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ORIGINAL

Decision No. _____

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 water service provided by the Tuolumne Water System.

Application No. 54199 (Filed July 23, 1973)

(Water)

(For additional appearances see Decision No. 87468.)

G. William Lundgren, for County of Tuolumne Planning Department; Mrs. Mary Kessel and Kenneth B. Kessel, for East Sonora Association; Robert F. King and Tina Deatsch, for themselves; and Sheila Nolan, Attorney at Law, and Gunter A. Redlin, for State Department of Health Services; interested parties. Sheldon Rosenthal, Attorney at Law, Eugene M. Lill, and Donald Yep, for the Commission staff.

FINAL OPINION

Antecedents

Pacific Gas and Electric Company (PG&E) in Application No. 54199, as initially filed, sought authority to increase rates by an average of 95.6 percent for water service performed by PG&E's Tuolumne Water System. Public hearings having been held, a Proposed Report was prepared and filed on July 3, 1975. Thereafter, the Commission, on June 21, 1977, issued its interim Decision No. 87468 (81 CPUC 800) partially granting PG&E's sought general increase in water rates.^{1/} Findings 5, 6, and 7 of that decision state:

^{1/} By Decision No. 87969, dated October 12, 1977, PG&E's petition for rehearing of Decision No. 87468 was denied.

- "5. The additional issues raised by Tuolumne County Water District No. 2 (TCWD #2) set forth below should be the subject of further hearings:
- "(a) The nature and extent of PG&E's service area for its ditch system and town systems.
 - "(b) The nature and extent of PG&E's duties in supplying untreated ditch water to various customers.
 - "(c) Whether PG&E has waived the right to enforce its contractual storage requirement with its resale water customers.
 - "(d) The adequacy of PG&E's plan to assure an adequate water supply in the future for the Tuolumne Water System.
- "6. PG&E should provide additional evidence on the changes that would be required should their service area be defined as set forth in the Examiner's Proposed Report. The evidence should state whether untreated ditch water will continue to be made available and what costs and facilities will be required to provide water service.
- "7. PG&E may present additional evidence on the fair rate of return and update its test year results of operations."

A prehearing conference was held at Sonora on February 3, 1978 to determine the then existing posture of Application No. 54199. PG&E expressed the opinion that it had made its case on Finding 5(a), (b), and (d) and would stand on the record it had then made. With respect to Finding 5(c), PG&E advised it would subsequently determine whether the record should be supplemented. With respect to Finding 6, PG&E stated it would file the required evidence by August 1, 1978. As for Finding 7, PG&E advised it would not present any additional evidence. TCWD #2 decided to stand on the record and would respond to any further evidence presented by PG&E. The Commission staff took no position.

Further adjourned hearings were held at Sonora on October 31 and November 1, 1978. The matter was submitted on November 1, 1978, subject to a late-filed exhibit to be submitted by TCWD #2: On November 17, 1978, TCWD #2 notified the Commission, by letter, that it was unable to obtain the data necessary to submit the contemplated late-filed exhibit and would, therefore, stand on the evidence of record as of November 1, 1978. The service issues remaining to be resolved in Application No. 54199 were then submitted for decision as of November 17, 1978.

A proposed decision on the outstanding service issues was prepared and recommended to the full Commission by assigned Commissioner Richard D. Gravelle. However, at its November 30, 1979 conference the Commission determined that the proposed decision should first be distributed, in the form of a second Proposed Report, prior to reaching a final decision in this matter. The second Proposed Report was filed on January 4, 1980. Copies of the Proposed Report were served on the Tuolumne County Board of Supervisors and all appearances of record in Application No. 54199. In doing so, the Commission advised the parties, in part, as follows:

"The Commission has pending before it a proposed decision that would require Pacific Gas and Electric Company (PG&E) to upgrade its water service in Tuolumne County, and the Commission is concerned that the residents of Tuolumne County understand fully what the costs of this improvement would be. Accordingly, the Commission invites your attention to the enclosed materials, and would welcome your comments on them before January 24, 1980."

* * *

"The proposed decision finds that PG&E will be required to make capital expenditures of \$30-52.8 million to upgrade its facilities to sell treated water in areas now served by a

ditch system. When the proposed decision came before the Commission on November 30, 1979, the head of the Commission's accounting and auditing division (Revenue Requirements Division) contended that the proposed decision would lead to unacceptably high rates for PG&E's water customers. He noted that the company has a pending application (No. 58631) that would affect Tuolumne customers, in which PG&E seeks a rate increase for water service of 236 percent. He estimated that the decision proposed by ALJ Gillanders could, under certain circumstances, result in rates rising 1,406 percent, which would mean that an average monthly bill that is now \$8 would rise to about \$80.

"ALJ Gillanders does not agree with this assessment, contending that new customers to be added to the system will greatly reduce the cost impact, and that maintenance expenses will not be as high as the Revenue Requirements Division has estimated.

"All three documents--the proposed decision, the financial objections to it, and the rebuttal by ALJ Gillanders--are enclosed. Because the Commission wishes to resolve this matter promptly, your comments are requested by January 24, 1980.

"Written comments may be submitted by all interested parties. Properly filed Exceptions and Replies to Exceptions will be placed in the formal file in accordance with Rule 80 of the Commission's Rules of Practice and Procedure, ..."

A copy of the second Proposed Report, in the form of a proposed decision, is attached hereto as Appendix A. We believe that the facts, chronology, and material issues as now set forth in the second Proposed Report are basically correct and need not be restated here. Exceptions to the second Proposed Report were filed by TCWD #2 on January 23, 1980 and late filed by PG&E on January 29, 1980. No replies to the exceptions were received. Written comments relative to the second Proposed Report were received from the Tuolumne County Board of Supervisors, State

Department of Health Services (SDHS), Tuolumne County Water District No. 1, residents served by Tuolumne County Water District No. 1, Twain Harte Homeowners Association, Inc., Twain Harte Improvement Association, Inc., East Sonora Association, Cedar Ridge Water Company, Crystal Falls Water Co., Ponderosa Water Co., Inc., and six individual customers of PG&E. By an Administrative Law Judge's Ruling, dated March 7, 1980, it was determined that:

"The letter from the State Department of Health Services should be received in evidence as it is the only communication that presents pertinent information not previously discussed at the hearings. Consequently, it is marked Exhibit 66 and included in the record in Application No. 54199.

"Attached is a copy of Exhibit 66. If any appearance desires to cross-examine Mr. Redlin, such party should request in writing, within 10 days of the date of this ruling, that a hearing be held for that purpose.

"This proceeding is submitted unless a request is made to cross-examine with respect to Exhibit 66. If no request is received a proposed order will be prepared for Commission consideration."

PG&E and the Commission's Revenue Requirements Division staff are the only parties of interest to request further hearing for the sole purpose of cross-examination relative to Exhibit 66. A duly noticed public hearing was held before Administrative Law Judge Gagnon at Sonora on May 16, 1980, at which time witness Gunter A. Redlin, supervising sanitary engineer, Sanitary Engineering Section of SDHS was made available for cross-examination relative to the aforementioned Exhibit 66. Thereafter, Application No. 54199 was resubmitted for final decision on the outstanding PG&E water service issues.

SDHS

A review of the second Proposed Report by witness Gunter A. Redlin, on behalf of the Sanitary Engineering Section for SDHS, is set out in Exhibit 66.

The Sanitary Engineering Section of SDHS maintains primary health jurisdiction over all public water systems serving over 200 service connections. Local health departments maintain like jurisdiction over all public water systems serving less than 200 service connections. Since passage of the EPA-Safe Drinking Water Act, SDHS also monitors the local health departments' enforcement of the Safe Drinking Water Act. The general observations of witness Redlin, relative to the water quality problems in Tuolumne County, are set forth, in part, as follows:

"The major water quality problem in Tuolumne County is that water from unlined PG&E ditches is during appreciable time periods very high in turbidity. Most large and small water systems in Tuolumne County do operate filtration and chlorination facilities but are unable to consistently reduce the turbidity to less than 1 turbidity unit, the maximum allowable level as specified by the Safe Drinking Water Act. Therefore, as required by the Act, these water utilities notify in writing all affected consumers, at least quarterly, that the waters produced and supplied are in non-compliance with Drinking Water Standards. These notifications have caused local concerns.

"If water after filtration contains excessive turbidity, chlorine cannot disinfect the water very effectively. Effective disinfection of surface water is considered essential to deactivate all pathogenic bacteria and virus. If this is not accomplished the product can certainly not be considered 'potable' or safe for human consumption.

"To enable both large and small public water system purveyors, using PG&E ditch water, to produce safe and potable water requires that raw water quality be improved from the standpoint of turbidity (piping all of the ditches) and to also individually improve their water filtration plants, many of which are old and inadequate and also lack certain essential treatment processes entirely. We are currently taking steps with the utilities under our jurisdiction to get needed treatment plant improvements implemented. Improvements in raw quality, the other vital essential, can only be accomplished by PG&E.

"Another matter of great public health concern on our part is the 750-800 single consumers off the PG&E ditch system. Most of these lack filtration and chlorination treatment facilities. Where such treatment facilities are installed over 95% do not achieve 'potable water' results. Local government continues to permit individuals to utilize the PG&E ditch water as a domestic water source with treatment equipment approved by the local health department. A recent survey by this office of 69 premises, showed that only two treatment facilities produced safe and potable water. All others showed high turbidity after filtration and a great number showed bacterial contamination after filtration and chlorination treatment, many to an extremely alarming degree."

The aforementioned survey, as summarized in Exhibit 66, is set forth below:

TABLE 1

<u>Treatment Provided</u>	<u>No. Systems Tested</u>	<u>Exceeded Turbidity</u>	<u>Bacterial Contamination</u>
No treatment	24	24-100%	24-100%
Chlorination Only	2	2-100%	0-0%
Filtration Only	3	3-100%	3-100%
Chlorination & Filtration	38	37-97%	14-37%
Chlorination, Filtration & Chemical Pretreatment	<u>2</u>	<u>0-0%</u>	<u>0-0%</u>
Total	69	66-96%	41-60%

In conjunction with the aforementioned general observations concerning PG&E's reservoir and open ditch water system, witness Redlin concludes that:

"All surface water off the PG&E reservoir and ditch system requires filtration and chlorination treatment at all times. Such treatment facilities must consistently be able to produce a water containing less than 1 (one) unit of turbidity and be free of coliform bacteria. This criteria applies to both community water systems and to private individuals. Treated water not meeting these standards of water quality cannot be classified as 'potable' or considered safe for human consumption and in our opinion poses a threat to the public health. The most alarming non-compliance with this health criteria is known to effect the 750-800 individual consumers off the ditch system who either have no treatment facilities, only partial treatment facilities or full scale treatment facilities that do not perform. The only large public utilities which have consistently produced safe water in Tuolumne County off the present PG&E ditch system

are (1) PG&E Sonora-Jamestown-Tuolumne City, (2) Tuolumne County Water District No. 1 and (3) Gibbs Ranch Water Company. This has been possible for these utilities since they operate well designed and equipped plants and operate them adequately."

In light of the aforementioned general observations, witness Redlin presented the following specific comments in Exhibit 66 relative to the second Proposed Report:

- "1. We strongly concur with the request that all ditches be piped. This would greatly improve raw water quality (greatly reducing the turbidity and eliminating all ditch contamination hazards) and also eliminate the significant water losses taking place at the present time. The elimination of these current water losses would greatly benefit the domestic water supply industry in Tuolumne County as more supply is needed by many of them.
- "2. We concur with the proposal to meter all PG&E ditch diversions including the 750-800 individuals. Significant water conservation would result from such a metering requirement.
- "3. We do not agree that modifying (enlarging) of Lyons Reservoir to 'make it act as a sedimentation basin' would result in the delivery of 'potable water'. As discussed above all water leaving this reservoir would still require full treatment but a larger reservoir and a pipe delivery system would greatly reduce raw water turbidity. The other obvious benefits in enlarging Lyons Reservoir would be an increase in water supply capacity for domestic purposes in Tuolumne County, a vital need.
- "4. We support the concept of one or two central water filtration plants (operated by PG&E or Tuolumne C.W.D. #2) to supply both public water systems and private individuals (presently taking water directly from ditches).

- "5. PG&E should not be allowed to sell 'irrigation water' to consumers when it is a well known fact that such waters are used almost always for domestic purposes. Our recent survey clearly shows the consequent health hazard created by this PG&E policy. Also, Tuolumne County government should address this problem by declaring a moratorium to this practice and by implementing mitigating measures for the existing consumers.
- "6. We agree that water quality and water quantity improvements off the PG&E system would enable more orderly growth and hopefully also lead the consolidation of the many large and small water supply systems in Tuolumne County.
- "7. New water work standards have recently been enacted by the State Department of Health Services. These standards are contained in the California Administrative Code (Chapter 16, Sections 64551-64644). Minimum storage requirements for public water systems (both with metered and unmetered consumers) are contained in these Water Works Standards. The '14 day storage requirement' by PG&E would appear only valid if past ditch outages have demonstrated the need for this figure. A present benefit of considerable storage capacity is that utilities with sub-standard filtration treatment facilities can bypass raw water with very high turbidity and during that time supply better water from such treated water storage facilities.
- "8. We question the 'Financial Objection Report' findings discussing (1) unacceptable high water rate increases and (2) that all existing water treatment facilities would become obsolete. Mr. Gillanders' assessment of real costs involved and how repayment can be distributed to both

existing and future consumers should be reevaluated. Also existing plants will not become obsolete unless a central treatment plant is built at Lyons Reservoir. This is not proposed in Mr. Gillanders' 'Final Order' (pages 50-52 of the report)."

