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Decision 96-06-031 June 6, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's own motion to consider the line extension rules of electric and gas utilities.	R.92-03-050 (Filed March 31, 1992)

ORIGINAL

OPINION ON ISSUES TO BE ADDRESSED IN 1996

Summary

By this decision, the Commission limits the number of issues that will be addressed in this proceeding (see Order below).

Procedural Summary

On December 7, 1994, the Commission issued Decision (D.) 94-12-026 which implemented certain changes to the then existing gas and electric line extension rules by providing for revenue-based allowances for line extensions.

In D.94-12-026, the Commission stated:

> "This proceeding shall remain open to address: (1) any further necessary refinement of the revenue-based allowance calculation method after initial implementation; (2) applicant installation and design; and, (3) the sharing of savings resulting from competition, which issues shall be addressed by year-end 1995. The assigned ALJ [administrative law judge] shall hold a prehearing conference to schedule workshops, and, if necessary, evidentiary hearings, to address the above issues and any other issues that the ALJ considers necessary to further the Commission's goal 'to consolidate, simplify and standardize the extension rules and to more appropriately assign extension costs.' (Ordering Paragraph 6, pp. 31 and 32.)"

During 1995, in response to the Commission directive, several workshops were conducted, workshop reports were submitted to the Commission and a 24-month pilot applicant design program was

approved by the Commission (D.95-12-013). On November 15, 1995, in an effort to bring some closure to 1995's activities, a prehearing conference was convened to assemble a complete list of issues for briefing to determine which, if any, of such issues should be considered to be within the scope of this proceeding.

Thereafter, in a November 30, 1995 ruling, the ALJ listed 14 issues and stated:

> "Parties interested in a particular issue listed above should file briefs explaining the issue, the relevance to this proceeding, and why the Commission should address the issue in 1996."

Opening briefs or reply briefs were submitted by the California Building Industry Association (CBIA), Coalition for Urban Concerns (CUC), California Farm Bureau Federation (Farm Bureau), Joint Utilities,[1] California Association of Realtors (Realtors), City and County of San Francisco (CCSF), Natural Resources Defense Council (NRDC), Power Plus! (Power Plus), Toward Utility Rate Normalization and Utility Consumers Action Network (TURN/UCAN), and Utility Design, Inc. (UDI).

Discussion

A. Issues Determined in Workshops to be Within Scope of the OIR/Proceeding

There is no disagreement among the workshop participants that the issues set forth below should be addressed in 1996.[2]

1. Site-specific cost for job bids

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1 Southern California Gas Company (SoCalGas), Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SDG&E), San Diego Gas & Electric Company (SDG&E), Southwest Gas Corporation (Southwest Gas), PacifiCorp and Sierra Pacific Power Company (together Joint Utilities).

2 For practical reasons, it is necessary to limit the number of issues to ensure a Commission decision by year end (see Public Utilities (PU) Code § 783(d)).

2. Use the lower of utility's cost or applicant's cost for Income Tax Component of Contributions (ITCC) calculations and ratebase.

3. Utility service guarantee for "in" and "out" dates.

Since there is no dispute regarding the relevancy of the above issues, we agree that these issues should be addressed in 1996.

B. Issues Requiring Commission Determination Regarding Scope and Relevance to OIR Proceeding

Issue No. 1: "Reduce or eliminate line extension allowances"

TURN/UCAN argue that this issue raises questions about whether allowances continue to make sense in today's environment, especially considering the high utility rates paid by Californians, the state's economic conditions, and the emergence of competition in both the gas and electric utility service industries. TURN/UCAN expect to ask the Commission either to eliminate allowances altogether or, in the alternative, to scale them back dramatically as an appropriate response to these factors, and a response that serves the broader public interest.

