

MC

Decision No. 31254

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of PACIFIC GAS AND ELECTRIC COMPANY, a corporation, for an order of the Railroad Commission of the State of California authorizing applicant to enter into a written agreement with SOUTHERN PACIFIC COMPANY, in words and figures as written in the form therefor which is annexed hereto.

Application No. 22033

ORIGINAL

BY THE COMMISSION:

OPINION AND ORDER

This is an application of Pacific Gas and Electric Company, hereinafter called Pacific Company, for an order authorizing applicant corporation to enter into a written agreement relating to the sale and delivery, if and when it shall have same available therefor, of such quantity or quantities of surplus gas as shall, during the term of this agreement, be available for boiler fuel purposes by the Southern Pacific Company, hereinafter called Customer, for the operation of its high pressure boilers (7200 HP rated capacity) used for other than building heating purposes, located on Customer's premises known as "Fruitvale Station," situated at Fruitvale Avenue and Tidal Canal, in the City of Oakland, County of Alameda, State of California. A copy of said proposed agreement, marked Exhibit "A," is attached to and made a part of the application.

Some of the more important features and conditions of said proposed agreement may be here set forth:

If and when same shall be available therefor, Customer agrees that it will not, during the term thereof, use any other fuel

then surplus gas in the operation of its said plant, provided, however, that it may use fuel oil whenever it is necessary to do so for testing purposes.

Customer will not either directly or indirectly use any surplus gas delivered under the proposed agreement for any purpose other than as boiler fuel in the operation of said plant.

Customer has agreed to pay Pacific Company for all gas delivered at the following rates:

First 7,500,000 cu. ft. per month - 16.7¢ per 1000 cu. ft.  
Next 7,500,000 cu. ft. per month - 14.7¢ per 1000 cu. ft.  
All excess cu. ft. per month - 14.2¢ per 1000 cu. ft.

Annual minimum charge \$12,000, payable at the rate of \$1,000 per month.

The above rates are subject to increase or decrease on the basis of 1¢ per M.c.f. for each 6¢ per barrel increase or decrease, respectively, in the market price of fuel oil, as regularly quoted by Standard Oil Company of California from \$1.05 per barrel f.o.b. Richmond, California, computed to the nearest one-tenth cent, and to become effective on all meter readings taken on and after the 30th day following such change in the price of oil.

In the event gas is discontinued by Pacific Company either for the non-payment within fifteen days after receipt by Customer of bill therefor or because of Pacific Company's obligations to its regular customers and, secondly, to its surplus gas customers, the monthly minimum charge, specified above, for the month or months during which the gas shall have been so discontinued will be determined by dividing the minimum monthly rate, namely, \$1,000 by the number of days in the billing month and multiplying the quotient so determined by the number of days in the billing month during which gas was available for use by the Customer.

The proposed agreement contains a condition that the Pacific Company's undertakings in respect to furnishing natural gas are first to its regular customers and second to its surplus customers

and, therefore, it is mutually agreed that if in the ordinary operation of its system the Pacific Company shall, in its judgment, need all of its available gas for supplying its regular customers or if in its judgment the further immediate supplying of surplus gas under this proposed agreement will jeopardize or threaten its ability to supply its regular customers, it shall have the right, without notice to Customer, to discontinue in whole or in part the supplying of surplus gas under this proposed agreement, until it shall in its judgment have sufficient gas to supply same, and in that event Pacific Company shall not be liable to Customer for damages or otherwise on account of such discontinuance. Customer also agrees that, upon receipt of telephone or oral notice from Pacific Company so to do, it will at once discontinue its use of surplus gas to the extent and for the period specified in such notice, and that failing therein Pacific Company may at its option cancel said proposed agreement on five (5) days' written notice to Customer.

It is interpreted that this is a definite term contract, for a period of one (1) year dating from March 25, 1938, and that the clause " \* \* \* \* \* that either party hereto shall have the right to terminate this contract at the expiration either of the initial term hereof or any subsequent contractual year giving the other written notice to that effect at least thirty (30) days prior to such termination date" is inserted essentially to provide time for the renewing of the agreement and securing authorization, so there may be no period in which there is no agreement in force. The Commission so views the aforesaid indefinite term clause and in subsequent agreements it is suggested that such clause be changed to read substantially as follows:

"and shall continue thereafter from month to month for a period not exceeding six (6) months, provided, however, that either party hereto shall have the right to terminate this contract at the initial term hereof or at any subsequent

thirty (30) day period upon written notice to that effect twenty (20) days prior to such termination date."

The Commission likewise desires to call to the Applicant's attention, upon the expiration of the present agreement, the desirability of giving careful study to the possibility of rendering this service under a filed tariff rather than a special contract rate.

The proposed agreement also contains a statement to the effect that it is at all times subject to such changes and/or modifications as the Railroad Commission may, from time to time, direct in the exercise of its jurisdiction.

Inasmuch as both parties are agreeable to the signing of the proposed agreement and the Commission being of the opinion that it will not constitute a burden on the rest of the system, that a public hearing in the matter is not necessary, and good cause appearing therefor;

IT IS ORDERED that Pacific Gas and Electric Company is hereby authorized to charge said Southern Pacific Company at the rates specified in that certain proposed agreement attached as Exhibit "A" to the application, for such quantity or quantities of surplus gas as shall be available for boiler fuel purposes for the operation of the Customer's high pressure boilers, used for other than building heating purposes, at its Fruitvale Station located in the City of Oakland, County of Alameda, all as set forth under the terms and conditions of said proposed agreement.

Pacific Gas and Electric Company shall file a copy of the executed agreement with the Commission within thirty (30) days after its execution.

Authority herein granted shall become effective on the date hereof.

Dated at San Francisco, California, this 12<sup>th</sup> day of September, 1938.

Raymond S. [Signature]  
Frank [Signature]  
Francis [Signature]  
Ray L. Kiley  
Commissioners