Cross-Examination Re Exhibit 66

Responsive to the Commission invitation, Gunter A. Redlin, supervising sanitary engineer for SDHS's Sanitary Engineering Section, reviewed the second Proposed Report as well as the staff's memoranda relative thereto which have been identified as Items A and B for reference purposes only. Redlin is a licensed civil engineer in California, holds a Master's Degree in civil engineering, and has been employed by the SDHS for twenty years. The results of his aforementioned review are summarized in Exhibit 66. At the May 16, 1980 further adjourned hearing, witness Redlin was cross-examined by representatives for PG&E and the Commission staff.

The thrust of PG&E's cross-examination was designed to reaffirm and/or sustain its established overall opposition to the Commission's adoption of the second Proposed Report, including the alleged prohibitive financial impact implementation of the proposed decision would have upon its water customers. The staff also concentrated its efforts upon the alleged financial impact of the Proposed Report as well as certain inconsistencies it believed existed as between Exhibit 66 and the second Proposed Report. The financial data of record in this proceeding are stale and of little, if any, probative value. It is for this reason that in adopting the second Proposed Report we have also directed PG&E to submit with its plans' updated implementation cost estimates. In so doing, PG&E is cautioned to reflect in such cost estimates all of

the anticipated savings that are inherent in and will ensue from the development of its Tuolumne Water System into a total viable source of potable water for Tuolumne County.

Exhibit 66 has now been fully considered in light of the aforementioned cross-examination including the additional sanitary engineering expert explanatory testimony presented by witness Redlin. We find the results of such further cross-examination and expert testimony convincing support to our intended adoption of the findings of fact, conclusions of law, and order as recommended in the second Proposed Report. In doing so, however, we have revised and/or supplemented certain findings, conclusions, and orders so as to clarify, among other objectives, certain apparent inconsistencies as between Exhibit 66 and the second Proposed Report. Finally, the following summary comments of witness Redlin (TR 1130-1131) are deemed to be noteworthy:

"I would like the record to show, I did not come up here today saying that the main problem is the 750 consumers.

"I'd like the record to show that the Department of Health Services views the PG&E ditch system to be a system that greatly deteriorates the water quality, that affects not just the 250 people who compose maybe less than six percent of the population of the County of Tuolumne, but that that degradation of water is also posing a potential health hazard to all consumers, large domestic systems and small domestic water systems, and it would be a mistake to say that this project is not cost beneficial, just to take care of the 750 consumers.

"In fact, we put even greater emphasis on the total population of Tuolumne County deriving their domestic water supply from the existing PG&E ditch system."

PG&E's Exceptions to Second Proposed Report

PG&E's exceptions to the second Proposed Report were to be filed on or before January 24, 1980. Due to alleged administrative duties, the utility was unable to file its exceptions until January 29, 1980. PG&E, therefore, first directs our attention to the initial Proposed Report, filed on July 3, 1975, which the utility states contains the same basic factual and legal issues addressed in the second Proposed Report, filed January 4, 1980. PG&E now urges that its "Memorandum of Exceptions to the Proposed Report of Examiner", filed August 11, 1975 in response to the aforementioned initial Proposed Report of July 3, 1975, be reconsidered in our disposition of the second Proposed Report. Since additional evidence was received at the October 1978 adjourned hearing relative to heretofore unresolved service issues. PG&E also requests that we consider its additional late-filed exceptions to the text of the second Proposed Report.

Consideration of PG&E's "Memorandum of Exceptions to the Proposed Report of Examiner", filed August 11, 1975, was part of the decision-making process which culminated at the November 30, 1979 Commission conference with a final proposed decision being advanced and recommended to the full Commission by assigned Commissioner Gravelle. The proposed final decision was distributed on January 4, 1980 as a second Proposed Report to insure that the residents of Tuolumne County were aware of the potential impact that the cost of the proposed upgrading of PG&E's Tuolumne Water System would have upon the level of rates for water service in Tuolumne County. As for PG&E's late-filed exceptions to the second Proposed Report, all but Exception 3 thereof appear to consist of either a reargument of the utility's established position or references to allegations for which further

consideration is not critical to our reaching an ultimate decision in this matter.

PG&E's Exception 3 directs our attention to the fourth paragraph on page 9 of the second Proposed Report where PG&E contends the characterization of the testimony presented by the supervisory sanitarian for the Tuolumne County Health Department is "patently erroneous." PG&E maintains that the thrust of the testimony was to the effect that any water coming from Lyons Reservoir would have to be treated prior to distribution for human consumption (TR 997-1002). The contested fourth paragraph on page 9 of the second Proposed Report states:

"He believes that if the ditches were to be piped and Lyons Reservoir were either to be reconstituted or modified so that it would act as a sedimentation base, the water supplied would normally meet the requirements for potable water."

A careful analysis of the contested testimony of witness Tremewan, the supervising sanitarian for the Tuolumne County Health Department, and the related subsequent cross-examination by PG&E (TR 988-1002) reveals that the apparent conflicting conclusions drawn therefrom in the second Proposed Report and by PG&E are both not totally accurate. However, we now have the overriding subsequent testimony of witness Redlin, the supervising sanitarian for SDHS's Sanitary Engineering Section, who categorically states in Exhibit 66 that:

"3. We do not agree that modifying (enlarging) of Lyons Reservoir to 'make it act as a sedimentation basin' would result in the delivery of 'potable water'. As discussed above all water leaving this reservoir would still require full treatment but a larger

reservoir and a pipe delivery system would greatly reduce raw water turbidity. The other obvious benefits in enlarging Lyons Reservoir would be an increase in water supply capacity for domestic purposes in Tuolumne County, a vital need."

We shall adhere to the primary authority and jurisdiction of SDHS in reaching a decision relative to the proposed modification (enlarging) of Lyons Reservoir.

TCWD #2 Exceptions to Second Proposed Report

Except for certain relatively minor exceptions, TCWD #2 basically supports adoption of the second Proposed Report. The district is of the opinion that Tuolumne County is in need of a modernized water system that makes treated water available to the various areas outside of PG&E's three-town system,^{2/} and that PG&E should be directed to begin modernization of its Tuolumne Water System to meet the growing water requirements of the county.

Exception 1

The proposed Ordering Paragraph 2 should be revised so as to allow PG&E 180 days, in lieu of only 60 days, from the effective date of the order in which to prepare, file, and serve the plans called for pursuant to Ordering Paragraph 2. We are fully aware of the importance and complexity of the contemplated plans for a modernized water system for Tuolumne County, including the computation of updated estimated construction costs for implementing the planned water service. The district's recommended extension of time is reasonable and practical. The proposal will be adopted.

^{2/} PG&E's Tuolumne Water System supplies treated water through a piped system for the communities of Sonora, Jamestown, and Tuolumne.

Exception 2

TCWD #2 suggests the addition of the following sentence to the end of subparagraph 2(a) of the proposed order:

"The enlargement of Lyons Dam would be the most effective plan for this purpose. The installation of facilities to discharge water from higher levels in the Reservoir directly into the Tuolumne Canal (not using the cushion dam afterbay) may be an effective interim solution."

This suggested clarification of the proposed order for a plan to modify Lyons Reservoir is first premised upon the erroneous assumption that the second Proposed Report totally adopts the district's proposals in Exhibit 61. Since the district's plan does not require the immediate enlargement of Lyons Reservoir, it explains that the most effective method for decreasing sedimentation in the reservoir's water supply would be to install discharge facilities from the reservoir at higher levels directly into the Tuolumne Canal. It is explained that at the present time water does not flow directly from Lyons Reservoir into the Tuolumne Canal, but is first discharged through a pipe at the bottom of the dam into a cushion dam or afterbay immediately below the Lyons Reservoir dam, from whence it is diverted into the Tuolumne Canal. This process for diverting water out of the reservoir assertedly results, during certain times of the year, in an undesirable amount of siltation in the water taken into the Tuolumne Canal.

This exception of the district involves matters that, in the first instance, should be explored by PG&E when developing its plans to modify Lyons Reservoir. PG&E's efforts to comply with the Commission's order, as finally adopted, should not be prematurely anticipated with proposals the utility is, or should be, fully aware and capable of implementing on its own behalf.

Exceptions 3 and 4

These exceptions to the proposed Ordering Paragraph 2(b) are again premised upon the erroneous impression that the proposed order totally adopts the district's Exhibits 61 and 62 proposals. The suggested order contemplates that the entire ditch system will be piped. As for the need and/or location of either a single centralized or satellite treatment plants, it is PG&E's initial responsibility to make this determination as part of its process to develop plans for supplying potable water throughout its service area for the ultimate approval of the Commission.

Exception 5

This exception would amend proposed Ordering Paragraph 3 so as to require PG&E's plans, filed pursuant to Ordering Paragraph 2, be substantially implemented in accordance with a 5-year program as recommended in Exhibit 61 of TCWD #2. Any PG&E plans filed for Commission approval pursuant to the proposed order should, of course, include a time frame within which the plans would be implemented by the utility. What this time frame should be is a matter which, in the first instance, should be left to the discretion of PG&E.

Exception 6

The suggested amendment of proposed Ordering Paragraph 6 so as to provide that PG&E shall have 180 days' (in lieu of 60 days) from the effective date of the proposed order to file rules concerning the supplying of (potable) water to its entire service area is consistent with the like proposal in Exception 1 which we have determined to be a reasonable and practical proposal. Except for the suggested deletion of the word potable, a like amendment of Ordering Paragraph 6 will be adopted.

TCWD #2 states that it does not appear necessary to make potable water available now to PG&E's entire service area, but only to those areas which are or soon will be in need of a potable water supply, as indicated in the district's Exhibit 61. According to the district, there are some areas within PG&E's service area where a treated water supply is not in immediate demand, nor would it appear to be in the foreseeable future. This particular phase of the district's Exception 6, as in the case of its Exceptions 3 and 4, appears to stem from the erroneous impression that the second Proposed Report suggests and/or orders the total adoption of water service proposals set forth in the district's Exhibit 61. The compromised position taken by TCWD #2 with respect to the need for potable water within the PG&E's service area does not comport fully with the evidence in this proceeding. In this connection, it should be noted that TCWD #2 when ordered to produce data relative to PG&E's claim that it supplies open ditch water solely for agricultural and irrigation purposes would or could not produce any such figures. In the final analysis, however, the various time constraints involved in the utility's compliance with proposed Ordering Paragraph 6 would, in the first instance, be part of PG&E's plans submitted for ultimate Commission approval.

Exception 7

TCWD #2 recommends that the first two lines of Ordering Paragraph 6(b) of the second Proposed Report be amended to read:

"A provision that PG&E will promptly extend potable water service outside of the area referred to in subparagraph a if..."

The above suggested clarification, while not entirely appropriate, reveals an ambiguity that should and will be eliminated.

Exception 8

The district recommends that proposed Ordering Paragraph 6(c) be canceled and in lieu thereof the following ordering paragraph be substituted:

"PG&E shall continue irrigation water service where there are irrigators who are willing to pay appropriate rate adjustments that would result from necessary guniting of ditches needed to continue such irrigation service."

This recommended revision of Ordering Paragraph 6(c) again reflects the district's misreading of the second Proposed Report as a complete adoption of the district's Exhibit 61. The second Proposed Report would have PG&E's Tuolumne Water System totally upgraded so that the utility would distribute and sell to its customers only potable water that meets the water quality standards of the Safe Drinking Water Act as administered by the SDHS. Exception 8 reflects the same infirmities noted in connection with the district's Exception 6 and should not be adopted for the same reasons.

Adoption of the Second Proposed Report

We have now considered the additional evidence presented by SDHS (Exhibit 66), each of the exceptions and/or allegation made by the parties relative to the proposed decision initially presented to the Commission for approval on November 30, 1979 and, in lieu of such approval, subsequently filed and distributed on January 4, 1980 as a second Proposed Report. With certain modifications and/or clarifications, the second Proposed Report resolves the basic issues critical to our reaching a final decision in this matter. No other points require discussion.

The Commission adopts as its own all of the findings of fact, conclusions of law, and order set forth in the second Proposed

Report, except for Findings 16 and 28, Conclusion 5, and Ordering Paragraphs 2 and 6 which are hereinafter revised and/or supplemented by additional findings, conclusions, and orders.

Findings of Fact

16. (Revised) The supply of water from PG&E's Tuolumne Water System is, and for the future will be, deficient unless steps are taken to increase the quantity of potable water available for distribution to its customers.

28. (Revised) The modification and enlargement of Lyons Reservoir so that it will act as a sedimentation basin with a piped delivery system emanating therefrom, in lieu of the existing open ditch system, would greatly reduce the turbidity of the raw untreated water currently being drawn from the reservoir.

28.1. (New) The piping of PG&E's open ditch system emanating from Lyons Reservoir, in addition to reducing raw water turbidity, will eliminate all open ditch contamination hazards and significantly reduce water loss, thereby increasing both the quantity and quality of water available in Tuolumne County.

28.2. (New) Water drawn from Lyons Reservoir under circumstances and conditions referred to in Findings 28 and 28.1 above would still require full treatment in order to meet the potable water quality standards of the Safe Drinking Water Act as administered by the SDHS.

28.3. (New) Water drawn from PG&E's open ditch system is, during appreciable time periods, very high in turbidity. Consequently, most large and small water systems drawing such water, even though employing filtration and chlorination facilities, are unable to consistently reduce the turbidity to less than 1 turbidity unit, the maximum allowable level under the Safe Drinking Water Act.

Conclusions of Law

2.1. (New) PG&E should file a main extension rule for service within the utility's service area.

5. (Revised) PG&E should immediately prepare and implement a plan for the modification and enlargement of Lyons Reservoir so that it will act as a sedimentation basin. The plan should consider other anticipated beneficial uses of the water.

