Rm. 2002

ALJ/JRD/mrj *

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Decision 99-12-006 December 2, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Mountain Utilities (U 906-E) for Authority, Among Other Things, to More Precisely Define its Revenue Requirements and Increase Rates and Charges for Electric Service.	Application 99-01-037 (Filed January 20, 1999)

(See Appendix B for list of appearances.)

FINAL OPINION

Summary

This decision resolves the application of Mountain Utilities (MU) for authority, among other things, to more precisely define its revenue requirement and increase rates and charges for electric service. In this decision, we consider the settlement agreement presented to us by MU, the Office of Ratepayer Advocates (ORA), and Kirkwood Associates, Inc.[1] (KAI) (hereinafter collectively "Settling Parties"). We approve, with slight modification, the settlement agreement as being reasonable in light of the whole record, consistent with the law, and in the public interest.

Background

MU provides electrical services for customers located in its service territory, which encompasses portions of counties of El Dorado, Amador, and Alpine. Although MU is classified as an investor-owned utility, it differs

[1] KAI is the parent company of MU.

significantly from the three major investor-owned utilities that sell electricity, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (Edison). MU differs in the number and types of customers, seasonal electricity usage patterns, isolation from the California electrical grid, and limited generation options.

MU provides electric service to the small and geographically isolated community of Kirkwood, California. MU's service territory is approximately 26 miles from the nearest transmission grid facilities of any other utility. MU serves its customer load with utility grade diesel generation facilities. MU owns six diesel-powered generators with a combined normal operating capacity of 4,200 kilowatts. MU delivers electricity to its retail customers through a 12 kV distribution network.

MU's application states that it serves fewer than 500 customers with a firm load of 3.0 megawatts and an additional interruptible load of approximately 0.3 megawatt. The largest portion of the load serves KAI, the owner and operator of the ski resort facilities. Further, KAI consumes about 70% of MU's total winter energy production and about 55% of MU's summer production. MU's only other large scale customer is the Kirkwood Meadows Public Utility District (KMPUD). MU's application states that KMPUD's consumption is approximately 7-8% of MU's total energy produced. Additionally, MU states that it serves 75 full-time residents. The remaining residential load is consumed by seasonal and vacation use of rental properties and second homes.

MU asserts that it does not have any contracts for purchase of power from any qualifying facilities or other generators. Further, that it has no full-time employees; instead, it contracts with KAI for labor.

MU states that it does not collect any funds for public goods programs due to the administration costs for such a fund, and the limited number of eligible

customers for public goods assistance in its service territory. In Decision (D.) 97-12-093[2], the Commission did not require MU to allocate funds to the CARE program because of the small amount of revenues that it would generate compared to administrative costs, and the minimal number of low-income customers in MU's service territory. The Commission reasoned that any low income customers should be eligible to receive benefits under a statewide program, but because there are likely to be few in MU's service territory, they should provide an insignificant impact on statewide funding. However, D.97-12-093 did order MU to include in its next general rate case application a proposal for an appropriate level of public purpose program funding.

Procedural History

MU filed its application on January 20, 1999, and notice of the filing appeared on the daily calendar on January 29, 1999. On March 1, 1999, ORA and KMPUD protested the application and asked the Commission to set the matter for hearing. A prehearing conference (PHC) was conducted in South Lake Tahoe on March 19, 1999, before Commissioner Duque and Administrative Law Judge (ALJ) DeUlloa. At the PHC, representatives for all parties present agreed to a schedule. Commissioner Duque also encouraged parties to meet and confer on an informal basis in an attempt to resolve issues.

After the March 1, 1999 PHC, Commissioner Duque issued a scoping memo on April 28, 1999, which designated ALJ DeUlloa as the principle hearing officer for this proceeding. The scoping memo set forth the issues to be included in this proceeding and adopted the procedural schedule proposed by the parties

[2] In D.97-12-093, MU is identified as Kirkwood Gas & Electric Company.

at the PHC. Under the procedural schedule adopted, the Commission would issue a final decision by December 1999.

On May 28, 1999, MU served its supplemental testimony concerning standby rates. Further, pursuant to the scoping memo, on June 11, 1999, ORA was to give notice to other active parties concerning whether it would conduct a cost allocation study, after which, on June 16, other parties were to give the same notice. Neither ORA, nor any other active party gave notice of intent to conduct a cost allocation study.

On June 18, 1999, ORA served its Results of Operations Report for Mountain Utilities General Rate Case Application. On July 30, 1999, other intervenors were to serve intervenor testimony. No other party served testimony. On August 3, 1999, MU served its Rebuttal testimony.

On August 4, 1999, pursuant to Rule 51 of the Commission's Rules of Practice and Procedure, MU, ORA, and KAI gave notice of a settlement conference to be held on August 11, 1999. On August 11, 1999, hearings in this proceeding commenced and were temporarily adjourned while the settlement conference proceeded. At the conclusion of the settlement conference on August 11, 1999, the evidentiary hearing was reconvened and evidence was received by stipulation.

On August 20, 1999, the settling parties filed a joint motion for adoption of settlement. On September 20, 1999, KMPUD filed comments on the proposed settlement. On October 5, 1999, the settling parties filed a joint response to the comments of KMPUD on the proposed settlement.

Terms of Settlement

The settlement is attached to this decision as Appendix A. Below we describe the major substantive provisions of the settlement.

A. Rates For All Customer Classes

Basic rates for all customer classes as follows:

Remainder of Fiscal Year (FY) 2000: $0.21500/kWh
FY 2001 $0.22750/kWh
FY 2002 $0.24000/kWh

The rate of return (ROR) on rate base represented by these rates is 6.7% for FY 2000, 6.9% for FY 2001, and 8.7% for FY 2002.

B. Baseline Rates

The winter season is defined as being seven months long and lasting from November 1 through May 31. The summer season is defined as being five months long and lasting from June 1 through October 31. For each FY of the test period, the proposed baseline rates are as stated below up to the baseline maximum for each season. The proposed non-baseline rates are as stated below for all consumption over the baseline maximum for each season.

	FY 2000	FY 2001	FY 2001
Baseline	$0.20874	$0.22087	$0.23301
Non-Baseline	$0.22961	$0.24296	$0.25631

The baseline maximum for each season will be calculated using 70% of the average residential monthly consumption for each season. Further, MU will calculate the baseline maximum using the most recent average consumption data available to MU at the time it prepares an advice letter to effectuate this decision. Additionally, if rates are adjusted in the future using the fuel adjustment provisions contained in the settlement agreement, then baseline rates will be recalculated using a 10% differential.

C. Standby Rates

The settlement contains standby rates as proposed by MU with the modification that any customer desiring to give notice of an intention to take standby service may do so within 60 days of the date the standby tariff takes effect rather than the 30 days proposed by MU. After the expiration of the 60-day period, any customer must give 12 months notice of an intention to take standby service.

However, if a customer gives less than the required 12-month notice, MU will notify the customer within 30 days of its receipt of the customer's notice, whether it can provide standby service by the date specified by the customer, and if MU cannot do so, it will provide its best reasonable estimate as to when it will be able to provide standby service to the customer.

D. Unbundling of Rates

The settlement agreement adopts MU's proposal for unbundling rates. MU's rates will be allocated 75% to generation and 25% to distribution, with no allocation to transmission since MU has no transmission service.

