COM/JXK/tcg

Mailed
NOV 8 1996

Decision 96-11-014 November 6, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Decrease Its Rates and Charges for Electric and Gas Service, and Increase Rates and Charges for Pipeline Expansion Service.	Application 94-12-005 (Filed December 9, 1994)
And a Related Matter.	I.95-02-015 (Filed February 22, 1995)

ORIGINAL

OPINION

This decision addresses Pacific Gas and Electric Company's (PG&E) compliance with Decision (D.) 95-09-073. That order directed PG&E to undertake a number of improvements to its call center operations and customer communications practices.

We find that PG&E did not comply with Item 1 of Ordering Paragraph of D.95-09-073 in the months of November and December 1995. For its failure to comply in November, we penalize PG&E in the amount of $480,000. In December, there was an unusually harsh storm which contributed, probably significantly, to PG&E's failure to comply with the standard established by D.95-09-073. Certainly such a storm complicates our ability to fairly evaluate the significance of PG&E's noncompliance with a technical standard which we expected to be a reasonable measure for periods of relative normalcy. Therefore we decline to impose a sanction for PG&E's noncompliance in December. However, in a later phase of this proceeding, we shall review and decide the reasonableness of PG&E's handling of the outages related to the December 1995 storm. That decision will address issues far more complex than the matters addressed herein.

I. Background

In January and March 1995, severe rainstorms hit northern California. During those storms, thousands of PG&E customers experienced power outages and hazardous conditions. Hundreds of customers complained to the Commission of being unable to reach PG&E or receiving incorrect information from PG&E representatives. Others complained that unsafe conditions on PG&E's system went uncorrected for long periods during the storms and afterward. In response, the Commission initiated an investigation of PG&E's response to the storms and its readiness for them. Following hearings and briefs on these matters, we issued D.95-09-073. In that decision, we found that PG&E's employee reductions, extended maintenance cycles, and an inadequate customer service telephone system had contributed to the problems on PG&E's system and PG&E's storm response.

In D.95-09-073, the Commission took two significant steps hoping to promote higher quality service and safety both generally and during future emergencies. In that order, we initiated an investigation of reporting, reliability, maintenance, and inspection standards for all of the state's electric utilities. We also ordered PG&E to make certain improvements to its call centers and its communications with the media.

Following issuance of D.95-09-073, a severe rainstorm hit northern California on December 11, 1995. During that storm, conditions for PG&E customers were worse than during the storms in January and March 1995. Customers experienced more outages and outages of longer duration. The Commission received hundreds of complaints from customers who could not reach PG&E to report hazards or outages or who received incorrect information from PG&E's representatives.

In response, the assigned commissioner issued a ruling on December 19, 1995 directing an investigation of whether PG&E had complied with the requirements of D.95-09-073, among other things. Specifically, Ordering Paragraph 1 directed PG&E to:

> Achieve an average queue wait of less than 20 seconds, and busy signal occurrence of less than 1% during normal operations and less than 3% during outages.
>
> Submit monthly reports on daily and monthly call center performance consistent with reporting requirements for telephone utilities set forth in General Order 133.
>
> Explore mutual assistance opportunities with other utilities and assure backup assistance from vendors.
>
> Provide backup call center employees with adequate orientation to PG&E's service area and customers.
>
> Retain a copy of the AT&T 800 data in computer format for the most recent three peak days.
>
> Incorporate the use of radio announcements in emergency plans.
>
> Explore calling back customers to report changed estimates of repair times.
>
> Evaluate the possibility of accepting service orders from customers without the use of live service representatives.
>
> Maintain for no less than four years customer account information to enable it to identify chronic problems.
>
> Increase training for customer service representatives to enable them to understand and identify potential service and safety problems.

D.95-09-073 directed PG&E to report on the progress of these matters by December 31, 1995.

