

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY AND COMPLIANCE DIVISION
ENERGY BRANCH

RESOLUTION G-3173
DECEMBER 18, 1995

R E S O L U T I O N

RESOLUTION G-3173. REQUEST OF UNIVERSITY OF CALIFORNIA DAVIS MEDICAL CENTER (UCDMC) FOR A RULING UNDER THE EXCEPTIONAL CASES PROVISION OF TARIFF RULE 15 TO ORDER PACIFIC GAS AND ELECTRIC COMPANY TO METER AT A LOCATION 13,400 FEET FROM UCDMC AND SERVE A THIRD-PARTY OWNED AND OPERATED GAS LINE EXTENSION TO UCDMC

BY LETTER, DATED OCTOBER 4, 1995.

SUMMARY

1. The University of California at Davis Medical Center (UCDMC or Applicant) requests a special ruling from the Commission to have a third party, Texas Ohio West (TOW), install, finance, own, operate, and maintain a high pressure gas line from Pacific Gas and Electric Company's (PG&E) facilities to UCDMC's Cogeneration Central Plant.
2. PG&E protested UCDMC's request on procedural grounds and concerns about safety and liability, and it also requested a hearing. PG&E's protest on procedures is denied. To the extent the resolution conditions Applicant's request, PG&E's protest is granted. PG&E's request for a hearing is denied.
3. TOW may install its requested gas main line extension subject to the following conditions:
 - TOW shall not serve any other customers off the line,
 - TOW shall seek an easement to install the gas line,
 - TOW shall notify and seek any permits from local, state, or federal agencies necessary for construction of this project,
 - TOW shall comply with all applicable Commission gas safety requirements and Gas Tariff Rule 2, and
 - TOW shall subscribe to the Underground Service Alert (USA).

BACKGROUND

1. On October 4, 1995, UCDMC requested a special ruling by the Commission under the Exceptional Cases provisions of PG&E's Gas Tariff Rule (Rule) 15 - Gas Line Extensions. The Exceptional Cases provision allows PG&E or an Applicant to refer a matter to the Commission for special ruling when unusual circumstances are involved, and the application of Rule 15 appears impractical or unjust.

2. UCDMC believes that PG&E's application of Rules 15 and 16 is impractical and unjust with regard to the installation of a gas meter and 13,400 feet of gas line extension to UCDMC. Applicant funded a cogeneration central plant project based on an offer from PG&E to finance the gas line extension based on Applicant's request in February 1995. PG&E subsequently changed its offer to one requiring Applicant to pay the capital cost based on Rule changes and notified the Applicant of this fact approximately six weeks after the Rule changes went into effect on July 1, 1995. PG&E notified Applicant of another option relocating the gas meter from UCDMC property to City of Sacramento property 13,400 feet away at the beginning of the gas line extension.

3. Applicant then contacted TOW and entered a precedent agreement with TOW for the purpose of providing a proposal to finance, own, operate, and maintain the gas line extension. A subsequent meeting with TOW and PG&E was arranged by the Applicant to discuss PG&E's requirements for meter, regulator and vaults and their associated costs needed by TOW in order to provide its proposal to Applicant. On the day PG&E said that such costs would be provided to Applicant, PG&E notified Applicant that PG&E would not approve the meter location 13,400 feet away from Applicant in a median strip owned by the City of Sacramento, and PG&E would again finance the gas line extension for Applicant. UCDMC believes that it will obtain advantageous financing arrangements and have better control over its projects if it constructs, owns, and operates its service.

4. UCDMC asserts PG&E's position is impractical and unjust under these circumstances, and the utility is unnecessarily preventing Applicant from receiving service from a third party pipeline dedicated to serve UCDMC only. Applicant requests that the Commission direct PG&E to meter and serve a third party owned and operated gas line extension to Applicant at a location on City of Sacramento property 13,400 feet from UCDMC. UCDMC submits its request under the Special Conditions, Exceptional Cases provision of Rule 15, Gas Main Extensions, Section H.3. and under the Exceptional Cases provision of Rule 16.G.

5. UCDMC believes that its request qualifies for treatment as an exceptional case under Rule 15.H.3. because Applicant would take service on an easement obtained from another party, rather than on an easement on its own property. Applicant cites that both Rule 15 and 16 allow for such an exception:

When the application of this rule appears impractical or unjust to either party PG&E or Applicant may refer the matter to the Commission for a special ruling....

Applicant requests that PG&E be required to negotiate an agreement with similar language, but with the phrase "on Applicant's premises" deleted. Applicant also requests that PG&E be required to provide service at transmission pressures.

6. Applicant agrees to abide by the Private Line provisions of the line extension tariff language adopted by the Commission in Decision (D.) 94-12-026 (slip opinion, pp. 16-25) under which the utility is not required to serve any other Applicant from extension facilities that are not owned, operated and maintained by the utility. In the event that other parties desire service along the route of Applicant's private line, service shall be provided by PG&E under the terms of its extension rules. Also, in the event that Applicant's easement is rescinded, PG&E may discontinue service to Applicant.

NOTICE

Notice of this letter was provided by publication in the Commission Calendar and by service to PG&E.

PROTESTS

1. PG&E protested UCDMC's letter on October 24, 1995. PG&E raised several issues in its protest and asks for a hearing to resolve the issues.

2. PG&E asserts that UCDMC's request is not subject to Rules 15 and 16. Rather, PG&E states that UCDMC should seek permission to install "special facilities" which fall under the authority of Rule 2 - Description of Service.

3. PG&E denies that it has obstructed UCDMC's attempts to have the proposed pipeline constructed by a third party. PG&E asserts that it is indifferent to third-party facility construction as long as it complies with its applicable tariffs and construction standards.

4. PG&E says that the safety and liability issues raised by UCDMC's request for a high pressure line (375-700 psig) cannot be adequately addressed without a hearing. PG&E raises the following issues that it alleges can only be determined after a hearing:

- PG&E responsibility for a customer owned-line
- Who would be responsible for emergency response to dig-ins, leaks or ruptures of the customer-owned pipeline located in a public area
- Who would be responsible for regulating and monitoring the operation of the customer-owned line in the public area to ensure public safety, particularly the safety of

- those individuals working near or around the customer-owned line
- Who will locate the customer-owned line when a different party is digging in the area
 - Who will be responsible for continued maintenance of the line and will ensure that maintenance is consistently being performed
 - Whether the line will be required to subscribe to the Underground Service Alert (USA)
 - Whether the line will receive proper inspection during the construction stage to help insure that the line is of proper integrity.

PG&E says that it is concerned about these issues and asserts that the City and County of Sacramento and other governmental agencies would also be affected by the location, maintenance, and level of safety of UCDMC's proposed line.

5. PG&E asserts that UCDMC should not be allowed to bring its request before the Commission in such an informal manner. PG&E recommends that UCDMC's request be brought before the Commission as a formal complaint or an application filed according to the Commission's Rules of Practice and Procedure. PG&E also recommends that other parties should be given the opportunity to be heard such as the service list of the Commission's gas restructuring investigation/rulemaking, the City and County of Sacramento, the UC Board of Regents, the US Department of Transportation, and other agencies with an interest in a high-pressure gas line on public property.

6. PG&E further asserts that the Commission should construe UCDMC's letter request as a complaint and grant PG&E a hearing on UCDMC's request and on the legality of accepting customer letter requests as advice filings. PG&E asserts that neither the Commission's General Order 96-A nor Rules of Practice and Procedure contemplate the acceptance of customer letter requests as advice letters for requesting the kind of tariff deviation UCDMC requests. PG&E continues that letter requests from applicants filed as advice letters are an improper means of adjudicating requests for tariff deviations absent a Commission decision creating such a procedure. Finally, PG&E says that it is entitled to a hearing on the legality of accepting customer letter requests as advice letters under Public Utilities Code Section 1708.