NRDC seeks to advance its California members' interests in the efficient and equitable allocation of the costs of extensions of transmission and distribution lines for electric and gas utilities. Specifically, NRDC seeks a cost allocation regime in which cheaper-to-serve and resource-efficient urban and suburban growth patterns, including infill and compact contiguous development, enjoy lower costs, and in which ratepayer-financed subsidies for service extensions for expensive-to-serve low-density or noncontiguous residential and commercial development are abolished.

CUC considers it a violation of sound public policy for regulated utilities to use inner-city utility payments to subsidize new housing construction in suburban and rural areas. CUC alleges

that current public utility line extension allowances comprise a direct subsidy to new housing developers in California. According to CUC, this subsidy is an adverse transfer of money from lower- and middle-income urban Californians to upper-income suburban individuals who are creating urban sprawl and destroying useful agricultural land.

PG&E, SDG&E and Edison[3] (electric utilities), TURN/UCAN, NRDC and CUC argue that this issue is within the scope of the OIR.

The electric utilities agree that this issue is part of the "refinement of the revenue-based allowance and calculation method after initial implementation" criteria set forth in D.94-12-026. Also, the electric utilities believe that there is the potential for significant savings regarding the more appropriate assignment of costs associated with line extensions.

SoCalGas and Southwest Gas (gas-only utilities), CBIA, Power Plus and Realtors argue that Issue No. 1 is beyond the scope of this proceeding.

The gas-only utilities argue that this issue is not one of "applicant installation and design" or "the sharing of savings resulting from competition." They believe that the Commission intended for this issue to address refinements to the allowance calculation method after some implementation experience.

Addressing the argument made by TURN/UCAN that the current allowances do not recover a number of utility costs that new customer hook-ups impose on the utility system, the gas-only

3 The Joint Utilities did not reach agreement as to whether this issue should be included within the scope of this proceeding. SoCalGas and Southwest Gas (gas-only utilities) believe that it is beyond the scope of this proceeding. PG&E, SDG&E and Edison (electric utilities) believe that it is within the scope of this proceeding.

utilities, submit that the TURN/UCAN issue belongs in Issue No. 3 below. Also, the gas-only utilities argue that Issue No. 1, as written, is too broad and could open the door to a variety of proposals having nothing to do with what the Commission intended in D.94-12-026.

Further, the gas-only utilities state that Issue No. 1 is of particular concern to gas-only utilities for the reason that natural gas service is a matter of builder discretion whereas electric service is a matter of builder necessity. The gas-only utilities point out that for a combination gas/electric utility or an electric-only utility, there obviously is less concern that reducing or eliminating allowances may cause builders/developers to choose to construct an all electric building or development. It may therefore come as no surprise that the gas-only utilities feel differently about this issue.

Power Plus argues that NRDC and Urban Concerns seek to insert social engineering into the line extension rules. Power Plus agrees with the gas-only utilities that Issue No. 1 is overly broad and could well open the door to proposals having nothing to do with the Commission's intent in D.94-12-026. Also, Power Plus agrees with the gas-only utilities that the impact upon gas-only utilities may be greater and would encourage a market for less efficient uses of energy.

CBIA points out that the Commission has had less than six months of experience with the recently instituted major rule revisions that were over three years in the making (D.94-12-026), yet it is now being asked to scrap its newly instituted reforms in contemplation of even more fundamental changes to the way in which electric and gas utilities extend gas and electric service to their customers. According to CBIA, it makes little sense to expend substantial resources to completely reinvent them.

Realtors argue that it does not make economic sense to continue to discuss the elimination of revenue-based allowances,

which not only benefit existing ratepayers, but also provide a small break to the buyers of homes who are the future ratepayers of this state. With regard to the concerns of NRDC and CUC, Realtors argue that a Commission proceeding should not become the forum for debates over future growth in California; statewide growth issues should be appropriately addressed in the California Legislature.

We believe that it is too soon to consider further reductions or elimination of line extension allowances. The new rules became effective on July 1, 1995, and were part of the Settlement Agreement adopted by the Commission in D.94-12-026. Furthermore, there is insufficient data available to analyze the effect of the rules now in place to satisfy Public Utilities (PU) Code § 783 requirements.[4] Therefore, we will revisit this issue but only after we have collected two years of data on how the new rule is operating. This procedural schedule also allows the Commission to address most of the other outstanding issues in this proceeding first. It is our expectation that further revisions, if any, to the line extension rules would be adopted by no later than January 1, 1998.

Issue No. 2: "Replace allowances with strategic incentives."

The electric utilities argue that the concept of "strategic incentives" can be developed into a specific application that would provide an incentive to attract new customers for the benefit of all ratepayers. Accordingly, the electric utilities believe that the public interest will be served through further discussion of this issue in this proceeding.

CUC urges the Commission to address Issue No. 2. By "strategic incentives" the CUC means financial rewards to builders

4 PU Code § 783(b) states:

"(b) Whenever the Commission considers issuing an order or decision amending those terms or conditions, the commission shall make written findings on all of the following issues:

(1) The economic effect of the line extension terms and conditions upon ...." (Emphasis added.)

and developers who promote "in-fill" of new multiple units in the inner-city. According to CUC, building new housing in the inner city, where density is already high and utility infrastructure is well developed, will increase efficiency in power distribution. CUC offers to present statistical evidence and financial data to demonstrate that line extensions to new suburban and rural housing are uneconomic, wasteful, and bad public policy and that line extension allowances to new housing in inner cities is economically positive, financially productive, and good public policy.

The gas-only utilities point out that there is no reference to "strategic incentives" in D.94-12-026. If the notion of strategic incentives is to provide the utility with the discretion to provide allowances only when to do so benefits the strategic objectives of the utility, the gas-only utilities submit that any such proposal runs contrary to PU Code § 453 which prohibits undue discrimination in the provision of utility services.

Power Plus agrees with the gas-only utilities that an issue as broadly interpreted, and to date as ill defined, could well open the door to proposals having nothing to do with the Commission's intent in D.94-12-026. Power Plus argues that the electric utilities, rather than seeking to establish a more level playing field for all participants in the process, are seeking some form of strategic incentive that they may apply at their discretion.

CBIA objects to consideration of Issue No. 2 for the same reasons it objects to inclusion of Issue No. 1 in this proceeding. According to CBIA, it is simply too soon after the most recent major revision of the line extension rules (D.94-12-026) to embark upon yet another comprehensive examination of the rules.

The Commission, in D.92-12-026, did not intend that strategic incentives be addressed in this proceeding.

Accordingly, we conclude that Issue No. 2 is outside the scope of this proceeding.

Issue No. 3: "Include the costs of transformers, meters, and services in the total cost of the project and subject to any applicable allowance"

The Joint Utilities agree that this issue, which was clearly identified by TURN/UCAN, is properly within the scope of this proceeding. Also, TURN/UCAN, CUC and Power Plus support addressing this issue in 1996.

We agree that Issue No. 3 should be addressed in 1996 since this will help to standardize the rules for all utilities.

Issue No. 4: "Make applicants responsible for the costs of distribution system reinforcements not attributable to normal load growth"

TURN/UCAN point out that connecting new projects to the existing utility system can cause the utility to incur costs for distribution system reinforcements. Under existing tariff rules, the new project does not bear responsibility for system reinforcement costs. TURN/UCAN contend that the utility's other ratepayers subsidize the costs of system reinforcements. TURN/UCAN seek to end this practice and make new customers responsible for these costs by including them within the costs subject to the line extension rules.

CUC urges the Commission to address Issue No. 4. CUC states that it will present evidence that line extensions in urban areas have negligible costs in the form of distribution system reinforcements. CUC will urge that all costs of reinforcement of the distribution systems due to the wasteful construction of new housing in suburban and rural areas should be included in calculations of rates to line extension allowance applicants. CUC believes that the scope of this issue should be broad enough to recognize that subsidies for urban sprawl have indirect adverse social cost consequences on all urban dwellers, as well as adverse direct operational/material costs.