This portion of this proceeding addresses PG&E's compliance with Ordering Paragraph 1 of D.95-09-073, that is, whether PG&E fulfilled the requirements of the ordering paragraph in the time allotted. The decision to review this compliance matter resulted from our informal review of data PG&E provided to Commission staff during the December 1995 storm. That information suggested that PG&E had not complied with certain elements of Ordering Paragraph 1. We take the opportunity to review its compliance with all elements of Ordering Paragraph 1. This decision does not address the reasonableness of PG&E's response to the December 1995 storm, the integrity of PG&E's engineered system or possible improvements to PG&E's operations or services. Those matters are under consideration in other phases of this proceeding.

II. PG&E's Compliance with D.95-09-073

Most of the elements of Ordering Paragraph 1 require PG&E to take certain broad actions and report its progress in their implementation. Only one element of Ordering Paragraph 1 of D.95-09-073, referred to as "Item 1" of ten items, sets out specific measurable standards for PG&E's call center operations.

The controversy in this proceeding centered mostly around Item 1. Several other elements of Ordering Paragraph 1 are disputed, but the issue of PG&E's compliance is one of degree.

PG&E states it has made marked improvements to its call center operations since early 1995. It believes it has complied with Ordering Paragraph 1 of D.95-09-073. PG&E argues that the Office of Ratepayer Advocacy (ORA) and Toward Utility Rate Normalization (TURN) have the burden of proof to demonstrate that PG&E failed to comply with Ordering Paragraph 1 because the proceeding has been characterized by the Commission and the administrative law judge as one to determine compliance.

In general, ORA states its view that PG&E made an earnest effort to improve call center performance. However, ORA believes that PG&E has not complied fully with certain elements of Ordering Paragraph 1 of D.95-09-073. ORA makes several recommendations for improvements to PG&E's call center operations but suggests the Commission defer consideration of penalties or other sanctions until its review of PG&E's response to the December 1995 rainstorms, which is scheduled to be heard in June 1996.

TURN also finds that PG&E failed to comply with part of Ordering Paragraph 1 based on evidence it believes is uncontroverted. TURN recommends the Commission impose a penalty on PG&E in the amount of $1.1 million.

Each of the ten items listed in Ordering Paragraph 1 is addressed below.

A. Item 1

Item 1 requires PG&E to: "Achieve an average queue wait of less than 20 seconds, and busy signal occurrence of less than 1% during normal operations and less than 3% during outages."[1]

PG&E states it has taken appropriate steps to position itself to be able to meet the goals set forth in Item 1. It upgraded its Stockton Credit and Collection Center phone switch to support additional lines to bring the total capacity to 184 lines that can be used as a backup call center. It added 408 new lines to call centers since January 1995, 240 of which were in place

1 The parties use the term "average queue wait" synonymously with "average speed of answer" or "ASA." ASA is the time that elapses between the customer's selection of a menu item to the customer's connection to that selection. PG&E's estimates of ASA do not include the time the customer spends listening to the menu or waiting for the system to pick up the call when the telephone is ringing. PG&E describes an "outage" as an interruption of electrical service.

during the December 1995 storm. Prior to November 1995, it added over 200 customer service representatives to handle calls and made several technological improvements designed to increase call center capacity or service quality.

PG&E observes that these call center improvements have had a substantial effect on ASA and percentage of busy signals ("busies") over the past fifteen months:

January 1995	2:38 ASA	45.0 percent busies
February 1995	1:57	24.7
March 1995	1:04	25.6
April 1995	:36	1.2
May 1995	:11	1.8
June 1995	:44	2.3
July 1995	:24	1.3
August 1995	:38	2.8
September 1995	:49	5.6
October 1995	:28	1.7
November 1995	:16	1.7
December 1995	1:07	53.07
January 1996	:21	0.7
February 1996	:10	0.0
March 1996	:07	0.0

PG&E observes that if it excludes days on which major events[2] occurred, its performance is even better.

PG&E believes that D.95-09-073 did not intend for PG&E to meet the standards of Item 1 within 60 days of its issuance. It also believes the ASA and percent busies referred to in Item 1 should be considered goals rather than strict standards. PG&E states its intent to propose in another proceeding that the Commission revisit the measurements in Item 1 in favor of slightly different measurements.