E. Streamlined Treatment of Future Rate Proposals

1. General

In general, the settling parties agree that the Commission's final decision may state that the parties may use the small water company model workbook as a basis for parties to negotiate a method for streamlined treatment of future general rate adjustments. The settling parties agree that the rate of return of the small water company model workbook will not apply. The settling parties propose to work together to adjust the small water company model as necessary to take account of the differences between a small water company and a small energy utility such as MU. MU agrees that when filing for a general rate adjustment, it shall provide notice as required by the Commission's Rules of

Practice and Procedure. The settling parties agree on a target date of six months after issuance of this decision for filing an advice letter with a tariff that sets forth the streamlined model. No new rates using the streamlined model will take effect before the end of FY 2002.

2. Fuel Adjustment Cost Procedures

MU may file for rate adjustments by advice letter necessitated by increases or decreases in diesel fuel no more frequently than annually, with the first such filing allowed between May 31 and July 1, 2000 and subsequent filings between those same dates in subsequent years. If average fuel costs over the 12-month period preceding May 1 of the year in which the advice letter may be filed exceed the forecasted fuel cost included in this proceeding ($0.7504/ gallon) by 3% or more, MU may file for an upward adjustment in rates. If average costs over the same period decrease by 3% or more compared to the forecasted fuel cost included in this proceeding ($0.7504/ gallon), MU is required to file a downward adjustment. Increases or decreases will be trued up. The advice letter shall be accompanied by proof that MU has competitively procured diesel fuel during the 12-month period preceding the filing of the advice letter. ORA may protest the advice letter.

MU will be required to institute a balancing account for use with this fuel adjustment mechanism. ORA and MU agree to meet and agree upon the mechanics of the balancing account. Implementing tariffs shall include the agreed upon form of balancing account. In order to control costs, MU agrees not to enlist the assistance of outside consultants or attorneys with respect to fuel adjustment filings unless the filing is protested.

F. ECMA Costs

The parties agree that the costs recorded for 1998 in MU's ECMA account are reasonable and capitalized ECMA expenses are subject to

reasonableness review until the new rates agreed to in the settlement agreement go into effect. At the date of implementation of new rates, the ECMA will be closed to further accumulation of costs.

G. Public Purpose Program

MU will continue to accept voluntary contributions in aid of renewable resources and forward them to the appropriate agency.

H. Reporting Requirements

1. D.92-08-008

The settlement agreement states that MU will file affiliate reports as required by D.92-08-008 as to the relationship between MU and its parent company KAI, and any other affiliates as defined in D.92-08-006. The settlement agreement proposes that transactions between MU's electrical and propane divisions be addressed in a separate proceeding to be instituted by the Commission by December 31, 2000. (See D.99-05-011, p. 1.)

The settlement agreement does not directly address the affiliate transaction rules developed for energy utilities in Rulemaking (R.) 97-04-011 and adopted in D.97-12-088, as modified by D.98-08-035. However, in Resolution E-3568 (October 8, 1998) the Commission granted MU an exemption from the affiliate rules adopted in R.97-04-011.

2. G.O. 65 and 104

The settlement agreement states that it is burdensome for MU to file monthly General Order (G.O.) 65 reports due to MU's small staff size. The settlement agreement proposes that MU file its annual report of operations as required by G.O. 104, but that in each such annual report, MU will also include all financial and operation information (on an annual basis) that would be required to be filed in G.O. 65. In addition, under the terms of the settlement

agreement, every six months MU will provide to an ORA designee an unaudited balance sheet, income statement, and profit and loss statement.

3. G.O. 77

MU will file G.O. 77 reports as required, except that salary information for every person whose salary information would be required to be filed by G.O. 77 may be filed as confidential under Pub. Util. Code § 583. The only exceptions are that the salaries of the MU General Manager, power house personnel, and other who perform services exclusively for MU will be publicly filed as long as they otherwise meet the threshold requirements of G.O. 77.

I. Other Affiliate Issues

All personnel who perform work both for KAI and MU must record the amount of time spent working for each entity. Personnel working for both MU's electrical and propane division must also record the amount of time working for each division, as well as the allocation of other expenses. These records shall be made available for ORA and the Commission to inspect at anytime. MU will monitor its personnel to ensure proper recordation is occurring. ORA will conduct an affiliate record inspection after March 31, 2000, to assess compliance.

J. Customer Service

MU will keep track of complaints and its responses to such complaints. Each quarter of the first year after the issuance of this decision, and every six months the next two years after that, MU will submit to ORA a summary of those records in abbreviated form. MU will also conduct training for all employees with customer contact on being "customer friendly." MU and ORA also agree to "a series of realistic goals for customer service which will be put in place as an MU program, the success of which will be measurable." The

settlement agreement also requires MU to report to the Commission concerning compliance with these goals.

K. Line Extension Tariff Review and Revision

The settlement agreement states that MU's line extension rule (Rule 15) is outdated and not useful for the utility or ratepayers. The settlement agreement requires MU to incorporate policies and practices developed in the line extension workshop at the earliest practicable opportunity. MU and ORA agree to meet and "arrive at a revised modernized Rule 15." Further, within six months of issuance of a final decision, MU will file with the Commission an advice letter with new tariff language for Rule 15.

Comments

KMPUD objects to the settlement agreement's 41% rate increase and the absence of a methodology or plan to address any costs that may be imposed by low load factor and low power factor customers. KMPUD recommends rejection of the settlement agreement and instead recommends:

- That to the extent that ORA's original proposal in its report is not adopted, the difference between the litigation positions of MU and ORA should be evenly divided which would result in rates of $0.2070/kWh in 2000, $0.2148/kWh in 2001, and $0.2344/kWh in 2002.

- That adoption of any rate be conditioned on the installation of meters that measure demand and power factor for KAI loads above 100kW and for any other load greater than 100kW that MU or the Commission deems appropriate. KMPUD asserts that such measurements would provide a basis for establishing a power factor penalty and allow for the establishment of demand charges in a future rate case.

KMPUD's comments do not include an express request for an evidentiary hearing.

Settling parties filed a joint response to the comments of KMPUD. Settling parties believe that KMPUD has failed to provide an analysis based on admitted evidence that would show the settlement should not be approved.

Public Participation Hearings

The Commission held two public participation hearings (PPHs) on MU's application. The first PPH was held on July 13, 1999 in San Francisco. Approximately five persons spoke, including speakers from Kirkwood homeowners, officers of Kirkwood Homeowners Association and long time residents. The speakers expressed concerns that the proposed rate increase was excessive. Speakers also opined that MU was not responsive to customer complaints. Problems described included public safety, power outages, and poor power installations. Speakers also asserted that MU provided preferential treatment to its employees. Lastly, some concerns were expressed about poor management and conflicts of interest.

A second PPH was held on July 17, 1999, in South Lake Tahoe Council Chambers. Approximately eight persons spoke including former employees, officers of Kirkwood Homeowners Association and KMPUD. Some of the speakers contended that MU had a "sloppy" management operation. Speakers expressed frustrations regarding: unreliable service, poor management, inadequate installation of power lines, audit problems, propane explosions, safety and possible subsidization of non-regulated operations. Some speakers felt that the new owner inherited the problems from the old owner and requested that any rate increases be conditioned upon the correction of existing problems.

Discussion

Rule 51.1(e) provides that the Commission must find a settlement "reasonable in light of the whole record, consistent with the law, and in the public interest" in order to approve the settlement. These criteria apply to the settlement before us.

