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MAIL DATE

9/17/99

Decision 99-09-074      September 16, 1999

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Establish Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates.

Rulemaking 97-04-011  
(Filed April 9, 1997)

Order Instituting Investigation to Establish Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates.

Investigation 97-04-012  
(Filed April 9, 1997)

**ORDER REOPENING THE PG&E PENALTY PROCEEDING THAT RESULTED IN DECISION (D)98-11-026 AND D.99-03-025 FOR THE LIMITED PURPOSE OF CONSIDERING THE POSSIBLE IMPLICATIONS OF D.99-09-033 ON THOSE TWO DECISIONS**

**Summary**

This order reopens the proceeding that resulted in Decision (D.)98-11-026 and D.99-03-025, in the instant rulemaking/investigation in the affiliates transaction rules. (Rulemaking (R.)97-04-011 and Investigation (I.) 97-04-012.) The purpose for reopening this proceeding is to consider the possible implications that D.99-09-033 may have on the penalty issues in D.98-11-026 and D.99-03-025, involving the disclaimer requirements set forth in the Commission's Affiliate Transaction Rules. This order also provides for the submission of written comments regarding issues as set forth below.

The proceeding is reopened pursuant to Public Utilities Code Section 1708.<sup>1</sup> This order also stays D.98-11-026 and D.99-03-025 pending the outcome of the reopening of the PG&E penalty proceeding.

### **Background**

In D.98-11-026, the Commission fined Pacific Gas and Electric Company ("PG&E") \$1,680,000 for noncompliance with the disclaimer requirements set forth in the Commission's Affiliate Transaction Rules, adopted in D.97-12-088. PG&E filed an application for rehearing of D.98-11-026 on December 7, 1998. By D.99-03-025, dated March 4, 1999, the Commission denied PG&E's application for rehearing of D.98-11-026.

PG&E subsequently filed a petition for writ of review of D.98-11-026 and D.99-03-025 in the California Supreme Court (S078004). PG&E simultaneously filed a petition for writ of review before the California Court of Appeal (A086522), essentially raising the same claims in both petitions. The Commission filed answers to both petitions.

On June 9, 1999, the California Court of Appeal issued a ruling denying the Commission's motion to dismiss PG&E's petition for writ of review. It also denied the Commission's request that the Court consider the merits of PG&E's petition in light of Exhibit D of the Commission's answer before the California Supreme Court, and ordered briefing in accordance with California Rules of Court, Rule 58(b). Neither the California Court of Appeal nor the California Supreme Court has acted on PG&E's petitions as of the date of this order.

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<sup>1</sup> Public Utilities Code Section 1708 provides: "The [C]ommission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision. (Pub. Util. Code, §1708.)"

On September 10, 1999, the Commission issued D.99-09-033. That decision resulted in a reconsideration of the language required in the disclaimer for the tagline and logo of Sempra Energy ("Sempra"), the parent corporation of San Diego Gas and Electric Company ("SDG&E") and Southern California Gas Company ("SoCalGas"). In that decision, the Commission granted SDG&E and SoCalGas' application for rehearing of D.98-11-027, and revised and shortened, on First Amendment grounds, the disclaimer for the Sempra tagline and logo.

Although D.99-09-033 only addresses the tagline and logo for Sempra, there may be some implications on the PG&E penalty matter related to D.98-11-026 and D.99-03-025, the two decisions which are the subject of the petitions for writ of review in A086522 and S078004. In those petitions, PG&E raised First Amendment challenges to the Commission's enforcement of the disclaimer requirements, as it relates to the imposition of the penalty.

### **Discussion**

We believe that it would be appropriate to reopen our administrative proceeding in this PG&E penalty matter (PG&E Penalty Proceeding) pursuant to Public Utilities Code Section 1708, and to consider the possible implications that D.99-09-033 may have on the penalty issues in D.98-11-026 and in D.99-03-025.<sup>2</sup> We shall therefore reopen the proceeding that resulted in D.98-11-026 and D.99-03-025 for that purpose.

We believe that it would be appropriate to consider this matter in opening and reply comments. However, any party who believes that an evidentiary hearing is needed should request it. The request should explain in detail what material issues of facts are in dispute that necessitate holding an evidentiary hearing. Such a request

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<sup>2</sup> The reopening of this proceeding should not be interpreted as a retreat by this Commission of its vigorous pursuit of violations of its orders, rules and regulations, and associated penalties.

should be made in the party's opening comments. Responses to the request for evidentiary hearing shall be made in the reply comments.

The comments should address the following issues:

1. In light of D.99-09-033, should the penalty determinations in D.98-11-026 and D.99-03-025 be modified?
2. If so, how should the decisions be modified?

An assigned administrative law judge's ruling will be issued setting forth the procedural aspects (e.g. scheduling, the necessity for a prehearing conference, etc.). The Executive Director will serve a copy of this order to all parties on the service list for R.97-04-011 and I.97-04-012.

Because we are reopening the PG&E Penalty Proceeding that resulted in D.98-11-026 and D.99-03-025, we believe that it is also reasonable to stay these two decisions pending the outcome of this reopened proceeding. Thus, we will order that they be stayed.

### **Findings of Fact**

1. In D.98-11-026, the Commission fined PG&E \$1,680,000 for noncompliance with the disclaimer requirements set forth in the Commission's Affiliate Transaction Rules, adopted in D.97-12-088.
2. By D.99-03-025, dated March 4, 1999, the Commission denied PG&E's application for rehearing of D.98-11-026.
3. On September 10, 1999, the Commission issued D.99-09-033, in which it granted SDG&E and SoCalGas' application for rehearing of D.98-11-027, and revised and shortened, on First Amendment grounds, the disclaimer for the Sempra tagline and logo.
4. In light of D.99-09-033, it is appropriate to reopen the PG&E Penalty Proceeding that resulted in D.98-11-026 and D.99-025.

5. It is reasonable to stay D.98-11-026 and D.99-03-025 pending the outcome of the reopened proceeding.

### **Conclusions of Law**

1. The PG&E Penalty Proceeding in R.97-04-011 and I.97-04-12 should be reopened for the limited purpose of considering the possible implications that D.99-09-033 may have on the determinations about the penalty issues in D.98-11-026 and D.99-03-025.

2. D.98-11-026 and D.99-03-025 should be stayed pending the outcome of the reopened proceeding.

### **IT IS ORDERED that:**

1. The PG&E Penalty Proceeding in R.97-04-011 and I.97-04-12 is reopened for the limited purpose of considering the possible implications that D.99-09-033 may have on the determinations about the penalty issues in D.98-11-026 and D.99-03-025.

2. Parties to R.97-04-011 and I.97-04-012 shall be permitted to file opening and reply comments on the following issues:

a. In light of D.99-09-033, should the penalty determinations in D.98-11-026 and D.99-03-025 be modified?

b. If so, how should these decisions be modified?

3. An assigned administrative law judge's ruling shall be issued setting forth the procedural aspects (e.g. scheduling, the necessity for a prehearing conference, etc.) for this reopened proceeding.

4. The Executive Director shall serve a copy of this order to all parties on the service list for R.97-04-011 and I.97-04-012.

5. D.98-11-026 and D.99-03-025 are stayed, pending the outcome of the reopened PG&E Penalty Proceeding.

This order is effective today.

Dated September 16, 1999, at San Francisco, California.

RICHARD A. BILAS

President

HENRY M. DUQUE

JOSIAH L. NEEPER

JOEL Z. HYATT

CARL W. WOOD

Commissioners