---

2 PG&E defines "major event" as an event during which 10 percent or more of its customers are affected within a 48-hour period, or a highly unusual event completely out of PG&E's control such as an extremely severe storm, fire, earthquake or other natural disaster, or off-system disturbance.

ORA observes that PG&E has made marked improvements in its call center operations. It observes that PG&E receives about 50,000 calls daily during normal conditions. During the December 1995 storm, PG&E received over 4.5 million calls, 2.9 million of which never reached PG&E. ORA finds that PG&E is out of compliance with Item 1 and recommends the Commission order improvements to PG&E's call center system. ORA recommends that the Commission defer its determination of appropriate sanctions until review of the reasonableness of PG&E's storm response scheduled for later in the year.

TURN argues that the evidence unambiguously demonstrates that PG&E was out of compliance with D.95-09-073 during the months of November and December 1995. It responds to PG&E's allegations that Item 1 presented "goals" rather than performance standards by observing that the ordering paragraph is unambiguous and that PG&E agreed to its provisions before they were adopted. TURN recommends the Commission assess a $1.1 million penalty on PG&E for its failure to comply with Item 1 of Ordering Paragraph 1.

D.95-09-073 adopted the requirements of Ordering Paragraph 1 which were recommended by ORA and PG&E did not object to ORA's recommendations. PG&E did not file a petition to modify D.95-09-073 to argue that Item 1 referred to "goals" rather than standards. Nor did it argue that it could not obtain those standards within 60 days, as D.95-09-073 ordered. The evidence in this part of the proceeding suggests that the standards may be very difficult to attain, perhaps impossible during major events, at least at a reasonable cost.

PG&E had 60 days to meet the standards set forth in Item 1, that is, until November 6, 1995. It did not meet the standards in November because it exceeded the 1% busies when no outages[3] occurred and in December. When an outage did occur, because it dramatically exceeded the 3% busies and the 20 second ASA. Although PG&E did not meet the standards in December, it is impossible to ascertain the extent to which the storm effected PG&E's noncompliance. In view of the severity of the December storm and the fact that it occurred only 35 days after compliance with the standards was required, it is appropriate to consider whether we should excuse PG&E's failure in December to comply with Item 1 on the ground that the expectation of compliance under those circumstances was unreasonable.

	ASA	% Busies/Normal	% Busies/Outages
Standard	:20	1%	3%
November 1995	:16	1.7%	
December 1995	1:07		53.3%

PG&E failed to comply with Item 1 of Ordering Paragraph 1 which requires PG&E to attain certain standards for call center operations. Specifically, for the months of November and December 1995, PG&E failed to attain an average ASA of less than 20 seconds, and busy signal occurrence of less than 1% during normal operations and less than 3% during outages within 60 days of the issuance of D.95-09-073.

B. <u>Item 2</u>

Item 2 of Ordering Paragraph 1 requires PG&E to: "Submit monthly reports on daily and monthly call center performance, consistent with reporting requirements for telephone utilities set forth in General Order 133."

3 For purposes of analyzing PG&E's compliance with Ordering Paragraph 1, we accept PG&E's interpretation that "outage" as used in Item 1 is the same as a "major event."

PG&E has provided monthly call center performance data to the Commission Advisory and Compliance Division as Item 2 requires. ORA recommends, however, that PG&E improve the format and content of its reports by reporting the level of busies during outages separately from monthly averages and to include the number of customers out of service and the duration of outages with the outage report. On the basis that this information was not provided, ORA believes PG&E is only partially in compliance with Item 2.

We agree with ORA that PG&E's monthly reports would be more useful if they included the information ORA seeks. We do not agree with ORA that PG&E is only "partially" in compliance with Item 2, however. Item 2 did not specify the type of information ORA would now have PG&E include in the monthly reports. PG&E provides the information Item 2 requires. It is therefore in compliance with Item 2.

C. Item 3

Item 3 requires PG&E to: "Explore mutual assistance opportunities with other utilities and assure backup assistance from vendors."

PG&E observes that mutual assistance for call center operations is unlike mutual assistance for restoring system problems. In order for call center mutual assistance programs to work, telephone systems must be compatible and the assisting utility's employees must be knowledgeable about the utility's systems. PG&E determined that San Diego Gas & Electric Company (SDG&E) has telephone equipment which is compatible with its own, although Edison does not. Water utilities' employees, according to PG&E, do not have an adequate understanding of gas and electric systems. PG&E has secured backup assistance from an independent service bureau and, during the December 1995 storms, used its own credit center as backup.

ORA expresses concern that PG&E did not do enough to explore its options in this area. Specifically, ORA believes PG&E should engage in discussions with Southern California Gas Company and municipal utilities. It suggests PG&E should include in its report to the Commission obstacles to obtaining assistance from all potential vendors it contacts. ORA believes PG&E is not in compliance with Item 3 for these reasons.

We agree with ORA that PG&E could do more to assure it has adequate options for backup assistance to its call centers during emergencies. We cannot, however, find that PG&E failed to comply with Item 3. PG&E's subsequent report should include the results of a survey of all potential service providers and the status of associated activities or the reason mutual assistance agreements were not workable for each potential service provider.

D. Item 4

Item 4 requires PG&E to: "Provide backup call center employees with adequate orientation to PG&E's service area and customers."

PG&E states it did not need to undertake any training of backup call center employees because it used SDG&E employees only to inform customers that they would receive a call back from PG&E employees.

ORA believes PG&E is in compliance with this item.

PG&E appears to be in compliance with this item with the understanding that it may in the future require backup call center employees who will need to provide more information to callers or who may not have the skills or general knowledge needed to serve customers adequately.

E. Item 5

Item 5 requires PG&E to: "Retain a copy of the AT&T 800 data in computer format for the most recent three peak days."

PG&E testified that it has retained the AT&T 800 data in computer format since February 1995. PG&E is in compliance with this item.

F. Item 6

Item 6 requires PG&E to: "Incorporate the use of radio announcements in emergency plans."

PG&E states it fulfilled this requirement during the December 1995 rainstorm by making 2,500 contacts with the media and paying for 2,700 radio announcements regarding storm outages. In fall 1995, PG&E also engaged in a campaign to educate customers with "storm preparedness tips."

ORA believes that PG&E has technically complied with Item 6 by using radio announcements but believes the content of those announcements was inadequate. Specifically, ORA believes the announcements should have provided customers with information regarding times for restoration of service in specific areas. According to ORA, such information would have obviated the need for many of the calls customers made to PG&E during the storms.

Technically, PG&E has complied with Item 6 although it has certainly not fulfilled the intent of Item 6. PG&E's radio announcements during the December 1995 storms did not provide customers with any useful information regarding electric system conditions or expected times for restoration of service. Most merely apologized for customer inconvenience and assured customers that PG&E employees were working to correct problems. The announcements were in the nature of public relations pieces, seemingly intended to promote PG&E's reputation rather than customer convenience or understanding. The announcements were, for that reason, inadequate.

Item 6 requires PG&E to incorporate the use of radio announcements in its emergency plans. We interpret this to mean PG&E's emergency plans, which are developed in advance of emergency situations, should include reference to the type of radio announcements to be used and the strategy for deploying the information over local radio stations. PG&E should provide that information in its next report. The report should set forth the format of the announcements which should include reference to the conditions in specific neighborhoods and PG&E's expected timeframe for restoring service or repairing hazardous conditions.

G. Item 7

Item 7 requires PG&E to: "Explore calling back customers to report changed estimates of repair times."

PG&E states it will have in place at the end of 1996 an "interactive voice response system" (IVR) which will allow PG&E to return customer calls with updated information regarding repair times. The return calls will use recorded information rather than a live customer service representative. Prior to installation of the IVR, PG&E will continue to use a system it has had in place since December 1995 whereby customers may leave a telephone number to receive a call back from PG&E.

