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Decision 89 09 021 SEP 7 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Application of Pacific Gas and Electric Company for approval of electric service agreement with Texaco Refining and Marketing, Inc. U-39-E	(EAD) Application 89-03-020 (Filed March 14, 1989)

<u>O P I N I O N</u>

Pacific Gas and Electric Company (PG&E) seeks approval of the electric service agreement (the agreement) between Texaco Refining and Marketing, Inc. (TRMI) and PG&E, executed November 7, 1988, for electric service delivered to TRMI's premises located at Bakersfield, California, under negotiated rates. Specifically, PG&E requests that the Commission authorize PG&E to carry out the terms of the agreement subject to those conditions prescribed by the Commission in its Decision (D.) 87-07-089 (USS-POSCO) and D.87-09-082 (ARCO) with respect to similar negotiated rate agreements.

PG&E asserts that the agreement was negotiated to avoid uneconomic bypass at TRMI's refinery operation and thereby capture substantial benefits for PG&E's ratepayers. TRMI currently receives electric service from PG&E under schedule E-20 and has a base demand in excess of 1 megawatt. PG&E's standard tariff rates, including Schedule E-20, are not currently competitive with the cost of building and operating a cogeneration unit at TRMI's Bakersfield refinery operation. The proposed cogeneration system would have been fueled primarily by internally generated refinery gas and natural gas. Had PG&E been unwilling or unable to negotiate an individualized rate agreement with TRMI, TRMI would have proceeded toward completion of its cogeneration project to be on line by December 1, 1989. (Attached to the application is the affidavit of Jesse Gray, plant manager of TRMI's Bakersfield refinery, which confirms this statement.) In that case, PG&E's other ratepayers would have had to pay approximately $10.5 million over the life of the agreement in contribution to margin (CTM), relative to the CTM associated with the cogeneration system. That contribution will be received from TRMI through the negotiated rate, but would have been lost had TRMI bypassed the system.

The agreement, a copy of which is attached to the application, is similar to the contract approved by the Commission in D.87-07-089 (USS-POSCO). The agreement provides for a negotiated rate for electricity delivered to TRMI beginning on the date TRMI's cogeneration plant could have commenced operation--December 1, 1989. Deliveries before this date will be at PG&E's standard tariff rates. The contract rate is effective for a term of five years, and can be terminated by either party on one years' notice, given at least one year after the effective date of the contract. The rate is divided into two components: a non-escalated energy charge and an escalated energy charge. The non-escalated energy charge is based on the investment costs of the proposed cogeneration system, i.e., those which do not vary over time. The escalated energy charge is based on all other costs of the proposed cogeneration system--fuel costs, fixed and variable operation and maintenance costs of the proposed cogeneration system, as well as utility standby and demand charges which would have been incurred had the project proceeded, net of the cost savings provided through application of the waste heat to thermal loads. These charges are converted to time-of-use charges based on the time-of-use differentials reflected in E-20P, Firm. The escalated energy charge is escalated according to changes in PG&E's Energy Cost Adjustment Clause (ECAC) rates. The price components are designed to give TRMI the same financial benefit it would receive from on-site generation and at the same time reflect time-of-use pricing required by the Commission.

The agreement is subject to both floor and ceiling price limitations. The floor price is calculated per Commission guidelines and is based on PG&E's Standard Offer 1 Power Purchase Agreement prices, plus allowances for marginal costs for generation and transmission capacity, and transformation, plus $0.002 per kilowatt-hour (kWh). The ceiling price is the otherwise applicable standard tariff plus $0.002 per kWh.

TRMI was informed of the conservation menu option pursuant to D.88-03-008. Several possible options for conservation were discussed and an estimated net present value of the rate discount was made to TRMI. However, TRMI ultimately elected the negotiated rate in lieu of the conservation offer.

PG&E states that the agreement benefits both TRMI and PG&E's ratepayers. TRMI receives financial benefits similar to those associated with its proposed cogeneration plant. PG&E and its ratepayers benefit through the $10.5 million in revenues net of marginal costs which sales to TRMI will generate over and above the net revenues associated with the cogeneration option. These net revenues would otherwise be paid by the other ratepayers. The ratepayers are assured of the contribution to margin because the contract rate is designed to equal TRMI's alternative costs and is therefore the maximum PG&E could charge while remaining competitive. PG&E estimates that it will receive approximately $2.7 million less in CTM from TRMI as a result of the agreement than it would have had TRMI remained on the standard tariff rates for all of its electric requirements.

In D.87-07-089 (USS-POSCO), D.87-09-082 (ARCO) and others, the Commission approved negotiated rate agreements subject to a condition which leaves open the ratemaking treatment and reasonableness of those contracts. Under this approach, the Commission may allow negotiated rate agreements to go into effect while preserving its ability to consider the issue in another proceeding. The contribution to margin which PG&E would have received from TRMI under full tariff rates but which may not be received under the agreement (approximately $2.7 million) will therefore be made up as determined by the Commission in other proceedings.

In D.89-07-029 in Application 88-10-021 we denied PG&E's application for a special electric rate for International Business Machine Corporation (IBM) when IBM threatened to construct a cogeneration plant to bypass PG&E's electric system. The contract was for a period which could extend through 1998 and apparently was noncancelable by PG&E. In denying the application we said that "the issue of excess capacity is critical to our determination of whether the IBM contract is reasonable," and we found that PG&E had not shown that it would have excess capacity throughout the contract term.

The TRMI contract differs from the IBM contract significantly. First, it is for 5 years beginning December 1, 1989; and second, it may be canceled on 12-month notice by PG&E or TRMI at any time after December 1, 1990, in effect, as early as December 1, 1991. PG&E is expected to have excess capacity throughout the contract term, but should capacity become restricted the contract term can be shortened at PG&E's election.

The Division of Ratepayer Advocates has reviewed the application and advises that the application meets the guidelines of D.88-03-008 and that the threat of bypass is imminent and credible. There are no protests. A public hearing is not necessary.

<u>Findings of Fact</u>

1. PG&E and TRMI have negotiated an agreement for electric service whereby TRMI will receive service over the life of the agreement at rates below PG&E's filed tariff rates.

2. If the agreement is not approved TRMI will build a cogeneration plant to generate electricity which will cause the ratepayers to lose approximately $10.5 million contribution to

margin over the life of the agreement when compared to the expected margin contribution under the agreement.

3. PG&E is expected to have excess capacity throughout the contract term, which can be shortened at PG&E's election.

4. The threat of bypass is imminent and credible.

5. The terms of the agreement are in compliance with the standards set by this Commission in approving similar agreements to avoid bypass.

Conclusions of Law

1. The agreement should be approved.

2. PG&E is at risk for any ratemaking treatment of the agreement that the Commission later determines to be unreasonable.

O R D E R

IT IS ORDERED that the electric service agreement between Pacific Gas and Electric Company and Texaco Refining and Marketing, Inc. is approved.

This order is effective today.

Dated SEP 7 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Direct