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Decision No. 83934

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for authority to increase rates for electric service due to fuel cost adjustments. (Filed by Advice Letter No. 454-E.)	Application No. 55222 (Filed October 1, 1974; amended October 4, 1974 and November 6, 1974)

(Appearances are listed in Appendix A.)

O P I N I O N

On September 5, 1974 the Pacific Gas and Electric Company (PG&E) filed Advice Letter No. 454-E requesting an offset fuel cost adjustment of $28,500,000. The fuel cost adjustment was based on forecast period sales and fuel use for the 12 months beginning October 1, 1974, and increases in fuel prices in effect on October 7, 1974. PG&E requested that tariffs filed in conjunction with the advice letter be authorized to be effective on October 7, 1974. On October 1, 1974 the Commission declined to act on the advice letter filing and ordered it filed as an application to be set for public hearing. On October 4, 1974 PG&E filed an amendment to that application setting forth the information required by the rules of procedure including a statement "that the increase sought in this application reflects and passes through to its customers only the effect of increased fuel costs to PG&E for electric service furnished to its customers." On October 15, 1974 public hearings began before Examiner Robert Barnett in San Francisco. On November 6, 1974 PG&E filed its second amendment to its application which, among other things, reduced the required annual revenue increase initially proposed in Application No. 55222 from $28,500,000 to $25,000,000, but at the same time alleged that construction of its nuclear generating plant at Diablo Canyon would be delayed, thereby causing an increase in the cost of fossil fuel. The total amount requested in the second amendment to its application was $56,000,000. In its second amendment PG&E requested a waiver of its tariff requirement of a three-month interval between fuel offset adjustments because the time required to hear this matter has delayed the offset and because PG&E expects to file a further fuel cost adjustment increase by December 1974.[1/] Public hearings continued until November 19, 1974 when the matter was submitted. After the staff presented its case recommending certain adjustments and a revenue increase of $24,501,000, PG&E acquiesced in some of the adjustments and reduced its request to $38,502,000.

The principal objection of the protestants to the proposed rate increase is that the increase is based upon a renegotiated contract between PG&E and the Atlantic Richfield Company (Arco), PG&E's largest fuel oil supplier. Protestants assert that this renegotiation, which raised PG&E's cost of fuel substantially, was unnecessary and imprudent on the part of PG&E. As a result, the protestants assert that the Commission should disallow the increased costs resulting from this imprudent renegotiation and base any fuel cost adjustment upon prices in effect prior to the renegotiation.

The second major issue in this proceeding is the manner of weighting the price of oil in inventory with the current price of replacement oil to determine the average price of oil. Under current conditions the inventory price is lower than the replacement oil price. The staff, by using the weighted average cost of withdrawals in the first three months of the test year, in effect

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1/ This offset was filed November 27, 1974 (Advice Letter No. 464-E, $114,700,000 and, in the alternative, Advice Letter No. 465-E, $16,100,000 for gas only. The 464-E filing includes the $38,502,000 requested in Application No. 55222 and the $16,100,000 requested in 465-E).

weighs those prices as 80 percent from beginning inventory and 20 percent from replacement oil. PG&E, by using the weighted average cost of withdrawals in the first six months of the test year weighs those prices as 66 percent from beginning inventory and 34 percent from replacement oil. The staff's method results in PG&E's revenue requirement being $14 million less than PG&E's method.

During the hearings PG&E agreed to make a refund to its customers because it erred in estimating the price of new oil in July 1974. Correct pricing would have caused a reduction in PG&E's rates from July to the present. The amount involved has not been computed, nor has the manner of refund. PG&E will be ordered to file a refund plan.

The Arco Contract

The contract between PG&E and Arco entered into on June 1, 1973 and modified on April 1, 1974 was the result of extended negotiations. The parts most relevant to the issues raised in this proceeding are set forth in Appendix B of this decision.

In regard to the negotiations concerning the Arco contract PG&E presented its manager of materials department who was responsible for entering into the contract. He testified as follows: In 1972 and the early part of 1973 PG&E forecast that it would need approximately 30 million barrels of fuel oil in 1974. At that time PG&E had contracts covering approximately 6 million barrels. In order to get firm commitments to fill that need he began a worldwide search for oil which, because of environmental considerations, had to have a sulfur content under 0.5 percent. The major sources for this type of oil include Indonesia, South America, West Africa, North Africa, and Canada. Because of problems in dealing with foreign oil suppliers PG&E devoted much effort to obtaining increased supplies from domestic suppliers such as Union Oil and Arco. Negotiation with

Arco produced the contract, portions of which are set forth in Appendix B, which provides for 71,400,000 barrels of oil during the years 1974 through 1981. Prior to entering this contract Arco had been supplying between 2 and 2-1/2 million barrels of oil per year. At the time the contract was signed oil prices were relatively stable. In November 1973 PG&E was approached by Arco and was asked to allow an increase in the price of oil effective January 1, 1974. Arco suggested that paragraph 5 of the agreement, which provides that on January 1, 1975 oil prices shall increase or decrease according to average posted prices of crude oil based upon 20 percent Alaskan crude and 80 percent Canadian crude, should go into effect on January 1, 1974. The reason Arco gave was that Arco's crude oil supply had shifted from almost sole reliance on Alaskan oil to an 80 percent reliance on Canadian oil. Canadian oil was priced higher than Alaskan. Negotiations over putting the January 1, 1975 pricing formula into effect on January 1, 1974 continued through early 1974 and was finally agreed to go into effect on April 1, 1974. The effect of this renegotiation was to initially increase the contract price from $6.42 a barrel to $12.88 a barrel.

During negotiations the witness asked the Arco representatives what their company's reaction would be if PG&E were to refuse to accept this earlier than scheduled price change. His attention was directed to that portion of paragraph 6 of the agreement which states: "In the event the effect on the contract of (extreme variation in market price) is not mutually agreed to within sixty (60) days from the initial date of discussion, then the contract shall terminate two years and sixty days after the initial discussion date. This provision shall not be construed to extend the term of the contract." The witness stated: "They were careful not to say that a firm judgment had been made by Arco about what they would do. But it seemed the clear inference was that they would consider acting under that provision. And that was the basis for our belief that not negotiating did jeopardize our largest and most reliable single source."

The witness testified that the negotiations which led to the revised oil prices as of April 1, 1973 were conducted against the backdrop of the Arab-Israeli War of September 1974 and the concurrent oil embargo imposed by various Arab governments. During that time oil prices began to move very rapidly. The Peruvian National Oil Company refused to honor its agreement with PG&E and called for worldwide auctions for the oil they had available. Similar problems occurred in Nigeria and Libia. Indonesia, however, honored its contracts. The Peruvian oil auction resulted in the Los Angeles Department of Water and Power paying almost $25 a barrel for oil. PG&E had tried to get additional long term commitments but could not; Arco was PG&E's largest single supplier and Arco's supply was centered primarily on the North American continent; it was the best contract available to PG&E from a responsible supplier. PG&E did not wish to chance losing this supply.

PG&E contends that the evidence shows that at one point Arco referred to the fact that the issue of commercial frustration might arise in connection with Arco's performance. PG&E's fear that Arco might use this issue as an excuse to cancel the contract was also a consideration in PG&E's renegotiation of the price adjustment clause date.

Finally, PG&E contends that events have confirmed the correctness of its action. All during 1974 PG&E has been searching for additional firm sources of oil on the magnitude of the Arco contract and has found nothing. PG&E also was apprehensive that Arco might assert rights under Article 16 of the contract (this article, the "force mejeure" clause, is not set forth in Appendix B).

The manager of the government, utilities, and coke sales department of Arco testified that the original price escalation clause of the contract provided for the price of product sold to be increased or decreased with Alaskan crude oil prices until January 1, 1975, when the formula was to change to relate to the percentage increase or decrease of a weighted average of 20 percent Alaskan and 80 percent Canadian crude postings.

He testified that: With the inception of the Middle-East oil embargo and the meteoric rise in the price of foreign crude oil, including the Canadian imposition of export duties, it was necessary for Arco to invoke the escalation clause calling for discussion of a new price basis under the agreement. This was initiated November 9, 1973. Had it been impossible to agree on a new price basis, under its terms the agreement would have terminated two years and sixty days thereafter. In the course of the negotiations which followed, it was agreed that the escalation clause previously negotiated and agreed upon to become effective January 1, 1975 was a proper and acceptable basis of establishing a price consistent with the needs of Arco and reasonable to PG&E as a reflection of costs of manufacture as well as market price.

On cross-examination he stated that his company has contracts with Southern California Edison and the Los Angeles Department of Water and Power to supply oil. These are short term contracts which his company is attempting to renegotiate but as of the date of testifying has been unsuccessful. His company currently provides oil to Edison and the Department which costs Arco at least $11.88 and which is delivered for $5.45 a barrel.

None of the other parties presented evidence on the issue of the propriety of the renegotiation of the Arco contract. However, protestants argue, from the facts as adduced, that the renegotiation was imprudent. They argue that written notice of renegotiation pursuant to Articles 6 and 21 of the contract was never given to PG&E; nor was written notice of termination, or threatened termination of the contract given to PG&E. "Commercial frustration" was a phrase merely casually used; it was not pursued in detail nor could it have been effective under the circumstances as PG&E would have been entitled to a proportional share of Arco's oil pursuant to federal regulation. Most strongly, protestants argue that PG&E was a strong, assured customer of Arco with a guaranteed take into 1981. If Arco had given a two year notice under Article 6 of the contract it would have terminated the contract at a time (1976) when it was selling oil to PG&E at a price that Arco thought reasonable. Arco and PG&E were attempting to renegotiate the contract from November 1973 to April 1, 1974, yet at no time did Arco give PG&E clear notice, written or unwritten, of its intention to invoke Article 6 of the contract and cancel the contract. For all of these reasons, protestants assert that PG&E acted imprudently in agreeing to pay higher prices for oil purchased from Arco. PG&E agreed to the higher price solely because it knew that, through its fuel adjustment clause, it could pass the increased costs through to the ratepayers with little or no burden to PG&E.

Protestant's arguments are the arguments of hindsight. To determine if PG&E was prudent or imprudent in renegotiating its contract with Arco we must, to the extent possible, view the transaction in the world of March 1974. This was a time of acute gasoline shortage in the United States, a time when national governments were breaking their contracts for oil deliveries to American companies, a time when power companies were paying up to $25 a barrel for oil, and were glad to get it at the price, a time when PG&E was millions of barrels short of filling its requirements for 1974 and the future, and when PG&E's fuel procurement officers were scouring the world for oil. Arco was and is PG&E's primary source of oil. We are persuaded that in March 1974 the responsible officers of PG&E had good reason to fear that Arco would place the contract in jeopardy. They had already been negotiating for over four months and the world oil situation was dire. It is not for us to say that under the circumstances PG&E should not have given in, it is enough to say that under the circumstances PG&E did not act imprudently by renegotiating the contract. In context, the failure of PG&E to insist on the niceties of contract performance regarding notice is understandable; PG&E was worried about its oil supplies and was in the midst of delicate negotiations. It should not be expected to watch the oil evaporate in the heat of legalisms.

Oil Inventory Pricing

In order to determine the increase in rates necessary to offset the increase in costs of oil fuel, PG&E's tariff (Preliminary Statement, Part B, Article 5) states in part, "the price of oil fuel shall be the average cost of <u>each type in inventory</u> (emphasis added) (determined in accordance with the Uniform System of Accounts) on the expected effective date for the amount of such oil fuel in inventory and the price of any oil fuel required in excess of such inventory shall be at the price (including sales and use taxes) of the most recent delivery of such fuel." The staff as well as PG&E agree that Article 5 defines the unit price of oil in inventory as well as oil required in excess of inventory. Those unit prices are utilized in estimating the total fuel expense in determining the fuel cost adjustment.

Oil added and withdrawn from inventory is accounted for through an average cost system. Starting with any month, the price of any oil withdrawn in that month from inventory is at an average price determined by dividing the dollars in inventory by the barrels of oil in inventory at the beginning of that month. Additions to inventory during a month are the volume and cost of such additions. At the end of each month, the resulting inventory dollars and oil volume are used to determine a new average price for withdrawals in the following month, and so on.

The staff and PG&E agree in theory on pricing inventory but disagree on the time span to be used in the weighting period. The staff weighs the price of oil in inventory on October 1, 1974 ($10.87 per barrel) with the current price of replacement oil ($14.23 per barrel) to determine the average price of oil, by using the weighted average costs of withdrawals in the first three months after October 1, 1974. This, in effect, weighs those prices as 80 percent from beginning inventory and 20 percent from replacement oil. PG&E, by using the weighted average cost of withdrawals in the first six months after October 1, 1974 weighs those prices as 66 percent from beginning inventory and 34 percent from replacement oil. Because, at the present time, the price of replacement oil exceeds the price of oil in inventory, the lower weighting of replacement oil by the staff yields a lower total price of oil than does the PG&E method. This difference in the price of oil yields a difference in revenue requirement of $14 million on an annual basis.

PG&E uses the six-month period basis because it feels that such basis provides a closer corollation between revenues received from the fuel cost adjustment and the underlying price of oil than does use of a three-month period. The six-month period was used by PG&E in its prior filing on June 7, 1974 and was used by the staff in analyzing that June 7th filing.

PG&E justifies its six-month period on the ground that the revenue actually received from any quarterly fuel cost adjustment does not flow to PG&E immediately when that fuel cost adjustment becomes effective. There is a lag of about 30 days between any meter reading date and the date of receipt of the revenues associated with that reading. Second, when a fuel cost adjustment becomes effective, it is prorated on the number of days since the effective date. Thus, billings for the meter readings on the first day a rate becomes effective reflect 1/30 of the new rate; on the second day 2/30; and so on until the new rate has been in effect a full month and billings then reflect 30/30, or all, of the new rate. PG&E recommends the six month basis because it yields an estimated average price of oil which closely corresponds to that in effect at the time the corresponding revenues would be received.

The staff recommends use of a three-month average price rather than six-months. It argues that the average oil price thereby obtained will reflect the impact of oil prices and volume for the quarter in which the quarterly filing will be in effect. Both the initial inventory price and the price for new oil are thereby recognized under the average inventory pricing method utilized by PG&E. This basis is consistent with the tariff provision. The staff asserts that there is no provision made in the tariff to consider billing lag, delay in receipt of revenues, carrying costs of high priced oil, or a cash flow problem. The utilization of three-month average prices fully covers oil expenses for this period on an average year basis.

The staff points out that originally a twelve-month period was utilized in fuel clause filings. It was anticipated that the price of replacement oil and the inventory price would not differ substantially. This did not hold true and during the early part of 1974 filings were being made every quarter by the utilities because the price of fuel oil started to rise at a rapid pace. Due to the frequency and magnitude of price increases, the staff recommended a shorter period be used for calculating fuel oil costs. In July 1974 the staff used a six-month period for PG&E. Now the staff recommends a three-month period. The staff points out that currently the staff method is being used in determining fuel cost offsets for Southern California Edison and San Diego Gas & Electric Company. As recently as November 13, 1974 the Commission authorized a fuel cost adjustment for Southern California Edison using the inventory pricing method advocated by the staff in this proceeding, that is, the three-month period.

We see no reason to depart from our recent decisions involving other major electric utilities in California. We will adopt the staff's estimate based upon the three-month period. PG&E's tariff does not authorize an increase in rates to make up for a lag in PG&E's billing or in the ratepayers' payment.

The Three-Month Waiting Period

On November 27, 1974 PG&E filed Advice Letter No. 464-E requesting an increase in rates of $114,700,000 to offset an increase in fuel costs. PG&E requests that the rates be made effective on January 1, 1975. This proposed offset includes the $38 million being requested in this Application No. 55222.

PG&E's request in this application to waive the three-month period between fuel offsets[2/] is based on the assumption that the offset requested in this application will be granted prior to the offset requested in Advice Letter No. 464-E. If such were the case then without the waiver of the three-month period PG&E would have to wait 90 days from the effective date of the decision in Application No. 55222 before receiving its Advice Letter No. 464-E request minus any increase granted by this application. In our view the better procedure is to deny rate relief in this application and grant all relief through a resolution approving that part of the advice letter filing that we deem sufficient to cover PG&E's increased costs. In determining the merits of the advice letter filing we shall apply the findings of this application, that is, the use of the staff's oil inventory pricing and the finding that the Arco renegotiation was not imprudent.

Refunds

In June 1974 PG&E applied for a fuel cost offset based upon an increase in fuel oil to $13.85 a barrel. The Commission by Resolution No. E-1400 dated July 9, 1974 refused to grant any offset. Subsequently PG&E was informed by Arco that the contract price for fuel oil during the period prior to July 9, 1974 was only $12.88 a barrel. At the $12.88 price rather than rejecting an increase the Commission would have reduced the fuel clause adjustment factor. As a result of the lower price PG&E has agreed to refund the excess collected. This refund should cover the period between July 9, 1974 and the effective date of PG&E's next adjustment to its billing factor. PG&E has not yet submitted a refund proposal to the Commission, nor has it informed the Commission of the amount to be refunded. We shall order PG&E to file its refund plan by January 31, 1975.

2/ "Such adjustment per kilowatt hour shall not be revised more often than once every three months." (PG&E's tariff, Preliminary Statement, Part B, 2.)

Findings of Fact

1. On June 1, 1973 PG&E and Arco entered into a contract for the sale of 71,400,000 barrels of fuel oil during the years 1974 through 1981. Paragraph 5 of the contract provides that on January 1, 1975 oil prices shall increase or decrease according to average posted prices of crude oil based upon 20 percent Alaskan crude and 80 percent Canadian crude. In November 1973 Arco approached PG&E and requested that the adjustment provided in paragraph 5 go into effect on January 1, 1974. PG&E and Arco negotiated concerning this proposal until March 1974 when PG&E agreed to the proposal effective April 1, 1974. The effect of this renegotiation was to initially increase the contract price from $6.42 a barrel to $12.88 a barrel.

2. At the time the renegotiation was completed there was an acute gas shortage in the United States, some nations were refusing to sell oil to the United States, national governments were breaking their contracts for oil deliveries to American companies, power companies were paying up to $25 a barrel for oil, and were glad to get it at the price, PG&E was millions of barrels short of filling its requirements for 1974 and the future, and PG&E's fuel procurement officers were scouring the world for oil and not having much success. Arco was and is PG&E's primary source of oil.

3. In March 1974 the responsible officers of PG&E had good reason to fear that Arco would place the contract in jeopardy. They had already been negotiating for over four months and the world oil situation was dire.

4. Under the circumstances PG&E did not act imprudently by renegotiating the contract.

5. The staff's three-month average price method for determining the price of oil is reasonable. PG&E's six-month method is unreasonable.

6. Under a fuel cost adjustment offset clause rates should not be increased to make up for lag in utilities' meter readings or billing practices, nor for lag in ratepayers' payments.

7. On November 29, 1974 PG&E filed Advice Letter No. 464-E requesting an increase in rates of $114,700,000 to offset an increase in fuel costs. PG&E requests that the rates be made effective on January 1, 1975. This proposed offset includes the $38 million being requested in this Application No. 55222. We will deny the offset requested by this application and grant an offset, if warranted, in response to Advice Letter No. 464-E.

The Commission concludes that the relief requested in the application should be denied.

O R D E R

IT IS ORDERED that:

1. The relief requested in the application is denied.

2. Pacific Gas and Electric Company shall file a refund plan by January 31, 1975 to refund rates collected in excess of those rates which would have been in effect in July 1974 based upon lower contract prices for Atlantic Richfield Company fuel.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 30th day of DECEMBER, 1974.

Vernon L. Sturgeon
President

William Symons Jr.

Thomas Moran

Robert E. McDavid
Commissioners

APPENDIX A

LIST OF APPEARANCES

Applicant: John C. Morrissey, Malcolm H. Furbush & Robert Ohlbach, by Malcolm H. Furbush and Robert Ohlbach, Attorneys at Law.
Protestants: Mrs. Sylvia M. Siegel, for Toward Utility Rate Normalization (TURN), Consumer Federation of California, and herself; James J. Cherry, Attorney at Law, for Consumer Action; and Thomas J. Graff, Attorney at Law, for Environmental Defense Fund.
Interested Parties: Joseph Byrne, for Union Oil Company of California; Colonel Frank J. Dorsey, Attorney at Law, for Consumer Interests of The Executive Agencies of the United States; Thomas M. O'Connor, City Attorney, by Robert R. Laughead, for the City and County of San Francisco; William M. Pfeiffer, Attorney at Law, for Southern California Gas Company; Brobeck, Phleger & Harrison, by Gordon E. Davis and Thomas G. Wood, Attorneys at Law, for California Manufacturers Association; Henry F. Lippitt, 2nd, Attorney at Law, for California Gas Producers Association; Richard C. Morse, Attorney at Law, for Atlantic Richfield Company; Peter H. Kruse, Attorney at Law, and Edward A. Essayan, for Perta Oil Marketing Corporation; Richard T. Mulcahy, for Pacific Resources, Inc.; John W. Witt, City Attorney, by William S. Shaffran, for the City of San Diego; David B. Follett, Attorney at Law, for Southern California Gas Company; and David W. Stewart, Attorney at Law, for Union Oil Company.
Commission Staff: Walter H. Kessenick, Attorney at Law, and Donald L. Houck.

"A T L A N T I C R I C H F I E L D C O M P A N Y
515 South Flower Street, Los Angeles, California 90071

"THIS AGREEMENT, made and entered into as of the 1st day of June 1973 by and between ATLANTIC RICHFIELD COMPANY, a Pennsylvania Corporation, hereinafter referred to as Seller, and PACIFIC GAS AND ELECTRIC COMPANY, a California Corporation, hereinafter referred to as Buyer:

"W I T N E S S E T H

"1. Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase and receive from Seller fuel oils of the specifications and in the quantities hereinafter described, subject to the covenants and conditions hereinafter contained.

"2. This agreement shall cover the period commencing April 1, 1972 and shall continue to and including December 31, 1981.

* * *

"4. The quantities of fuel oils, as described in Paragraph 7 hereinbelow, shall be as follows:

April 1, 1972 through December 31, 1972	- 2,250,000 barrels of which 1,000,000 barrels shall be delivered during the period April through September and 1,250,000 barrels shall be delivered during the period October and November 1972.
Calendar Year 1973	- 5,475,000 barrels for delivery April through December 1973.
Calendar Year 1974	- 8,400,000 barrels.
Calendar Year 1975	- 9,000,000 barrels.
Calendar Year 1976	- 9,000,000 barrels.
Calendar Year 1977	- 9,000,000 barrels.
Calendar Year 1978	- 9,000,000 barrels.
Calendar Year 1979	- 9,000,000 barrels.
Calendar Year 1980	- 9,000,000 barrels.
Calendar Year 1981	- 9,000,000 barrels.

"The quantities of product are to be delivered at a fairly equal monthly rate throughout each contract calendar year, unless otherwise specified herein, or as mutually agreed.

"In the event Buyer purchases quantity of fuel oil exceeding its contractual obligation for any contract period, with such excess having been purchased solely to satisfy the full tank ship delivery requirements contained herein, such excess purchase will be carried forward and deducted from the succeeding contract period. Should the Buyer purchase a quantity of fuel oil less than its contractual obligation for any contract period because of the full tank ship delivery requirements contained herein, then such volume not purchased will be carried forward and added to the succeeding contract period.

"5. The prices payable, as of the date of this agreement, for fuel oils delivered to Buyer's facilities hereunder shall be:

Low Sulfur Cutter Stock	$5.40 per barrel
Low Sulfur Fuel Oil (.5% Max. Sulfur)	$5.07 per barrel.

"Any change by Government regulation which reduces the maximum fuel oil sulfur content allowed for use at Buyer's California plants below .5% will be reflected by an increase in the contract price at the rate of $.15 per barrel for each such reduction of .1% or fraction thereof. However, in no event shall Seller be required to supply fuel oils with less than a .3% sulfur content under this agreement.

"The foregoing prices for Cutter Stock and Low Sulfur Fuel Oil shall increase or decrease concurrent with and by the same amount per barrel as the combined average of the posted prices for 35.0 - 35.9 Gravity Crude Oil as posted by Atlantic Richfield Company at Cook Inlet Pipeline Company and Kenai Pipeline Company, plus the average of the ICC common carrier rates from Cook Inlet Pipeline Company and Kenai Pipeline Company to ships rail. As of this date, said average posted price (per Atlantic Richfield Company's attached Crude Oil Price Bulletin No. 6 dated May 4, 1973) is $3.3775 per barrel, and said average of the ICC common carrier rates (per ICC Schedules No. 7 and 10 dated January 1, 1971 and April 7, 1969 respectively) is $.1525 per barrel, resulting in price f.o.b. ships rail of $3.53 per barrel. In the event that the average posted price of said Gravity Crude Oil as posted at Cook Inlet Pipeline Company and Kenai Pipeline Company by all producers of greater than 10% of the total monthly production of such crudes at those points, except Atlantic Richfield Company, is $.10 or more per barrel below the average price posted by Atlantic Richfield Company, the average of the posted prices of these companies, other than Atlantic Richfield Company, shall be the basis for price changes under this provision.

"The applicable prices in effect as of the opening of business (12:01 a.m.) January 1, 1975, and any modified prices computed or agreed to under the provisions of this agreement thereafter, shall increase or decrease by the same percentage as the percentage increase or decrease in the average posted price of crude oils, such average being weighted on the basis of twenty percent (20%) for the average of the Alaskan Crudes as identified in the next preceding paragraph, and eighty percent (80%) for the average of Canadian marketable crude oil (U.S. Dollar Price) having a quality of 42° or higher API Gravity and containing less than .5% sulfur by weight, as posted at Edmonton Terminal, Canada by all producers of ten percent (10%) or more of the total monthly production available at that point. As of October 19, 1972 said average Canadian posted price was $3.16 per barrel (Canadian Dollar) which equates to a U.S. Dollar price of $3.2185 per barrel as of October 19, 1972, based on the 'Wall Street Journal' of October 20, 1972, Foreign Exchange Report. Changes will be to the nearest cent per barrel in accordance with the following formula:

$$\frac{\text{New Crude Price}\ \left(\begin{array}{l}\text{20\% Alaskan}\\ \text{80\% Canadian}^{*}\end{array}\right.}{\$3.2308\ \text{(Base Crude Price}^{\#}\text{)}} \times \begin{array}{l}\text{\$4.82 Per Bbl.}\\ \text{Low Sulfur}\\ \text{Fuel Oil}\\ \quad\text{and}\\ \text{\$5.15 Per Bbl.}\\ \text{Low Sulfur}\\ \text{Cutter Stock}\end{array} = \begin{array}{l}\text{New Low Sulfur}\\ \text{Fuel Oil and}\\ \text{Cutter Stock}\\ \text{Prices}\end{array}$$

*U.S. Dollars based on exchange rate prior calendar quarter (B below).

#Alaskan $3.28 Per Barrel Canadian $3.2185 Per Barrel (U.S. Dollars).

"Any changes in the aforesaid crude postings subsequent to October 19, 1972 but prior to January 1, 1975 will be reflected in accordance with the above formula on January 1, 1975.

"As of January 1, 1975 the applicable prices shall further be adjusted by applying eighty percent (80%) of any change in any duty, tariff, or other charge imposed by any governmental agency on Canadian Crude Oil delivered into the United States which is not reflected in the posted price or governed by other provisions hereof. As of the date of this Agreement applicable duties are $.105 per barrel.

"Any changes in the aforesaid duty, tariff, or other charges subsequent to October 19, 1972 but prior to January 1, 1975 will be reflected in accordance with the above on January 1, 1975.

"In addition to the price adjustment provisions above, but separate therefrom, adjustment will be made in the contract prices for Low Sulfur Fuel Oil and Cutter Stock commencing January 1, 1975 and the first day of each calendar quarter thereafter, to reflect changes in the U.S. and Canadian Dollar rate of exchange...

* * *

"6. The parties hereto agree to discuss and assess the effect, if any, on this Agreement, and the performance hereunder, of any of the following circumstances should they occur during the term hereof.

APPENDIX B

"A. Technological break-through in stack gas desulfurization.

"B. Changes in refinery technology and/or equipment.

"C. Extreme variation in market price of Low Sulfur Fuel Oil of the same specifications as covered herein, equivalent volumes and term.

"D. Change in Oil Import Administration Regulation that either increases or decreases the number of crude oil Import Bonus Tickets that accrue to Seller from one (1) for each barrel of Low Sulfur Fuel Oil sold hereunder.

"E. Changes in specifications of product herein which substantially affect the cost of manufacture.

"In the event the effect on the contract of any of the above, A through E, is not mutually agreed to within sixty (60) days from the initial date of discussion, then the contract shall terminate two years and sixty days after the initial discussion date. This provision shall not be construed to extend the term of the contract.

* * *

"19. The waiver of any breach or failure to enforce any of the terms and conditions of this agreement by either party, at any time, shall not in any way affect, limit or waive either party's right to enforce and compel strict compliance with every term and condition hereof.

* * *

"21. Notices permitted or required to be given by either party hereunder shall be deemed to have been duly and legally given when deposited in the United States mail, postage prepaid, addressed to the other party at the following respective addresses:

Atlantic Richfield Company	515 South Flower Street Los Angeles, California 90071
Attention: Manager, National Sales - West	
Pacific Gas and Electric Company	77 Beale Street San Francisco, California 94106
Attention: Manager, Materials Department"	