MEMORANDUM

To: Board Development Committee, Fiduciary Committee, and Winding Down PlanWorking Group

From: Allene Zanger, Executive Director

Date: May 31, 2011

RE: Petition to Modify CPUC Decision

SUMMARY

Members of the Legal Division of the California Public Utilities Commission (CPUC) are recommending that the Stewardship Council seek modification of the CPUC Decision pertaining to the PG&E Settlement Agreement to address certain outstanding issues involving the Stewardship Council's Youth Investment Program and the Land Conservation Program.

Stewardship Council staff will review this matter at the June 6 joint meeting of the Board Development Committee, the Fiduciary Committee, and the board working group that was established to plan for an orderly wind down of the Stewardship Council. Staff believes it would be prudent for the Stewardship Council board to approve the filing of a petition to address the outstanding issues. The board members participating in the June 6 meeting are urged to make such a recommendation to the full board for review and action at its June 29 meeting.

Meeting Information

The meeting will be held by teleconference on June 6, 2011 from 1:15 to 2:30 p.m. Board members can also meet at the CPUC, 505 Van Ness Avenue, San Francisco, Conference Room 4211 to participate in the discussion.

BACKGROUND

Earlier this year, the Stewardship Council board established a working group composed of the following volunteers to plan for an orderly wind down of the Stewardship Council: Art Baggett, Richard Roos-Collins, Steve Larson, Karen Mills, Soapy Mulholland, Mark Rentz, and Reda Redacted. It was also recommended that Randy Livingston and Dave Sutton be asked to participate in the group's discussions.

In March 2011, the Stewardship Council board approved a pledge of up to $13 million of PG&E's payments for the Stewardship Council's Youth Investment Program. These funds would support the efforts of the Foundation for Youth Investment (FYI) to establish a permanent

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program to connect youth to the outdoors, especially underserved youth, subject to (1) all expenditures being consistent with the requirements of the PG&E Settlement Agreement; (2) the boards of the Stewardship Council and FYI reaching agreement on the terms of the agreements; and (3) a substantial amount of the $13 million being offered to FYI subject to FYI raising matching funds from other donors.

Given these developments, staff and our CPUC board members (Paul Clanon and Nancy Ryan) thought it would be prudent to meet with CPUC legal staff to discuss (1) what oversight must the Stewardship Council maintain when it transfers ratepayer funds to other organizations, and (2) how funds granted to FYI might need to be restricted in order for all expenditures to be consistent with the requirements of the PG&E Settlement Agreement. On May 19, 2011, representatives of PG&E (Brian Cherry and Redacted, Steve Larson, Nancy Ryan, David Moyce and I met with CPUC legal staff to discuss this matter. At that meeting, the legal staff advised the Stewardship Council to seek modification of CPUC Decision 03-12-035 (Opinion Modifying the Proposed Settlement Agreement of Pacific Gas & Electric Company, PG&E Corporation and the Commission Staff, and Approving the Modified Settlement Agreement). Attached are the pertinent parts of the CPUC Decision.

CPUC legal staff offered the following advice:

1. Since the Stewardship Council is expending ratepayer funds, we are accountable for its use and should oversee the expenditure of funds granted to other organizations. This means it is advisable for the Stewardship Council board to remain active until all ratepayer funding for the land conservation and youth programs has been expended.

2. Since the Stewardship Council intends to make a series of large grants to FYI in the next year, it would be beneficial for the CPUC to approve the proposed roles of the Stewardship Council and FYI relating to accountability for expenditure of those ratepayer funds.

3. It is advisable for the Stewardship Council to request modification of the CPUC Decision so that the language of the CPUC opinion provides more flexibility regarding expenditure of ratepayer funds to connect underserved youth to the outdoors. Although the Stewardship Council has administered an excellent Youth Investment Program benefiting over 200,000 underserved youth in the PG&E service area, its grantmaking program has not exactly mirrored the expectations that were set forth in the CPUC opinion and order. After conducting extensive research and listening sessions throughout the PG&E ratepayer area, the Stewardship Council board decided to implement a grantmaking program that it believed would most appropriately fill major gaps in services

for underserved youth. The Stewardship Council board believed it had the authority to exercise its independent judgment on how best to administer the Youth Investment Program.

4. It was suggested that the Stewardship Council also seek to clarify any outstanding issues relating to the Land Conservation Program when submitting its request to the CPUC. (See further discussion below concerning possible issues.)

5. The most appropriate vehicle to request changes to the CPUC Decision would be a petition to modify the decision. It would likely take 4-6 months for the CPUC to complete its review and take action on the petition. This week, CPUC legal division staff said the Stewardship Council itself could file the petition. (Since the Stewardship Council was not a party to the original proceeding, the petition must state specifically how the petitioner is affected by the Decision, but legal division staff believes the Stewardship Council can meet this requirement.)

6. It was suggested that both PG&E and the Greenlining Institute could submit filings in support of the Stewardship Council's petition, and that the petition could be jointly filed by the Stewardship Council and one or more of the involved parties.

7. The modifications to the CPUC Decision to effectuate #2 and #3 would probably not require making modifications to the Settlement Agreement or bankruptcy court approval, but CPUC legal staff will continue to confer on this point. The CPUC and PG&E representatives expressed support for the filing of a petition to modify the CPUC Decision, but disfavored any change that would require reopening the Settlement Agreement.

DISCUSSION

Petition Contents – Youth Investment Program

Members of the CPUC legal division staff were clear that transferring substantial amounts of ratepayer funds into the hands of another organization needs to be done in such a way that the Commission can continue to exercise oversight and demand accountability for the use of the funds. The Stewardship Council was created with the blessing of the Commission, and is required to submit semi-annual reports on progress and expenditures (becoming annual reports after PG&E submits its final Section 851 application under the Land Conservation Plan). Legal division staff expressed a strong preference for keeping the Stewardship Council in existence (in some form) until all ratepayer funds have been expended and accounted for, rather than creating a new reporting mechanism for a nonprofit organization that is unknown to the Commission and to ratepayer watchdogs.

Stewardship Council staff recommends that the petition seek clarification or confirmation from the Commission that:

- Making a substantial grant of funds to the Foundation for Youth Investment to carry on and expand the work of the Youth Investment Program is an appropriate use of the Settlement funds, provided that the grant agreement between the Stewardship Council and FYI includes terms that ensure FYI's accountability to the Stewardship Council for the use of the funds[1];
- Utilizing funds to support FYI's development efforts is appropriate, fulfilling the Commission's expectation that a portion of the funds would be used as "seed money to establish a permanent program;" and
- Now, having the benefit of the Stewardship Council's thorough study of where the greatest needs and opportunities exist and its six years of grantmaking experience, the Commission agrees that the Decision language was unduly restrictive regarding the Commission's expectations about how Youth Program funds would be spent; the Commission now expects the funds to be expended "to provide greater resources to connect children, youth, and young adults in the PG&E ratepayer territory to nature, parks, open spaces, and the outdoors."

Petition Contents – Land Conservation Program

Staff believes it may be beneficial at this time to seek CPUC clarification of one or more of the following matters.

Trustee to Make Future Annual Property Tax Payments

The Stewardship Council is exploring the option of appointing a trustee to make future payments over time, such as annual property tax payments to counties that elect to receive an annual payment instead of a lump sum payment to fulfill the tax neutrality requirement of the Settlement and Stipulation. The petition could seek clarification that the Stewardship Council could transfer ratepayer funding to a private trustee or a non-profit organization who would provide future payments for these and potentially other purposes per the terms of the trustee instructions. The CPUC may require that the trustee submit an annual report to the CPUC, reporting on funds invested and expenditures made.

[1] The petition to modify the CPUC decision would state the Stewardship Council's intent to ensure that its contributions to FYI are leveraged by requiring that much of the funding provided be matched by contributions from other major donors.

Staff believes it would be beneficial at this time to receive CPUC approval for the trustee option because staff and the counties where PG&E's watershed lands are located will soon begin discussions about the manner in which the Stewardship Council will ensure property tax neutrality when lands are donated to entities that do not pay property taxes. Furthermore, the Stewardship Council board soon will be reviewing and approving Land Conservation and Conveyance Plans (LCCPs) pertaining to lands recommended for donation, and as required by the Stipulation the LCCPs must state how property tax neutrality will be achieved.

Establishment of Legacy Enhancement Fund

Another option being explored by the Stewardship Council is the establishment of a Legacy Enhancement Fund to fund physical enhancements on PG&E's watershed lands after the land transactions have been completed. Creation of the Legacy Fund would ensure availability of Stewardship Council funding to support impactful physical enhancement projects on the planning units at a time in the future when implementation of those projects actually becomes feasible from a practical, regulatory compliance, and financial perspective. Enhancement projects proposed following completion of land conveyance transactions would benefit from donees having a better understanding of the watershed lands, as well as the time to craft more thoughtful and comprehensive proposals which incorporate a more complete overall funding strategy that leverages Stewardship Council funding with other available public and private funds.

If the Stewardship Council proposed to establish the Legacy Enhancement Fund by placing a portion of the Settlement funds in the hands of a third party, who would have authority to consider grant requests and issue enhancement grants, then the issues would be similar to those raised by the grant of Youth Program funds to FYI, and it may be desirable to have the CPUC endorse the plan. On the other hand, CPUC legal staff has expressed a strong preference for the Stewardship Council to continue in existence until all ratepayer funds have been expended and accounted for. Following that advice, the Stewardship Council may decide to administer the Legacy Enhancement Funds directly, essentially evolving into a grantmaking foundation once the LCCP process has been completed.

Downsizing Stewardship Council Board

Given the CPUC legal staff's preference for the Stewardship Council to continue in existence, the Stewardship Council may also wish to consider requesting that it be given the option to downsize the Stewardship Council board when a specific milestone is achieved, such as approval of all the Land Conservation and Conveyance Plans or the completion of all conveyance transactions that were recommended by the Stewardship Council board. The Settlement

Agreement provides that the board be composed of representatives of the CPUC, PG&E, California Department of Fish and Game, the State Water Resources Control Board, the California Farm Bureau, and three public members appointed by the CPUC. In the Stipulation, the board size was increased to the current 17 members plus the non-voting seat shared by the Forest Service and BLM. It may be possible to obtain a CPUC decision permitting the Stewardship Council board to downsize to the composition outlined in the Settlement Agreement, however, we would want to analyze whether that would involve reopening the Settlement Agreement and/or the federal bankruptcy settlement, and whether such a proposal to alter the board composition would be more likely to provoke a negative response from parties on the service list. The board may decide that it would be more prudent to delay discussing the size of the Stewardship Council board until a future date when the suggestion may be less controversial.

NEXT STEPS

If members of the committees and working group support the filing of a petition to modify the CPUC Decision to address outstanding issues involving both the youth and land programs, then staff suggests that a specific recommendation be forwarded to the Stewardship Council board for its review and approval at the June 29, 2011 board meeting.