Power Plus believes that it is unreasonable to expect a new customer adding an extension to the system to pay for reinforcement of facilities that have been used to provide new service to many other customers for years. Power Plus submits that this would be a case of which straw broke the camel's back.

The Joint Utilities are in agreement that to address reinforcement of existing distribution and service systems would be time consuming with little prospect for simple resolution. We conclude that Issue No. 4 will not lead to simplification of the line extension rules (D.94-12-026, p. 32) and it should not be addressed in this proceeding.

Issue No. 5: "Allow utilities freedom to:

a. (Not be) builder of last resort;

b. Provide applicant payment arrangements and financing like private contractors; and

c. Design, install, and coordinate installation of other utilities (i.e., gas, electric, streetlights, phone, and cable TV)."

The Joint Utilities believe that to the extent that services traditionally provided by public utilities are singled out for unbundling in the furtherance of free and open competition, this issue should be included within the scope of this proceeding to ensure that appropriate consideration is given to allowing public utilities the freedom to compete on an "equal footing" with unregulated entrepreneurs.

The Joint Utilities argue that, for example, if an applicant for utility service solicits design or installation bids for a particular project, each affected public utility obligated to furnish an energy resource (e.g., gas or electricity) should have the same freedom as the other prospective bidders - i.e., to bid or not to bid, and accordingly, the freedom to decline to perform the design or installation work in the event that either

all bids are rejected or the affected public utility does not participate in the bidding process.

Also, the Joint Utilities argue that consideration should be given to ensuring that public utilities are allowed the freedom to offer payment options and additional services (e.g., the design, installation and coordination associated with all of the utility facilities, i.e., gas, electric, water, sewer, streetlights, phone, cable TV, etc.) involved with any particular project. Essentially, the Joint Utilities envision the oft exploited "level playing field" concept. The public utilities believe they should have the freedom to compete fairly with the unregulated entrepreneur.

Power Plus believes that the subissues (a), (b) and (c) are outside the scope of this proceeding.

With regard to subissue (a) (Not be builder of last resort), Power Plus expects that the utilities would apply this only in a competitive bid option when the particular extension is very costly and difficult to estimate. Power Plus contends that, in such instances when the utility provides an estimated cost for Option 1, the utility should be obligated to provide a bid for Option 2.[5] Power Plus argues that this is another area for the utility to use its monopoly power to secure a line extension under Option 1 at an estimated cost and then book the actual cost. Power Plus submits that if the utility is not required to be the builder

[5] Using PG&E as an example, under Option 1, the installation is done by PG&E, and the applicant is charged on the basis of fixed (system average) prices set out in PG&E's tariff. Under Option 2, the applicant may choose PG&E or any other contractor. PG&E provides a bid; the applicant may shop PG&E's bid to obtain a lower price. However, at the outset, the applicant is required to select an option; and when the applicant provides a signed Installation Option Selection Form to PG&E, the option cannot be changed (Rule 15).

of last resort, then it should not be allowed a monopoly advantage to serve all customers on such line extensions. Further, Power Plus contends that this proposal is a tool to intimidate applicants for line extensions to choose Option 1 and so that the utility avoids competitive bidding.

With regard to subissue (b) (provide applicant payment arrangements and financing like private contractors), Power Plus argues that the unregulated entrepreneur does not have millions of captive customers to support bad business decisions. In contrast, when an unregulated entrepreneur bids a job too low, that cost is absorbed by that entrepreneur. According to Power Plus, a utility can use anticompetitive behavior that no unregulated entrepreneur can possibly endure, and the outcome would be less competition and loss of the resultant savings.

With regard to subissue (c) (design, install, and coordinate installation of other utilities (i.e., gas, electric, streetlight, phone, and cable TV)), Power Plus points out that today the utilities have the freedom to fairly compete with the unregulated entrepreneur for line extensions. Power Plus suggests that, however, if a utility is truly interested and sees a market for this type of work, the utility should compete through an unregulated subsidiary totally separate from ratepayer funds.

We find the proposals of the Joint Utilities interesting, but the issue is whether these proposals should be addressed in this proceeding. We agree that D.94-12-026 specified that this proceeding remain open to address, among other things, "(3) the sharing of savings resulting from competition." While there may be savings resulting from the activities proposed by the joint utilities (and the possibility of losses too), it was not our intention that in this line extension proceeding we address head-on competition in the construction business between the utilities and the private sector. Accordingly, we conclude that subissues (a), (b), and (c) should not be addressed in this proceeding.

Issue No. 6: "Allow local jurisdictions to determine if overhead or underground utilities can be installed"

The Joint Utilities believe that Issue No. 6 is beyond the scope of this proceeding. The Joint Utilities argue that allowing local jurisdictions to decide whether to underground or overhead line extensions has nothing to do with refinements to revenue-based allocations, applicant installation or competitive issues. Nor does it further the goal "to consolidate, simplify and standardize the rules and to more appropriately assign extension costs."

We conclude that this is not the appropriate proceeding to address undergrounding of utilities. Issue No. 6 is beyond the scope of this proceeding.

Issue No. 7: "Allow for shareholder gain/loss"

The Joint Utilities believe that Issue No. 7 is beyond the scope of this proceeding. The Joint Utilities point out that the proceeding relates to line extension rules, not to whether the industry's existing cost of service ratemaking approach should be changed. Accordingly, the Joint Utilities contend that important ratemaking questions are properly considered in industry restructuring proceedings and utility general rate cases.

We conclude that Issue No. 7 is outside the scope of this proceeding. This issue does not further the Commission's goal "to consolidate, simplify and standardize the extension rules" or to more appropriately assign extension costs (D.94-12-026, p.32). This is not the appropriate proceeding to consider issues related to restructuring the gas and electric utilities.

Issue No. 8: "Include the applicant's costs to install trench and conduit as part of the refundable advance, subject to refunds and inclusion in rate base"

This issue was raised in the workshops. However, the briefs filed disclose no interest in this issue. Accordingly, Issue No. 8 shall not be addressed.

Issue No. 9: "Sale of materials by utilities to applicant." UDI alleges that the utilities disadvantage competitors in the line extension marketplace by specifying unique construction materials. Since utilities place orders for large quantities directly with manufacturers, the manufacturers produce such materials, for example, wire, to each utility's specification. Such materials are not readily available in the marketplace. According to UDI, in such situations, the utility resells these items to the applicant at its cost plus a "mark up" which could be as high as 50%. Accordingly, UDI requests that this issue be addressed in this proceeding.

Power Plus shares these concerns with UDI. The sale of materials by utilities to applicant installers is an issue the Joint Utilities agree is within the scope of this rulemaking. However, the Joint Utilities also believe that it should be excluded from further rulemaking proceedings.

The Joint Utilities point out that the mandatory sale of material by utilities has been discussed at length in the applicant installation rulemaking workshops. The workshop report stated that the majority of workshop participants agree that the matter of utility provided material is solely a utility option, open to any utility as a business decision, and is not a tariff related issue. We do not believe that the utility should be the guarantor or supplier of materials for an applicant's contractor. With more applicants undertaking their own construction, we can expect that suppliers of utility specified materials will expand their inventories to carry adequate stocks of such items. We acknowledge that these suppliers cannot match the discount available to a utility for purchase of large quantities direct from

manufacturers. However, that is no reason for the Commission to require the utilities to routinely provide materials, at their cost, to an applicant's contractor. On the other hand, if utility-specified materials are not available in the marketplace, and the utility refuses to accept a substitute or provide the materials to the applicant at cost plus a reasonable markup for handling, in such circumstances an applicant may file a complaint with the Commission. We will not address Issue No. 9 in this proceeding but, if necessary, would do so in a complaint case where we would have specific facts before us.

