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ORIGINAL

Decision No. 65070

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of PACIFIC GAS AND ELECTRIC COMPANY for authority to carry out the terms and conditions of a contract with SPRECKELS SUGAR COMPANY, dated October 30, 1962. (Gas)	Application No. 44968 (Filed November 26, 1962)

F. T. Searls, John C. Morrissey and Malcolm A. MacKillop, by John C. Morrissey, for Pacific Gas and Electric Company, applicant.
William L. Holloway, Morrison, Foerster, Holloway, Clinton and Clark, for Spreckels Sugar Company.
Bernard F. Cummins and Alfred V. Day, for the Commission staff.

OPINION

This application was heard before Examiner Dunlop at San Francisco on February 11, 1963, on which date the matter was submitted after oral argument. Copies of the application and the notice of hearing were served in accordance with the Commission's procedural rules.

Pacific Gas and Electric Company (Pacific) seeks an order of the Commission granting all necessary authority to carry out the terms and conditions of a contract executed on October 30, 1962 with Spreckels Sugar Company (Spreckels). Said contract is attached to the application as Exhibit A and relates to the sale and delivery by Pacific to Spreckels of interruptible gas for fuel purposes in the operation of certain equipment at its sugar processing plant, now under construction, approximately three miles southeast of the City of Mendota, Fresno County.

Said contract provides, among other things, that:

1. If and when Pacific shall have available therefor, as to which Pacific shall be the sole judge, Pacific shall sell and deliver to Spreckels and Spreckels shall purchase and receive from Pacific such quantity of interruptible gas as shall be required for fuel purposes in the operation of Spreckels' boiler, driers, and kilns (except rotary lime kilns, for the efficient operation of which Spreckels contemplates using fuel oil exclusively) at its sugar processing plant near Mendota.

2. Spreckels agrees to use interruptible gas when available as the exclusive fuel in the operation of said equipment, except that standby fuel may be used for testing purposes for limited periods of time. Spreckels further agrees that it will not either directly or indirectly use any interruptible gas delivered for any purpose other than as fuel in the operation of said equipment.

3. Pacific is not obligated to supply interruptible gas to Spreckels at a rate of flow in excess of an hourly maximum of 500,000 cubic feet. If at any time Spreckels shall require fuel for the operation of said equipment in excess of an hourly maximum of 500,000 cubic feet, and Pacific is unable or unwilling, on terms satisfactory to Spreckels, to deliver such excess fuel requirements, Spreckels may supplement its fuel supply by the use of other fuel acquired from sources other than Pacific but only for the purpose of supplying its requirements for the items of equipment requiring such excess fuel requirements.

4. For all interruptible gas so delivered, Spreckels agrees to pay Pacific at the applicable rates and charges which shall, from time to time, be established by Pacific and on file with the Public Utilities Commission. For the initial purpose of the contract, Pacific's Schedule G-50, Interruptible Natural Gas Service, shall be deemed the schedule of rates and charges applicable thereunder.

5. In order to supply Spreckels with interruptible gas and to provide sufficient capacity to supply natural gas to future customers, Pacific will furnish and install, at an estimated cost of $490,000, approximately 16 miles of eight-inch diameter gas pipe and associated facilities, extending from its gas transmission main No. 2 to Spreckels' plant. The estimated allocated cost of these facilities, exclusive of service regulator and meter which will be supplied by Pacific at its expense, necessary to provide Spreckels' interruptible gas service requirement is $382,463. The annual gross revenue to be derived by Pacific from the sale of interruptible gas to Spreckels at its plant under Pacific's Schedule G-50 is estimated at $670,000, which will justify the installation of the facilities entirely at Pacific's expense, in accordance with its gas main extension Rule No. 15.

6. The furnishing of interruptible gas shall be contingent upon Spreckels maintaining adequate standby facilities and a supply of fuel therefor, which standby facilities are to be ready at all times for immediate operation in the event the supply of interruptible gas shall be curtailed.

7. The contract shall not become effective until the Public Utilities Commission authorizes Pacific to carry out

the terms and conditions thereof, and shall remain in force for an initial term of five years after either (a) the date of first delivery of interruptible gas, or (b) six months subsequent to the date Pacific is ready to supply interruptible gas from its facilities, whichever date shall be earlier, and shall continue thereafter from year to year unless terminated by either party as provided in the contract.

8. The contract shall at all times be subject to such changes or modifications by the Public Utilities Commission as it may, from time to time, direct in the exercise of its jurisdiction.

The only provision in the contract which deviates from Pacific's regularly filed tariff schedules is the five year initial term. An initial term of three years for service from main extensions is provided for in Pacific's tariff schedules. Except for this difference in initial term, the contract would not require authorization by this Commission. Pacific made its application pursuant to Section 532 of the Public Utilities Code, Section X of the Commission's General Order No. 96-A and to Section E.7 of its Rule 15, which provides:

> "E.7. Exceptional Cases
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> In unusual circumstances, when the application of this rule appears impractical or unjust to either party, the utility or the applicant shall refer the matter to the Public Utilities Commission for special ruling or for the approval of special conditions which may be mutually agreed upon, prior to commencing construction."

Sections D.2. and E.1. of Pacific's Rule 15, Gas Main Extensions, are also pertinent. They provide as follows:

<u>Section D.2.</u>

> "Extension of distribution mains and/or enlargements of existing distribution main

capacities to furnish interruptible service will be installed, owned, and maintained by the utility provided: (1) in the utility's opinion, adequate supplies of gas are, and will continue to be available for firm service, and (2) the cost of such extension and/or enlargement does not exceed one time the estimated annual revenue as determined by the utility. Any additional extension and/or enlargement required will be installed, owned, and maintained by the utility provided the applicant pays to the utility an amount of money equal to the estimated cost of that portion of such extension or enlargement necessary to supply the applicant's load in excess of that installed at the utility's expense. The amount so paid will be subject to refund in accordance with Section B.3.b. herein and for any unused free allowance for subsequent firm industrial or gas engine customer extension. The utility will require each applicant to execute an appropriate contract in the form which is on file with the Public Utilities Commission as part of the utility's effective tariff schedules. The utility will install, own, and maintain the necessary service regulators, meters, and services all in accordance with the provisions of Rules No. 16 and 20."

Section E.1.

"Each applicant for service and persons requesting an extension in advance of applications for service will be required to execute contracts covering the terms under which the utility will install mains at its own expense or contracts covering main extensions for which advance deposits will be made in accordance with the provisions of the tariff schedules. Such contracts shall be in the form on file with the Public Utilities Commission as part of the utility's effective tariff schedules.

"These contracts will provide, among other things, that applicant will install, commence using in a bona fide manner within six months after the date of the completion of the main extension and continue to so use for a period of three years, those appliances and items on which the utility's allowances are based. Such contracts will also provide that if any applicant fails to take service or fails to install one or more of the appliances or items contracted for, the utility may calculate and bill the customer and the customer shall pay an amount according to the utility's main extension rule in effect at the time the extension was made as though service had been requested on the basis of the actual appliances and equipment installed and utilized."

The record revealed that the form of contracts required, by the above sections of Pacific's Rule 15, to be on file with the Public Utilities Commission as part of Pacific's effective tariff schedules have not been so filed. Pacific should promptly rectify such deficiency in its tariff schedules.

Pacific maintained that the initial five year term was required in this instance in order to protect its capital investment in the facilities to be installed to furnish the required interruptible gas to Spreckels. In support of its position, Pacific cited the magnitude of the investment to serve the Spreckels load, the possibility of losing the load to fuel oil competition at an earlier date unless the initial contract term were five years, and the fact that once installed the main could not be removed even if the interruptible load were lost because the main also would serve some 57 general service customers along the route of the pipeline. Pacific maintained further that with less than a five year initial term the unrecovered investment could result in a burden on other ratepayers; that the Commission in the past had authorized contracts with initial terms longer than three years where large investments by Pacific were involved; and that Spreckels had agreed to the initial term of five years.

The annual revenues estimated by Pacific to be received from the 57 general service customers along the route of the proposed pipeline is $15,500. At the end of five years of service Pacific estimated in Exhibits 3 and 4 that Spreckels would have paid sufficient revenues not only to cover all costs of the service, including a 6.25 percent rate of return on depreciated investment, but also sufficient amounts to approximately offset Pacific's investment in the facilities which Pacific attributed to Spreckels' service.

A vice president of Spreckels, while acknowledging that he had agreed to an initial term of five years, testified that Pacific would not agree to provide the service without an initial contract term of five years. He further testified that the cost of gas at the Mendota plant of Spreckels is cheaper than alternate fuels.

The record revealed that the new Mendota plant of Spreckels is closer to Pacific's Main 134 than to Stanpac Main 2 from which Pacific proposed to extend service to such plant. Main 134 is served by Gill Ranch Gas Field. According to the testimony the daily availability in the Gill Ranch Field has been declining for some years; its adequacy to supply the Firebaugh-Mendota area is of limited duration; and such supply is inadequate to meet anticipated requirements of the Spreckels' plant and existing demands in the Firebaugh-Mendota area.

Pacific maintained that it had no specific present plans for tying the proposed 16 mile extension from Stanpac Main 2 into Main 134 and that such a tie would require a pipeline extension of some 4.5 miles and cost about $135,000. However, such a tie would be a possible method of augmenting the gas supply in the Mendota-Firebaugh area in the future.

Pacific's currently effective Rule 15, Gas Main Extensions, became effective on April 20, 1960 pursuant to Decision No. 59801, dated March 22, 1960. Such decision was issued after extensive hearings. At that time, all gas corporations, including Pacific, were required to revise their gas main extension rules to conform with a prescribed rule.

Prior to the April 20, 1960 revision of Rule 15, Pacific required an interruptible gas customer to pay the full cost of the

gas main extension either as an advance lump sum payment or, in some cases, over a period of years as an additional amount per thousand cubic feet of gas sold.

Among other things, Pacific's currently effective Rule 15 provides that Pacific will install, own, and maintain gas main extensions to furnish interruptible gas service where the cost of such extension does not exceed the estimated annual revenue as determined by the utility and further provides for an initial service term of three years where a main extension is required.

Pacific's interruptible natural gas service Schedule No. G-50, under which Pacific proposes to render gas service to Spreckels, requires a service contract for an initial period of only one year where no main extension or enlargement of existing distribution main capacities is required.

The Commission staff urged that the five year initial term of the contract not be authorized because Pacific had failed to show that unusual circumstances were involved sufficient to justify such action in this instance.

By invoking the "Exceptional Cases" provision of its Rule 15 in this instance and insisting that Spreckels take service for an initial term of at least five years when the estimated annual revenues to be derived from interruptible gas sales to Spreckels are 1.75 times the estimated cost of the extension to serve such load, Pacific would be negating its gas main extension rule, thus requiring the customer to fully offset Pacific's investment in the extension. In the 1960 extension rule proceeding we found that the provisions of the rule set forth in Decision No. 59011 relating to main extensions to furnish interruptible gas service were reasonable and should be filed by all respondent gas utilities without exception.

We find that the gas main extension to serve interruptible gas to the Mendota plant of Spreckels comes within Sections D.2. and E.1. of Pacific's Rule 15; that there have been no unusual circumstances shown in this instance that would justify departing therefrom; and that an initial contract period of three years should apply.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company is authorized to carry out the terms and conditions of the contract, dated October 30, 1962, for the supply of natural gas to Spreckels Sugar Company, except that such contract shall be modified to provide for an initial term of three years in accordance with Section E.1. of Rule No. 15 filed by Pacific Gas and Electric Company.

2. Within thirty days after the effective date of this order, Pacific Gas and Electric Company shall file with the Commission four certified copies of the contract as executed.

3. Pacific Gas and Electric Company shall notify the Commission of the date of termination of said contract within thirty days after date of termination.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 12th day of MARCH, 1963.

George G. Grover
President

[signature]

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Frederick B. Holoboff

William M. Bennett
Commissioners