7. On November 3, 1995 TOW responded to PG&E's protest. In its letter, TOW asserts that PG&E's claims that UCDMC's request is procedurally defective are frivolous. The request is properly filed under Rule 15. TOW argues that the request should be decided on its merits, in like manner as the Hofacket request for approval of a similar service configuration for electric service. (Resolution E-3417, dated July 19, 1995).

8. TOW states that it will construct the pipeline to meet or exceed PG&E's standards and will be subject to the safety jurisdiction of the U.S. Department of Transportation. TOW recommends the Commission approve UCDMC's request.

DISCUSSION

1. The history of UCDMC's request for gas service with PG&E for its new medical center is clearly outlined in the Background section of this Resolution.
2. In order to respond to UCDMC's request to require PG&E to meter and serve a third party owned and operated gas line extension to UCDMC, CACD must first address the procedural issues raised by PG&E in its protest. If there is no procedural impediment, then CACD can review the substantive safety and liability issues raised by PG&E. PG&E also refutes in its protest UCDMC's assertions that PG&E obstructed UCDMC's attempts to have the proposed pipeline constructed by a third party. Since this issue is tangential to UCDMC's request, CACD will return to it after discussing the main issues at hand.
3. The first issue to be resolved is the one that addresses the legality of UCDMC's letter request. PG&E asks that it be provided a hearing. PG&E objects to the acceptance of UCDMC's letter request as an advice letter requesting a tariff deviation not mutually agreed upon by UCDMC and PG&E. Neither the Commission's General Orders nor its Rules of Practice and Procedure contemplate the acceptance of customer letter requests as advice letters for requesting the kind of tariff deviation UCDMC requests. PG&E goes on to say that allowing customers to file letter requests under **all** (emphasis added) circumstances as advice letters requires a change to the General Order 96-A and notice and opportunity to be heard on this issue pursuant to Public Utilities Code Section 1708. In addition PG&E argues that letter requests are an improper means of adjudicating requests for tariff deviations absent a Commission decision creating such a procedure.
4. CACD notes that PG&E's contention that the Commission General Orders and Rules of Practice and Procedure do not allow letter requests from customers for action by the Commission is correct. What PG&E fails to recognize is that the Commission is not limited to only the General Orders and Rules of Practice and Procedure for taking action. PG&E ignores UCDMC's request wherein it specifically cites Rule 15.G.3 (quoted above).¹ A plain reading of this part of the tariff clearly allows the applicant for service to refer this matter to the Commission for **special** (emphasis added) ruling. PG&E's contention that the applicant letter is an advice letter thus subject to General Order 96-A is off point. The applicant letter is a separate and distinct procedural vehicle from the advice letter which the

1 In its letter request, UCDMC refers to Gas Tariff Rule 15.H.3. The correct tariff citation is Gas Tariff Rule 15.G.3.

Commission has used in the past.² Furthermore, PG&E has assumed a scope of UCDMC's request that does not exist. The customer initiated letter is not allowed for all circumstances, but rather, only to the circumstances allowed in Rules 15 and 16. Before closing on the issue of requests for Commission action outside the ambit of the General Orders and Rules of Practice and Procedure, PG&E should recall when it requested the Commission to certify to the Securities and Exchange Commission that PG&E would protect its ratepayers regarding investments in foreign utilities by letter dated June 15, 1995. PG&E did not file an advice letter or an application to seek a Commission ruling which it received at the Commission's regular meeting on July 6, 1995.

5. PG&E is also concerned that the Commission will accept letter requests absent a Commission decision creating such a procedure. In D.94-12-026 the Commission adopted Rule 15.G.3. which permits an applicant to refer the matter to the Commission for special ruling. Nothing prohibits applicants from making a referral through a letter request. PG&E was a respondent utility to that proceeding (R.92-03-050). Rule 15.G.3 was adopted as part of a settlement supported by PG&E. If PG&E has now changed its position on the settlement, then PG&E may pursue this matter with a Petition for Modification pursuant to Rule 43 of the Commission Rules of Practice and Procedure and not by a protest of Applicant's request.

6. CACD finds no procedural defect in UCDMC's letter request. PG&E's request for a hearing on procedural grounds should be denied.

7. Turning to the other issues in UCDMC's request, CACD notes that PG&E's protest is concerned with safety and liability issues. CACD shares those concerns. Accordingly, CACD recommends that those issues be clarified and resolved in the manner set forth below. Approval of UCDMC's request is conditioned upon UCDMC and TOW's acceptance of these clarifications and the conditions listed below.

8. Specifically, TOW, in its letter of November 3, 1995, confirms that it will assume responsibility for the gas line extension. As such, TOW would be responsible for emergency dig-ins, leaks, or ruptures of the pipeline. In addition, TOW should be responsible for ensuring conformance with industry standards as well as regulating and monitoring the operation and maintenance of the gas line extension to ensure public safety. TOW should also be required to subscribe to the Underground Service Alert (USA).

² See Resolution E-3417, dated July 19, 1995. This Resolution also cites other examples of the Commission taking action in response to letter requests.

9. PG&E is concerned that the City and County of Sacramento and other governmental agencies be made aware of these issues. TOW will be required to seek an easement and possibly other permits from the City of Sacramento or other local, state, or federal agencies in order to excavate, install, and backfill the gas extension in the city's right-of-way. In obtaining the easement and permits, the local, state, and federal agencies will be notified of TOW's intentions to construct a gas main line extension. This Resolution does not pre-empt other governmental agencies in the exercise of their responsibilities.

10. The safety of the line falls under the jurisdiction of the U.S. Department of Transportation and is administered by the Utilities Safety Branch of the Commission's Safety & Enforcement Division. TOW shall agree that it will comply with the requirements of General Order 112-D as it is administered by the the Utilities Safety Branch of the Commission's Safety and Enforcement Division.

11. UCDMC has already stipulated in its letter that it would not serve any other customers from its line. Any requests for service would be directed to PG&E. Should UCDMC and TOW agree to these conditions that address PG&E's concerns CACD recommends approval of UCDMC's request.

12. PG&E asserts that the gas extension line requested by UCDMC is not subject to the provisions of Rules 15 and 16. With regard to Rule 16, PG&E is correct. Rule 16 applies to Gas Service Extensions. Clearly, UCDMC's request is not for a service extension but rather a main extension. Rule 15 defines Main Extension:

The length of main and its related facilities required to transport gas from the existing distribution facilities to the point of connection with the service pipe.

A Main Extension consists of new distribution facilities of PG&E that are required to extend service into an open area not previously supplied to serve an Applicant. It is continuation of, or branch from, the nearest available existing permanent Distribution Main, to the point of connection of the last service. PG&E's Main Extension includes any required Substructures and facilities for transmission taps but excludes service connections, services, and meters.

13. PG&E offered UCDMC several options. One of these options was a gas main extension of 13,400 feet. Since UCDMC would obtain advantageous financing arrangements and have better control over this projects if it has a third party construct, own, and operate its service rather than under PG&E's terms, UCDMC requested consideration of the Exceptional Cases provision of Rule 15.G.3. Since the application of Rule 15 would be impractical to UCDMC in this particular case, the request of the Exceptional Case should be granted.

14. PG&E also raises the issue of the applicability of Tariff Rule 2 - Description of Service, specifically Section C, Special Facilities. PG&E is off point when it makes the assertion that UCDMC's request for gas main extension under Rule 15 should be made under Rule 2. Rule 2 does apply to UCDMC only to the extent that it will be receiving transmission level service at a location not on the premises of UCDMC where it will be metered by PG&E. Since this Resolution will order PG&E to meter at a remote location, CACD recommends that PG&E's discretion to agree to this installation pursuant to Tariff Rule 2.C.1 be lifted. UCDMC will still be subject to the other provisions of Tariff Rule 2 such as the terms and conditions of financing these facilities such as meter, regulator, and vaults.

