

Decision 97-10-030 October 9, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion and Order to Show Cause to determine if Pacific Gas and Electric Company should be held in violation of Gas Tariff Rule 16 for failure to provide trenching at no cost within the allowance of 100 feet.

ORIGINAL
1.96-10-033
(Filed October 25, 1996)

O P I N I O N

Summary

An unopposed Stipulation for Settlement between Pacific Gas and Electric Company (PG&E) and staff is adopted and PG&E will make refunds pursuant to this settlement.

Discussion

This matter was initiated by the Commission to investigate the practices of PG&E with regard to implementation of its Gas Tariff Rule 16, relating to customer charges for gas line trenching. At the same time the Commission instituted an Order to Show Cause why PG&E should not be found in contempt for violation of its Gas Tariff Rule 16. The Order to Show Cause was based on the affidavit of Kevin Coughlan, Chief of the Energy Branch of the Commission's Advisory and Compliance Division (Staff). (That branch and division name has since changed.) By a ruling from the assigned Commissioner this proceeding was placed under the Experimental Rules of Procedure pertaining to the requirements of Senate Bill (SB) 960. There was no objection from any of the parties. The proceeding was categorized as adjudicatory. Under the Experimental Rules the proceeding is to be decided within one year of the initiating document, or by October 25, 1997.

Petitions to intervene were filed by California Building Industry Association (CBIA) and Utility Design Inc. (UDI). They also requested that the scope of the

proceeding be expanded to include Gas Tariff Rule 15 and trenching for electric services. Both petitions were opposed by PG&E as to intervention and expansion of the issues. Staff opposed expansion of the issues, but not intervention.

Prehearing conferences (PHCs) were held on June 24, 1997 before President Conlon and Administrative Law Judge (ALJ) Rosenthal, and on July 18, 1997 before ALJ Rosenthal. CBIA and UDI's petitions to intervene were granted and their petitions to expand the issues were denied.

On July 15, 1997, PG&E and Staff submitted a Joint Motion To Adopt Stipulation For Settlement and Stipulation For Settlement, and served a copy on CBIA and UDI. This Stipulation for Settlement was discussed at the PHC of July 18, 1997. At the request of the ALJ, PG&E and Staff agreed to make certain amendments to clarify some of the provisions without changing their meanings. The amended Stipulation for Settlement was filed on July 21, 1997 and served on all parties. A copy of this document is appended to this decision as Attachment A. It was agreed that UDI and CBIA would have until August 11, 1997 to file comments on the Stipulation for Settlement. No comments were filed.

We have reviewed the Stipulation for Settlement. Under its terms PG&E will return all money collected from a customer for the first 100 feet of trenching for a gas-only trench or for an expanded trench for gas service in an electric service trench. PG&E also agrees to pay \$30,000 to the Commission, which we will remit to the State Treasury to the credit of the General Fund to partially cover the Staff's costs of this proceeding and to send a letter to Mr. Coughlan of the Commission Staff indicating regret over the misunderstanding that occurred. Staff agrees that this is an appropriate conclusion to this investigation and order to show cause. At the PHC of July 18, 1997, PG&E and Staff agreed to review the names of customers nominated by CBIA to determine their eligibility for refunds under this settlement. We agree that this is a proper resolution of this proceeding, that it is fair, just and reasonable and that it should be adopted.

Findings of Fact

1. An Order Instituting Investigation and Order to Show Cause and Notice of Hearing was issued on October 25, 1996 into the practices of PG&E pertaining to implementation of its Gas Tariff Rule 16.
2. By ruling of the assigned Commissioner this proceeding was placed under the Experimental Rules for SB 960 and declared to be an adjudicatory matter.
3. Petitions of CBIA and UDI to intervene were granted and petitions to expand the scope of the proceeding were denied.
4. A Stipulation for Settlement between PG&E and Staff was signed and served on July 15, 1997. This document, as amended on July 21, 1997, is appended to this decision.
5. UDI and CBIA were given the opportunity to comment on the Stipulation for Settlement but declined to do so.
6. The Stipulation requires PG&E to make refunds to customers of all money collected for the first 100 feet of trenching for a gas-only trench or an expanded trench in an electric service trench.
7. The Stipulation for Settlement requires PG&E and Staff to work together to identify customers of PG&E eligible for refunds, and to meet at least weekly for two months to accomplish this goal.
8. PG&E and Staff have agreed to investigate names offered by CBIA to determine their eligibility for refunds.
9. PG&E has agreed to pay \$30,000 to the Commission, which we will remit to the State Treasury to the credit of the General Fund.
10. PG&E has agreed to send a letter to Mr. Coughlan of Staff expressing regret over the misunderstanding that gave rise to this proceeding.
11. The Stipulation for settlement applies to the period from July 1, 1995 through December 20, 1996.
12. PG&E and Staff agree that the terms of the settlement are not to be considered as evidence in support of any factual finding in this or any other proceeding.
13. PG&E and Staff agree that if adopted, this Stipulation for Settlement will constitute a final disposition of the specific issues considered in this proceeding.

including the Order Instituting Investigation and the Order to Show Cause pertaining to contempt.

14. The Experimental Rules under SB 960 require that an adjudicatory proceeding, such as this, be completed within one year of the initiation of the proceeding.

Conclusions of Law

1. We conclude that the Stipulation for Settlement is fair, just and reasonable and should be adopted.

2. Under the terms of the unopposed Stipulation for Settlement all allegations under the Order Instituting Investigation and Order to Show Cause are resolved.

