

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Investigation and Suspension on the Commission's own motion of the tariff filed by Advice Letter No. 1831-E of Pacific Gas and Electric Company.

(I&S) Case 99 06 002**ORIGINAL**ORDER OF INVESTIGATION AND SUSPENSION**I. Summary**

By this order, we convert Pacific Gas and Electric Company's (PG&E) Advice Letter (AL) 1831-E into an investigation of the issues raised by that AL, and we suspend PG&E's proposed tariff for 120 days. On December 14, 1998, PG&E filed AL 1831-E requesting approval of a new electric tariff schedule that would apply specifically to the San Francisco Bay Area Rapid Transit District (BART). On January 4, 1999, BART protested asking that the AL be rejected. PG&E AL 1831-E and its associated protest and replies raise issues beyond the scope of the AL process.

II. Background

PG&E AL 1831-E requests approval of electric tariff Schedule E-BART, that purports to establish rates and charges for the distribution services PG&E provides to BART. BART protested asking that the AL be rejected because the rates sought by PG&E are inappropriate for an AL and can only be submitted through a rate application, the Commission does not have jurisdiction over the proposed services, and PG&E's proposed rates are calculated improperly.

In AL 1691-E, effective, August 1, 1997, PG&E submitted an agreement between BART and PG&E for electric delivery service. The agreement amended the existing service agreement to allow PG&E to transmit and deliver BART's increased federal preference power to BART's traction power and station and miscellaneous power

loads pursuant to California Public Utilities (P.U.) Code Section 701.8. The agreement expired on June 30, 1998.

After some negotiations, PG&E submitted a contract for electric service to the Federal Energy Regulatory Commission (FERC) and it was accepted on September 24, 1998. PG&E and BART signed the contract shortly thereafter. PG&E claims the contract does not cover all electrical services provided by PG&E and that the services not covered by the contract are under the jurisdiction of this Commission. BART's protest states the filing should be rejected because the FERC has already issued orders, and implemented tariffs and contracts, that provide for all electric services that BART receives from PG&E.

PG&E claims AL 1831-E modifies existing generally applicable tariffs in response to recent legislation (Senate Bill 1838 amending P.U. Code Section 701.8) that exempted BART from certain Direct Access requirements. PG&E, therefore, filed AL 1831-E under Section V. of General Order 96-A (Procedure for Filing Tariff Sheets Which Do Not Increase Rates or Charges). BART's protest asserts AL 1831-E is a rate increase and, therefore, Section V of General Order 96-A does not apply. In support, BART states AL 1831-E would impose entirely new special facilities and standby reservation charges and would impose various charges that do not currently apply.

BART's protest also challenges the method and calculation of the proposed rates. Among other points, BART claims the proposed rates would result in double charges, would charge for services not performed, and would violate P.U. Code Sections 374(b) and 701.8(f).

The Energy Division has reviewed the filings of PG&E and BART and concludes that the protest by BART raises issues that can not be properly addressed in an AL filing. Therefore, the Energy Division recommends that PG&E's AL 1831-E be suspended and an investigation opened.

III. Discussion

PG&E AL 1831-E raises issues of process, jurisdiction, and ratesetting.

PG&E and BART differ over the appropriate process to resolve the disputed issues. PG&E asserts its request is not a rate increase and that an AL filing is permitted under P.U. Code Section 455 and General Order 96-A, Section V. BART claims the filing is a rate increase and P.U. Code Section 454 applies. The proposed rates in AL 1831-E are an increase over the rates in the PG&E-BART contract approved by the FERC, but they do not appear to be an increase over PG&E's otherwise applicable PUC-filed tariff rates (e.g. Schedule E-20). Therefore, P.U. Code Section 455 applies. Under that Code Section we now suspend the E-BART tariff schedule for 120 days and set the matter for briefing and potentially for hearing.

PG&E and BART differ on whether any services provided by PG&E to BART are under the jurisdiction of this Commission. This question calls for an interpretation of state and federal law and of the PG&E-BART contract filed at the FERC. This issue should be briefed by the parties and we will issue a ruling after reviewing the briefs.

If the Commission determines after reviewing the briefs that we have jurisdiction over this matter, we will decide the appropriate rates for any services within our jurisdiction that PG&E provides to BART. BART's protest claims PG&E's proposed rates contain double counting, charges for services not performed, and violate P.U. Code Sections 374(b) and 701.8(f). Evidentiary hearings will be required to determine the appropriate cost basis and rate design for the services in question if we determine that we have jurisdiction.

Pursuant to Rule 6(c)(1) of the Commission's Rules of Practice and Procedure, we preliminarily determine the category of this investigation to be ratesetting as defined in Rule 5(c). The core question of the dispute is the reasonableness of the rates and charges PG&E wants to charge BART. While the determination of appropriate

jurisdiction for the dispute does not require evidentiary hearings, the determination of the appropriate rates, if the Commission does have jurisdiction, will require a hearing.

The initial issue to be addressed is whether the Commission has jurisdiction. Therefore, parties are requested to file briefs, within 30 days of this order, on whether this Commission has jurisdiction over any electric service PG&E provides to BART, and, if so, what is the extent of this Commission's jurisdiction vis-a-vis the FERC.

If we determine that this Commission retains jurisdiction over some part of PG&E's service to BART, we shall convene a prehearing conference to establish a procedural schedule for the resolution of the remaining issues.

An initial service list for this proceeding shall be the respondent and the protestant. Any other individuals or entities interested in this proceeding should submit separately, or include with their brief, a written request to the Commission's Process Office. Each request shall contain the following information:

Name of person receiving documents

Name of organization

Address, city, state, and zip code

E-mail address

Indicate the party status that the individual or entity is requesting¹

Indicate whether you prefer service by mail or by E-mail

For the purposes of this proceeding, an "interested party" is defined as someone who will submit briefs and evidence in response to this investigation. An interested party receives all formally filed documents, and any exhibits and testimony that may be submitted. The "respondent" is the utility named in this investigation. The respondent receives the same information that an interested party receives. The state service category is for Commission staff, divisions, or branches, or Legislators or other

¹ The written request shall indicate whether the entity is a "respondent," "interested party," "state service," or "information only."

State agencies who are monitoring the proceeding but are not parties. The state service category receives the same information that an interested party receives. The information only category ^{is} are for those persons who only want notice of the hearing, rulings, proposed decisions, and Commission decisions but are not parties.

Any party who is interested in participating in this investigation but is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor Offices in Los Angeles [(213) 897-3544] or San Francisco [(415) 703-2074].

The Process Office shall develop an initial service list based upon the written requests that it receives. This initial service list shall be posted on the Commission's website on or before June 21, 1999 and shall be updated as requests are received.

Parties shall concurrently file their initial briefs with the Commission's Docket Office on or before June 28, 1999, and reply briefs on or before July 14, 1999. Parties shall serve the briefs on the service list. In addition, the briefs shall be served on the Commission's Director of the Energy Division, General Counsel, and Chief Administrative Law Judge.

Entities who request that they be placed in the information only category of the service list may also request an E-mail copy of the briefs by directly contacting the respondent and interested parties.

We will be posting significant documents (e.g., rulings and decisions) in this proceeding on the Commission's website. Some may find it convenient to follow this proceeding by checking the website.

Consistent with Rule 6(e), we expect this proceeding to be concluded within 18 months.

Parties shall include in their initial brief any objections they may have regarding: (1) the categorization of this proceeding as an investigation; (2) the determination to hold a hearing for the presentation of facts; and (3) the preliminary scope for this proceeding as described in this order.

IT IS ORDERED that:

1. An investigation is opened into the issues raised in PG&E's AL 1831-E and BART's protest.

2. PG&E's E-BART tariff schedule is suspended for 120 days, and may be suspended for an additional period of time by the Commission or the Assigned Commissioner.

3. PG&E and BART shall concurrently file initial briefs on the legal and jurisdictional issues on or before June 28, 1999 and reply briefs on or before July 14, 1999. For good cause shown, the Assigned Commissioner or Assigned Administrative Law Judge may grant a short extension to this briefing schedule. Any interested party may file briefs according to this schedule. All briefs shall be served upon the initial service list and the Commission's Director of the Energy Division, General Counsel, and Chief Administrative Law Judge.

4. Based upon the Commission's ruling on the legal issues, an evidentiary hearing may be necessary. A prehearing conference may be scheduled and held after the Commission rules on the legal issues. At the prehearing conference, a schedule for the evidentiary hearing can be established.

5. This ordering paragraph suffices for the "preliminary scoping memo" required by Rule 6(c) of the Commission's Rules of Practice and Procedure. This proceeding is categorized as a ratesetting proceeding. While the legal issues will first be set for briefing, an evidentiary hearing may eventually be necessary. The issues of the proceeding are whether we have jurisdiction over PG&E's service to BART, and, if so, what charges do we have jurisdiction over; and whether PG&E's proposed rates contain

double counting, charges for services not performed, or violate P.U. Code Sections 374(b) and 701.8(f). If an evidentiary hearing is required, a prehearing conference will be set for the purpose of setting a schedule for this evidentiary proceeding. The evidentiary hearing should take place so as to allow the Commission sufficient time to issue our decision well before the 18-month deadline. This order, as to the categorization of this proceeding, is appealable under the procedures in Rule 6.4.

The Executive Director shall cause a copy of this order to be served by mail on PG&E, BART, and all other parties in this proceeding.

This order is effective today.

Dated _____, at San Francisco, California.

L/bwg

MAIL DATE
6/8/99

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Investigation and Suspension on the Commission's own motion of the tariff filed by Advice Letter No. 1831-E of Pacific Gas and Electric Company.

FILED
PUBLIC UTILITIES COMMISSION
JUNE 3, 1999
(I&S) Case 99-06-002

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The Executive Director shall cause a copy of this order to be served by mail on PG&E, BART, and all other parties in this proceeding.

This order is effective today.

Dated June 3, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
LORETTA M. LYNCH
TAL C. FINNEY
Commissioners