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MAIL DATE

12/8/97

Decision 97-12-055

December 3, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of PACIFIC GAS AND
ELECTRIC COMPANY (U 39 M) for
Rehearing of Resolution G-3173,
approving U.C. Davis Medical Center's
Letter Request of October 4, 1995.

Application 96-01-017
(Filed January 17, 1996)

ORIGINAL

**ORDER VACATING RESOLUTION G-3173 AND DISMISSING THE
APPLICATION FOR REHEARING AS MOOT**

In Resolution G-3173, we conditionally approved the letter request, dated October 4, 1995, filed by the University of California Davis Medical Center ("UCDMC"). In this letter request, UCDMC asked for a special ruling to have a third party, Texas Ohio West ("TOW"), install, finance, own, operate, and maintain a high pressure gas line from the facilities of Pacific Gas and Electric Company ("PG&E") to UCDMC's Cogeneration Central Plant.

PG&E timely filed an application for rehearing. In its rehearing application, PG&E alleges the following legal error: (1) The Resolution improperly created a new procedure by accepting the customer's letter request for a gas main extension, and thus, has changed General Order 96-A and the Commission's Rules of Practice and Procedure without giving interested parties notice and an opportunity to be heard, as required by Public Utilities Code Section 1708; (2) the Commission's failure to permit a hearing constitutes an arbitrary and unreasonable abuse of discretion; and (3) the Commission erred by not providing for reimbursement to PG&E in the event it responds to emergencies involving the line.

TOW filed a response to PG&E's Application for Rehearing. The response was filed late and was accompanied by a Motion to Allow Late-Filed Response to Application for Rehearing. In the motion, TOW alleges that PG&E had not served it with a copy of the rehearing application, so that TOW could timely file a response.

In a letter, dated November 21, 1997, UCDCMC advised "the Commission that implementation of this Resolution [was] no longer necessary, because subsequent events have mooted out the mandates set forth in the Resolution." PG&E, rather than TOW, had build the gas line extension. Accordingly, UCDCMC withdrew, without prejudice, its letter request. (See the Letter of November 21, 1997, from Michael S. Lewis, Principal Engineer, UCDCMC, to Paul Clanon, Director of the Energy Division.)

UCDCMC's withdrawal of its letter request has resulted in the extinguishing of the underlying proceeding which was the basis for Resolution G-3173. As a result, our approval of UCDCMC's request and the conditions we set forth in Resolution for such approval has been made unnecessary and moot. Consequently, in light of this situation, we will vacate Resolution G-3173. We are guided by the reasoning of the U.S. Supreme Court in United States v. Munsingwear (1950) 340 U.S. 36, 39-40, which observed:

"The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below. . . . That procedure clears the path for future relitigation of the issues between the parties and eliminates a judgment, review of which was prevented through happenstance. When that procedure is followed, the rights of all parties are preserved; none is prejudiced by a decision that in the statutory scheme was only preliminary."

(See also our discussion in Order Vacating Decision 95-01-014 and Dismissing Application for Rehearing As Moot [D.97-11-085, p. 2 (slip op.)] (1997) ___ Cal.P.U.C.2d ___.)

In light of our vacating Resolution G-3173, PG&E's application for rehearing of this resolution becomes moot. Accordingly, we shall dismiss the rehearing application on this ground.

It is noted that the rehearing application does raise several issues concerning Commission procedure. However, we choose not to address these issues in this particular proceeding, because to do so would result in the issuance of an advisory opinion. We have "a longstanding policy against issuing advisory opinions. In order to conserve scarce decisionmaking resources, [we] generally, '[do] not issue advisory opinions in the absence of a case or controversy.' [Citations omitted.] [We adhere] to this 'rule' unless [we are] presented with 'extraordinary circumstances.' [Citation omitted.]" (Order Disposing of Application for Rehearing of D.95-01-045 [D.97-09-058, pp. 3-4 (slip op.)] (1997) ___ Cal.P.U.C.2d ___; see also, Opinion on Pacific Gas and Electric Company's Motion for Adoption of Additional Guideline for Multiyear QF Buyouts [D.97-08-016, p. 6 (slip op.)] (1997) ___ Cal.P.U.C.2d ___.) The instant proceeding presents us with no such "extraordinary circumstances" which warrant the expenditure of our limited decisionmaking resources.

We have considered each and every allegation raised in the application for rehearing, and have concluded that the withdrawal of the letter request by UCDMC has extinguished the underlying proceeding, which justifies our decision to vacate Resolution G-3173 today. Therefore, in light of our vacating this Resolution, the application for rehearing is made moot, and thus, it is dismissed accordingly.

THEREFORE, IT IS ORDERED that Resolution G-3173 is vacated, and that the application for rehearing filed by Pacific Gas and Electric Company is dismissed as moot.

This order is effective today.

Dated December 3, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners