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Decision 90-12-024 December 6, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U 902-M) for an Ex Parte Order Approving Settlement.	)))))	Application 90-07-016 (Filed July 6, 1990)

O P I N I O N

I. Summary

San Diego Gas & Electric Company (SDG&E) filed this application requesting an ex parte order approving a Settlement Agreement entered into between SDG&E and Pacific Energy (Pacific) resolving a dispute concerning performance under an Interim Standard Offer 4 contract (SO4). The Settlement Agreement proposes decommissioning of an existing landfill gas plant and the construction of a new facility at a site with a more stable fuel source. While the replacement facility will not be operating before 1991, the contract term and energy and capacity prices under the SO4 will remain unchanged. Thus, the capacity price will be the unescalated 1987 capacity price. Other aspects of the settlement are discussed below. No party protested this application.

This decision finds the settlement reached between SDG&E and Pacific to be reasonable and allows the costs incurred under the settlement to be recovered by SDG&E in its energy cost adjustment clause (ECAC) proceeding.

II. Background of the Dispute

In 1983, SDG&E entered into an SO4 contract with Central Plants Inc. (CPI), the predecessor in interest to Pacific. CPI committed to design, construct, and operate a 1.875-megawatt (MW) power plant fueled by landfill gas, sited in Bonsall, California (Bonsall Plant), and to sell to SDG&E the energy and capacity generated by the plant, including 0.8 MW of firm capacity for a term of 20 years. In 1987, Pacific completed construction of the Bonsall Plant, and first delivered power to SDG&E in April of that year. Shortly after Pacific began operating, SDG&E began receiving complaints of flickering lights from other customers in the Bonsall area. One customer even initiated an informal complaint with the Commission alleging that the low quality of electricity which he received caused clocks to run slowly, timers to operate erratically, and lights to flicker severely.[1] In June and July of 1987, SDG&E performed voltage tests at the Bonsall Plant and surrounding areas as part of its investigation of the flickering lights complaints. As a result of its investigation, SDG&E concluded that Pacific's Bonsall Plant was responsible for the flickering and requested Pacific correct the problem. SDG&E informed Pacific that if the problem was not corrected, SDG&E would be forced to disconnect the Bonsall Plant from its distribution system. In August 1987, because the flickering light problem continued, SDG&E disconnected the Bonsall Plant, citing SDG&E's Rule 21[2] and the SO4 as authority.

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1 CPUC Informal Complaint File Nos. 862-05747 and 872-060001.

2 SDG&E's Rule 21 presents the design and operating guidelines applicable to Qualifying Facilities (QFs) to facilitate safe integration of customer generation into the utility's system.

After the disconnection, SDG&E and Pacific met many times to discuss the conditions under which SDG&E could allow reconnection of the Bonsall Plant. However, the parties were unable to reach agreement and Pacific filed a lawsuit against SDG&E in San Diego Superior Court on June 7, 1988. SDG&E provided a copy of this complaint to its application as Attachment C.

Pacific's complaint alleged that because SDG&E approved the Bonsall Plant's engineering design and performed an interconnection facilities study at Pacific's expense taking into account the characteristics of the SDG&E's system, SDG&E knew or should have known that the flickering would occur. Pacific claimed that SDG&E should bear the responsibility for the flicker problem. Pacific alleges damages of over $22 million due to lost revenues and tax credits under the SO4.

SDG&E answered and cross-claimed that only Pacific was aware of the operating characteristics of its unit and that Pacific was responsible to keep those characteristics within acceptable parameters and to deliver good quality power, in accordance with SDG&E's rules and prudent electrical practices. SDG&E maintained that had Pacific operated within normal parameters, there would have been no flicker problem.

III. The Settlement Agreement

SDG&E and Pacific reached a settlement of their dispute on July 6, 1990. The settling parties believe the Settlement Agreement returns them to the status quo prior to the dispute and is fair and reasonable independent of the litigation. In addition, SDG&E points out that the case has been very costly to both sides thus far and believes the Settlement Agreement is the most efficient and economical means of resolving the dispute without further delay and without exposure to the inherent risk and uncertainties of litigation. By letter dated October 15, 1990, to

the assigned administrative law judge, SDG&E provided an update on the status of the litigation. SDG&E reported that the case is on the San Diego Superior Court's "fast track" system which places substantial pressure to bring cases quickly to trial. SDG&E stated that the current trial date is December 17, 1990, stressing the urgency for a Commission decision prior to that date. This letter of October 15, 1990, will be received in evidence as Exhibit 1.

The Settlement Agreement is attached to the application as Attachment A. It revises the existing Power Purchase Agreement and provides for other commitments between the parties. The parties summarize the features of their Settlement Agreement as follows:

1. Decommissioning Bonsall Plant: At Pacific's expense, Pacific will decommission the existing Bonsall Plant and site a landfill gas plant of the same description and capacity at the Otay Landfill in San Diego County to replace the Bonsall Plant. (Pacific currently already has one operating plant at Otay delivering power to SDG&E under an entirely separate contract.)