Issue No. 10: "Whether the timing of collection of the ITCC tax should be changed"

CCSF points out that the Income Tax Component of Contributions (ITCC) tax is collected at the same time under both options, Option 1 and Option 2, as an upfront charge, before work begins. The issue is whether, for Option 2, the timing should be changed so that the ITCC tax is not due until the facilities are deeded to the utility. CCSF supports a change in the rule that would ensure applicants do not pay ITCC taxes until such taxes are due. To the extent that taxes under Option 2 are not due until the work is completed and deeded over to the utility, CCSF believes that applicants should not be required to pay for taxes not yet due. Further, CCSF argues that just because ITCC taxes under Option 1 may be due in total upfront, that does not justify prepayment of taxes by applicants under Option 2. CCSF therefore requests that the Commission review this issue in 1996 so that any necessary modifications to the line extension rules can be made.

Power Plus submits that this issue is within the scope of these proceedings because it deals with applicant installation and the sharing of savings resulting from competition.

The Joint Utilities believe that the question of the timing of the collection of the ITCC tax is outside the scope of this rulemaking. The Joint Utilities argue that this phase of the

rulemaking focuses on competition and sharing of savings resulting from competition, as well as the refinement of allowances after initial implementation. The Joint Utilities contend that the issue of when to collect ITCC tax is not a competitive issue, is not an area of savings resulting from competition, and is not an allowance issue. Currently, the ITCC tax is collected at the same rate, amount and time regardless of who builds the line under Option 2 - utility or applicant. The Joint Utilities assert that the current method and time of collection is as close to a "level playing field" as one can get.

We agree that CCSF may have a valid argument that a "taxable event" has not occurred to require payment of ITCC tax before a facility is deeded to the utility. Since the issue is "timing" and it is unique to the line extension rules (it is not a tax or refund issue), we conclude that this issue should be addressed in this proceeding.

Issue No. 11: "Whether the utilities' accounting of line extension engineering and construction work creates the potential for monopoly abuse"

UDI argues that the following changes in the utilities' tariffs and accounting practices must be made.

11.1. Applicant's Responsibility: The applicant must be responsible for the total cost of the design and construction work included in the utility's Site Specific Cost Estimate for a line or service extension, including all nonrefundable ITCC taxes. The applicant must either advance the total cost of the extension to the utility prior to the start of work and the utility will install the extension, or provide the utility with completed facilities pursuant to the Competitive Bidding Option.

11.2. Site Specific Cost Estimates: The utility's Site Specific Cost Estimate must include all costs (exclusive of meters and regulators) necessary to construct the gas and electric line extension and service completions to a project. This must

include the cost of all trenching, substructure excavations, electric conduits, pipes, wire, devices, poles, permits, inspection charges, etc. Retaining walls and protective structures should remain the responsibility of the applicant.

11.3. Competitive Bidding. The applicant may select the utility or a qualified contractor to perform the installation work through competitive bidding. If the utility is a competitive bidder for a line extension project, it must include all costs in its bid (exclusive of meters and regulators) necessary to construct that portion of the line extension and service completions requested by the applicant.

11.4. Applicant's Cost. The Applicant's Cost will be the total amount paid to the utility, a qualified contractor, or combination thereof for all work included in the utility's Site Specific Cost Estimate.

11.5. Refundable Amount. The Applicant's Cost must be submitted to the utility as a basis for refund. The utility should compare its Site Specific Cost Estimate to the Applicant's Cost, check for reasonableness, and establish the applicant's Refundable Amount as the lower of the two accounts.

11.6. Refunds: The applicant should receive refunds for the line extension and service completions equal to the Refundable Amount provided that the Refundable Amount does not exceed the revenue based allowances in effect at the time application for service was made to the utility. Any portion of the Refundable Amount that exceeds the revenue-based allowances will be retained by the utility. Refunds should be made to the applicant on a pro rata basis when each individual meter or regulator is set and service is connected to the end user

11.7. Ratebase Amount. The utility should book the Refundable Amount to ratebase for a line extension or service completion project.

11.8. Parity. If the utility performs new business plant addition work and the amount it charges the applicant exceeds the cost of installing the facilities, any excess amount should be retained by the utility as profit to its shareholders. Conversely, if the utility's costs exceed the income collected from the applicant for this new business work, any deficit should be borne by the utility's shareholders and not the ratepayers.

11.9. Written Agreement. A provision for a written agreement between the applicant and the utility prior to start of construction must be added.

11.10. Free Extensions. The provision for free extensions must be eliminated.

11.11. Reduced Refundable Amount. The provision for a reduced refundable amount must be eliminated.

11.12. Discount Option. The discount option should be revised and be applied to the Refundable Amount only after the line extension has been constructed.

Power Plus recognizes that certain accounting practices of the utilities may be anticompetitive and may be used to discourage applicants from choosing the competitive bid option (Option 2) for their line extensions. However, Power Plus submits that this issue may be beyond the scope of these proceedings and could best be handled in a different forum.

The Joint Utilities argue that Issue 11 is beyond the scope of this proceeding. The Joint Utilities point out that the purpose of this Rulemaking is to: "uncover opportunities to consolidate, simplify and standardize the extension rules, reduce

the administrative cost of the rules, and more appropriately assign extension costs. According to the Joint Utilities, this purpose does not include changing utility accounting rules and addressing alleged utility abuses of monopoly power.

Further, the Joint Utilities believe that if a party wishes to address utility accounting rules, they should request that the Commission institute a separate proceeding relating to the Commission's and the Federal Energy Regulatory Commission's Uniform System of Accounts. Also, the Joint Utilities contend that if a party believes that a utility is abusing the authority entrusted to it by the Commission, this is a matter for a complaint.

We conclude that these issues are accounting and ratemaking matters and are outside the scope of this proceeding.

Issue No. 12: "Whether nonrefundable construction inspection service for applicant-installed line extensions create potential for monopoly abuse"

This issue deals with the utilities' requirement that there be an on-site inspector for applicant installed projects and whether the cost of this inspector should be refundable.

UDI alleges that a utility may disadvantage competitors by requiring 100% full-time nonrefundable inspections for Option 2 projects where the applicant's contractor performs the work. On the other hand, for Option 2 projects where the utility performs the work, the utility waives these inspection costs.

Power Plus acknowledges that the utilities have the right to inspect an applicant installed project and to charge fair rates for the inspection. However, Power Plus believes that the utilities should not use billing for inspection to discourage applicant installations (under Option 2).

The Joint Utilities agree that Issue No. 12 is a proper issue for this proceeding because it could affect the allocation of costs among the parties and could conceivably be a competition issue.

We conclude that Issue No. 12 is a competition and cost allocation issue and is within the scope of this proceeding. However, this is not the proceeding to address prior incidents of alleged monopoly abuse. Issue No. 12 shall be modified to read: "Whether nonrefundable construction inspection service charges for applicant installed line extensions create an unfair incentive for applicants to choose the utility installed option." With this modification, we conclude that Issue No. 12 should be addressed.

Issue No. 13: "Whether the absence of a mandatory written agreement between the utility and the applicant prior to initiation of line extension design and construction work creates the potential for monopoly abuse"

According to UDI, currently, the lack of a mandatory written agreement prior to commencing line extension design and construction work allows the utility to give away services at the ratepayers' expense without leaving an auditable trail. Further, UDI believes that the lack of a contract between the applicant and the utility would give the utility complete freedom to perform work and charge the applicant whatever it wants after the work is completed.

Power Plus states that without a written agreement, applicants are not notified of their rights.

The Joint Utilities note that Issue No. 13 addresses a specific provision in Rule 15, namely, Paragraph A10. The Joint Utilities submit that although this rulemaking was not intended to address alleged "monopoly abuse," they agree that the issue of whether there should be a mandatory written agreement between the utility and the applicant is within the scope of this proceeding.