ORA believes PG&E has not sufficiently complied with Item 7. It believes that PG&E's system will not be able to handle 2 million calls per day during major events. ORA also states PG&E failed to explain adequately why it rejected options to hire additional employees during peak periods or use a service bureau's IVR. ORA recommends that after installation of the IVR, PG&E divert other human resources to call-backs during emergencies.

PG&E is in compliance with Item 7. Although ORA may not be satisfied with PG&E's planned system, PG&E was not required by Item 7 to implement any particular system or satisfy any particular standards. Item 7 only required PG&E to explore its options and report them to the Commission. We will, nevertheless, be interested in the effectiveness of PG&E's IVR, especially during outages and "major events."

H. Item 8

Item 8 requires PG&E to: "Evaluate the possibility of accepting service orders from customers without the use of live service representatives."

PG&E states the IVR technology to be applied to call-backs may be used to accept service orders without the use of customer service representatives. ORA believes PG&E has complied with Item 8. We agree.

I. Item 9

Item 9 requires PG&E to: "Maintain for no less than four years customer account information to enable it to identify chronic problems."

PG&E states that it maintains historical account information for at least four years in its Distributed Outage Reporting Computer Application system (D-ORCA). If a customer wishes to have access to the information, customer service representatives forward the request to an engineer who gathers the information and discusses it with the customer.

ORA observes that D-ORCA is an important source of information for system design and engineering, but does not fulfill the requirements of Item 9 because it does not allow customer service representatives to access individual customer outage information. ORA recommends that PG&E be required to make improvements to its customer information system so that customer service representatives have immediate access to the information.

This proceeding is not the forum for determining whether PG&E should invest in a system which is immediately accessible to customer service representatives. While such a system may be slightly more convenient for a handful of customers, nothing in the record here demonstrates that customers require the information immediately upon request.

Item 9 does not require PG&E to retain customer information for any reason other than to "enable it to identify chronic problems." The information PG&E retains allows it to do that. PG&E is in compliance with Item 9.

J. Item 10

Item 10 requires PG&E to: "Increase training for customer service representatives to enable them to understand and identify potential service and safety problems."

PG&E states it has provided its customer service representatives with additional training regarding the gas and electric systems and customer communications during outages. Employees have also been involved in disaster drills to test call answering and call routing procedures. PG&E states its intent to continue to provide training to improve call center performance. ORA believes PG&E has complied with Item 10. We concur.

III. Discussion

This order finds that PG&E failed to comply with Item 1 of Ordering Paragraph 1 of D.95-09-073 for the months of November and December 1995. Our review here was motivated by the many complaints we received during the December 1995 storm about call center operations. Except for the effects of that storm, we might not have initiated this investigation outside of a scheduled general rate case review unless we had reason to believe PG&E's failure to meet the standards in Ordering Paragraph 1 was dramatic or chronic. If we control for the December storm, it is neither.

In December, PG&E did not comply with the standard applicable to outage periods. However, by all accounts the December storm was not your usual storm. It was unusual in force and in the damage caused. Similarly, the related December outages were unusual. Certainly the December outages were more complex and widespread than the outages caused by the January and March 1995 rainstorms, the outages which gave rise to the phone response standards which we now use to evaluate PG&E's December 1995 performance. Although we have attempted to adjust the response data to remove the effect of the storm days, we cannot know with any degree of certainty that PG&E's December performance was not completely skewed, impacted directly and indirectly, by the intensity and destructiveness of the storm. Because the standards adopted in D.95-09-073 were, by definition, measurements of a reasonable response during periods of relative normalcy, it is inappropriate to use those technical standards as the measure of acceptable performance when the circumstances effecting that performance were anything but normal.

We do not make any findings here regarding the reasonableness of PG&E's response to the storm or the relationships between PG&E's management practices and the outages which occurred during the storms. That is a matter for a subsequent order and raises issues that are much more complex than those we resolve here.

Notwithstanding the extent of PG&E's culpability for the problems which occurred during the December 1995 rainstorms, we cannot overlook PG&E's failure, in November 1955, to comply with standards we adopted and which it did not oppose. For noncompliance with those standards in November 1995, we adopt TURN's recommendation to impose a penalty on PG&E pursuant to Public Utilities (PU) Code §§ 2107 and 2108. Section 2107 provides that:

> "Any public utility which violates or fails to comply with any provision...of any order...is subject to a penalty of not less than five hundred dollars ($500), nor more than twenty thousand dollars ($20,000) for each offense."

Section 2108 provides that:

> "Every violation of the provisions...of any part of any order...by any corporation or person is a separate and distinct offense and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense."

TURN proposes a penalty on PG&E of $1.1 million based on its assumption that PG&E is culpable for one violation of D.95-09-073 for a period of 55 days, between November 6[4] and December 31, 1995. It arrives at the $1.1 million figure by multiplying 55 days of a continuing violation by the maximum penalty, $20,000.[5] Although we decline to sanction PG&E for noncompliance with the phone response standard during December, we shall adopt TURN's method for calculating the penalty for the November violation by imposing a penalty of $480,000 which was derived by applying the maximum penalty of $20,000 per day for the 24 days between November 6 and November 30.

A $480,000 penalty is a meager sum for a corporation of PG&E's size and the corresponding rate reduction would be so small as to be undetectable by PG&E's 4.2 million customers. Nevertheless, we believe even such a small penalty may produce positive results because it signals our intent to impose penalties, large or small, where they are warranted. We are motivated less by a desire to punish than to promote compliance with Commission orders, particularly those which affect a utility's service quality or public safety.

---

4 D.95-09-073 provided PG&E with 60 days to comply with its provisions. The order was issued on September 7, 1995. Sixty days from September 7 is November 6.

5 TURN treats PG&E's failure to comply with Item 1 in Ordering Paragraph 1 as a single violation of a Commission order which continued over the months during which the statistical average differed from the standard even though the standard may have been satisfied on individual days. Other applications of Section 2107 might allow us to find PG&E's call center performance for November and December represented many violations of a Commission order. Other applications of the facts or the law in this case could result in reducing the number of days the violations continued. For purposes of this proceeding, TURN's calculation is reasonable.

Although PG&E failed in its efforts to meet the standards for ASA and percent busies in November and December 1995, beginning January, 1996, PG&E has made extraordinary progress in meeting or exceeding the standards. According to the reports PG&E has submitted pursuant to D.95-09-073, PG&E had zero percent busies and ASA statistics ranging from 10 seconds to 14 seconds for the months of February through May 1996. We find this progress laudable. In addition, we note that the standards are more stringent than any imposed on other jurisdictional utilities and difficult to achieve.

The company's 1996 record indicates that future failures should be unlikely. However, we will continue to monitor PG&E's compliance with the standards adopted in D.95-09-073. Should PG&E fail to meet the standards in the future, we will reopen this proceeding and consider appropriate penalties. We will reconsider the standards set forth in Item 1 if PG&E can demonstrate that they are unreasonable or that other measurements would better represent the quality of telephone service to customers.

Findings of Fact

1. The Commission initiated this compliance review by way of an assigned commissioner ruling after it received hundreds of complaints from PG&E customers and PG&E's call center data in December 1995. The scope of this part of this proceeding is confined to the related issues of whether PG&E complied with Ordering Paragraph 1 of D.95-09-073 and whether and to what extent PG&E should be subject to sanctions for noncompliance.

2. PG&E did not fulfill the requirements of Item 1, which relate to call center performance measures, in Ordering Paragraph 1 of D.95-09-073 in November and December 1995. PG&E has met or exceeded the standards for the period January 1996 through May 1996.

3. PG&E fulfilled the requirements of all parts of Ordering Paragraph 1 of D.95-09-073 except those included Item 1.

4. In December 1995 an unusually harsh and destructive storm occurred which contributed significantly to the outages experienced during that month.

5. It is not possible to determine with any degree of certainty the effect of the storm on PG&E's failure to comply in December 1995, with item 1, Ordering Paragraph 1 of D.95-09-073.

Conclusions of Law

1. Section 2107 and Section 2108 authorize the Commission to impose penalties on jurisdictional corporations which fail to comply with a Commission order.

2. The Commission should impose a penalty on PG&E of $480,000 for its failure in November 1995 to comply with Item 1 of Ordering Paragraph 1 of D.95-09-073.

3. The Commission should not sanction PG&E for its noncompliance in December 1995 because the harshness of the December storm and its likely impact on PG&E's performance renders the expectation of compliance with Ordering Paragraph 1 of D.95-09-073 unreasonable.

4. PU Code § 2104 provides that penalties recovered under the Code shall be paid to the General Fund of the State Treasury.

5. The Commission should reopen this compliance proceeding if, on the motion of a party or on the basis of relevant information, it believes that PG&E has failed to comply with Item 1 of Ordering Paragraph 1 of D.95-09-073.

O R D E R

IT IS ORDERED that:

1. The Executive Director shall direct Commission staff to review the information filed by Pacific Gas and Electric Company (PG&E) pursuant to Ordering Paragraph 1 of this Decision (D.) 95-09-073 and to advise the assigned administrative law judge and

assigned commissioner in writing if PG&E fails to comply with that Ordering Paragraph.

2. For violation of a Commission order and pursuant to §§ 2107 and 2108 of the Public Utilities (PU) Code, PG&E is penalized in the amount of $480,000 and is ordered to pay to the State Treasury of California the amount of $480,000, plus interest at 7% accruing from the date of this order, to the credit of the General Fund pursuant to PU Code § 2104.

3. This proceeding shall remain open to complete the investigation of electric distribution system service and safety standards initiated by D.95-09-073.

This order is effective today.

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

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners

I will file a written dissent.

/s/ JOSIAH L. NEEPER
Commissioner

D.96-11-014
A.94-12-005, I.95-02-015

COMMISSIONER JOSIAH L. NEEPER, DISSENTING:

I am in agreement with the general thrust of this decision. I agree that we established clear standards, that PG&E clearly was not in compliance with our standards, and that it is appropriate to fine PG&E for non-compliance.

My dissent is in regard to the legal interpretation of Public Utilities Code Sections 2107 and 2108 with regard to the allowable level of the fine. I am happy to impose the maximum permissible fine on PG&E. My interpretation of Sections 2107 and 2108 lends me to the conclusion that a $20,000 fine for November and/or a $20,000 fine for December would be the limits allowed by the Code.

Our standards were established in D.95-09-073. We established in that decision a monthly reporting requirement for call center queue wait and busy signal occurrence. The requirement specified that "average queue wait" or "busy signal occurrence" should be measured based on "monthly reports on daily and monthly call center performance..." We have this data.

The Commission's decision imposes a fine based on non-compliance for the month of November based on <u>monthly</u> performance. Yet the decision imposes a fine for each <u>day</u> of November (after D.95-09-073 went into effect on November 6, 1995). I would have also imposed a penalty for the month of December. It is clear that Section 2107 allows a penalty only "for each offense." If the reporting and performance both concern monthly data, an offense can only occur once in a month. An exception to this interpretation might be made for "rolling month" data. However, no rolling month data was calculated or considered in this case. Therefore the maximum penalty we can impose for a single offense based on monthly data is $20,000.

Conceivably, we could have examined the daily data and imposed a penalty based on each incident of non-compliance, which then would be each day of non-compliance. As it turns out, PG&E's daily data shows compliance on some days in November and non-compliance on other days. It is inappropriate to impose a penalty per day when the non-compliance is per month.

/s/ <u>Josiah L. Neeper</u>
Josiah L. Neeper
Commissioner

San Francisco, California
November 6, 1996