2. Purchase Price: The contract term and energy and capacity prices under the SO4 will remain unchanged. Although the replacement facility is not expected to begin operation until 1991, the capacity price will be the unescalated 1987 capacity price. For energy deliveries during the ten-year forecast period, the forecast portion of the energy price will be as specified in the SO4 in the same manner as if no dispute had occurred. In years after the energy price table ends, the energy price will be the last price in the table, unescalated. Pacific will have two years from the date of execution of the amendment to begin firm operation.

3. Interconnection Terms: The parties will allocate interconnection costs as follows:

   - o SDG&E will pay for metering and cost of direct interconnection.
   - o As a distribution system upgrade, Pacific will pay the cost (up to $255,000) of a parallel 12 kilovolt (kV) circuit to accommodate anticipated load growth in the Otay area. Although the parties contemplated that Pacific would pay the cost of necessary substation upgrades, none are required.
   - o Pacific will pay for any line extensions to connect to SDG&E's system.

4. Operating Parameters: Pacific will operate the replacement plant at Otay as well as the existing facility at Otay, within specified operating parameters to prevent either or both from causing negative impacts on SDG&E's system. Pacific will bear the risk if the combination of plants creates flicker problems.

5. Conditions Precedent: The Settlement Agreement is conditioned on the CPUC approving it, as described in this application, and on Pacific receiving the government approvals necessary to begin plant construction. Upon occurrence of these conditions, litigation will be dismissed with prejudice.

SDG&E maintains that the Settlement Agreement not only preserves ratepayer indifference to the amendments to the SO4, but actually provides present value benefits to SDG&E's customers as compared to expenses that would have been incurred had there been no dispute. SDG&E asserts that the Settlement Agreement results in both economic and operational ratepayer indifference.

First, following Commission precedent, SDG&E negotiated the capacity price, energy price, and contract term to be unchanged from the predispute prices and term. The capacity price table has

been extended unescalated to provide a price for operation beginning in 1991 or 1992. SDG&E points out that its price of $127/kilowatt/year (kW/yr) is the same price Pacific would have received for operation beginning in 1987. Additionally, by not escalating the last year of the energy price table, the 1998 energy price will be used for the remaining years of the forecast period. Thus, the forecast energy prices under the Settlement Agreement are the same in each year as they were under the original contract. SDG&E claims that because the forecast period under a 1987 start date would have been concluded before the last year in the energy price table (1998), the effect of this Settlement Agreement is that SDG&E's ratepayers do not bear the burden of several years of energy price escalation they would have borne absent the dispute. SDG&E calculates a present value savings to its ratepayers on the forecast portion of the energy price of over $1 million, and over 20% (in 1987 dollars).

Because the Settlement Agreement permits a change in project location, SDG&E and Pacific agreed to an expected on-line date of June 1991 and an absolute deadline for firm operation of two years after the amendment to the SO4 is effective. SDG&E argues that this term of the Settlement Agreement gives Pacific sufficient time to build the relocated plant, but does not extend the unescalated SO4 indefinitely.

The change in project location also required the parties to negotiate the allocation of interconnection costs to ensure ratepayer indifference. SDG&E asserts they have done so by SDG&E paying for expected nominal costs of metering and direct interconnection. Pacific must pay the costs of necessary distribution system and substation upgrades. In addition, Pacific will pay the cost (capped at $255,000) of a parallel 12 kV circuit to accommodate anticipated load growth in the Otay area where the replacement facility will be located.

Secondly, SDG&E claims the Settlement Agreement provides it with two important operating safeguards, thus providing ratepayers operational indifference. SDG&E believes the Settlement Agreement resolves the flicker question with finality by moving the plant to the Otay Landfill where both parties have greater confidence that no flicker problems will arise. Further, since the Settlement Agreement makes explicit what constitutes acceptable operation for the plant, it substantially reduces the possibility of further misunderstandings if by some chance flicker problems recur. This term of the Settlement Agreement sets forth a Voltage Fluctuation Measurement Protocol aimed at avoiding future problems at the new location by detailing testing methodology, instrumentation test procedures, compliance, data interpretation, and responsibilities for corrective action by each party.

The second operating safeguard is intended to protect SDG&E in the event of expected significant load growth in the Otay area. Since the relocation of the Bonsall Plant to Otay may use distribution capacity which SDG&E had planned to use to accommodate that load growth, Pacific agreed to pay up to $255,000 for the installation of a parallel 12 kV circuit. Thus, SDG&E argues its ratepayers would not have to cover the cost.

Finally, the Division of Ratepayer Advocates (DRA) sent a letter to SDG&E concurring with its findings that the Settlement Agreement has no adverse impact on SDG&E's ratepayers. Thus, DRA did not participate in this application formally. DRA's letter of August 3, 1990, will be received in evidence as Exhibit 2 in this proceeding.

IV. Discussion

Our review of the record confirms SDG&E's representation that the Settlement Agreement reasonably resolves the litigation pending between the parties while leaving SDG&E's ratepayers

economically and operationally indifferent. Over the years, we have approved many proposed settlements in light of our long-standing policy of favoring settlements to resolve QF-utility disputes so long as the ratepayers remain indifferent. (See e.g. Decision (D.) 88-08-021, 28 CPUC 2d, 583 (1988).)

This Settlement Agreement is unusual in that it requests a site change. We have consistently held that utilities should not permit a site change where it is an element of bartering an SO4 or rescuing an ill-conceived project unless the utility obtains substantial concessions. However, the circumstances of this dispute are unique. The Bonsall Plant is fully built; the dispute centers on its operational impact on voltage concerns in the area. The parties, through negotiation, concluded that a site change to the Otay Landfill (where a plant is already operating with no flicker problems) is the most sensible resolution of their dispute over responsibility for flickering near Bonsall. We concur. Operationally, it is preferable for the plant to be at Otay rather than Bonsall.

Other terms of the Settlement Agreement conform with Commission precedents. We agree with SDG&E that it was appropriate to keep the price terms of the SO4 at the level they would have been had no dispute occurred. Thus, leaving the capacity price at the 1987 level of $127/kW-yr is reasonable. We have explicitly discouraged escalation of price terms. (D.86-10-038, 22 CPUC 2d, 105, 112 (1986).) Likewise, under the Settlement Agreement, the energy price table will not be escalated past the 1998 price. This is another worthwhile concession that SDG&E negotiated in the settlement.

The payment by Pacific of up to $255,000 for a parallel 12 kV circuit is another important term of the settlement which protects SDG&E's ratepayers and minimizes the impact of a site change. Since the studies conducted indicate enough landfill gas to power both plants at the Otay site, society benefits by avoiding

any waste of that landfill gas in the era of volatility over fossil fuel resources.

Additionally, the Settlement Agreement clearly places responsibility for the Bonsall Plant decommissioning on Pacific. We find this to be another term of the settlement which protects SDG&E's ratepayers.

With a trial date looming in the near future and no opposition by any party, approval of the Settlement Agreement in an ex parte order is appropriate and reasonable. The parties will be able to avoid the substantial legal costs of what they estimate to be a lengthy trial, not to mention the uncertainty of the outcome of litigation. We agree with SDG&E and Pacific that the controversy over the operation of the Bonsall facility should be put to rest.

We conclude that we should approve the Settlement Agreement finding it reasonable and that costs properly incurred under the agreement are also reasonable and may be recovered by SDG&E in its ECAC proceeding.

Findings of Fact

1. Under an SO4 contract, Pacific began operating a landfill gas plant at Bonsall in 1987. Shortly thereafter, SDG&E received complaints of flickering lights.

2. After investigation, SDG&E concluded that Pacific's plant was causing the flickering lights and informed Pacific that if the problem was not corrected, the plant would be disconnected.

3. In August 1987, SDG&E disconnected the Bonsall Plant despite Pacific's objection.

4. Unable to resolve the dispute over responsibility for the flickering lights, Pacific filed a complaint against SDG&E in 1988 alleging that because SDG&E approved the engineering designs and performed an interconnection facilities study, it knew or should have known the flickering problem would occur. Pacific asked for

$22 million in damages due to lost revenue and tax credits under the SO4.

5. SDG&E answered and cross-complained against Pacific maintaining the flicker problem was Pacific's responsibility.

6. On July 6, 1990, SDG&E and Pacific reached a settlement agreement (Attachment A to the application) resolving all of their disputes over the Bonsall Plant.

7. A condition precedent of the Settlement Agreement is that the Commission approve the settlement and find SDG&E's payments pursuant to the settlement reasonable.

8. Under the Settlement Agreement, the site change from Bonsall to the Otay Landfill is reasonable because it is a preferable location operationally and Pacific will clearly be responsible for flickering if it occurs at Otay.

9. The nonescalation of energy and capacity prices under the Settlement Agreement is reasonable because it maintains ratepayer indifference.

10. The payment by Pacific of up to $255,000 for a parallel 12 kV circuit is another term of the Settlement Agreement that protects SDG&E's ratepayers.

11. Pacific's responsibility to decommission the Bonsall Plant also protects SDG&E's ratepayers.

12. No party protested this application and DRA stated the Settlement Agreement had no adverse effects on SDG&E's ratepayers.

13. The Settlement Agreement is reasonable because it maintains ratepayer indifference, maximizes use of a valuable alternate fuel, and resolves a long-standing dispute between SDG&E and Pacific.

14. The Settlement Agreement is consistent with other settlements approved by the Commission to resolve QF/utility disputes.

Conclusions of Law

1. Exhibits 1 and 2 should be received in evidence.

2. The Settlement Agreement should be approved. SDG&E's costs properly incurred pursuant to the Settlement Agreement should be found reasonable and recoverable in its ECAC proceeding.

3. This order should be made effective immediately in order to allow the parties to avoid a lengthy trial and resolve the uncertainty created by the long-standing dispute.

O R D E R

IT IS ORDERED that the Settlement Agreement between San Diego Gas & Electric Company (SDG&E) and Pacific Energy is approved. SDG&E's costs properly incurred pursuant to the Settlement Agreement shall be deemed reasonable and recoverable in SDG&E's rates.

This order is effective today.

Dated December 6, 1990, 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

NEAL J. SHULMAN, Executive Director