting that conclusion is faulty.

One might postulate that some savings to the general ratepayer might accrue by virtue of the elimination of employee discounts. However, not only does the record not support such a contention but, in fact, suggests quite the opposite. Since, as the majority concedes in Finding No. 3 (mimeo p. 25), "(t)he employee discount rates are a form of partial compensation to

PG&E employees", we can expect that PG&E will be required to restore the value of its total compensation package to the level existing prior to today's decision. Should this restoration take the form of increased wages, PG&E, because of the current differing tax treatment of wages and discounts will be required to expend more dollars in increased wages than it will accrue through the increased revenue caused by the elimination of the discounts. Thus, the ratepayer will actually suffer through the phasing out of the discounts.

The majority rejects the proposition that the discount phase-out will result in an increased revenue requirement. The majority position is based on their conclusion that employee discounts will, at some undefined point in time, be treated as taxable income. This conclusion is embodied in a two-sentence discussion:

"However, this additional customer cost is unavoidable since a recent U.S. Supreme Court decision held that meals furnished to employees are taxable. The Internal Revenue Service has apparently begun a campaign to eliminate the tax benefits of virtually all employee fringe benefits."
(Mimeo p. 24) (Emphasis added)

Tax experts of considerably greater stature than the Commission majority generally reach conclusions with regard to the impact of court decisions with somewhat less certitude than that evidenced by the majority in the first sentence of its exhaustive discussion of the tax question raised by employee discounts. This absence of caution with regard to arriving at conclusions with respect to Federal Income Tax law should not surprise readers of recent Commission decisions and would not surprise me were it not for the second sentence in the discussion.

The majority proceeds to describe the "apparent" intentions of the Internal Revenue Service. Mere mention of the IRS surprises me since the majority has usually taken the position that that particular branch of the Federal Government either does not exist or, minimally, is an entity whose actions and opinions are to be largely, if not completely, ignored. Today, however, the "apparent campaign" of the IRS is cited as support for the proposition that the phasing out of employee discounts will not result in a revenue requirement increase for PG&E. I am pleased that the Service's view of Federal Tax questions has finally been accorded some weight by this Commission.


Even if one accepts the majority's conclusion that employee discounts^{1/} are, or will be, taxable, and I expressly do not, it is nonetheless clear that PG&E's revenue requirement will not be reduced by the phasing out of employee discounts. As stated earlier, the compensation package will have to be restored to its former level.

Why then does this Commission persist in interfering in employee relations? There are other agencies of government that, believe it or not, have far more expertise, not to mention more express jurisdiction, in labor relations than this Commission. Only when it could be shown that some employment policy had a substantial impact on some subject matter properly within our purview (rates, conservation, service, etc.) should we consider

^{1/} The discount given PG&E employees differs only in form from the discount being provided to all residential customers through this Commission's rate design policy.

interfering with a utility's employee relations. Clearly PG&E's employee discount policy does not even remotely rise to this level of significance. I have literally searched the majority's opinion in vain for any statement supporting the phasing out of the discounts. The majority's discussion first concludes that the provision of discounts has no impact on conservation. It then implies that, at worst, the provision of discounts has no impact on rates. Finally, and incredibly, it then concludes that the phasing out of employee discounts is "reasonable". I would describe this process as the "random...leap from evidence to conclusions"^{2/} eschewed by appellate courts were it not for the fact that it appears to be a deliberate leap toward a conclusion totally unsupported by the record. Whatever the majority's decision making process may be described as, it is one from which I will gladly dissent.

San Francisco, California
September 6, 1978


VERNON L. STURGEON
Commissioner

^{2/} Topanga Association for a Scenic Community v. County of Los Angeles (1974) 1 Cal 3d. 506 at p. 516.

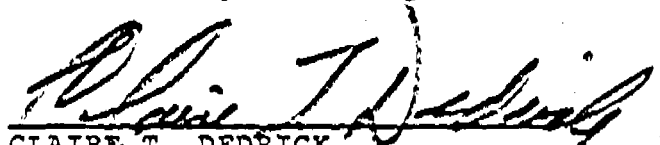
COMMISSIONER CLAIRE T. DEDRICK, concurring:

My vote today, which has the effect, inter alia, of terminating PG&E's employee discount program, should not be construed as an absolute rejection of such benefits. Indeed, virtually every business has traditionally allowed its employees discounts as a wage supplement on its product lines or its services. When such benefits constitute an equitable part of the wage package, I have no reluctance from a regulatory point of view to treat them as a normal wage component.

PG&E's employee discount program, however, suffers from inequities which justify its termination. First, since the amount discounted from an employee's bill increases with the amount of gas and electricity used by the employee, the more affluent (or wasteful) employee stands to reap more of a benefit than his co-workers. Thus, the employee discount creates inequities among PG&E's own employees. Secondly, the amount discounted, again since it is a function of the amount consumed, bears no relation to the services rendered to the utility by the employee or to the employee-user's proficiency on the job. Thus, PG&E's employee discount is inequitable to the ratepayers who bear the cost of services rendered to the utility in its provision of gas and electric services. Lastly, a discount program structured as this one is in conflict with the conservation goals set by this Commission. This results in inequity to the people of this State who themselves must conserve resources, partly because of the orders and policies promulgated by this Commission.

I reiterate that a benefit program included in wages is, if fair and otherwise reasonable, a legitimate utility expense which should be included in utility rate-setting. PG&E's employee discount program, however, is unfair and is not reasonable when contrasted with existing Commission goals and policies.

San Francisco, California
September 6, 1978


CLAIRE T. DEDRICK
Commissioner