3. This proceeding should be closed .

4. The requirement of the Experimental Rules pertaining to completion of this proceeding within one year has been met.

O R D E R

IT IS ORDERED that:

1. The Stipulation for Settlement proposed by Pacific Gas and Electric Company and Staff, and unopposed by the other parties, is adopted.

2. This proceeding is closed.

This order is effective today.

Dated October 9, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)	
motion and Order to Show Cause to)	
determine if Pacific Gas & Electric)	
should be held in violation of Gas Tariff)	
Rule 16 for failure to provide trenching at)	I.96-10-033
no cost within the allowance of 100 feet)	(Filed October 25, 1996)
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REVISED STIPULATION FOR SETTLEMENT

This Stipulation is entered into by and between the Staff of the Consumer Services Division (CSD or Staff) of the California Public Utilities Commission (Commission) and Pacific Gas and Electric Company (PG&E). The effective date of this Stipulation shall be the date of its approval and adoption by the Commission.

To resolve outstanding issues in dispute between them, the parties have agreed on a settlement of these issues and wish to submit this Stipulation to the Commission for approval and adoption as its final disposition of the matters in I.96-10-033. As noted in the Joint Motion to Adopt Revised Stipulation for Settlement, the parties believe this Stipulation to be in the public interest.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties stipulate as follows:

STIPULATION

1. Letter. Within a week of the Commission's adoption of this Stipulation, PG&E shall send the letter in Exhibit 1 attached hereto.
2. Refunds. PG&E has already paid refunds to many of the customers who incurred incremental costs¹ for the first 100 feet of trenching performed under applications² submitted between July 1, 1995 and December 20, 1996 (eligible customers).³ PG&E and Staff agree to work together to discover, and make refunds to, those eligible customers who have not yet received refunds for such charges. These eligible customers include those whose gas service is in a gas-only trench, and those whose gas service is in a joint trench which had to be enlarged to accommodate the gas service. This cooperative effort will begin within two weeks of the adoption of this Stipulation. The parties will meet at least weekly after that for two months or until both parties are satisfied that all identifiable eligible customers have been located and have received refunds, whichever comes first.
3. Costs of Investigation. Within 15 days of the Commission's adoption of this Stipulation for Settlement, PG&E will pay the sum of \$30,000, representing payment of a

¹ "Incremental cost" is defined as the cost to install a new gas-only trench or to enlarge a joint trench, in order to accommodate a gas service line covered by Gas Tariff Rule 16.

² "Application" is a written application for service, as defined in Gas Rule 1.

³ December 9, 1996 was the date on which D.96-12-030 was issued; tariffs in compliance with D.96-12-030 became effective December 13, 1996. However, PG&E allowed its field offices an extra week to implement the new tariff. In order to ensure that the refunds are made uniformly among customers, this Stipulation uses the later date as the cutoff for refunds.

portion of Staff's investigation costs in this matter. Payment shall be made by a check made payable to the Commission and delivered to William R. Schulte, Director of the Consumer Services Division.

4. Settlement. Whether or not the Commission adopts this Stipulation, the terms of this settlement shall not be admissible as evidence in support of any factual finding in this or any other proceeding. The parties intend that this settlement be treated as a whole, and not as a collection of separate agreements on discrete issues.

The parties agree this is a final disposition of all issues in I.96-10-033, including allegations of contempt on the part of PG&E, its officers or employees. This Stipulation does not constitute, nor shall it be deemed to constitute, a finding, acknowledgment or admission that the alleged conduct in any way constituted a violation of the Commission's rules or contempt of the Commission.


This Stipulation does not address PG&E's interpretation of other tariffs, or PG&E's interpretation of Gas Rule 16 at times prior to July 1, 1995 or after December 20, 1996.

5. Reasonable Conditions. The parties agree jointly by executing and submitting this Stipulation for Settlement that the conditions herein are just, fair and reasonable, and that the terms herein are binding when approved by the Commission.

The parties respectfully request that the Commission adopt this Stipulation as part of its final decision in I.96-10-033.

IN WITNESS WHEREOF, the parties hereto have executed this Stipulation on the date set forth below.

Respectfully submitted,



CAROL DUMOND

Staff Counsel

Attorney for the Consumer Services
Division

California Public Utilities Commission

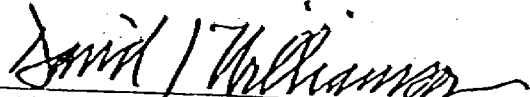
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July 21, 1997



DAVID J. WILLIAMSON

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Company

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Exhibit 1
Letter to Kevin Coughlan

Mr. Kevin P. Coughlan
Chief, Investigating, Monitoring, Compliance Branch
California Public Utilities Commission
505 Van Ness Avenue, Room 4001
San Francisco, CA 94102

Re: Gas Rule 16

Dear Mr. Coughlan:

As you are aware, PG&E and the Commission's Consumers Services Division have entered into a Settlement Agreement in the Commission's action concerning PG&E's application of Gas Rule 16 for the period from July 1, 1995 to December 12, 1996. Although Commission approval of the Settlement Agreement will dispose of this action, I sincerely regret that such a misunderstanding occurred. As PG&E's Vice President of Regulation, I will do everything within my authority to ensure that such a misunderstanding does not occur again.

I look forward to continuing and building on our productive and cooperative working relationship. Please do not hesitate to call me directly with any concerns that you may have.

Sincerely,

Steven L. Kline

cc: Ms. Carol Dumond

(END OF APPENDIX A)