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MAIL DATE  
12/5/96

Decision 96-11-064                      November 26, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the )  
Commission's own motion to develop a policy )  
governing utility involvement in the market for )  
low-emission vehicles. )

**ORIGINAL**  
Investigation 91-10-029  
(Filed October 23, 1991)

Order Instituting Investigation on the )  
Commission's own motion to establish rules )  
and procedures governing utility involvement in )  
the market for low-emission vehicles. )

Rulemaking 91-10-028  
(Filed October 23, 1991)

DECISION ON REHEARING OF DECISION (D.) 96-08-032

**Background**

On September 5, 1996, the Pacific Gas and Electric Company (PG&E) filed an Application for Rehearing of Decision (D.) 96-08-032, which addressed four unresolved issues in Phase II of Investigation (I.) 91-10-029/Rulemaking (R.) 91-10-029, concerning low-emission vehicles. No other pleadings were filed.

PG&E makes two challenges regarding the section of D.96-08-032 subtitled "The Jurisdiction of the Division of Weights and Measures Over Utility Sales of Natural Gas and Electricity for Low-Emission Vehicles." This section resolves one of the outstanding Phase II issues. PG&E does not contest our resolution of the issue but alleges that: 1) both the text of D.96-08-032 and Finding of Fact #10 make an inflammatory statement unsupported by the record; and 2) D.96-08-032 misquotes California Business and Professions Code Section 12150 (a)(4). PG&E admits that both of these arguments were made in its comments on the proposed decision but has asserted them again, claiming that they were not addressed in D.96-08-032 and constitute legal error.

**The Disputed Finding Is An Inaccurate Statement Of The Record, Not Material To Determination Of The Matter At Issue, And Should Be Stricken To Cure Legal Error.**

Public Utilities Code Section 1705 requires that, following a hearing (except where the hearing is in an expedited complaint proceeding), we issue a decision which contains "separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision." (Pub. Util. Code Sec. 1705.)

PG&E argues that the D.96-08-032 contains a statement which has "no basis in the record or in fact", thereby violating Section 1705 and that the statement is inflammatory. (PG&E rehearing application, pp. 2-4.) The statement PG&E objects to appears in the text of D.96-08-032 and is repeated as a finding of fact: "Because the utilities have built the stations to standards that are unacceptable in the commercial market, the utilities appear to have undermined their ability to transfer the stations to nonutility use." (D.96-08-032, mimeo, p. 15 and Finding of Fact #10.)

The record on the subject of the differences between standards for measuring compressed natural gas set by the Division of Measurement Standards (DMS) and the standards in use by Commission-regulated public utilities is found in a single document, Exhibit 210. This document, entitled "Workshop Report on Jurisdiction of Division of Measurement Standards Over Utility Sales of Natural Gas and Electricity to Low-Emission Vehicles" and dated April 23, 1996, memorializes the concerns of the workshop participants and the agreements they reached. The report consists of five pages, one of which is a list of the workshop participants.

The report does not include, verbatim, the statement which PG&E is challenging. On closer review, we are persuaded that the statement and corresponding finding go beyond the record established in this proceeding to ascribe motive or intent to utility actions. Moreover, since the challenged statement does not address a fact material to the narrow issue decided—what standards apply to the utilities' measurement of delivered fuels—we will delete the finding and accompanying text, as PG&E suggests. However, we decline to adopt PG&E's additional editorial suggestions. Rather, we modify D96-08-032 as follows:

- Page 15, mimeo, the second full paragraph:

"The premise offered by the utilities since the outset of the natural gas utility refueling station programs was that the ratepayers would only pay for these stations in order to help stimulate the development of a viable market. When a viable market was established the utility would sell the stations or otherwise transfer them for nonutility use. ~~Because the utilities have built the stations to standards that are unacceptable in the commercial market, the utilities appear to have undermined their ability to transfer the stations to nonutility use. The Commission never told the utilities to do this and the~~ The utilities have always been responsible for the reasonableness of their low-emission vehicle undertakings.

- Delete Finding of Fact 10 and renumber Finding of Fact 11.

**D.96-08-032 Does Not Misstate Business And Professions  
Section Code 12510(A)**

Business and Professions Code Section 12510 (a) provides, in relevant part:

Any person, who by himself or herself, or through or for another, does any of the following is guilty of a misdemeanor:

....

- (4) Uses, for commercial purposes, or for determining the charge for a service, any weight or measure or weighing or measuring instrument which is not kept at a fixed location, which does not bear a current or previous year's seal, and which, upon test by the sealer, is found to be incorrect, unless a written request for an inspection of the weighing or measuring instrument has been made to the county sealer. However, the use of any weight or measure or weighing or measuring instrument used by a public utility in connection with measuring gas, electricity, water, steam, or communication service subject to the jurisdiction of the Public Utilities Commission is exempt from this chapter. (Bus. & Prof. Code Sec. 12510 (a) (4).)

In D.96-08-032 we paraphrased the statute, distinguishing when DMS jurisdiction does not apply as follows: "California Business and Professions Code §12150 (a) (4) exempts from this oversight the measurement of commercially-delivered

natural gas and electricity when the delivery systems are under the jurisdiction of this Commission." (D.96-08-032, mimeo, p. 14.) PG&E argues that the paraphrase misquotes the statute. According to PG&E:

"The section exempts from Division of Measurement Standards jurisdiction measuring instruments used by a public utility in connection with measuring utility services subject to Commission jurisdiction. The exemption applies when the delivery system is part of the utility service, not when the Commission has specifically taken jurisdiction over the delivery system." (PG&E rehearing application, p. 5, emphasis in original.)

PG&E prefers the paraphrase in Exhibit 210, which reads: "Section 12510(a)(4) exempts from DMS jurisdiction any weighing or measuring instrument used by a public utility in connection with measuring gas or electricity subject to the jurisdiction of the Public Utilities Commission." (Exhibit 210, p. 2.)

PG&E appears to be splitting hairs. While PG&E is correct that the statutory paraphrase in Exhibit 210 more exactly follows the language of the statute, PG&E has not shown the paraphrase in D.96-08-032 is erroneous, as a matter of law. We deny rehearing on this ground.

#### CONCLUSION

For the foregoing reasons, we will grant limited rehearing of D.96-08-032 and, on the existing record will modify the decision as discussed herein to correct legal error.

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**IT IS ORDERED that:**

1. Rehearing of D.96-08-032 is granted to the extent provided in ordering paragraph 2.
2. The text of D.96-08-032, page 15, mimeo, and findings of fact 10 and 11 are modified as discussed in the body of this order.
3. D.96-08-032 is affirmed as modified by this decision on rehearing.

This order is effective today.

Dated November 26, 1996, at San Francisco, California.

**P. GREGORY CONLON**

President

**DANIEL WM. FESSLER**

**JESSIE J. KNIGHT, JR.**

**JOSIAH L. NEEPER**

Commissioners

Commissioner Henry M. Duque,  
being necessarily absent, did not  
participate.