

Decision No. 31270

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 SPRECKELS SUGAR COMPANY, in words and figures as written in the form therefor which is annexed hereto.

Application No. 22182.

ORIGINAL

BY THE COMMISSION:

OPINION AND ORDER

This is an application of the Pacific Gas and Electric Company, hereinafter called Pacific Company, for an order authorizing applicant corporation to enter into a written agreement with Spreckels Sugar Company, hereinafter called Customer, relating to the sale and delivery of surplus gas, if and when the same shall be available therefor, in such quantity or quantities as shall be required for fuel purposes in the operation of Customer's kilns, dryers and high pressure boilers (2450 HP rated capacity) to be used primarily for industrial purposes and only incidentally for building heating purposes at Customer's plant located approximately two miles south of Manteca, County of San Joaquin, 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 the proposed agreement may be here set forth:

Customer agrees to use surplus gas, if and when the same shall be available therefor, as the exclusive fuel in the operation of said plant, and will not use any of the surplus gas delivered for any purpose other than as fuel in the operation of

the aforesaid plant, and only incidentally for building heating purposes.

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

First 30,000,000 cu.ft. per month..... 14¢ per M.c.f.
For all in excess thereof, equivalent to the
total quantity used by Customer between
8 P.M. and 6 A.M. during all nights of
said month (as indicated by meter readings). 10¢ per M.c.f.
For all in excess of the foregoing..... 12¢ per M.c.f.

Annual minimum charge \$60,000, payable at the rate of \$5,000 per month.

Above rates subject to increase or decrease of one (1) cent per M.c.f. for each six (6) cent increase or decrease, respectively, in market price of fuel oil above or below 89 cents per barrel, f.o.b. Lyoth, California, as regularly quoted by Standard Oil Company of California, such change to be computed to the nearest one-tenth of one (1) cent and to become effective on all regular meter readings taken on and after the 30th day following such change in the quoted price of fuel oil.

In the event gas is discontinued by Pacific Company either for the non-payment, within fifteen (15) days after receipt by Customer of bill therefore, or because of Pacific Company's obligations to its regular customers and to its surplus gas customers, or because of accidents, interruptions, diminutions and failures in the transportation and distribution of natural gas, the annual minimum charge shall be reduced \$5,000 for each month during which Customer does not conduct its "beet slicing" operations, provided, that the first billing month of each year hereunder shall consist of a period of approximately forty (40) days beginning approximately ten (10) days prior to commencement of Customer's "beet slicing" operations (known as the "warming up" period), and continuing from the date of commencement of said "beet slicing" operations until the corresponding date in the next succeeding month.

The proposed agreement contains a provision 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 it is mutually agreed between the parties that if in the ordinary operation of its system 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 the 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 until in its judgment there shall be sufficient gas to supply the 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 the 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 upon failing therein Pacific Company may, at its option, cancel this proposed agreement on five (5) days' written notice to Customer.

The proposed agreement contains the further provision that the same shall be cancelled prior to its expiration date if Customer fails to take the necessary quantity of gas to operate its equipment and that as a result of the default the Customer will (in addition to all other moneys then due Pacific Company thereunder) on demand therefor pay Pacific Company the full amount of all minimum charges specified for the balance of the term of the agreement.

The proposed agreement also provides that in the event delivery of gas is discontinued by Pacific Company because of the requirements of its regular and surplus gas customers for a period of more than thirty (30) consecutive days, between June 1st and November 30th of any calendar year, Customer shall have the option of cancelling said proposed agreement.

It is interpreted that this is a definite term contract, continuing until June 1, 1941, 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 by 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 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 of the State of California 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 remainder 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 Spreckels Sugar 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 the operation of Customer's kilns, dryers and high pressure boilers, to be used primarily for industrial purposes and only incidentally for building heating

purposes, at its plant located approximately two miles south of Manteca, County of San Joaquin, State of California, 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 19th day of September, 1938.

Rayburn
Leon
Frank
May & Cline
Commissioners.