In D.92-12-019, we set forth criteria by which we would consider an all-party settlement. The first criterion is that the settlement must enjoy "the unanimous sponsorship of all active parties to the instant proceeding." The settlement before us is close to being an all-party settlement. KMPUD, however, opposes the adoption of the settlement. Thus, we must consider the settlement under the criteria set forth in Rule 51.1(e), rather than under the all-party settlement criteria. This is a more stringent standard of review, as we have recognized in previous decisions:

> "However, the standard of review here is somewhat more stringent. Here, we consider whether the settlement taken as a whole is in the public interest. In so doing, we consider individual elements of the settlement in order to determine whether the settlement generally balances the various interests at stake as well as to assure that each element is consistent with our policy objectives and the law." (D.96-01-011, 64 CPUC2d, 241, 267, citing D.94-04-088.)

KMPUD proposes that the Commission reject the proposed settlement rates and that the adoption of any rates be conditioned on the installation of meters.

Rates

KMPUD believes that the settlement does not fairly allocate the difference between ORA's rate recommendation and MU's rate request in its application. KMPUD notes that the settlement rates are approximately $0.01/kWh below MU's original request and $0.025/kWh above ORA's report recommendation.

Thus, KMPUD concludes that "ratepayers are giving up substantially more than MU" under the settlement agreement..

KMPUD's observation does not justify a finding that the settlement agreement is unreasonable, inconsistent with the law, or not in the public interest. There is no law or Commission rule that dictates how differences between parties should be allocated. Although it may appear that ratepayers are giving up more than MU under the settlement agreement, such an observation does not mean that an agreement is per se unreasonable. As settling parties explain in its response to KMPUD (and in MU's rebuttal testimony), ORA's original figures did not include adjustments for inflation. Had ORA's original calculations included inflation, the settling parties contend that ORA's recommendations would have been much closer to MU's request. We agree with settling parties that we should treat settlement on cost numbers as compromise rather than replace it with a rote 50/50 split as suggested by KMPUD. Based on the whole record before us, we find that the rates proposed by settling parties are justified and reasonable.

We also take note that most speakers at the public participation hearings opposed an increase in rates. Speakers raised valid concerns about poor operations under past management. Some speakers acknowledged the need for an increase in rates to improve service, however, assurances were sought that service in fact would improve.

The settlement includes provisions dealing with customer service. The settlement requires MU to track complaints and responses to such complaints. On a quarterly basis for the first year after the issuance of this decision, and every six months for the next two years after that, MU will submit to ORA a summary of those records. MU will also conduct training for all employees with customer contact on being "customer friendly." MU and ORA will also establish

a series of realistic goals for customer service that will be put in place as a MU program, the success of which will be measurable. We find the settlement's treatment of consumer issues reasonable and encourage ORA to solicit MU customer input in establishing customer service goals.

Lastly, although we accept the customer service proposals set forth in the settlement as reasonable, we place future owners on NOTICE that the Commission will not authorize rate increases for safety and maintenance in the event revenues for such activities have been previously authorized but not used to maintain facilities. We wish to protect consumers from absorbing the costs of poor management. We believe that an entity contemplating a hypothetical purchase of MU will in its due diligence review or should review this decision. Any potential purchaser should carefully inspect MU for deferred maintenance and accordingly adjust its purchase price to reflect needed improvements that may not be recoverable in rates (due to prior authorizations).

Return on Equity

KMPUD also expresses concern that under the terms of the settlement the return on equity (ROE) would exceed both MU's original request and ORA's recommendation. Settling parties respond that out of concern for rate shock that MU's application capped MU's original proposed rates and that the ROR and ROE derived from the artificial capping. Settling parties contend that MU did not so much propose a specific ROE as it did a specific, artificially low rate. MU contends that it was not willing to accept such a voluntary low return for costs of service that result in rates less than the voluntary rate caps it proposed in its application. Settling parties contend that they agreed upon small negotiated increases in ROR and ROE and that MU's rebuttal testimony supports this compromise.

We note that for year 2000 and 2001, that MU's ROE is essentially breakeven (0.88% in 2000 and – 0.84% in 2001). Moreover, in 2002 MU's ROE of 4.6% is less than the 5.28% ROE requested in MU's application. We find that settling parties compromise on ROE is reasonable, consistent with the law, and in the public interest.

Cost Allocation

KMPUD's comments express concern that MU's rate case will not result in a methodology for insuring that costs are allocated fairly. At the PHC parties discussed the need for a cost allocation study. The scoping memo adopted the parties proposal that on June 11, 1999, ORA was to give notice to other active parties concerning whether it would conduct a cost allocation study, after which on June 16, other parties were to give the same notice. Neither ORA, nor any other active party gave notice of intent to conduct a cost allocation study. Thus, although KMPUD's comments assert that it does not request a cost allocation study, KMPUD proposes that separate metering be required for all non-residential load above 100kW to ensure a fair allocation of system costs.

KMPUD criticizes the flat rate proposed in MU's application. The basis of KMPUD's criticism is that large electric users impose costs arising from low power factor and low load factors. KMPUD offers extensive argument regarding the issues of power factor, load factor, and metering demand. We dismiss KMPUD's concerns as new proposals with no record evidence. KMPUD offered no testimony in this proceeding to support the proposals it now makes in its comments. KMPUD's comments on these issues do not specifically address whether the settlement is reasonable, consistent with the law, or in the public interest. KMPUD should pursue its concerns in a more active and timely manner in MU's next GRC or similar proceeding.

Evidentiary Hearing

KMPUD has not requested an evidentiary hearing. The issues raised by KMPUD do not involve material facts. Rather, KMPUD raises policy issues regarding what is equitable and inappropriately raises for the first time new proposals in comments on the settlement. Thus, the issues raised by KMPUD do not require an evidentiary hearing to resolve.

Agreements to Agree

The settlement agreement contains several provisions that we can best describe as "agreements to agree." For instance, the settling parties propose to use the small water company model workbook as a basis for parties to negotiate a method for streamlined treatment of future general rate adjustments. The settlement agreement also requires ORA and MU to agree on the mechanics of a balancing account, establishment of a series of realistic goals for customer service, and a revised Rule 15.

We assume that implicit in the negotiations between MU and ORA was the expectation that the parties in good faith would reach agreement on streamlined treatment for future general rate adjustments, mechanics of a balancing account, realistic goals for customer service, and a revised Rule 15. Similarly, we adopt this settlement with the expectation that the parties will reach agreement on the issues identified and within the timelines set forth in the settlement agreement. We note that these unresolved matters are of secondary importance; however, in the event an impasse is reached, any settling party may petition the Commission to modify this decision. In future settlements, we encourage parties to fully resolve issues rather than propose agreements to agree.

With regard to streamlined treatment of future general rate adjustments, we encourage the parties to use the small water company model workbook as a basis for parties to negotiate a new method.

G.O. 77

We decline to accept settling parties' proposal to create an exemption to G.O. 77 in this utility specific proceeding. The agreement to exempt MU from complying with G.O. 77 differs from agreements to compromise and settle factual disputes regarding the calculation of rates. G.O. 77 is premised on Commission policy whereas rates are premised on numerical numbers or calculations. We afford much more discretion to parties in settling disputes concerning numbers and calculations, but impose a stricter standard of review when parties propose to change Commission policy.