15. The final issue that CACD needs to address is UCDMC's allegation that PG&E was unnecessarily preventing it from receiving gas service from a third-party pipeline. In its protest, PG&E denies this representation. PG&E cites its letter of September 29, 1995 to support its claim that it is indifferent to third party facility construction. CACD has also reviewed an earlier letter from PG&E to UCDMC that lends credence to UCDMC's claim. In a letter from PG&E (Lucinda Andreani) to UCDMC (Michael Lewis) dated September 26, 1995, PG&E apologized for the appearance of inconsistent information provided to UCDMC at different times. Since this issue is not essential to determining whether UCDMC's request is granted or denied, it need not be resolved in this Resolution.

16. PG&E has not raised any factual issues that need resolution by evidentiary hearings. The safety and liability issues have been resolved in PG&E's favor to the extent the granting of UCDMC's request has been conditioned. PG&E's request for a hearing should be denied.

17. CACD is concerned with the misunderstanding that may have occurred between PG&E and its customer, UCDMC. Line extension rules were adopted in December 1994. PG&E knew these tariffs were changing in February 1995 when it began negotiations with UCDMC. While compliance tariffs did not become effective until July 1, 1995, the specific tariff language to be filed was attached to the Commission decision. UCDMC was not informed that the changes to Tariff Rule 15 were under consideration, nor were they informed the tariff rule had changed until six weeks after they became effective. UCDMC and PG&E will need to work together at the location where TOW's and PG&E's lines interconnect. To ensure cooperation, CACD shall monitor the compliance of this Resolution. PG&E shall submit a copy of the agreement and its charges required by Rule 2 to CACD for the added facilities necessary to connect TOW's pipeline to PG&E's distribution main.

18. In order to implement this Resolution, it is necessary that the appropriate party accept the conditions attached to the authorization of UCDMC's request. Since TOW will own the gas main line extension requested by UCDMC, CACD recommends that TOW, if it agrees to the five conditions, submit a letter to CACD with a copy to PG&E, the Utilities Safety Branch of the

Safety & Enforcement Division, and UCDMC that TOW or any successor company accept these conditions within 20 days of the effective date of this Resolution. Since UCDMC has stated that its project is time sensitive, this Resolution should be effective today.

FINDINGS

1. The University of California at Davis Medical Center (UCDMC) requested by letter on October 4, 1995 a special ruling by the Commission to order Pacific Gas & Electric Company (PG&E) to meter at a location 13,400 feet from UCDMC and serve a third party owned and operated gas line main extension to UCDMC.
2. UCDMC filed its request under the Exceptional Cases provisions of PG&E's Gas Tariff Rule (Rule) 15.
3. UCDMC asserts that the application of Rule 15 is impractical and unjust with regard to UCDMC's request.
4. UCDMC entered a precedent agreement with Texas Ohio West (TOW) for the purpose of providing a proposal to finance, own, operate, and maintain the gas main line extension.
5. UCDMC will obtain advantageous financing arrangements and have better control over its project if it has TOW construct, own, and operate its service.
6. UCDMC asserts that PG&E's position is impractical and unjust under these circumstances, and PG&E is unnecessarily preventing UCDMC from receiving service from a third party pipeline dedicated to serve UCDMC only.
7. UCDMC submits its request under the Special Conditions, Exceptional Cases provision of Rule 15.H.3., Gas Main Extensions, and under the Exceptional Cases provision of Rule 16.G.
8. UCDMC requests that PG&E be required to provide service at transmission delivery pressures.
9. PG&E protested UCDMC's letter request on October 24, 1995.
10. PG&E requests a hearing to resolve procedural and substantive issues.
11. PG&E claims UCDMC's request is not subject to Rules 15 and 16, but rather to Rule 2, Description of Service.
12. PG&E denies it obstructed UCDMC's attempts to have a third-party constructed pipeline.
13. PG&E claims there are safety and liability issues if UCDMC's request is granted.

14. PG&E claims that UCDMC should not be allowed to bring its request to the Commission in such an informal manner, and its request should be construed as a complaint.

15. PG&E claims that other parties should be allowed to be heard on this subject.

16. On November 3, 1995, TOW responded to PG&E's protest.

17. TOW asserts PG&E's claims that the request is procedurally defective are frivolous.

18. TOW argues that the request should be decided on its merits.

19. TOW states that it will construct the pipeline to meet or exceed PG&E's standards and will be subject to the safety jurisdiction of the U.S. Department of Transportation.