FINAL ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) shall file with this Commission on or before the effective date of this order four copies of a comprehensive map drawn to an indicated scale not smaller than 2,000 feet to the inch which map shall be identical to the map which is Exhibit 14 in this proceeding, plus the communities of Mi-Wuk Village, Confidence, Sierra Village, and Sugar Pine. The filed map shall clearly show the boundaries of the service area and shall henceforth be referred to as PG&E's service area map for its Tuolumne Water System.

2. PG&E shall, within one hundred eighty days after the effective date of this order:

- a. Prepare a plan, including current estimated implementation costs, to modify and enlarge Lyons Reservoir so that it will act as a sedimentation basin.
- b. Prepare a plan, including current estimated implementation costs, to pipe the existing open ditch system emanating from Lyons Reservoir consistent with the requirements of this order.
- c. Serve the above-ordered plans on all appearances to this proceeding, serve a copy on the Commission's Hydraulic Branch, and submit one copy to the Docket Office for filing as a compliance filing in this proceeding.

3. Upon filing the plans required above in Ordering Paragraph 2, PG&E shall expeditiously undertake and initiate construction of the facilities required.

4. PG&E shall prepare a study on the desirability of providing metered water service, addressing the criteria set forth in Section 781 of the Public Utilities Code, within one hundred eighty days after the effective date of this order, serving and filing the study as set forth in above Ordering Paragraph 2(c). The issue of whether or not metering shall be instituted, within the requirements of Section 781, will be considered in the general rate proceeding following the completion of the facility improvements and modifications ordered herein.

5. PG&E's plans for piping the existing ditch system must meet with the approval of the California Department of Fish and Game.

6. PG&E shall file a main extension rule for service to areas within its established service area.

7. PG&E shall supply water within its established service area that complies with the potable water quality standards of the Safe Drinking Water Act as administered by the State Department of Health Services.

8. PG&E shall, within one hundred eighty days after the effective date of this order, file rules governing the supplying of potable water to its entire service area. Such rules shall include:

- a. An assurance that PG&E will promptly extend potable water service to areas which are adjacent to its present treated water service areas.
- b. A provision that PG&E will promptly extend potable water service to areas within its established service area that are located beyond the areas referred to in subparagraph 8(a) above if requested to by the appropriate

government agency provided that the territory consists of a cohesive unit, that it includes a total area logically to be served by the necessary special transmission and pumping and storage arrangements, and that satisfactory arrangements are made to finance special facilities.

c. PG&E shall withdraw and cancel all tariff schedules which refer to untreated or unpotable water.

9. Except by further Commission order, in accordance with Section 2710 of the Public Utilities Code, PG&E's Tuolumne Water System shall not supply water within or without its service area to any public utility water corporation, mutual water company, municipal corporation, public district, or any other water purveyor not supplying water as of the effective date of this order.

10. The motion for an Environmental Impact Report is denied. The effective date of this order shall be thirty days after the date hereof.

Dated JUL 29 1980 , at San Francisco, California.

John E. Bryan

President
Richard D. Crowley

Charles J. DeWich

Commissioners

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 water
service provided by the Tuolumne
Water System.

Application No. 54199
(Filed July 23, 1973)

(Water)

Additional Appearances

G. William Lundgren, for County of Tuolumne
Planning Department; Mrs. Mary Kessel and
Kenneth B. Kessel, for East Sonora Association;
and Robert F. King, and Tina Deutsch, for
themselves; interested parties.
Eugene M. Lill and Donald Yea, for the Commission
staff.

PROPOSED REPORT OF ADMINISTRATIVE LAW JUDGE JOHN R. GILLANDERSSummary

The service issue remaining and resolved by this final opinion in this rate increase proceeding is that of defining the scope of the Pacific Gas and Electric Company's (PG&E) service territory in Tuolumne County with respect to that utility's obligation to serve potable water. Interested parties, primarily Tuolumne County Water District No. 2 (TCWD #2), contend PG&E has a public utility obligation to serve treated water in all areas where it now serves untreated ditch water. The Tuolumne County Planning Director believes more orderly county growth will result if PG&E is directed to serve treated water to areas it now serves with untreated water, and the county's Chief Sanitarian thinks service throughout the area would improve if PG&E extends its provision of potable water.

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PG&E presented a cost study showing the capital outlay it would be required to make in order to provide treated water to areas now served by ditches would be between \$52.8 and \$203 million with a considerable eventual impact on water rates in Tuolumne County.

Environmental concern over the impact of installing piping in lieu of the existing ditch delivery system was expressed by the California Department of Fish and Game and Ms. Tina Deatsch, interested parties.

The Commission finds that PG&E has, by its conduct, dedicated its facilities to serve Tuolumne County with water; and the fact the utility has in the past differentiated its view of this obligation (or service territory) into treated and untreated water service does not mean it has a different obligation for various areas - PG&E has one utility obligation, and that is to serve potable water where required or requested by its Tuolumne County customers.

PG&E is directed to expeditiously file plans to improve its Tuolumne water system and undertake the modifications necessary to provide potable water to its existing customers now receiving untreated ditch water. The issue as to whether PG&E should eventually offer only metered rates will be addressed in a subsequent PG&E application for general rate relief upon completion of the construction ordered by this opinion; this issue, pursuant to Section 781 of the Public Utilities Code, requires further cost-benefit study and analysis (which PG&E is directed to initiate). The capital outlay PG&E will be required to make in conformance with this opinion and order is estimated to be in the range of \$30 to \$52.8 million.

Background

On June 21, 1977, we issued Decision No. S7468 in Application No. 54199.

Findings 5, 6, and 7 of Decision No. S7468 said:

"5. The additional issues raised by Tuolumne County Water District No. 2 (TCWD #2) set forth below should be the subject of further hearings:

- "(a) The nature and extent of PG&E's service area for its ditch system and town systems.
- "(b) The nature and extent of PG&E's duties in supplying untreated ditch water to various customers.
- "(c) Whether PG&E has waived the right to enforce its contractual storage requirement with its resale water customers.
- "(d) The adequacy of PG&E's plan to assure an adequate water supply in the future for the Tuolumne Water System.

"6. PG&E should provide additional evidence on the changes that would be required should their service area be defined as set forth in the Examiner's [now ALJ] Proposed Report. The evidence should state whether untreated ditch water will continue to be made available and what costs and facilities will be required to provide water service.

"7. PG&E may present additional evidence on the fair rate of return and update its test year results of operations."

A prehearing conference was held at Sonora on February 3, 1978, before Administrative Law Judge Gillanders to determine the posture of the proceeding.

PG&E stated its opinion that it had made its case on Items 5(a), (b), and (d) and would stand on the case it had made to date. On Item (c) it was still studying the matter and would subsequently inform the Commission if the material in the record needed supplementing.

PG&E stated it would file the evidence required by Finding 6 by August 1, 1978.

PG&E stated it would not present further evidence as permitted by Finding 7.

TCWD #2 stood on the record already made and stated it would respond to any further evidence presented by PG&E. The Commission staff was silent.

PG&E distributed its material as promised, the parties reviewed it, and further hearings were held at Sonora on October 31 and November 1, 1978. The matter was submitted on November 1 subject to a late-filed exhibit to be presented by TCWD #2. By letter dated November 17, 1978, TCWD #2 stated:

"Since the closing of the hearing on November 1, 1978, Tuolumne County Water District No. 2 has been unable to obtain or compile any additional information relative to the amount or magnitude of actual or commercial irrigation use out of P.G.&E.'s Tuolumne Ditch System, and, therefore, will submit nothing further on that point."

History of Tuolumne Water System

The Tuolumne Water System supplies treated water for domestic, commercial, industrial, and other uses through pipe systems in the towns of Sonora, Jamestown, and Tuolumne.^{1/} It supplies untreated water from a number of ditches, most of which were constructed in the early 1850's to supply the placer mines that formerly operated in the area. When these mines became exhausted many of the ditches were abandoned but other laterals were built to supply the quartz mines which were opened after placer mining ceased. As the quartz mines were gradually worked out, it became necessary to develop other uses for the water. Presently, the water is used for domestic and commercial purposes.

The main Tuolumne ditch was constructed in 1851 and 1852 by the Tuolumne County Water Company. During the next 40 or so years that company purchased the ditch systems of a number of other companies and consolidated them into its ditch system.

In 1898 Tuolumne County Water Company reincorporated as the Tuolumne County Water and Electric Power Company and constructed the Phoenix Power Plant. The ditches, the reservoirs, and Phoenix Power Plant eventually were acquired in 1909 by the Sierra and San Francisco Power Company. PG&E leased all of the operative properties of Sierra and San Francisco Power Company, including the Tuolumne Water System, for a period of 15 years from and after January 1, 1920. In 1936 PG&E acquired all of the Sierra and San Francisco Power Company properties, including the Tuolumne Water System.

^{1/} Water supplied to the treatment plants comes from the ditch system.

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The Tuolumne Water System is the source of water for approximately 75-85 percent of the population within Tuolumne County. Water comes from the south fork of the Stanislaus River, is impounded in Lyons Reservoir and then conveyed via the 52 cfs main Tuolumne canal to the western portion of the county. It is then distributed through 79 miles of ditches to the area between the south fork of the Stanislaus River and the north fork of the Tuolumne River. Water in the system is divided between the company's Section Four Ditch System, its Columbia System, and the Phoenix Powerhouse, which also provides water for the Sonora-Jamestown area.

PG&E's Additional Evidence

At the October 31, 1978 hearing, PG&E stated that in response to Decision No. 87468 it would present additional evidence on the changes to its existing Tuolumne Water System that would be necessary in order to serve treated water throughout the entire area designated by the water service boundary as discussed earlier in this case and in the Administrative Law Judge's report. According to PG&E, its evidence would show that it would be tremendously expensive to do those things necessary to provide treated water to the more widespread service area. Whatever capital would be expended by PG&E and the additional operating expenses associated with any new capital facilities would ultimately have to be paid for by the ratepayers of PG&E's Tuolumne Water System. In general, revenue requirements ultimately could be over 100 times their present level.

In the event that PG&E is ordered to provide treated water to the larger area, it does not intend to continue to serve untreated water as portions of the existing ditches would be piped over. It has been and remains PG&E's position that it has had a legal duty to serve treated water only to those areas to which it has dedicated such service. According to PG&E the service areas are the cities of

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Sonora, Jamestown, and Tuolumne as set forth in its filed tariffs. PG&E has in the past and will continue in the future to fulfill its public utility obligation to its present and future customers within its established service areas. There has been no complaint in this proceeding that PG&E has at any time failed to do so.

To the degree that PG&E is not able to adequately provide the treated water demand outside of its existing service areas, TCWD #2 would be the logical entity to provide wider range treated water service to those areas of Tuolumne County not served by PG&E.

In fact, according to PG&E, the Tuolumne County Water Study completed for the district in 1977 concludes that the district should be the vehicle to meet increased water demand outside of PG&E's service area.

A civil engineer employed by PG&E presented Exhibit 54 which contained three plans. Plans 1 and 2 covered the entire 150 square mile area with treated water, while Plan 3 was a smaller-scale plan serving existing town system service areas with treated water and untreated water to areas that are generally adjacent to the ditches. Plan 1 has a total cost of \$203 million, and Plan 2 has a total cost of \$191 million. Plan 3 would cost \$52.6 million.

TCWD #2's Additional Evidence

TCWD #2 presented what it called a "make-sense plan" to provide treated water to the areas of need. (Exhibit 61.)

According to TCWD #2, some of the immediate problems that need to be addressed are in the upper system where there are a number of water districts, all providing their own treatment. However, many of those do not meet the present requirements for the Safe Drinking Water Act. Some will be required to expend additional funds to improve their treatment plants and to enlarge their systems to meet future growth.

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There is economy of scale involved in putting in a central treatment plant rather than each separate system improving its own treatment plant. Therefore, the plan contemplates putting a central treatment plant in Section 4 ditch and piping the treated water to the distribution agencies. Stage 1 will go to those that do require some immediate improvement, and Stage 2 will continue to essentially serve the whole upper ditch system from that one treatment plant.

On the lower system, the same concept applies. There are areas that have some immediate problems, e.g., the East Sonora area and the Columbia area. It appeared that the economies of scale required serving the Columbia area from the Sonora treatment plant initially, and eventually putting in a central treatment plant near the Phoenix Power Plant to serve this lower area. The plan also considered the need to conserve water as well as the cost of water.

On the Algerine and Montezuma ditches where there are only three acres under commercial agricultural irrigation,^{2/} piping the ditches would perhaps make the price of water too expensive for irrigation purposes; consequently, guniting those ditches was considered. The plan essentially provides treated water to the presently developed areas and some of the growth areas and untreated water to the agricultural areas.

The improvements suggested the two centralized treatment systems would take care of the large part of the problem of providing treated water to the areas that need it.

The total cost of the plan over a five-year period would be about \$30 million and would provide the capacity to meet the county's water needs through the early 1990's.

^{2/} No one could or would prove the extent of commercial agricultural irrigation.

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TCWD #2 also presented a study which was described as an inventory of the water problems and the water supplies in Tuolumne County (Exhibit 63).

Other Evidence

Planning Director, County of Tuolumne

According to the planning director, growth in the county is determined by water availability. Consequently, growth follows PG&E's ditches. PG&E's refusal to supply treated water from its ditches except from the town systems is the primary reason that there are 33 separate water systems supplied by the ditches. These systems are operated by 27 different entities. He believes that PG&E must be the provider of the county's water needs as it owns the only adequate source of water.

Mr. Walters

Mr. Walters, a professional Civil Engineer, representing several small water systems, public utilities, mutuals, and water districts recommended that the ditches be piped from their origin at Lyons Reservoir. If the ditches were piped, water could be supplied through meters thus saving vast amounts of water. The only treatment he recommends would be that which takes place through natural sedimentation in the reservoir.

Supervising Sanitarian, Tuolumne County Health Department

The Supervising Sanitarian testified that 22 small water companies in the county currently depend on the ditch system for all or a portion of their water supply. Treatment facilities maintained by these systems vary from rather sophisticated plants at Columbia Junior College and the Stanislaus Outdoor Education facility to simple diversions of raw water for domestic use maintained by the Mountain Road Mobile Estates, the West System of Soulsbyville, Parkway Inn System, Cedar Rock Water Association, Saw Mill Flat Water Users Association, and the North Airport Road Association.

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He believes two of the above-named systems will be eliminated by the current expansion of the TCWD #2 Columbia treatment, storage and distribution facility, but there would still be four communities which serve raw water.

The PG&E ditch system has historically produced a raw water low in minerals, inorganic chemicals, and organic chemicals; turbidity at many times of the year may be excessive.

Many of these small systems currently require improvements in the way of storage, basic treatment, and distribution systems in order to meet health standards. As additional outlays for provision of higher quality of water may prove beyond the financial capabilities of the owners, it would appear far more logical to centralize treatment facilities than to continue separate improvements at many locations along the ditch system.

He believes that if the ditches were to be piped and Lyons Reservoir were either to be reconstituted or modified so that it would act as a sedimentation base, the water supplied would normally meet the requirements for potable water.

It was his opinion as an expert in water sanitation and the requirements of the Safe Drinking Water Act that potable and treated water are not synonymous because a treated water supply may be an inadequately treated water supply. It may not produce the results that are required by California's version of the federal law. Yet a water supply that has, for example, never seen the light of day may, through an accident of nature, meet or be in all characteristics beneath the maximum contaminant levels contained in California law.

The Environment

Ms. Tina Deatsch, appearing on her own behalf, presented testimony and an exhibit. It was her belief that an Environmental Impact Report (EIR) should be prepared before any further action be taken on this application. She testified that alternatives to ditch piping should be required to reduce any adverse impacts and that an extensive effort should be made to inform and gather input from the public before any action is taken.

A witness for the California Department of Fish and Game, the department's Wildlife Biologist for Mariposa and Tuolumne Counties, testified as to the concern for adequate water supplies for wildlife at elevations below 3,000 feet. He asked that if a decision was made to pipe the ditch that evaluation of such act on wildlife be made.

Six other public witnesses testified. Four were in favor of not piping the ditches while two were in favor of piping.

What is the nature and extent of PG&E's Tuolumne Water System Service Area?

According to PG&E, this issue requires, initially, a review of Decision No. 54818 dated April 9, 1957, in Application No. 36646^{2/} which was issued in the last general rate case for the Tuolumne Water System. Ordering Paragraphs 2, 5, and 6 of that decision required PG&E to file two different types of maps with the Commission.

Ordering Paragraph 2 states:

"2. Applicant is authorized to file in quadruplicate with this Commission within thirty days after the effective date of this order, in conformity with General Order No. 96, the tariff sheets set forth in Exhibit 7 in this proceeding as specifically approved or modified by Appendix C attached hereto, together with tariff service area maps. Such rules and tariff service area map shall become effective on five days' notice to the Commission and to the public after filing as hereinabove provided."

In response, PG&E filed a tariff sheet under Advice Letter No. 75-W showing the Tuolumne ditch system on May 29, 1957. This tariff sheet was made effective by the Commission on June 3, 1957. This map of the Tuolumne ditch system was filed according to PG&E in response to, (1) a request made by TCWD #2 in Application No. 36646 to define the service area and the terms and conditions upon which service would be made from PG&E's ditch system, and (2) the Commission requirement that in response to this request an appropriate tariff service area map be filed for the ditch system.

3/ (1957) 55 CPUC 556.

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It is clear, according to PG&E, that the Commission wanted this map to be included in PG&E's filed tariff as it specifically ordered the tariff service area map to be filed in conformity with General Order No. 96, which order specifically sets forth the rules governing the filing and posting of schedules of rates and rules for utilities including service area maps.

This map, revised in 1966 under Advice Letter No. 123-W, is PG&E's current service area map for the Tuolumne ditch system.

Ordering Paragraph 5 states:

"Applicant shall file with this Commission, within thirty days after the effective date of this order, four copies of a comprehensive map drawn to an indicated scale not smaller than 2,000 feet to the inch, delineating by appropriate markings all of the ditches of the Tuolumne Water System, the various tracts of land and territory served, the principal storage facilities of applicant's ditch system, and the location of the various water system properties of applicant."

According to PG&E, this map was prepared and filed not to show any specific service area but to show only the location of the ditch facilities and the broad geographical territory where the Tuolumne ditch system was located. It is coincidental only that the filed map is bordered by an outline showing a caption "boundary of water service area". This geographic delineation, however, is the same as that for the tariff service area map filed with the Commission pursuant to Ordering Paragraph 2 of Decision No. 54818. The essential difference between the two maps, PG&E claims, is that the tariff service area map is legally recognized as showing the service area under General Order No. 96-A.

Ordering Paragraph 6 states:

"6. Applicant shall file with this Commission, within thirty days after the effective date of this order, four copies of a comprehensive map of each town system comprising part of the Tuolumne System, drawn to an indicated scale not smaller than 400 feet to the inch, delineating by appropriate marking the

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various tracts of land and territory served, the ditch diversion, storage and distribution facilities, and the various water system properties of applicant."

Ordering Paragraph 6, according to PG&E, calls for basically the same delineation as Ordering Paragraph 5 except that it does so for the town system, as separate and distinct from the ditch system. PG&E simultaneously filed both maps required by Ordering Paragraphs 5 and 6.

PG&E argues that it is important to note that Ordering Paragraphs 5 and 6 make no mention of filing pursuant to General Order No. 96 nor to tariffs or service areas.

According to PG&E, Decision No. 54818 did not in any way require the revision, modification, or alteration of any of the Sonora, Jamestown, and Tuolumne town system service area maps. Throughout the period of time in 1957, PG&E's regularly filed tariff service area maps of the town systems remained in force and effect without alteration or modification. Secondly, it is important to look at PG&E's commercial procedures regarding applications for service during the past 20 years. PG&E's Commercial Department witness stated PG&E's past and present policy in regard to providing water service from the Tuolumne Water System. PG&E has always held itself out to provide treated water within its dedicated town system water service area and has expanded its service areas to provide water when warranted. The PG&E witness explained the steps PG&E takes in processing an application that requires service area expansion. The witness introduced a complete chronology of PG&E's advice letter filings related to changes in its town system service areas.

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Most importantly, the witness stated that the expansion or enlargement of existing service area boundaries is made only after detailed study demonstrates a need for extension.

PG&E's manager stated that it will only serve pursuant to its filed tariff schedule, and, for the town systems, this is the territory shown on the Jamestown, Sonora, and Tuolumne service area maps. PG&E also makes untreated water available to areas adjacent to the ditch system by providing service at the berm of the canal or ditch under the terms and conditions stated in its tariffs.^{L/} The term "adjacent to the ditch" does not mean that the receiver of the supply must be contiguous to the ditch. There is no territorial perimeter or confinement to the term.

PG&E, as indicated from its actions over the past 20 years, claims that it has not dedicated treated water service to areas beyond those found in its town system service area maps. PG&E has scrupulously sought Commission permission to expand its treated water service area in advance of any extension of it. This policy is evidenced by the chronology of service area map revisions introduced as evidence in this matter.

PG&E defends its policy by reference to the following cases:

The Commission has no authority to compel a water utility to extend its service to prospective consumers who reside outside of the area to which water of the utility has been dedicated. (Upton v Stinson (1921) 19 CRC 475.)

^{L/} PG&E files two sets of tariff sheets. One for its "Town Systems" and one for its "Ditch Systems". The tariff sheets filed for the "Ditch Systems" do not include sheets for main extensions.

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Dedication is not presumed without evidence of unequivocal intention. (Allen v Railroad Commission (1918) 197 Cal 68, 175 Pac 466; Ocean Park Pier Amusement Corporation v City of Santa Monica (1940) 40 Cal App 2d 76, 104 P 2d 668; California Water and Tel. Co. v Public Utilities Commission (1959) 51 Cal 2d 476, 334 P 2d 887.)

The question of scope of a utility's undertaking is a question of mixed law and fact. (Hollywood Chamber of Commerce (1922) 22 CRC 272.)

A public utility cannot be compelled to devote its property to a use to which it has not been dedicated. (Richfield Oil Corporation v Public Utilities Commission (1960) 54 Cal 2d 419, 354, P 2d 4.)

One owning a water supply is not compelled to dedicate all of it to public use; he may dedicate a part of it only to such use. Accordingly, the right of a water company to make such limited dedication and to decline to furnish its water to persons not within the area it has undertaken to serve has been recognized and repeatedly declared. (California Water and Tel. Co., supra.)

The question of dedicating facilities in new areas is a matter of discretion for a water utility. (Thury v Lucerne Water Co. (1964) 62 CPUC 525.)

The perimeter of authority of the Commission to order service modifications is staked out by the limits of a utility's dedication or devotion of its property to public use. The obligation of a public utility to serve, extend, and grow is delineated by and coextensive with the utility's dedication. (Greyhound Lines, Inc. v Public Utilities Commission (1968) 68 Cal 2d 406, 67 Cal. Rptr. 97, 438 P 2d 801.)

Thus, PG&E argues that it has demonstrably chosen to limit the dedication of treated water to those areas delineated in its town system treated water service area maps currently on file with

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the Commission and that it supplies water from its ditch system solely for agricultural and irrigation purposes.

According to TCWD #2, the Commission should declare that the service area of the Tuolumne Water System is all of the territory within the boundaries shown on the map filed with the Commission in accordance with Ordering Paragraph 5 of Decision No. 54818.

TCWD #2 claims that the Commission by Decision No. 54818 sought to settle the service area issue by ordering PG&E to file a map showing the territory served.

"5. Applicant shall file with this Commission, within thirty days after the effective date of this order, four copies of a comprehensive map drawn to an indicated scale not smaller than 2,000 feet to the inch, delineating by appropriate markings all of the ditches of the Tuolumne Water System, the various tracts of land and territory served, ..." (Emphasis added.)

PG&E filed such a map. The map specifically identifies a line drawn around the perimeter of the area shown, as the "boundary of water service area".

According to TCWD #2, the above-quoted order was directed precisely to the service area issue. As page 10 of Decision No. 54818 shows, TCWD #2 had specifically requested a definition of the service area at that time, and at page 14 the Commission had indicated that:

"With regard to the request to define the service area, we will require the applicant to file an appropriate tariff service area map."

PG&E then did so, identifying the service area boundary in plain language.

Notwithstanding these actions, according to TCWD #2, PG&E now takes the incredible position that the map is not a definition of the entire service area, as the ditch system service area must be defined as the territory adjacent to PG&E's canal system, and that this is something less than the territory delineated on the

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service area map. TCWD #2 argues that this contention should be rejected because the specific purpose and function of the filed service area map was to define the entire service area and the map is clear and unambiguous. TCWD #2 claims that there are additional reasons for rejecting this contention. The service area boundary shown on the map has repeatedly been referred to as the service area boundary with the knowledge of PG&E representatives and without objection from them.

In 1969, TCWD #2's engineer Goodenough completed a study of the Tuolumne Water System. This study was described by PG&E as the first comprehensive study ever taken of the Tuolumne Water System.

The study contains various text references to the service area of the Tuolumne Water System and contains a map of the Tuolumne Water System service area. Mr. Goodenough indicated that he obtained this map from PG&E. The study itself cites that before issuance, the preliminary draft of the study was revised by representatives of PG&E. Mr. Goodenough also testified that the report was reviewed by PG&E and that although some other corrections were requested, none were mentioned with respect to the designated service area.

Similarly, engineer Frank Walter, who prepared the 1972 Area Wide Planning Study for Water and Sewer for Tuolumne County, depicted on the Area Index Map on the second page of the report, the PG&E Tuolumne Ditch System service area boundary. The boundary shown there is identical to that shown on the map filed with the Commission. He testified that he thought he had obtained this boundary delineation from Mr. Goodenough's earlier 1969 study and also that he verified it with PG&E. The adoption of this 1972 study by the Tuolumne County Planning Commission and the Tuolumne County Board of Supervisors received wide publicity. Mr. Walter thought that a copy of the study was given to PG&E for comments before its adoption, but that in any event its representatives were

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aware of its contents. No comment or request for correction was ever received by him from PG&E with respect to his delineation of the service area.

All of the territory within the boundary shown on the service area map is in fact "adjacent" to PG&E's canal system in Tuolumne County.

PG&E's theory was that the preliminary statement in its filed tariff schedules defines its service area, to wit:

"The territory adjacent to the Company's canal system in Tuolumne County, below Lyons Reservoir."

Decisional law indicates that "adjacent" is a word of flexible meaning, depending upon context and subject matter (U.S. v Denver & R.G. Ry. Co., 31 Fed 886), and that it has a different and considerably broader meaning than the word contiguous. (Sonora Elementary School v Tuolumne County Board of Education (1966) 239 CA 2d 824, 49 Cal. Rptr. 153.) PG&E concedes that adjacent does not mean contiguous; that it applies no territorial limit in its use of adjacent to the ditch; and that it means whatever PG&E feels is adjacent to the ditch. The local manager understands that it "means in the neighborhood or in the vicinity of the ditch". He also testified that "adjacent to the ditch was interpreted by him to mean that the customer must come to the ditch to get service, and that it didn't matter if the land to be served lay half a mile or a mile away from the ditch".

The recent decision of Sonora Elementary School v Tuolumne County Board of Education, supra, held that the Sonora Elementary School District was adjacent to the Stanislaus National Forest, even though its nearest point lay one-half mile distant from forest land. This decision also referred to a New York case (Application of Board of Education of Union Free School District, 198 N.Y.S. 2d 151) holding that a distance of eight miles was within the definition of adjacent under the New York statute.

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TCWD #2 contends that the context in which the term adjacent was used in this case includes the companion map which PG&E filed with the Commission delineating the service area boundary; the map simply makes clear whatever might be unclear about the term adjacent. It simply means all land adjacent to PG&E's canal, as shown on the map delineating the service area boundary.

According to the staff, in the last general rate case, TCWD #2 raised the issue of PG&E's service area and, therefore, the Commission stated in Decision No. 54818:

"5. Applicant shall file with this Commission, within thirty days after the effective date of this order, four copies of a comprehensive map drawn to an indicated scale not smaller than 2,000 feet to the inch, delineating by appropriate marking all of the ditches of the Tuolumne Water System, the various tracts of land and territory served, the principal storage facilities of applicant's ditch system, and the location of various water system properties of applicant."

The Commission also ordered:

"2. Applicant is authorized to file in quadruplicate with this Commission within thirty days after the effective date of this order, in conformity with General Order No. 96, the tariff sheets set forth in Exhibit 7 in this proceeding as specifically approved or modified by Appendix C attached hereto, together with tariff service area maps. Such rules and tariff service area map shall become effective on five days' notice to the Commission and to the public after filing as hereinabove provided."

PG&E filed, in response to Ordering Paragraph 2, tariff sheets, which included maps of the Jamestown, Sonora, and Tuolumne Town Systems and the Tuolumne Ditch System. As the preliminary statement indicates, water for domestic service is provided from the town systems and water for irrigation from the ditch system.^{5/}

^{5/} Official notice was taken of PG&E's Tuolumne Water System Tariffs.

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In response to Ordering Paragraph 5, PG&E filed a map which is Exhibit 14 in this proceeding. Exhibit 14 is a map of the ditches encircled by a line entitled "boundary of water service area". Focusing upon this exhibit, TCWD #2's position is that this map defines the perimeters of PG&E's obligation to serve domestic water. Clearly, according to the staff, this is not so.

Ordering Paragraph 5 and the responsive Exhibit 14 refer only to the ditch system. In fact, Ordering Paragraph 6 of Decision No. 54816 required the filing of similar maps for the town systems. Thus, a distinction existed in the Commission's mind between the town and ditch systems. The basis of this distinction is PG&E's obligation with respect to each. This is made clear by reference to the tariffs which describe the nature of each service and the tariff maps delineating each system. Service area maps define the service area boundaries (General Order No. 96-A, II (L)) and are included in the filed tariffs as tariff sheets (General Order No. 96-A, I. A.). The basic source of information regarding a service area would be found in the tariff sheets. Assuming an ambiguity or deficiency therein, reference could then be made to other maps such as Exhibit 14 or PG&E practice.

In this case, the maps in the filed tariff are clear and reference to Exhibit 14 or PG&E practice supports the definition of the town and ditch service areas appearing in the tariff.

It is the staff's position that Exhibit 14 deals only with the ditch system, for which PG&E's obligation is to serve irrigation water. Looking to PG&E's practice the record is clear, according to the staff, that domestic extensions outside the town systems are not made until the appropriate tariff-sheet map is amended.

Perimeters to the ditch system service area seem of little value, according to the staff, since it is the customer's obligation to take water at the berm, i.e., ditch, although the use may be

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elsewhere. In addition to providing the facilities necessary to take the water wherever he plans to use it, the customer must negotiate the terms of service with PG&E and, in the case of new customers, put up funds to enable the company to recover from the ditch flow the amount of water requested by the customer. Thus, according to the staff, economic, rather than geographic, considerations will dictate the practical borders of the ditch system.

Discussion

PG&E's claim that its tariff service area map which distinguishes areas served with treated and untreated water as that legally recognized as showing the service area or areas of the Tuolumne Water System is not credible.

The question of the scope of a utility's undertaking is a question of mixed law and fact. While service maps filed in tariffs and even maps ordered by the Commission are persuasive, they are not conclusive. They are filed for the benefit of the public to show the area in which the utility is ready and willing to serve. (Woodworth v California Water Service Co. (1956) 55 CPUC 285; San Jose Water Works (1972) 73 CPUC 358.) In Isenberger v PG&E (1951) 50 CPUC 455, the Commission said:

"We are not to be understood as implying that we consider the filing by the defendant of its service area as a final and conclusive circumscription of the limits in which it is obliged to render service. The Commission has considered the question of extension of utility water service to areas which lie close to existing facilities as well as those which are located in more remote territory and it has uniformly applied the rule of reasonableness in reaching a determination."

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General Order No. 96-A requires the utility to file a tariff sheet indicating its service area. The tariff sheets which PG&E claims form the legal basis for determining its service area^{2/} carry stamps which print the following limitation:

"This map shall not be considered by the Public Utilities Commission of the State of California or any other public body as a final or conclusive determination or establishment of the dedicated service or any portion thereof."

The maps ordered filed by Ordering Paragraphs 5 and 6 of Decision No. 54818 were ordered at the request of TCWD #2 to resolve the issue of what was PG&E's service area. The map filed in accordance with Ordering Paragraph 6 shows the town areas in detail. The map filed in accordance with Ordering Paragraph 5 shows the general area of Tuolumne County served by the ditch system. PG&E, itself, placed upon this map, without equivocation or reservation, a solid line enclosing an area. In three places, the line is clearly labeled "Boundary of Water Service Area". There is no inconsistency between the two maps since the town systems are included within the area of the boundary line and are themselves served from the ditch system.

The fact that, "PG&E has scrupulously sought Commission permission to expand its treated water service area in advance of any extension from it" is also not a conclusive fact in determining total service area. If the whole system has been dedicated in the past for purposes which would include providing treated water, PG&E cannot, by filing maps, make a previously dedicated area smaller. PG&E is a public utility providing water to portions of Tuolumne County.

All of the water in the Tuolumne Water System is used for beneficial public uses including irrigation, watering of stock, and domestic and power purposes. It serves a broad geographical area

^{2/} CPUC Sheet No. 747-W was filed May 29, 1957. CPUC Sheet No. 965-W which cancelled it was filed in 1966.

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which has included mines, agricultural lands, and scattered communities. It has been sold to anyone who is willing to comply with contractual and other restrictions of the companies offering it for sale. There is no question that a company that operates such a system is a public utility. (Miller and Lux Enterprise (1915) 169 Cal 415; Williamson v CRC (1924) 193 Cal 22; S. Edwards Assn. v CRC (1925) 196 Cal 62; Robcock v Clarke (1931) 213 Cal 389; Yucaipa Water Company No. 1 v CPUC (1960) 54 Cal 2d 823.)

PG&E does not argue that it is not a public utility; it argues that it is a public utility which offers two different kinds of service which are separate and distinct. In other words, when PG&E started to treat some of the water which it was supplying to communities in Tuolumne County, it was offering a new and different service to the communities and it could define and limit the area to which this service was offered.

PG&E's Tuolumne Water System
is dedicated to public use.

Although it is true that the Commission cannot regulate a utility which has not dedicated its service to the public or compel a utility to extend its service to prospective customers who reside outside of the area to which the water of the utility has been dedicated (AT&SF Ry. Co. v CRC (1916) 173 Cal 577; California Water and Tel. Co., supra), the Supreme Court of California has held that dedication's restraining power should not be extended further than logic and precedent require. (Greyhound Lines, Inc. v CPUC (1968) 68 Cal 2d 406.) Public use can be found by implication, such as acts in which the utility holds itself out to supply the public or a class of the public on equal terms to all who apply. (Yucaipa Water Company No. 1, supra; California Water and Tel. Co., supra; Lukrawka v Spring Valley Water Company (1915) 169 Cal 318.)

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Dedication is defined by the class of people to whom service is offered, the nature of the service offered, and the territory to which service is offered. The Tuolumne Water System took its form in the middle of the Nineteenth Century. It has for years supplied the water needs of those people reachable by the ditch system. It has supplied water for mining, agricultural, and domestic purposes. The system has not provided water for a particular purpose, but rather it has offered water as a commodity in itself, in the manner and quantity desired to be received and used. (Pinney and Boyle v L.A. Gas and Electric Corp. (1914) 168 Cal 12; San Leandro v CRC (1920) 183 Cal 229.)

There are a number of cases in which large water systems, flumes, and treatment plants supplied water for a variety of purposes, including domestic, mining, and agricultural. These systems, like the Tuolumne Water System, were located in mining and agricultural areas interspersed with small towns and communities. Even though the number and kinds of users varied, these cases do not make a distinction between the different services provided except in terms of reasonableness as to who pays for what. (S. Edwards, supra; Williamson, supra; Yucaipa, supra; Hildreth v Montecito (1903) 139 Cal 22; Babcock, supra; San Jose Water Works, supra.) See also McFarland Tel. Co. for a telephone company which had a rural and urban system. One case distinctly found that there were "not four separate and distinct dedications" as the company maintained. (El Dorado Water Users Association (1918) 15 CRC 681.) The Commission found that the predecessors of the El Dorado Water System had been engaged in the business of selling water to anyone who was willing to abide by its regulations and contracts. Though the kind of use changed, the system was doing only one thing, selling water for public use. The facts of that case are consistent with the facts surrounding the Tuolumne Water System. These cases have all found that it was the system and the waters within it which were dedicated

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to public use. End-use of the water was not the determining factor of dedication. San Jose Water Works, supra, found that potability was not a measure of dedication. In a case in which transportation was the service offered, the Supreme Court indicated that the Commission could require Southern Pacific to change their mix of rail, automotive, and boat transportation. (Southern Pacific v FUC (1953) 41 Cal 2d 354.)

Although PG&E would separate, for the purpose of defining service area, the two kinds of service it calls treated and untreated water, PG&E will cavalierly seek to abandon an area to which it previously offered ditch water when it finds it to PG&E's economic advantage to replace the open ditch with closed pipe. And to top everything off, PG&E claims that since the purpose of the pipe is to supply a town to which it previously offered treated water, on the grounds of improving its system, PG&E is under no obligation to extend treated service to any great extent to the communities and persons now located along the closed pipeline. Making no provision for reasonable growth, PG&E would deny both treated and untreated water to people more than 50 feet off the pipeline, except for those customers actually using water before construction of the pipeline.

This kind of situation is intolerable. We find that the Tuolumne Water System is one which has been dedicated to the particular undertaking of supplying water as a commodity and the utility must take all reasonable measures to supply the kind of water the communities and individuals within the service area desire and need.

The service area of the Tuolumne Water System is that area circumscribed by a line marked "Boundary of Water Service Area" on the map filed in response to paragraph 5 of Decision No. 54618, plus the communities of Mi-Wuk Village, Confidence, Sierra Village, and Sugar Pine.

Although Ordering Paragraphs 2, 5, and 6 of Decision No. 54618 were designed to require PG&E to clearly define its service

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area, there is still confusion over the extent of the Tuolumne Water System service area. Cases which involve extensive ditch water systems have generally held that it is the duty of the utility to furnish, to the limits of its facilities, all people properly reachable under the system. We find that the class of people to whom the Tuolumne Water System is devoted consists of all persons living and doing business in that portion of Tuolumne County lying under the water system or all the land lying between the south fork of the Stanislaus and the north fork of the Tuolumne Rivers which can reasonably be served by water coming from the Lyons Reservoir and the main Tuolumne canal. PG&E, itself, has indicated that it considers the area indicated on the map filed by PG&E in response to Ordering Paragraph 5 surrounded by a perimeter line labeled "boundary of service area" to be a reasonable determination of the area to be served by the ditches of the Tuolumne Water System. The town systems shown on the map filed in response to Ordering Paragraph 6 are within the perimeter area marked and are also served from the ditch system.

The record shows that the communities of Mi-Wuk Village, Confidence, Sierra Village, and Sugar Pine are being served out of the main Tuolumne canal, but are not within the perimeter boundary. PG&E confirmed that these communities are being supplied water; that they were covered from a service area standpoint by the tariff definition of territory adjacent to PG&E's canal systems even though there is property between the canal and the areas being served. These areas, as well as any other areas outside the perimeter now being served, must be shown on PG&E's service map and we will so order.

The fact that we have determined PG&E's service area to be a large area indicated by the "boundary of water service" perimeter line does not mean that PG&E will have furnished water of a

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specific quality to all who are or will be in that area regardless of cost or proximity to the canals. The requirement to extend within a service area is a question of reasonableness to be decided by the Commission on a case-by-case review. (Clark v Hermosa Beach (1913) 2 CRC 149; Greyhound, supra.) The limitation of new customers is determined by the capability of the system. (Butte Co. Water Users Association v CRC (1921) 18 Cal 218.) Even if the lands are within the service area, once the limit of the system has been reached, the Commission can prohibit the utility from selling to additional lands. (Merdecas v Madera Canal and Irrigation Co. (1913) 3 CRC 965; Aerial Acres Water System (1970) 71 CPUC 92, Section 2710 of the Public Utilities Code.) Thus, in a situation like that posed in Decision No. 84428 where PG&E asked for authorization to replace part of the open ditch system with a pipe supplying treated water, PG&E may be given permission to abandon a part of the service area previously served, since the improvement makes it more costly and less feasible to deliver water to the entire area. This does not mean that the old service area has been replaced by a new service area, but that the old service area has been narrowed after, of course, a determination that former users or prospective users will not be unduly harmed and proper allowance for reasonable growth off the pipeline has been made.

The Nature and Extent of PG&E's Duties in Supplying Untreated Ditch Water to Various Customers

According to TCWD #2 it filed an appearance and protest in this proceeding to show that PG&E is not providing adequate, efficient, just, and reasonable service to its patrons and the public as required by Section 451 of the Public Utilities Code. TCWD #2 sought to show that PG&E's service is deficient in several respects, including:

1. Its lack of an adequate amount of water supply for the existing and growing needs of its service area, coupled with a failure to develop additional supplies.

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2. Its supplying untreated water from open ditches to a large part of its service area, ostensibly for "agricultural purposes", when the water is obviously and knowingly being used principally for domestic purposes, without any program to improve the quality of supply.
3. Its imposition of burdensome conditions on new applicants for service (stemming principally from its own failure to improve the system and develop additional supplies), including requirements that they pay for capital improvements (ditch piping) to the PG&E's plant, and provide local storage.

TCWD #2 argues that an adequate water supply from the Tuolumne Water System is of vital importance to Tuolumne County's welfare and economy. The source of water for PG&E's Tuolumne Water System is the south fork of the Stanislaus River. Water is impounded in the 5,506 acre-feet Lyons Reservoir, and then conveyed in the 52 cfs main Tuolumne canal to the western portion of Tuolumne County, where it is distributed through 79 miles of ditches^{7/} to the area between the south fork of the Stanislaus River and the north fork of the Tuolumne River.

The system serves most of the populated areas in Tuolumne County, including the communities of Sonora, Jamestown, Tuolumne, Columbia, and Twain Harte. The Stanislaus National Forest lies north and east of the service area. The area to the south and west is relatively undeveloped. Approximately 75 percent to 85 percent of the population within Tuolumne County is estimated to be within the service area at the present time.

Mr. Goodenough, a witness for TCWD #2, in his study of the Tuolumne Water System reported that:

"Since 1962, a substantial increase in the amount of water delivered to the services has occurred, reaching a maximum in 1968, when 2,870 acre-feet was delivered to the services. One major factor in this increase was the amount of water delivered to Re-Sale Services, who receive

^{7/} Most of these ditches were developed by gold miners to convey water for hydraulic mining operations.

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untreated water and after treatment, distribute it to their customers. Other than Tuolumne County Water District No. 1, most of the Re-Sale Services increased in number and extent since 1962."

He further testified that: (1) growth in the PG&E service area has been apparent for many years; (2) he observed during the period 1953 to 1958 a rather steady building of recreational homesites; (3) starting in the 1960's there has been an extreme trend toward the building of more housing in the entire area, and it is scattered; and (4) there has been extensive growth in the various areas outside the town systems.

The County's Overall Economic Development Plan reports that from 1958 to 1968, county-wide, there was an average of 11 new subdivisions with an average of 700 lots developed annually, with new residential starts averaging 253 annually over seven years. The record shows that there has also been, in addition, an "infinite" number of lot splits in the area which do not show up as subdivisions. Numerous community or local water systems exist within the area. However, they are for the most part merely retailing water that is purchased from PG&E's Tuolumne Water System. The area obtains some water from springs, wells, and diversions from minor streams, but these sources are "minimal, frequently unreliable, and often inadequate".

The ability of the Tuolumne Water System to provide and distribute an adequate supply of water to meet the growing needs of the area is, of course, of great concern to the residents and the availability of an adequate water supply is vital to the area's existing and future economy.

Tuolumne County's 1969 Overall Economic Development Plan states:

"With the present and projected levels of homesite development now a near certainty, the years of 1973 to 1978 will, in all probability, become the most challenging years for the Real Estate industry-- that of developing ideal domestic water sources.

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"If such water source is not developed during the mid 1970's this industry and its related building fields will experience a steady decline in employment, resulting in an increase in unemployment, beyond any levels we are now attempting to reduce.

"The demand for domestic water will very likely tax our existing water supply beyond its capacity. This will, in effect, apply a choking action, reflecting a decrease of property values and building activity. . . .

"The need of adequate road and water systems is central to the problem (of economic growth), and interrelates with all other aspects of the county's environment."

Similarly, Tuolumne County's "Areawide Planning Study for Water and Sewer" concludes:

"Thus it can be seen that two great challenges confront the people of Tuolumne County. On the one hand there is the need to supply water of adequate quality and quantity for the future anticipated development. On the other is the ever increasing requirement that man take necessary steps to 'protect his environment from the adverse effects of his own liquid wastewaters'.

"The growth and well-being of Tuolumne County will be limited by the available water supply unless an adequate and reliable source can be developed."

According to TCWD #2 the area itself is doing something about its sewage (waste water) problems,^{6/} and the time has come for something to be done about its inadequate water supply. The Tuolumne Water System is its water supply for the most part, and so

6/ The area recently authorized a TCWD #2 bond issue of \$2,000,000 to build a regional sewage collection and disposal project to serve the area.

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the area must come to the Commission for help. What the Commission does, according to TCWD #2, will control in large part the future of Tuolumne County.

At the first series of hearings, PG&E presented a general plan to assure an adequate supply of water for the Tuolumne Water System. The plan proposed to follow two principal courses of action. First, PG&E would continue to divert water from its Strawberry Reservoir^{9/} for use in the Tuolumne Water System to supplement as required the basic source of supply during the high use period of the year. Secondly, PG&E planned to institute certain conservation practices to meet foreseeable water needs. The selected piping of ditches was among the practices chosen. These plans, according to PG&E, would assure the supply through at least 1985. PG&E chose a general plan to maintain as much flexibility as possible and to be able to take advantage of options developing in the future.^{10/}

PG&E claimed that it has, historically, been able to assure adequate and reliable service to all of its customers.^{11/}

PG&E stated at the original hearing that it would continue to serve treated water in the town systems and irrigation water in the ditch systems. At the second hearing, PG&E's position was: If the status quo remains the same - in other words, if the Commission does not order PG&E to do anything more than it is doing today - it will continue to serve treated water in the town system as it does today, and it will continue to serve untreated water from the ditch systems as it does today. However, if the Commission orders PG&E to serve treated water throughout the 150 square mile service area, then it will abandon the untreated water service because the ditches would be piped in order to serve treated water.

^{9/} The record shows that PG&E has no legal right to divert water from Strawberry Reservoir for domestic use in its Tuolumne Water System.

^{10/} PG&E has never made a complete engineering study of its system.

^{11/} Such claim was negated by the testimony of various witnesses.

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We have herein determined PG&E's service area.

From the beginning of our regulation, we have consistently held that it is the duty of a regulated public utility to furnish adequate facilities and service within its service area.

As was held in Sacramento Valley West Side Canal Co.
(1918) 15 CRC 253:

"The duty of a public utility to make such improvements and extensions as are reasonably necessary to give adequate service to the community it is constructed to serve is so clearly established as to make a citation of authorities surplusage."

Again in Griffin v Sycamore Canyon Water Co. (1919) 17
CRC 521:

"Clearly the responsibility is upon the utility, to provide an increased amount of water to its consumers sufficient to supply them adequate service at all times."

In Application of Monterey and Pacific Grove Ry. (1921)
19 CRC 646, we held:

"It has been the Commission's permanent policy that the owner of a utility is responsible for reasonably good service and that from him must come the necessary capital for extension or rehabilitation of plant."

We placed PG&E on notice regarding our policy when in Decision No. 54812 (1957) 55 CPUC 556 we said:

"Applicant's duty is not, however, limited to the supplying of the 52 second feet now provided through its ditch system. It has an obligation to supply all the reasonable needs of its customers for water. If the population of the area increases sufficiently, it will be required to improve its supply of water. We might properly, even now, require it to provide more storage facilities to assure an adequate supply during dry years when the full 52 second feet might not be available through the ditch system. In view of the expense involved, however, and of the necessity of authorizing still higher rates to cover it, we believe that the customers, for the present, would prefer to curtail somewhat their use of water should there be any unusually dry years."

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Twenty-one years have passed since we pointed out to PG&E its responsibilities. PG&E's response has always been to insist that the consumers assume the burden of improving its Nineteenth Century water system. PG&E should announce whether or not it is willing to assume its public utility obligation and bring its water system into the last quarter of the Twentieth Century.^{12/}

PG&E has a duty to expand its service to meet the needs of its service area.

PG&E's performance in its existing treated water service is not an issue in this case. However, PG&E has been reluctant to extend its treated service to areas within close proximity (East Sonora), and it refuses to improve its system in response to the needs of the community it serves.

Certainly every inhabitant within PG&E's service area is not entitled to the same service at the same rates as a town inhabitant. But every inhabitant is entitled to reasonable and adequate service subject to the demands of the public, the cost of the service, and the financial condition of the company. (General Telephone of Calif. (1969) 69 CPUC 601.)

In Fulton Utility Water Co. (1965) 64 CPUC 286 at 289, we held:

"In the past the peripheral areas of many of California's cities and towns have developed in a haphazard manner. In some places subdivisions have developed at such a distance from one another that numerous certificates have had to be issued. In some such situations

^{12/} If PG&E does not wish to assume its responsibilities it has two choices:

1. It can seek permission to abandon its system. (Lyon & Hoag v RR. Com. (1920) 163 C 145.)
2. It can sell its system (with Commission authorization).

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there are enough customers to maintain a first class utility with professional water works personnel in charge and adequate funds for such additions and betterments as become necessary, but due to the order in which subdivisions have been created, it has happened that the customers are divided among a number of small utilities which do not have adequate funds for a first class utility service. The situation just described is undesirable and the Commission proposes to avoid it wherever that is possible."

PG&E's reluctance to improve its system has resulted in a chaotic fragmentation of the service area.

The record shows that there now exist nearly 40 water systems in PG&E's service area of which 14 are public utilities, most having fewer than 100 customers.

The record also shows that the communities desiring to put in their own systems are not able to do so because PG&E will not supply them with enough water to supply the needs of the community and because the contractual requirements for resale customers imposed by PG&E are so onerous, the community water system could not operate in an economically efficient manner.

In order to obviate further uncontrolled proliferation of uneconomical water purveyors and in order to assure proper utilization of the existing water supply, we will order PG&E to provide for rational expansion of its treated area.

There is no question that the authority of this Commission extends to the power to require studies to be done and improvements to be made if it finds that it would be more efficient, in agreement with the needs of the community, and economically feasible. (Park Water Co. (1962) 66 CPUC 672; San Jose Water Works (1970) 71 CPUC 432.) The Commission may order modernization of facilities even though its orders may usurp functions which are normally part of management's decisions. (Southern Pacific Co. v CPUC (1953) 41 Cal 2d 354, App. Dis. 346 US 919.)

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PG&E must supply potable water throughout the system wherever it is reasonable to require it.

PG&E's system now supplies all of the water to PG&E-owned piped water distribution systems serving domestic water to the communities of Jamestown, Sonora, and Tuolumne. The system wholesales ditch water to 27 resale customers who are treating the water and supplying it to the residents of other communities and subdivisions in the area for domestic purposes.^{13/} The system also supplies water to approximately 735 other customers along the ditch system. Of these, 151 are taking their supply through domestic-size meters (Schedule 11, General Metered Service) and 208 are on the "Limited Irrigation" (Schedule 12) which provides one miner's inch or less. The remainder, or 376, of the ditch customers are on PG&E's General Irrigation Schedule 13. TCWD #2's witness Lawrence stated:

"It is well known that these categories of water service involve very significant ultimate deliveries of domestic water..."

"...we were able to come to the conclusion in working with the data provided and consulting with the Sonora P.G.&E. office, that of the customers that are under the irrigation-type of account, only about one out of twenty in round number, 5 percent, truly are agricultural irrigators. The irrigation classification is not really representative of the commercial type of agriculture."

^{13/} In 1968, the resale services served more customers and used more water (1,164 acre-feet) than was used in PG&E's three town systems (1,133 acre-feet).

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Mr. Goodenough made the same observations in his study. TCWD #2's witness Walter also noted that several of the individual ditch users are serving their neighbors:

"I discussed this with the Health Department and I found a number of such little water companies that an individual buys water from the ditch and then distributes it to--through his pipeline to several other people, and it's just plain untreated ditch water."

PC&E's survey (Exhibit 42) ordered by the ALJ during the hearing revealed the high domestic use by ditch customers. Out of 762 ditch customers, 566 admitted that they were using the ditch water in the household. PC&E also learned from the survey:

"...that out of 762 customers on the canal there were 102 of those customers that were sharing their outlets with others..."

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It is PG&E's public utility duty (General Order No. 103) to provide the following:

"II. Standards of Service

"1. Quality of Water.

"a. General. Any utility serving water for human consumption or for domestic uses shall provide water that is wholesome, potable, in no way harmful or dangerous to health and, insofar as practicable, free from objectionable odors, taste, color and turbidity. Any utility supplying water for human consumption shall hold or make application for a permit as provided by the Health and Safety Code of the State of California, and shall comply with the laws and regulations of the state or local Department of Public Health. It is not intended that any rule contained in this paragraph II 1 shall supersede or conflict with an applicable regulation of the State Department of Public Health. A compliance by a utility with the regulations of the State Department of Public Health on a particular subject matter shall constitute a compliance with such of these rules as relate to the same subject matter except as otherwise ordered by the Commission.

"b. Water Supply. In the absence of comparable requirements of the State Department of Public Health, the following general rules shall apply:

(1) Source. Water supplied by any utility shall be:

- (a) Obtained from a source free from pollution; or obtained from a source adequately purified by natural agencies; or adequately protected by artificial treatment.
- (b) From a source reasonably adequate to provide a continuous supply of water.
- (c) Of such quality as to meet the United States Public Health Service Drinking Water Standards."

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A PG&E witness testified that PG&E supplies ditch water solely for agricultural and irrigation purposes.