G.O. 77 has a long-standing history. In proposing to change Commission policy, parties should explicitly review prior Commission policies and explain in a meaningful manner the basis for departing from such policies. Here, settling parties have done neither. The settlement agreement makes no review of Commission policy regarding G.O. 77. Further, the settlement agreement justifies its basis for departing from past Commission policy with the summary position that applicant has:

> "...significant concerns about the privacy rights of personnel who perform tasks part time under the management services agreement with KAI.... Most such personnel took employment with a private entity, KAI, with no understanding that their salaries, if they exceed the threshold amount stated in G.O. 77, could be made public."

In the past, the Commission has made exceptions to G.O. 77 reporting requirements. However, such exceptions have been limited to situations involving entities that are no longer subject to rate regulation by this Commission, e.g., cellular telephone companies and railroads. However, the information regarding salaries is warranted in setting rates, particularly in this instance in which an affiliate is involved. In D.94-02-007, we addressed and

dismissed concerns similar to those of MU regarding the "right of privacy." In D.94-02-007, we stated:

> The so-called "Right of Privacy" by which applicants seek to shield from disclosure the identity of employees earning above a certain specified amount is not an absolute right, but at best is a qualified privilege. No party challenges, indeed there is no doubt that the Commission, in the execution of its Constitutionally mandated duties, may lawfully collect otherwise privileged information for internal distribution and use in connection with the planning, design, and implementation of programs furthering its official mission. Thus, there is no question that the Commission may require that employees earning above certain specified levels be identified by name. The real issue to be decided in this proceeding is simply whether honoring the qualified privilege so as to protect the identity of employees earning above the specified levels is outweighed by the public's right to know the identity of such employees. We believe that it is.
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> Since their interests are best served by prices for utility services being kept at the lowest possible level, the ratepayers have a very real interest in seeing that costs of producing the goods and services used by them are kept at a minimum. This includes the salaries and compensation of utility officers and employees. The ratepayers have a right to know what costs, including salaries and expenses, they as ratepayers are, in effect, reimbursing to the utility, and whether those salaries and expenses are comparable to or in line with those of others performing similar services in like industries. They further have a right to know whether the utility is engaging in "cross-subsidization" whereby they, as ratepayers, are burdened with costs unrelated to the services for which the ratepayers are being charged.
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> The most reliable manner of reviewing records to make determinations such as the above is by name. . . . For all of the above reasons, we find and conclude that name reporting is of great value, that the application to amend G.O. 77-K to delete such name

> reporting should be denied, and G.O. 77-K should remain as presently worded. (53 CPUC2d 177,182.)

Settling parties have neither discussed nor stated good cause for exemption from G.O. 77. Thus, we follow D.94-02-007 and decline to adopt that portion of the settlement dealing with G.O. 77 reporting requirements.

With this modification, we find that the settlement before us is reasonable in light of the whole record, consistent with the law, and in the public interest. We are convinced that the settlement, with slight modification, balances the various interests at stake.

Comments on Proposed Decision

The proposed decision of the administrative law judge in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g) and Rule 77.1 of the Rules of Practice and Procedure. On November 22, 1999, settling parties filed Joint Comments concerning the proposed decision. The settling parties accepted the ALJ's modification of the settlement agreement which declined to accept the proposal to create an exemption to G.O. 77. The settling parties also proposed several minor technical corrections which are incorporated into this final decision.

Findings of Fact

1. In A.99-01-037, Mountain Utilities (MU) requests authority, among other things, to more precisely define its revenue requirement and increase rates and charges for electric service.

2. On August 20, 1999, MU, the Office of Ratepayer Advocates (ORA), and Kirkwood Associates, Inc. (KAI) filed a joint motion seeking Commission approval of a settlement resolving the issues in this proceeding.

3. The Kirkwood Meadows Public Utility District (KMPUD) opposes the settlement.

4. The issues raised by KMPUD do not involve material facts.

5. KMPUD has not requested an evidentiary hearing.

6. Resolution of the issues raised in KMPUD's comments on the proposed settlement does not require an evidentiary hearing.

7. Based on the whole record before us, we find that the rates proposed by settling parties are justified and reasonable.

8. The agreement to exempt MU from complying with General Order (G.O.) 77 differs from agreements to compromise and settle factual disputes regarding the calculation of rates.

9. G.O. 77 is premised on Commission policy whereas rates are premised on numerical numbers or calculations.

10. We afford much more discretion to parties in settling disputes about numbers and calculations, but impose a stricter standard of review when parties propose to change Commission policy.

11. The Settlement does not review or address Commission policy regarding G.O. 77.

12. The Settlement does not explain in a meaningful manner the basis for departing from the policies underlying G.O. 77.

13. Information regarding salaries required under G.O. 77 is warranted in setting rates and especially in this instance in which an affiliate is involved.

14. The settlement, with slight modification, satisfies the Commission criteria for a contested settlement, as set forth in Rule 51 et seq., of our Rules of Practice and Procedure and prior Commission decisions.

Conclusions of Law

1. The settlement is a "contested settlement" as defined in Rule 51(e).

2. The settlement, with slight modification, is reasonable in light of the whole record, consistent with law, and in the public interest.

3. The settlement, with slight modification, should be approved.

4. The proposed settlement's treatment of rates is consistent with our guidelines.

5. Consistent with Rule 51.7, this decision proposes a modification to the settlement that eliminates MU's exemption from G.O. 77 filing requirements.

6. This order should be effective today, so that the settlement may be implemented expeditiously.

FINAL ORDER

IT IS ORDERED that:

1. The motion of Mountain Utilities (MU), the Office of Ratepayer Advocates, and Kirkwood Associates, Inc. for Adoption of Settlement, filed on August 20, 1999, and set forth in Appendix A, is granted, provided MU and the settling parties accept the modification addressed herein.

2. MU is authorized to recover the amount of revenues set forth in the Settlement Agreement and associated attachments commencing January 1, 2000. MU shall file a compliance advice letter implementing all required tariff changes necessitated by this decision within 15 days of the effective date of this decision. This advice letter shall be effective January 1, 2000, subject to Energy Division's finding that the advice letter is compliant with this order.

This order is effective today.

Dated December 2, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners

Appendix A

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Mountain Utilities (U906-E) For Authority, Among Other Things, to More Precisely Define Its Revenue Requirement and Increase Rates and Charges for Electric Service.	A.99-01-037

SETTLEMENT AGREEMENT OF

MOUNTAIN UTILITIES (U906-E),

THE OFFICE OF RATEPAYER ADVOCATES,

AND KIRKWOOD ASSOCIATES, INC.

I. PARTIES

The Parties to this Settlement Agreement are Mountain Utilities ("MU"), the Office of Ratepayer Advocates ("ORA"), and Kirkwood Associates, Inc. ("KAI").

II. RECITALS

A. Scope of the Settlement Agreement

This agreement resolves among the Parties all issues related to A.99-01-037, MU's General Rate Case which was filed by MU on January 20, 1999. These issues include but are not limited to the matters discussed in the subsections of Section IV of this Settlement Agreement.

B. Settlement Process

MU and ORA began settlement discussions in an effort to settle all or a portion of the issues in this proceeding approximately a month before the scheduled commencement of hearings. The discussions progressed deliberately, and approximately a week and a half before the scheduled commencement of hearings, MU and ORA felt they were close to a settlement on all financial issues. At approximately that time, ORA contacted the Kirkwood Meadows Public Utility District ("KMPUD") and MU contacted KAI to bring them into the settlement discussions. MU and ORA reached an agreement on financial issues approximately a week before the scheduled commencement of hearings and began discussing open non-financial issues. On August 4, 1999, pursuant to Rule 51 of the Commission's Rules of Practice and Procedure, MU, ORA, and KAI gave notice of a settlement conference to be held on August 11, 1999. On that day, hearings in this proceeding commenced and were temporarily adjourned while the settlement conference proceeded. After the conclusion of the settlement conference on August 11, 1999, all evidence in the proceeding was received by stipulation. The settlement conference and discussions following it have led to a settlement among MU, ORA, and KAI.

C. Positions of the Parties

MU's position is reflected in the MU Testimony, Supplemental Davie Testimony, Supplemental Hansen Testimony, and MU Rebuttal Testimony. ORA's position is reflected in the ORA Report. KAI did not file testimony. KAI preferred to keep rate increases as low as possible, and was not in favor of a cost allocation study being done. All parties agreed pursuant to a schedule adopted after the prehearing conference in this proceeding not to perform such a study.

III. DEFINITIONS

A. Parties

The term "Parties" when capitalized refers to the parties to this Settlement Agreement: MU, ORA, and KAI.

B. Settlement Agreement

The term "Settlement Agreement" refers to this Settlement Agreement among MU, ORA, and KAI.

C. MU Testimony

The term "MU Testimony" refers to the Testimony in Support of Mountain Utilities (U 906E) Application for Authority, among Other Things, to More Precisely Define its Revenue Requirement and Increase Rates and Charges for Electric Service, served on January 20, 1999, admitted as Exhibit 2 in this proceeding.

D. Supplemental Davie Testimony

The term "Supplemental Davie Testimony" refers to the Supplemental Testimony of Douglas E. Davie, P.E. on Behalf of Mountain Utilities Concerning Standby Rates, served on May 28, 1999, admitted as Exhibit 3 in this proceeding.

E. Supplemental Hansen Testimony

The term "Supplemental Hansen Testimony" refers to the Supplemental Testimony of Kurt G. Hansen, CPA, on Behalf of Mountain Utilities Concerning Standby Rates, served on May 28, 1999, admitted as Exhibit 4 in this proceeding.

F. MU Rebuttal Testimony

The term "MU Rebuttal Testimony" refers to the Rebuttal Testimony in Support of Mountain Utilities (U 906E) Application for Authority, among Other Things, to More Precisely Define its Revenue Requirement and Increase Rates and Charges for Electric Service, served on August 3, 1999, admitted as Exhibit 5 in this proceeding.

G. ORA Report

The term "ORA Report" refers to ORA's Results of Operations Report for Mountain Utilities General Rate Case Application dated June 18, 1999, admitted as Exhibit 6 in this proceeding.

IV. AGREEMENT

A. Rates for All Customer Classes

Basic rates for all customer classes will be as follows:

Remainder of FY 2000:	$0.21500/kWh
FY 2001:	$0.22750/kWh
FY 2002:	$0.24000/kWh

Except as stated in Sections IV.B and C below, all other provisions of MU's current rate tariffs remain the same.

The rate of return on rate base represented by these rates is 6.7% for FY 2000, 6.9% for FY 2001, and 8.7% for FY 2002. The rate of return on rate base originally requested by MU in its application in this proceeding was 6.1% for FY 2000, 6.0% for FY 2001, and 9.0% for FY 2002. (The MU Testimony reflected a calculation error showing the return on rate base in FY 2000 as 7.3%; the proper number is 6.1% as reflected in the preceding sentence.) (See MU Testimony, p. 24 (Exhibit 2).)

These rates result from compromises among the parties. ORA agreed to accept MU's O&M numbers as filed. MU agreed to decrease its forecasted A&G costs by $219,265 over the test period. MU agreed to increase the allocation of the propane reimbursement from MU's unregulated propane division so that the forecasted reimbursement is $338,596 over the test period. The rate of return on rate base stated above also represents a compromise, as can be seen by comparing the rates of return recited in the immediately preceding paragraph.

Attached in Table 1 is a comparison exhibit comparing MU's and ORA's positions in their testimony and the provisions of the final settlement.

B. Baseline Rates

The Parties agree that the differential between baseline and non-baseline rates will be 10%, that the winter season will be seven months long, from November 1 through May 31, and the summer season will be five months long, from June 1 through October 31. For each fiscal year of the test period, the baseline rates will be as stated below up to the baseline maximum for each season, and the non-baseline rates will be as stated below for all consumption over the baseline maximum for each season.

	FY 2000	FY 2001	FY 2002
Baseline	$0.20874	$0.22087	$0.23301
Non-Baseline	$0.22961	$0.24296	$0.25631

The baseline maximum for each season will be calculated using 70% of the average residential monthly consumption for each season, as noted in the MU Testimony at page 15 (Exhibit 2), using the most recent average consumption data available to MU at the time it prepares the

advice letter to effectuate the decision in this proceeding. If rates are adjusted in the future using the fuel adjustment provisions of this Settlement Agreement, baseline rates will be recalculated using the 10% differential agreed to in this paragraph.

C. Standby Rates

The Parties accept MU's standby rate as proposed in the Supplemental Davie Testimony and the Supplemental Hansen Testimony (Exhibits 3 and 4), with the following amendment. Any customer desiring to give notice of an intention to take standby service may do so within 60 days of the date the standby tariff takes effect, not 30 days as stated on page 1 of Attachment A to the Supplemental Davie Testimony. After the expiration of the initial 60 day period, any customer must give 12 months notice of an intention to take standby service, as stated on page 1 of Attachment A to the Supplemental Davie Testimony. However, if a customer gives less than the required 12 month notice, MU will notify the customer within 30 days of its receipt of the customer's notice whether it can provide standby service by the date specified by the customer, and if MU cannot do so, it will provide its best reasonable estimate as to when it will be able to provide standby service to the customer.

D. Unbundling of Rates

The Parties accept the proposal for unbundling of rates found in Section V.B.2 of the MU Testimony (Exhibit 2). Therefore, MU's rates will be allocated 75% to generation and 25% to distribution, with no allocation to transmission because MU has no transmission service.

E. Streamlined Treatment of Future Rate Proposals

1. In General

The Parties agree that the final decision in this proceeding may state that the small water company model workbook may be used as a basis for the Parties to negotiate a method for streamlined treatment of future general rate adjustments. The Parties agree that the rate of return in that model will not apply. The Parties agree to work together to adjust the small water company model as necessary to take account of the differences between a small water company and a small energy utility such as MU, while still allowing MU to file for rate adjustments as inexpensively as possible. MU agrees that when filing for a general rate adjustment, it will still be required to provide notice as required by the Commission's Rules of Practice and Procedure and that in addition, it will give notice to an ORA designee to be agreed upon during the discussions called for in this paragraph. The Parties finally agree on a target date of six months after issuance of the decision in this proceeding for filing an advice letter with a tariff which sets forth the streamlined model. No new rates using the streamlined model will take effect before the end of FY 2002.

2. Fuel Adjustment Cost Procedures

MU may file for rate adjustments by advice letter necessitated by increases or decreases in diesel fuel cost no more frequently than annually, with the first such filing allowed between May 31 and July 1, 2000, and subsequent filings between those same dates in subsequent years. If average fuel costs over the twelve month period preceding May 1 of the year in which the advice letter may be filed exceed the forecasted fuel cost included in this proceeding ($0.7504/gallon) by 3% or more, MU may file for an upward adjustment in rates. If average fuel costs over that same period decrease by 3% or more compared to the forecasted fuel cost included in this proceeding ($0.7504/gallon), MU is required to file for a downward adjustment. Increases or decreases in rates will be trued up. The advice letter filing shall be accompanied by proof that MU has competitively procured diesel fuel during the twelve month period preceding the filing of the advice letter. ORA will file either a protest or a statement that it does not protest the advice letter within twenty days of its receipt of the advice letter, and if ORA does not protest the advice letter, ORA will work with MU to encourage expeditious processing and issuance of a resolution approving the advice letter.

MU will be required to institute a balancing account for use with this fuel adjustment mechanism. MU and ORA shall meet as soon as possible after the execution of this Settlement Agreement to agree upon the mechanics of the balancing account. The agreed upon form of the balancing account shall be included in the implementing tariffs to be filed to effectuate the changes to rates and services reflected in this Settlement Agreement and a Commission decision approving them.

In order to control costs, MU agrees not to enlist the assistance of outside consultants or attorneys with respect to fuel adjustment filings unless the filing is protested by ORA or another interested party.

F. ECMA Costs

ORA found the costs recorded for 1998 in MU's ECMA account to be reasonable. The Parties agree that capitalized ECMA expenses should continue to be reviewed for reasonableness, until the new rates agreed to in this Settlement Agreement go into effect. The ECMA will be closed to further accumulation of costs at the date of the implementation of new rates. Therefore, no further review is necessary because no new costs to be capitalized will be recorded in the ECMA.

G. Public Purpose Programs

The Parties accept the proposal for public purpose programs found in Section V.B.3 of the MU Testimony (Exhibit 2). Therefore, MU will continue to accept voluntary contributions in aid of renewable resources and forward them to the appropriate agency.

H. Reporting Requirements

1. D.92-08-008

MU will file affiliate reports as required by D.92-08-008 as to the relationship between MU and its parent company KAI, and any other affiliates as defined in D.92-08-006. The issue as to whether an affiliate report such as that required by D.92-08-008 should be required for transactions between MU's electrical and propane divisions will be addressed (should the Commission so desire) in a new proceeding instituted by the Commission to be filed by December 31, 2000, to review the interim affiliate reporting requirements along with an anticipated proceeding to review the affiliate transaction rules which apply to energy utilities and certain of their affiliates. (D.99-05-011, p. 1.)

2. G.O. 65 and 104

G.O. 65 requires filing of periodic reports concerning the operations and financial condition of utilities such as MU. MU has a small staff and it would be burdensome to require monthly G.O. 65 reports. The Parties agree that MU must file its annual report of operations as required by G.O. 104, but that in each such annual report, MU will also include all financial and operational information (on an annual reporting basis) that would be required to be filed under G.O. 65. In addition, every six months (beginning six months after the issuance of a decision in this proceeding), MU will provide to an ORA designee an unaudited balance sheet, income statement, and profit and loss statement.

3. G.O. 77

MU has significant concerns about the privacy rights of personnel who perform tasks for it part time under the management services agreement with KAI, and KAI shares those concerns. Most such personnel took employment with a private entity, KAI, with no understanding that their salaries, if they exceed the threshold amount stated in G.O. 77, could be made public. However, MU's General Manager and power house personnel perform services exclusively for MU. Thus, the Parties agree that G.O. 77 reports may be filed as follows. MU will file G.O. 77 reports as required, except that salary information for every person whose salary information would be required to be filed by G.O. 77 may be filed as confidential under Public Utilities Code § 583. The only exceptions are that the salaries of the MU General Manager, power house personnel, and others who perform services exclusively for MU will be publicly filed as long as they otherwise meet the threshold requirements of G.O. 77.

I. Other Affiliate Issues

All personnel who perform work both for KAI and MU must record the amount of time spent working for each entity. Further, personnel performing work for both MU's electrical and propane division must also record the amount of time working for each division, as well as the allocation of other expenses. These records will be available for ORA and the Commission to inspect at anytime. MU will monitor its personnel to ensure that proper recordation is occurring.

ORA will conduct an affiliate record inspection on some date after March 31, 2000, to assess compliance with the provisions of this paragraph.

J. Customer Service

MU's power house personnel are required to keep track of complaints and MU's response thereto. MU will ensure that its power house personnel perform that task as instructed, and will conduct appropriate training to ensure that this tracking occurs. Each quarter of the first year after the issuance of a decision in this proceeding, and every six months the next two years after that, MU will submit to an ORA designee a summary of those records in abbreviated form, noting: (1) the customer name, (2) the complaint or problem, (3) the resolution of the complaint or problem, and (4) the amount of time taken to reach that resolution. MU will also conduct training for all employees with customer contact on being "customer friendly." Beyond these concrete steps, to be taken within three months of final decision, the Parties will meet to arrive at a series of realistic goals for customer service which will be put in place as an MU program, the success of which will be measurable. As to these goals, beginning three months after the adoption of the goals, MU will also submit a quarterly report concerning its compliance with the goals. After four quarterly reports, for the next two years, MU will submit such reports every six months.

K. Line Extension Tariff Review and Revision

MU's line extension rule, Rule 15, is outdated and not useful for the utility or ratepayers, and needs to be revised so that it is fair, equitable, and comprehensible. It is appropriate for MU to incorporate policies and practices developed in the line extension workshop at the earliest practicable opportunity. MU and ORA will meet within one month of issuance of a final decision in this proceeding to begin discussions to arrive at a revised and modernized Rule 15. In these discussions, MU and ORA together will examine the feasibility of use of and possible adaptation of a revenue-based extension allowance calculation. The revisions to Rule 15 will reflect as much as practicable the policies applicable to line extensions adopted by the Commission in D.94-12-026 (58 CPUC 2d 1). Within six months of the issuance of a final decision in this proceeding, MU will file with the Commission an advice letter with new tariff language for Rule 15.

L. Activity Timeline

The times stated below are with reference to the date of issuance of a decision in this proceeding.

Within one month:

First meeting of MU and ORA to address revision of MU's Rule 15.

Within three months:

MU files its first summary of customer complaint information (to be filed quarterly thereafter three more times, then every six months thereafter for two more years).

MU conducts training of all personnel with customer contact on being "customer friendly".

Begin discussions to arrive at a series of realistic goals for customer service which will be put in place as an MU program, the success of which will be measurable.

Beginning three months after adoption of customer service goals:

MU will submit a quarterly report concerning its compliance with the customer service goals. After four quarterly reports, for the next two years, MU will submit such reports every six months.

Within six months:

MU files a consolidated advice letter or separate advice letters with (1) tariff containing streamlined rate model, and (2) revised Rule 15.

After March 31, 2000:

ORA inspects MU affiliate records to assess compliance with personnel record-keeping requirements.

V. ADDITIONAL TERMS AND CONDITIONS

A. Term Of Settlement Agreement

The Parties agree that this Settlement Agreement shall be in effect until any provisions are superseded by any further Commission action.

B. Obligation To Promote Approval

The Parties agree to use their best efforts to propose, support and advocate adoption of this Settlement Agreement by the Commission. The parties will jointly and vigorously advocate implementation of all revised rates discussed in this Settlement Agreement by November 1, 1999. The Parties agree to perform diligently, and in good faith, all actions required or implied herein, including, but not necessarily limited to, the execution of any other documents required to effectuate the terms of this Settlement Agreement, and the preparation of exhibits for, and presentation of witnesses at, any required hearings to obtain the approval and adoption of this

Settlement Agreement by the Commission. No Party to this Settlement Agreement will contest any aspect of this Settlement Agreement in any proceeding or in any other forum, by contact or communication, whether written or oral (including *ex parte* communications whether or not reportable under the Commission's Rule of Practice and Procedure) or in any other manner before this Commission. Any Party may protest any advice letter filed by MU with which the Party does not agree.

The Parties further agree that they will use reasonable efforts to provide notice to the other Parties that they intend to enter into *ex parte* discussions with any Commission decision-maker regarding the recommendations contained in this Settlement Agreement, whether reportable under the Commission's Rules of Practice and Procedure, or not. Moreover, the Parties agree to actively and mutually defend this settlement if its adoption is opposed by any other party to the proceeding. The Parties understand and acknowledge that time is of the essence in obtaining the Commission's approval of this Settlement Agreement and that each Party will extend its best efforts to ensure the adoption of this Settlement Agreement.

C. Public Interest

The Parties agree jointly by executing and submitting this Settlement Agreement that the relief requested herein is just, fair and reasonable, and in the public interest. Each of the Parties actively participated in the settlement process, with substantiation of its position.

D. Non-Precedential Effect

This Settlement Agreement is not intended by the Parties to be a binding precedent for any future proceeding. The Parties have assented to the terms of this Settlement Agreement only for the purpose of arriving at the various compromises embodied in this Settlement Agreement. Each Party expressly reserves its right to advocate, in current and future proceedings, positions, principles, assumptions, arguments and methodologies which may be different from those underlying this Settlement Agreement and the Parties expressly declare that, as provided in Rule 51 of the Commission's Rules of Practice and Procedure, this Settlement Agreement should not be considered as a precedent for or against them.

E. Indivisibility

The Parties acknowledge that the positions expressed in this Settlement Agreement were reached after consideration of all positions advanced by each of the Parties during the settlement negotiations. This Settlement Agreement embodies compromises of the Parties' positions. No individual term of this Settlement Agreement is assented to by any Party except in consideration of the Parties' assents to all other terms. Thus, the Settlement Agreement is indivisible and each part is interdependent on each and all other parts.

Any Party may withdraw from this Settlement Agreement if the Commission modifies, deletes from, or adds to the disposition of the matters stipulated herein. The Parties agree, however, to negotiate in good faith with regard to any Commission-ordered changes in order to restore the balance of benefits and burdens, and to exercise the right to withdraw only if such negotiations are unsuccessful.

F. Liability

The Parties further agree that no signatory to this Settlement Agreement, nor any member of the Staff of the Commission, assumes any personal liability as a result of this Settlement Agreement.

G. Governing Law

This Settlement Agreement shall be governed by the laws of the State of California (without regard to conflicts of law principles) as to all matters, including, but not limited to, matters of validity, construction, effect, performance and remedies.

H. Interpretation

The section headings contained in this Settlement Agreement are solely for the purpose of reference, are not part of the agreement of the Parties, and shall not in any way affect the meaning or interpretation of this Settlement Agreement. All references in this Settlement Agreement to Sections are to Sections of this Settlement Agreement unless otherwise indicated. Each of the Parties hereto and their respective counsel have contributed to the preparation of this Settlement Agreement. Accordingly, no provision of this Settlement Agreement shall be construed against any Party because that Party or its counsel drafted the provision.

I. No Waiver

It is understood and agreed that no failure or delay by any Party hereto in exercising any right, power or privilege herein shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege.

J. Amendment/Severability

This Settlement Agreement sets forth the entire understanding and agreement between the Parties with reference to the subject matter hereof, and this Settlement Agreement may not be

modified or terminated except by an instrument in writing signed by all Parties hereto. This Settlement Agreement supersedes all prior agreements, negotiations, and understandings among the Parties, both oral and written related to this matter.

K. Counterparts

This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, intending to be legally bound, the Parties hereto have duly executed this Settlement Agreement on behalf of the Parties they represent.

R.T. Brinkley II
President
Mountain Utilities

August 20, 1999

IN WITNESS WHEREOF, intending to be legally bound, the Parties hereto have duly executed this Settlement Agreement on behalf of the Parties they represent.

TERRY R. MOWREY
Program Manager
Office of Ratepayer Advocates
California Public Utilities Commission

August 20, 1999

IN WITNESS WHEREOF, intending to be legally bound, the Parties hereto have duly executed this Settlement Agreement on behalf of the Parties they represent.

Anthony W Reid

ANTHONY REID
Chief Financial Officer
Kirkwood Associates Inc.

August 20, 1999

(END OF APPENDIX A)

APPENDIX B

List of Appearances

********** APPEARANCES **********

Dan L. Carroll
Attorney At Law
DOWNEY, BRAND, SEYMOUR & ROHWER
555 CAPITOL MALL, 10TH FLOOR
SACRAMENTO CA 95814
(916) 441-0131
dcarroll@dbsr.com
For: Mountain Utilities

Patrick L. Gileau
MARTIN HOMEC
Legal Division
RM. 5000
505 VAN NESS AVE
SAN FRANCISCO CA 94102
(415) 703-3080
plg@cpuc.ca.gov

Tom Henie
General Manager
KIRKWOOD MEADOWS PUBLIC UTILITY DIST.
PO BOX 247
KIRKWOOD CA 95646
(209) 258-4444
For: Kirkwood Meadows Public Utility District

William H. Booth
Attorney At Law
LAW OFFICES OF WILLIAM H. BOOTH
1500 NEWELL AVENUE, SUITE 500
WALNUT CREEK CA 94596
(925) 296-2460
wbooth@booth-law.com
For: Kirkwood Associates, Inc.

G. Alan Comnes
Sr. Associate
MRW & ASSOCIATES
1999 HARRISON ST, STE 1440
OAKLAND CA 94612-3517
(510) 834-1999
gac@mrwassoc.com
For: Kirkwood Meadows Public Utility District

Robert B. Gex
Attorney At Law
PILLSBURY MADISON & SUTRO LLP
PO BOX 7880
SAN FRANCISCO CA 94120-7880
(415) 983-1441
gex_rb@pillsburylaw.com
For: Kirkwood Meadows Public Utility District

********** STATE SERVICE **********

Roderick A Campbell
Energy Division
AREA 4-A
505 VAN NESS AVE
SAN FRANCISCO CA 94102
(415) 703-1214
rax@cpuc.ca.gov

Joseph R. DeUlloa
Administrative Law Judge Division
RM. 5006
505 VAN NESS AVE
SAN FRANCISCO CA 94102
(415) 703-3124
jrd@cpuc.ca.gov

Barbara Ortega
Executive Division
RM. 5109
320 WEST 4TH STREET SUITE 500
LOS ANGELES CA 90013
(213) 576-7070
bho@cpuc.ca.gov

Rosalina White
Public Advisor Office
RM. 5303
505 VAN NESS AVE
SAN FRANCISCO CA 94102
(415) 703-1647
raw@cpuc.ca.gov

********** INFORMATION ONLY **********

Standish O'Grady
31 PARKER AVENUE
SAN FRANCISCO CA 84118
(415) 439-3633
sogrady@hamquist.com

Richard Arri
1533 HARLAN DRIVE
DANVILLE CA 94526
104126.3377@compuserve.com

Richard C. Baxter
858 GERALDINE STREET
LIVERMORE CA 94550-2328
(925) 373-0314
rbaxter@ccnet.com

Elaine & Mervyn Becker
461 SUMMIT ROAD
WALNUT CREEK CA 94598

Reid Bennett
2142 GRAHN DR.
SANTA ROSA CA 95404
(707) 526-7949
For: PacBell

Bernie Benz
1265 OLD FOOTHILL ROAD
GARDNERVILLE NV 89410

Robert & Sally Beste
2588 DUMBARTON AVENUE
SAN JOSE CA 95124-1719

Kevin Blackwell
9938 FERNWOOD AVENUE
STOCKTON CA 95212-9436
(209) 931-5713

Paul Blanke
15466 LOS GATOS BLVD. 109-107
LOS GATOS CA 95032
(650) 366-6010

James Short
C/O DANIEL SKI, INC.
1528 SALINAS HWY
MONTEREY CA 93940
jntshort@mbay.net

Ronald Liebert
Attorney At Law
CALIFORNIA FARM BUREAU FEDERATION
2300 RIVER PLAZA DRIVE
SACRAMENTO CA 95833
(916) 561-5657
rliebert@cfbf.com

Karen Norene Mills
CALIFORNIA FARM BUREAU FEDERATON
2300 RIVER PLAZA DRIVE
SACRAMENTO CA 95833

John V. Copren
PO BOX 293
KIRKWOOD CA 95646-0293

Frederick Crews
636 VINCENTE AVENUE
BERKELEY CA 94707-1524
(510) 525-2479
fredc@socrates.berkeley.edu

Patrick D. Crocker
Attorney At Law
EARLY, LENNON, PETERS & CROCKER, P.C.
900 COMERICA BUILDING
KALAMAZOO MI 49007
(616) 381-8844
dgcrocker@voyager.net

Carolyn Baker
EDSON & MODISETTE
925 L STREET, SUITE 1490
SACRAMENTO CA 95814

Gary Gallaher
19 VALLEY DRIVE
ORINDA CA 94563
gallaher@pacbell.net

Margaret A. Rostker
Attorney At Law
GOODIN MACBRIDE SQUERI RITCHIE & DAY LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111

Kristen Kelley
HENWOOD ENERGY
2710 GATEWAY OAKS DRIVE, 300 NORTH
SACRAMENTO CA 95833

Frederick Holley
Md
15298 KENNEDY ROAD
LOS GATOS CA 95032

Judith W. Hunter
500 VERNON STREET 109
OAKLAND CA 94610

Dave Jones
INTERMARKET TRADING COMPANY
775 BAYWOOD DRIVE, STE 215
PETALUMA CA 94954

Kristen Jacobsen
125 MATTISON LANE
APTOS CA 98003
kristen@catalystonline.com

Edward W. O'Neill
JEFFER, MANGELS, BUTLER & MARMARO LLP
ONE SANSOME STREET, 12TH FLOOR
SAN FRANCISCO CA 94104-4430
(415) 398-8080
ewo@jmbm.com
For: El Paso Natural Gas

KELDER
6601 CAMINO DEL LAGO
RANCHO MURIETA CA 95683

Leo V. Smith
Property Owner, Pud Board Member
KIRKWOOD PUD & COMMUNITY
PO BOX 66
KIRKWOOD CA 95646
(209) 258-8859
For: Kirkwood PUD & Community

Penny Tirschman
Vice President
KIRKWOOD SKI AND SUMMER RESORT
PO BOX 1
KIRKWOOD CA 95646

Bruce Lawler
LISA LAWLER
1365 LONGFELLOW WAY
SAN JOSE CA 95129
(408) 252-9543
LCLInc@aol.com

James Mannos
236 DELPHI CIRCLE
LOS ALTOS CA 94022
(650) 948-1869
jmannos@alum.mit.edu

Bryan Martin E-M
580 SOBRATO DRIVE
CAMPBELL CA 95008
(408) 378-4004
bmartin@8x8.com

Gregory K. Mcmanus
PO BOX 6599
KAMUELA HI 96743
mcmanus@aloha.net

MRW & ASSOCIATES, INC.
1999 HARRISON STREET, SUITE 1440
OAKLAND CA 94612-3517

Pat Schmiege
O'MELVENY & MYERS
275 BATTERY STREET, 26TH FLOOR
SAN FRANCISCO CA 94111

Anne E. Eakin
PACIFICORP
800 NE MULTNOMAH
PORTLAND OR 97232

James C. Paine
PACIFICORP
900 S.W. FIFTH AVENUE, SUITE 2300
PORTLAND OR 97204

William G. Papsco
PO BOX 266
KIRKWOOD CA 95646

Geir Ramleth E-M
895 GAIL COURT
WALNUT CREEK CA 94598
geir@ramleth.com

Richard Esteves
RESCUE/SESCO, INC.
77 YACHT CLUB DRIVE, SUITE 1000
LAKE FOREST NJ 07849

Richard F. Reuter
Jeanne Reuter
PO BOX 19
KIRKWOOD CA 95646
jareuter@volcano.net

Doug Robinson
125 MATTISON LANE
APTOS CA 98003
climb@movingoverstone.com

Thomas R. Russell
ROBERTA A. FOLIART
1606 RAMONA WAY
ALAMO CA 94507

Richard Schader
RYAN SCHADER
17612 ROBISON ROAD
MACDOEL CA 96058

Gary Sargent
1550 WHITE RIDGE CIRCLE
RENO NV 89509

Noel B. Schween
1964 DOWLING CT.
SANTA ROSA CA 95404

Daniel W. Meek
SESCO INC./RESCUE
10949 S.W. 4TH AVENUE
PORTLAND OR 97219

David M. Norris
Attorney At Law
SIERRA PACIFIC POWER COMPANY
6100 NEIL ROAD, PO BOX 10100
RENO NV 89520-0024
(775) 834-4208
dnorris@sppc.com

William K. Branch
SIERRA PACIFIC POWER COMPANY
PO BOX 10100
RENO NV 89520-0024

Todd Slyngstad
STELLA SLYNGSTAD
10293 KENNY LANE
SAN JOSE CA 95127
(408) 254-2426
SMSlyng@aol.com

Ann P. Cohn
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770

Raymond P. Juels
SOUTHERN CALIFORNIA WATER COMPANY
630 EAST FOOTHILL BOULEVARD
SAN DIMAS CA 91773

H. Anton Tucher
4264 MANUELA WAY
PALO ALTO CA 94306
4hat@compuserve.com

Peter A. Tuxen
M.D.
2650 WESTMINSTER AVENUE
STOCKTON CA 95204
(209) 948-0578

Bill Underwood
116 GILBERT COURT
SANTA CRUZ CA 95062
bill@catalystonline.com

Robert E. Warren
1975 BECHELLI LANE
REDDING CA 96002

Bob Weber
PO BOX 103
KIRKWOOD CA 95646
(209) 258-8343

Theodore F. Wyess
1420 STEPHEN WAY
SAN JOSE CA 95129-4143

Karen Zelin
116 GILBERT COURT
SANTA CRUZ CA 95062
karen@catalystonline.com

(END OF APPENDIX B)