20. Rule 15.G.3. clearly allows the applicant for service to refer its request to the Commission for special ruling.

21. Rule 15 was adopted in Decision 94-12-026.

22. There is no procedural defect in UCDMC's letter request.

23. PG&E may file a Petition for Modification under Rule 43 of the Commission's Rules of Practice and Procedure if it seeks to modify D.94-12-026.

24. PG&E's request for a hearing on procedural grounds should be denied.

25. The application of Rule 15 would be impractical to UCDMC.

26. UCDMC's request to have TOW install, finance, own, operate, and maintain a high pressure gas line from PG&E's facilities to UCDMC's cogeneration central plant is reasonable subject to the following conditions:

- TOW shall not serve any other customers off the gas line,
- TOW shall seek an easement to install the gas line
- TOW shall notify and seek any permits from local, state, or federal agencies necessary for construction of this project,
- TOW shall comply with all applicable Commission gas safety requirements, and
- TOW shall subscribe to the Underground Service Alert (USA).

27. CACD recommends UCDMC's request be approved as conditioned in Finding of Fact No. 26.

28. There are no factual issues that need to be resolved by evidentiary hearing.

29. PG&E's request for a hearing should be denied.
30. PG&E should provide transmission level service at a location not on the premises of UCDMC where it will be metered by PG&E.
31. PG&E should install the special facilities with the additional costs borne by TOW including such ownership costs as may be applicable.
32. CACD should monitor the compliance of this Resolution.
33. Since UCDMC has stated that its project is time sensitive, the Resolution should be effective today.

THEREFORE, IT IS ORDERED that:

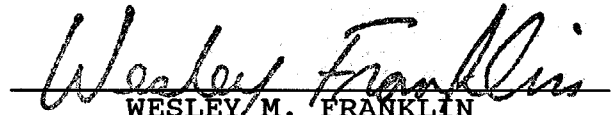
1. The University of California at Davis Medical Center's letter request of October 4, 1995 for a gas main line extension is approved subject to the following conditions:
 - a. Texas Ohio West shall not serve any other customers off the line,
 - b. TOW shall seek an easement to install the gas line,
 - c. TOW shall notify and seek any permits from local, state, or federal agencies necessary for construction of this project,
 - d. TOW shall comply with all applicable Commission gas safety requirements,
 - e. TOW shall subscribe to the Underground Service Alert.
2. Should TOW agree to the conditions of this Resolution, it shall file a letter accepting these conditions to the Commission Advisory and Compliance Division with a copy to the University of California at Davis Medical Center, Pacific Gas and Electric Company, and the Utilities Safety Branch of the Commission's Safety and Enforcement Division within 20 days of the effective date of this Resolution. These conditions would apply to any successor company of TOW.
3. Upon receipt of TOW's acceptance of these conditions and aquisition of all required easements and permits, PG&E shall provide transmission level service and shall meter TOW's gas main line extension at a location 13,400 feet from UCDMC.
4. CACD shall monitor the implementation of this Resolution.
5. PG&E shall provide CACD with a copy of the agreement and charges for the added facilities that TOW will require to install its gas main line extension.

6. PG&E's protest is granted to the extent UCDMC's request is approved with conditions. In all other respects, PG&E's protest is denied.

7. PG&E's request for a hearing is denied.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on December 18, 1995. The following Commissioners approved it:


WESLEY M. FRANKLIN
Executive Director

P. GREGORY CONLON
JESSIE J. KNIGHT, Jr.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

I abstain.
/s/ DANIEL Wm. FESSLER
President

L/dd

MAIL DATE
12/8/97

Decision 97-12-055

December 3, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

RECEIVED
ENERGY DIVISION
97 DEC -9 AM 10:30

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

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

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

ENERGY DIVISION
ROOM 4002
CPUC

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

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

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

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

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

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

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

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

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

This order is effective today.

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

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners