

Decision 89 11 056 NOV 2 2 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

APPLIED ENERGY, INCORPORATED, A Corporation,)

Complainant,)

vs.)

SAN DIEGO GAS & ELECTRIC COMPANY, A Corporation,)

Defendant.)

ORIGINAL

Case 88-12-012
(Filed December 7, 1988)

OPINION

This decision grants a petition for modification of Decision (D.) 89-07-055, jointly filed by San Diego Gas & Electric Company (SDG&E) and Applied Energy, Incorporated (AEI).

In D.89-07-055, the Settlement Agreement between AEI and SDG&E was approved. The Commission evaluated the agreement and found, in Finding of Fact 7, that if AEI does not pass the firm capacity test in 1989, the price for firm capacity would be \$141/kW-yr (mimeo. at 3, 4).

On August 7, 1989, the parties to the Settlement Agreement filed the "Joint Petition of San Diego Gas & Electric Company and Applied Energy, Incorporated for Modification of Decision 89-07-055" (Petition). There, the parties state that Finding of Fact 7 is not consistent with their intent in entering into the Settlement Agreement.

The contract language in question is:
"If AEI does not pass the firm capacity test in 1989, the price for firm capacity specified above shall not be increased."

The parties state in their Petition that the purpose of this provision was not to make the negotiated firm capacity price

conditional, but instead to make clear that the negotiated initial firm capacity price specified in Section 2.a of the Settlement Agreement would remain at \$152.50/KW-yr and not increase in a subsequent year if AEI subsequently passes the firm capacity test in a later year.

As clarified by the parties, the phrase "price for firm capacity specified above" in the Settlement Agreement refers to the price stated in the term immediately above that phrase. There, the Settlement Agreement provides for a negotiated firm capacity price of \$152.50/KW-yr, instead of the firm capacity price of \$141.00/KW-yr which was set out in the original Standard Offer 4 contracts.

We had interpreted the contract to make the initial increase in the price for firm capacity from \$141.00/KW-yr to \$152.50/KW-yr conditioned upon AEI's passage of the firm capacity test in 1989. The parties have clarified that the increase from \$141.00/KW-yr to \$152.50/KW-yr is not so conditioned. We understand that the price for capacity will not increase above \$152.50/KW-yr if firm deliveries commence after 1989.

It is accurate to state that \$152.50/KW-yr represents a middle ground of the parties' initial positions. As such, this term of the agreement represents a balancing of parties' interests which serves the interests of ratepayers as well.

Findings of Fact

1. The intent of the parties to the Settlement Agreement was to substitute \$152.50/KW-yr for \$141.00/KW-yr as the contract price for firm capacity.

2. The Settlement Agreement is still reasonable.

Conclusion of Law

D.89-07-055 should be modified to reflect the parties' intent in the Settlement Agreement with respect to the contract price for firm capacity.

ORDER

IT IS ORDERED that:

1. D.89-07-055 is modified as follows:
 - a. The first paragraph on page 3 is deleted and the following language is substituted:

Moreover, the terms of the agreement respect the potential validity of the parties' positions and facilitate our finding that "neither the Settlement Agreement nor its approval implies that (either party's) claims are either correct or incorrect." The terms of the S04 have been modified to adopt the middle ground between the parties' positions on the issue of capacity price and operation date.

- b. Finding of Fact 7 is deleted.

2. The findings and conclusions of D.89-07-055 are otherwise affirmed.

This order is effective today.

Dated NOV 22 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.

- 3 -

Wesley Franklin
WESLEY FRANKLIN, Acting Executive Director
10