The provisions of Chapter 7, California Health and Safety Section 4010, state in part:

"... 'Furnish and supply', as used in this chapter, is used in its normal and natural meaning, and shall be defined to include furnishing or supplying water to two or more places of human habitation where said places are connected by an integrated pipe system and operated by the supplier. 'Furnish and supply' shall be defined not to include furnishing or supplying water in a rural area from an irrigation canal system, if the owner or operator of such irrigation canal system has notified in writing a user or supplier that such water is untreated and is being furnished or supplied solely for agricultural purposes, to either of the following:

- "1. A user where the user receives the water, by pipe or otherwise, directly from the irrigation canal system.
- "2. A supplier who owns or operates an integrated pipe system where such supplier receives the water, by pipe or otherwise, directly from such irrigation canal system.

"'Irrigation canal system' as used in this section, shall be defined as a system or water conveyance facilities, including pipes, tunnels, canals, conduits, pumping plants, and related facilities, operated to furnish or supply water for agricultural purposes where a substantial portion of such facility is open and directly accessible to the atmosphere."

Section 4010.1 states:

"In areas where the service rendered by a person is primarily agricultural and domestic service is only incidental thereto, the provisions of this chapter shall not apply except in specific areas in which the State Department of Health has found in its application to be necessary for the protection of the public health and has given written notice thereof to the person furnishing or supplying water in the area. . . ."

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On June 17, 1970 PG&E, pursuant to the requirements of Sections 4010 and 4010.1, supra, sent a letter to its untreated water customers notifying them that the water being furnished by PG&E is untreated water and is being furnished solely for agricultural purposes. PG&E's untreated water schedules carry the disclaimer:

"The water supplied under this schedule is untreated water from open ditches, canals, conduits, and flumes. The Company does not represent or guarantee that any water delivered hereunder is potable or of a quality suitable for human consumption. Any customer who uses said water and makes it available to others for human consumption shall take all necessary precautions to make the same potable and shall assume all risks and liabilities in connection therewith."

In addition, PG&E claims it has no means to stop agricultural water customers from using the water for whatever purposes they want to.

PG&E maintains that the potability and level of purity of the water of a public utility's water supply is within the exclusive jurisdiction of the appropriate health authorities. PG&E argues that since the Health and Safety Code exempts a utility from having to provide unpolluted water when the water is intended to be used for domestic purposes if that water is furnished in a rural area from an irrigation canal system, the company has no duty to provide better water quality.

PG&E's claim that it supplies ditch water solely for agricultural and irrigation purposes is not credible. Indeed, PG&E did not produce a scintilla of evidence as to actual commercial irrigation. TCWD #2 when ordered to produce such figures was unable to produce any figures. The record shows that the greatest use of ditch water is for domestic use. PG&E cannot hide behind its misinterpretation of the Health and Safety Code. PG&E must consider its Tuolumne Water System to be a domestic water system supplying water for human consumption.

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Arguably, the system can be said to no longer be "rural" or an "irrigation canal system" since it is supplying in large part domestic users. Certainly, it is approaching the ridiculous to call east Sonora, an extension of the town of Sonora, a rural area or to maintain that the primary use of water there is for irrigation.

In any event such a characterization is not conclusive to the Commission's determination that the system is not adequate, efficient, just, and reasonable.

Although the standards for determining the quality of water are within the exclusive jurisdiction of the health authorities, the Commission has the authority, and indeed the responsibility, to consider the measures designed to improve the quality of the service. (Greyhound, supra; Pollock Pines Chamber of Commerce v Greyhound Lines (1966) 66 CPUC 253; Pool v Mokelumne River Co. (1918) 15 CRC 38.)

If water is unsuitable for domestic use, both the State Board of Health and the Public Utilities Commission have authority under their respective statutes to require the utility to remedy the situation. (Sonoma Valley Water and Light Corp. (1925) 27 CRC 39; Van Fleet v Pierson (1965) 65 CPUC 1; City of Oroville and County of Butte v Cal. Water Service Co. (1957) 55 CPUC 407.)

We have reviewed the evidence presented by the parties regarding improving PG&E's service. The recommendation of the Supervising Sanitarian, Tuolumne County Health Department, that modification of Lyons Reservoir so it would act as a sedimentation basin and the piping of the ditch system emanating from Lyons Reservoir is the best and most practical of those proffered. The water supplied

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after modification and piping would be potable, ^{14/} and PG&E's long claimed distinction between treated and ditch water would disappear.

In the hiatus between the system as it exists presently and the modification of Lyons Reservoir and piping of the ditch, it is PG&E's duty to provide water to applicants in accordance with its filed tariff.

The record shows that it has long been PG&E's practice when faced with requests for water service to require a payment equal to its estimate of the cost of piping a sufficient amount of ditch to recover the requested supply. This amount apparently runs \$35,000 per miner's inch. ^{15/}

When pressed for the authority it claims allows it to charge customers the amount necessary to pipe enough of the ditch to recover the amount of water requested, PG&E's attorney stated:

"To address your question particularly, we rely on the preliminary tariff for the Tuolumne water system that states in part that if the requirements of new customers or additional requirements of present customers are of such a nature as to require major addition to the company's distribution facilities, the furnishing of such service will be subject to negotiation by the customer and the company.

"I believe what's happened is that when a new customer comes in and asks for so much new water, PG&E determines how much additional ditch piping or whatever will be needed to furnish that water.

^{14/} Lyons Reservoir by acting as a sedimentation basin would make the water potable.

^{15/} A Northern California miner's inch is 1/40 cubic foot per second.

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"FC&E quotes a charge to that party based upon what it needs to do to make that water available."

The portion of the preliminary statement referred to by counsel states:

"2. Description of Service

"Town Systems:

"The Company will furnish water service for domestic, commercial, industrial and municipal needs in quantities and at pressures as may reasonably be delivered by its distribution system facilities. If the requirements of new customers or the additional requirements of present customers are of such a nature as to require major additions to the Company's production or distribution facilities, the furnishing of such service will be subject to negotiations by the customer and the Company.

"Ditch Systems:

"The Company will furnish water service for irrigation and general purposes from its ditch system. Water for mining service may be furnished in accordance with special arrangements whenever water is available for such service. The point of delivery shall be at the berm of the Company's ditch system. If the requirements of new customers or additional requirements of present customers are of such a nature as to require major additions to the Company's distribution facilities, the furnishing of such service will be subject to negotiation by the customer and Company."

While it is reasonable to require customers to contribute some capital for the extraordinary costs they may require of the system, it is not reasonable to require them to be the conservation program of the system. It is FC&E's responsibility to maintain its own storage and to pipe its own system.

FC&E's reliance on the words in the preliminary statement to avoid its public utility obligation is deceiving to the public who are not experts in the nuances of tariff interpretation. In an accounting sense, piping the ditch would be considered as an addition

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to plant (with some retirement of the ditch). However, in reality, replacing a leaky ditch which loses much water through evaporation with a pipe is not a major addition as meant in the tariff. Such replacement is nothing more than overdue maintenance of plant.

This Opinion in Context with Prior Related
Commission Opinions and Orders

The evidentiary record in this proceeding and the circumstances we consider are to a material degree different from those underlying Decisions Nos. 84428 and 84795 (Order Denying Rehearing), issued May 13 and August 12, 1975, respectively, in Application No. 55059. That proceeding involved a request of PG&E to abandon a small portion of its ditch system in the Tuolumne area; the Supreme Court denied a petition for writ of review on those decisions on April 22, 1976. By those decisions we found "It is unreasonable to require PG&E to provide treated water service from the closed pipeline to the entire service area of the portion of the ditch system which is to be abandoned". (Finding No. 9, Decision No. 84428.) However, in that proceeding we considered the dedication and service territory question with respect to PG&E's Tuolumne operations for a limited portion of PG&E's system. The record before us is more extensively developed and addresses the entire situation and dilemma posed by PG&E's existing practices. We review the evidence and positions of the parties knowing that 75-85 percent of Tuolumne County's population lives in the area potentially affected by this opinion, keeping in mind the history of PG&E's system (see pages 4-5 herein) and the socioeconomic changes that have evolved in Tuolumne County. In that context the testimony prescribed by the County's Health Department regarding the difficulties having adequate potable water service provided under the existing arrangement heightens our awareness, as we review this matter, that although Tuolumne County has changed and is changing PG&E is not evolving by matching adequate utility service to the needs of residents. Most of the water delivered by PG&E's ditch

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system is destined for residential use, unlike 75-100 years ago; this situation has evolved gradually and it cannot be ignored. A public utility, as a benefit going along with its exclusive franchise to serve, has an obligation to evolve and reasonably tailor its services to the needs of the public it serves; in that respect a utility and those in the area who depend on and benefit from its service are in a symbiotic relationship. Based on this evidentiary record and reviewing the broader issue, in a narrow sense we find contrary to our determination in Decision No. 84428, but more importantly we reach a conclusion that more soundly and equitably resolves what has been a festering dilemma now ripe for a comprehensive resolution.

Has PG&E waived the right to enforce its contractual storage requirement with its resale customers?

The record shows that the Tuolumne Water System is reaching capacity, that PG&E is making no efforts to supply additional water for the needs of a growing community, and that major losses of water and costs of maintenance exist because of the nature of the earthen ditch system.

In recent years, water supplied from Lyons Reservoir has not been sufficient to cover the needs of the system during peak periods. Water has been drawn from the Strawberry Reservoir which is not part of the Tuolumne Water System. PG&E has no legal right to divert this water for domestic use in the Tuolumne area. PG&E protects itself from liability for damage if third parties with prior rights appropriate the water by including a provision to that effect in its contracts. Even if the system is piped, there is evidence that by 1985 there will not be enough water to supply the needs of the community. The time to plan additional storage facilities and to obtain future water rights which appear to be available is before the need arises. PG&E is required to provide an amount of water sufficient to supply the area with adequate water service and to enlarge its existing facilities and develop additional water to

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reasonably carry out its obligations as a public utility (Griffin v Sycamore Canyon (1919) 17 CRC 521; Clark v Hermosa Beach, supra; Engel v Henry (1962) 59 CPUC 457).

The record is also clear that the open ditch system results in increased maintenance costs and increased water losses. In a system which it appears is reaching capacity, it is reasonable to require the utility to do all it can to reduce losses and improve the facilities to make them more efficient (Mordecai v Madera Canal and Irr. Co., supra; James A. Murray (1913) 2 CRC 464).

PG&E plans, unless otherwise ordered, to conserve water through two measures: (1) requiring its resale to pay for installation of sufficient ditch piping to recover the water applied for, and (2) providing storage for peaking purposes. There is no question that these conditions are extremely onerous for the purchaser.

PG&E's plan thus requires it to do very little to plan for the future. Although the above contractual requirements are valid between the parties, the Commission has the authority to review the contracts and regulations of the utility to determine if they are reasonable and just (Bayshore Park (1942) 44 CRC 74; Traber v CRC (1920) 183 Cal 304).

It is the Commission's policy, expressed in Application of Monterey and Pacific Grove Ry., supra:

"...the owner of a utility is responsible for reasonably good service and that from him must come the necessary capital for extension or rehabilitation of plant."

Only in extraordinary circumstances, where the detriment to the utility and its existing customers would be such as to make it fair to ask new customers to pay for all or part of the necessary extension or increase in machinery, can the utility ask the customer to pay for capital expenditures. (Lukrawka v Spring Valley Water Co., supra; Clark v Hermosa Beach, supra; Dooley v Peoples Water Co. (1913) 3 CRC 948; Butler v PG&E (1913) 3 CRC 948.)

PG&E, as part of its terms and conditions of providing resale water service, requires resale customers to have storage. The minimum amount of storage required is presently 14 days. This condition has been required to create an emergency supply of water

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in the event of a canal outage or an occurrence which would stop the flow of ditch water to resale customers. This requirement may be reduced depending on certain circumstances with an individual customer. The amount of storage has been negotiable but the requirement of storage has not. Resale water applicants have always been required to furnish storage and told that they were expected to furnish it. However, PG&E has used the "honor system" in the past and has not audited the specified storage in the field. The storage requirement is currently being enforced upon existing customers upon the renewal of existing contracts or upon the request for additional water supplies and upon new resale customers.

PG&E does not, itself, maintain a 14-day storage requirement for its town systems which are supplied by the ditch system and therefore subject to similar outage problems. PG&E defends its practice by saying that water in the Phoenix Powerhouse can be used by the town systems in emergencies. Since a number of the other users of the system are also located below the Powerhouse, there is no reason to require them to maintain extra storage.

PG&E's 14-day storage requirement is unreasonable. This condition on resale service should be removed.

The Estimated Capital Investment Necessary To Improve the Tuolumne Water System

The system improvement we direct herein is essentially that recommended by TCWD #2 (Exhibit 61). TCWD #2 estimates the investment required to complete these modifications and improvements (described earlier in this opinion) would be about \$30 million over a 5-year period. The closest plan PG&E presented, with an investment estimate, was its Plan 3, which would total about \$52.8 million. While construction costs are difficult to estimate, it is apparent that the order which follows will involve expenditures by PG&E in the range of \$30 to \$52.8 million. PG&E will recover the investment it makes to improve the Tuolumne Water System through allowed

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depreciation expense when setting rates and will realize a reasonable rate of return on the undepreciated capital investment that is in its plant account or rate base.

Environmental Issues

We are directing PG&E to prepare its plans for modification of its existing ditch system so that they meet with the approval of the California Department of Fish and Game. This will insure no harm results to fish below the 3,000-foot elevation.

With respect to the motion that an EIR be prepared made by Ms. Tina Deatsch, we believe the reconstruction of PG&E's existing utility facilities falls within the area of categorically exempt projects (see Rule 17.1 (m)(A)1). Accordingly, her motion is denied.

Findings of Fact

1. Section 2709 of the Public Utilities Code allows the Commission to order a water corporation to file with the Commission a statement in writing defining and describing the lands and territory to be supplied by the corporation with water.

2. Ordering Paragraph 5 of Decision No. 54818 dated April 9, 1957, required PG&E to file a map delineating all the ditches of the Tuolumne Water System and all the various tracts of land and territory served by the system.

3. PG&E filed such a map (Exhibit 14 to this proceeding).

4. PG&E placed upon such map without equivocation or reservation a solid line enclosing an area which is clearly labeled "boundary of water service area".

5. Ordering Paragraph 6 of Decision No. 54818 dated April 9, 1957 required PG&E to file a map describing the town systems and the various tracts of land and territory served by it.

6. PG&E filed such a map.

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7. The town system is within the perimeter of the area labeled "boundary of water service area" in Exhibit 14, the map filed in response to Ordering Paragraph 5, and is served from the ditches which form the basis of the Tuolumne Water System.

8. PG&E presently serves the communities of Mi-Wuk Village, Confidence, Sierra Village, and Sugar Pine. These communities are outside of the territory enclosed within the area depicted on Exhibit 14.

9. PG&E's water system was developed in the early 1850's to supply gold miners.

10. Subsequently the water system was converted to an agricultural and domestic system.

11. There is only one 3-acre commercial agricultural customer presently using water.

12. Today, PG&E's water system is a domestic water system supplying water for human consumption.

13. Although the kind of use to which the water has been put has changed, the Tuolumne Water System has been dedicated to one general enterprise, the selling of water for public use.

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14. Among the various operations which the Tuolumne Water System has maintained in keeping with its duty to supply the public with water are the supplying of locally treated water in some areas and untreated ditch water in other areas. These are not two different and distinct dedications, but are part of the Tuolumne Water System's obligation to supply the amount and kind of water needed by the customers of its service area.

15. Expansion is taking place within the area served by the Tuolumne Water System, and there is a need for potable water to supply such expansion.

16. PG&E's water supply for the future will be deficient unless steps are taken to increase the supply.

17. PG&E has never made a complete engineering study of its water system.

18. PG&E has been reluctant to improve its water system.

19. PG&E has allowed fragmentation of its water service area.

20. The Tuolumne Water System as it exists today is reaching capacity.

21. The open ditch system incurs increased maintenance costs, permits excessive loss of water, and is a health hazard.

22. PG&E does not have adequate storage facilities.

23. PG&E has relied on an "honor system" to police its storage requirement.

24. PG&E's storage request (14 days) is unnecessary.

25. PG&E does not have a legal right to divert water from the Strawberry Reservoir to the Tuolumne Water System.

26. Applicants for service should not be required to pay for the piping of PG&E's ditch as a condition of receiving service.

27. The words "potable" and "treated" when used in conjunction with water are not synonymous.

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28. If Lyons Reservoir was modified so it would act as a sedimentation basin and the ditch system extending therefrom was piped, the water supply would be capable of supplying potable water to users of the system.

29. A study of whether all potable water should be metered is required before the Commission can order metering.

Conclusions of Law

1. In conformity with Section II A(4) of General Order No. 96-A PG&E should file a service area map which includes all the lands and territory set forth in Exhibit 14 plus the communities of Mi-Wuk Village, Confidence, Sierra Village, and Sugar Pine, and any additions or retirements of public utility water service facilities occurring since its last filing with the Commission.

2. It is PG&E's duty to improve its water system including, but not limited to, providing adequate potable water, adequate storage, and piping of its ditches.

3. PG&E should immediately supply potable water to the east Sonora area.

4. PG&E's requirement that an applicant for service pay for the cost of ditch piping should be eliminated.

5. PG&E should immediately prepare and implement a plan to modify Lyons Reservoir so that it will act as a sedimentation basin capable of supplying potable water.

6. PG&E should immediately prepare and implement a plan to pipe the ditch system emanating from Lyons Reservoir.

7. The modification of Lyons Reservoir so it would act as a sedimentation basin is within the classes of projects which the Secretary for Resources has exempted from the EIR requirements of CEQA. (Rule 17.1(m)(A)1, 2 and (B)1.)

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8. The piping of the ditch system emanating from Lyons Reservoir is within the classes of projects which the Secretary for Resources has exempted from the EIR requirements of CEQA. (Rule 17.1(h)(A)1, 2 and (B)1.)

FINAL ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) shall file with this Commission on or before the effective date of this order, four copies of a comprehensive map drawn to an indicated scale not smaller than 2,000 feet to the inch which map shall be identical to the map which is Exhibit 14 in this proceeding, plus the communities of Mi-Wuk Village, Confidence, Sierra Village, and Sugar Pine. The filed map shall clearly show the boundaries of the service area and shall henceforth be referred to as PG&E's service area map for its Tuolumne Water System.

2. PG&E shall within sixty days from the effective date of this order:

- a. Prepare a plan to modify Lyons Reservoir so it will act as a sedimentation basin capable of supplying potable water.
- b. Prepare a plan to pipe the existing ditch system emanating from the Lyons Reservoir consistent with the requirements of this order.
- c. Serve the above-ordered plans on all appearances to this proceeding, serve a copy on the Commission's Hydraulic Branch, and submit one copy to the Docket Office for filing as a compliance filing in this proceeding.

3. Upon filing the plans required above in Ordering Paragraph 2, PG&E shall expeditiously undertake and initiate construction of the facilities required.

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4. PG&E shall prepare a study on the desirability of providing metered water service, addressing the criteria set forth in Section 781 of the Public Utilities Code, within one hundred eighty days after the effective date of this order, serving and filing the study as set forth in above Ordering Paragraph 2.c. The issue of whether or not metering shall be instituted, within the requirements of Section 781, will be considered in the general rate proceeding following the completion of the facility improvements and modifications ordered herein.

5. PG&E's plans for piping the existing ditch system must meet with the approval of the California Department of Fish and Game:

6. PG&E shall, within sixty days of the effective date of this order, file rules concerning the supplying of potable water to its entire service area. Such rules shall include:

- a. An assurance that PG&E will promptly provide potable water to areas which are adjacent to its presently treated areas.
- b. A provision that PG&E will promptly extend outside of the area if requested to by the appropriate government agency provided that the territory consists of a cohesive unit, that it includes a total area logically to be served by the necessary special transmission and pumping and storage arrangements, and that satisfactory arrangements are made to finance special facilities.
- c. PG&E shall withdraw and cancel all tariff schedules which refer to untreated or unpotable water.

7. Except by further Commission order, in accordance with Section 2710 of the Public Utilities Code, PG&E's Tuolumne Water System shall not supply water within or without its service area to any public utility water corporation, mutual water company,

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municipal corporation, public district, or any other water purveyor not supplying water as of the effective date of this order.

8. The motion that an Environmental Impact Report be prepared made in this proceeding by Ms. Tina Deatsch is denied.

9. Proceedings in Application No. 54199 are hereby terminated.

The effective date of this order shall be thirty days after the date hereof.

Dated January 4, 1980, at San Francisco, California.

/s/ JOHN R. GILLANDERS
John R. Gillanders
Administrative Law Judge



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BOARD OF SUPERVISORS

January 22, 1980

IN REPLY, REFER TO

Public Utilities Commission
State of California
State Building
350 McAlister St.
San Francisco, CA. 94115

Members of the Board:

The Tuolumne County Board of Supervisors expresses their appreciation for the opportunity to comment on your Application No. 54199, regarding the extent of the P. G. & E's obligation to serve potable water in Tuolumne County.

Even though we at the Board understand the desirability of serving this entire area with potable water, we are also painfully aware of the consequences regarding excessive expense to the consumers and the loss of irrigation water. We feel that it is imperative that a compromise be reached; whereby the cost to the consumer remains at a rate somewhere in the \$20.00 per month range. It is obvious that if all of the proposed improvements are undertaken, this can never happen.

In the P. G. & E's own position report, dated 1970 to 1985, they give a list of proposed improvements to the ditch system, which basically means starting at the lower end of the system and piping towards Lyons Dam on a steady long range program. We realize this will not serve potable water to all of our people; however, it would certainly make the necessary water available to existing water companies. This would allow a large portion of the agricultural users to continue buying water.

There are certain heavily built-up areas in our County, East Sonora in particular, that the P. G. & E. must serve with treated water in an approved distribution system. Areas such as this are the exception and not the rule in Tuolumne County and must be considered individually. These types of improvements should be paid for by the residents of the improved area as opposed to general ditch repair and improvements which must be shared by all.

Public Utilities Commission
January 22, 1980
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It is our feeling that if the P. G. & E. were forced to submit a plan such as the one they have already written, it would force them to adhere to a reasonable timetable for piping our ditches on a "worst first" basis.

The citizens of Tuolumne County could enjoy an adequate water supply without incurring horrendous rate increases. One short look at the average income in Tuolumne County makes it clear that the citizens simply cannot afford \$50.00 per month water rates, much less \$80.00 per month. We realize that we will probably be forced into the \$20.00 per month rate, but any steps above that will cause unacceptable hardships to our people.

Other steps that would help Tuolumne County would be to amend General Order 103 to allow lower fire flows for rural counties. This can be justified because we have an ordinance which does not allow a building over 35' high. If possible, the P. G. & E. could utilize some grant money to offset some of these costs.

Hoping this helps you some in your difficult decision, we remain,

Sincerely yours,

Tilio T. Chiappelli
TILIO T. CHIAPPELLI, Chairman,
Tuolumne County Board of
Supervisors

TTC:ele

JAN 7 1980

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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

State Building
350 McAllister Street
San Francisco, CA 94102

January 4, 1980

TO: TUOLUMNE COUNTY BOARD OF SUPERVISORS AND
ALL APPEARANCES IN APPLICATION NO. 54199

RE: PROPOSED REPORT OF ADMINISTRATIVE LAW
JUDGE JOHN R. GILLANDERS ON APPLICATION
NO. 54199 (PHASE RE EXTENT OF PG&E'S
OBLIGATION TO SERVE TREATED POTABLE
WATER IN TUOLUMNE COUNTY)

The Commission has pending before it a proposed decision that would require Pacific Gas and Electric Company (PG&E) to upgrade its water service in Tuolumne County, and the Commission is concerned that the residents of Tuolumne County understand fully what the costs of this improvement would be. Accordingly, the Commission invites your attention to the enclosed materials, and would welcome your comments on them before January 24, 1980.

The proposed decision, based on lengthy hearings and the submission of detailed materials, was prepared by Administrative Law Judge John R. Gillanders and was recommended to the full Commission by Commissioner Richard D. Gravelle. At its conference on November 30, 1979 the Commission approved issuance of this Proposed Report.

The proposed decision finds that PG&E will be required to make capital expenditures of \$30-\$52.8 million to upgrade its facilities to sell treated water in areas now served by a ditch system. When the proposed decision came before the Commission on November 30, 1979, the head of the Commission's accounting and auditing division (Revenue Requirements Division) contended that the proposed decision would lead to unacceptably high rates for PG&E's water customers. He noted that the company has a pending application (No. 58631) that would affect Tuolumne customers, in which PG&E seeks a rate increase for water service of 236 percent. He estimated that the decision proposed by ALJ Gillanders could, under certain circumstances, result in rates rising 1,406 percent, which would mean that an average monthly bill that is now \$8 would rise to about \$80.

ALJ Gillanders does not agree with this assessment, contending that new customers to be added to the system will greatly reduce the cost impact, and that maintenance expenses will not be as high as the Revenue Requirements Division has estimated.

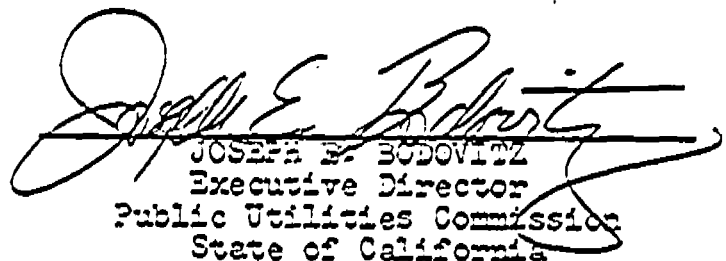
All three documents—the proposed decision, the financial objections to it, and the rebuttal by ALJ Gillanders—are enclosed. Because the Commission wishes to resolve this matter promptly, your comments are requested by January 24, 1980.

Written comments may be submitted by all interested parties. Properly filed Exceptions and Replies to Exceptions will be placed in the formal file in accordance with Rule 80 of the Commission's Rules of Practice and Procedure, which is summarized as follows:

Exceptions: Any party of record, in the above proceeding may file with the Commission, not later than January 24, 1980, an original and 12 copies of exceptions to the Proposed Report, sending a copy to each party and filing with the Commission a certificate of service. Exceptions shall be specific, and shall be stated and numbered separately. Exceptions to factual findings shall specify the portions of the record relied upon, and shall propose substitute findings or propose additional findings with supporting reasons. Exceptions to conclusions shall cite statutory provisions or principal authorities relied upon and shall propose substitute conclusions or additional conclusions.

Replies to Exceptions: Replies may be served and filed within 15 days after service of exceptions.

However, as the Commission desires to receive the comments and exceptions of those in Tuolumne County potentially affected by the Proposed Report, any interested party may submit exceptions and replies to exceptions (as outlined above) or otherwise submit written comments. Note: Only properly filed Exceptions and Replies to Exceptions will be placed in the Commission's formal file of pleadings in this matter; letters will be placed in the proceeding's correspondence file.


JOSEPH E. BODOVITZ
Executive Director
Public Utilities Commission
State of California