We agree that Issue No. 13 is a competition and cost allocation issue and is within the scope of this proceeding. However, this is not the proceeding to address prior incidents of alleged monopoly abuse. Issue No. 13 shall be modified to read: "Whether the absence of a mandatory written agreement between the

utility and the applicant prior to initiation of line extension design and construction work creates an unfair incentive for applicants to choose the utility installed option. With this modification, we conclude that Issue No. 13 should be addressed in this proceeding.

Issue No. 14: "Whether utility accounting treatment of free composite drawing engineering and coordination services creates the potential for monopoly abuse"

According to UDI, a utility can readily convince developers to select the utility installed option by promising them free engineering and construction services if the utility is guaranteed the construction work for the project. UDI contends that the current extension rules and utility accounting practices must be modified to protect applicants and ratepayers alike from such anticompetitive utility practices. UDI submits that if the benefits of competition are to be passed along to ratepayers, all costs to design and construct facilities must be used as the basis for allowances.

Power Plus believes that this issue is within the scope of this proceeding because it deals directly with competition, applicant installation and savings resulting from competition. According to Power Plus, if the utility is providing services at no cost to a developer that are not necessary in either the design or installation of that utility's extension, any saving brought about by competition will be offset by the free services and supported by the utility ratepayers.

The Joint Utilities contend that Issue No. 14 is beyond the scope of this proceeding. According to the Joint Utilities, this rulemaking relates to extension rules, and not to accounting rules or alleged abuses of utility monopoly power.

We conclude that Issue No. 14, with some modification, is a competition and cost allocation issue and is within the scope of this proceeding. However, this is not the proceeding to review

the Commission-prescribed accounting procedures of the utilities or address prior incidents of alleged monopoly abuse. The issue shall be revised to read: "Whether the utilities should be prohibited from offering free composite drawing, engineering, and coordination services to avoid creating an unfair incentive for applicants to choose the utility-installed option." Issue No. 14, as modified, should be addressed in this proceeding.

Findings of Fact

1. On November 30, 1995, the assigned ALJ issued a ruling listing 14 issues for briefing to assist the Commission in determining whether such issues should be addressed in this proceeding.

2. Briefs or reply briefs were filed by the parties. Because of the number of possible issues and the need for a Commission decision to be issued by year-end (PU Code §783(d)), the matter was submitted to the Commission to decide which issues should be addressed in 1996.

Conclusion of Law

Because of the need for a Commission decision by year-end, it is reasonable to limit the scope of this proceeding to Issue Nos. 3, 10, 12, 13, and 14, as modified by this decision. Also, the issues determined in the workshops to be within the scope of the OIR Rulemaking (see Part A of Discussion above) should be addressed.

O R D E R

IT IS ORDERED that in this proceeding, the following issues shall be addressed in 1996:

A. Issues Determined in Workshops to be Within Scope of the OIR Rulemaking

1. Site-specific cost for job bids.

2. Use the lower of utility's cost of applicant's cost for Income Tax Component of Contributions calculations and ratebase.

3. Utility service guarantee for "in" and "out" dates.

B. Issues Requiring Commission Determination Regarding Scope and Relevance to Rulemaking

3. Include the costs of transformers, meters, and services in the total cost of the project and subject to any applicable allowances.

10. Whether the timing of collection of the ITCC tax should be changed.

12. Whether nonrefundable construction inspection service charges for applicant installed line extension create an unfair incentive for applicants to choose the utility-installed option.

13. Whether the absence of a mandatory written agreement between the utility and the applicant prior to initiation of line extension design and construction work creates an unfair incentive for applicants to choose the utility-installed option.

14. Whether the utilities should be prohibited from offering free composite drawing, engineering, and coordination services to avoid creating an unfair incentive for applicants to choose the utility-installed option.

This order is effective today.

Dated June 6, 1996, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

Commissioner Daniel Wm. Fessler, being necessarily absent, did not participate.