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Decision 91-06-050 June 19, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for an order approving settlement of a complaint case brought by Dexzel, Inc., and amendment of the long-term Energy and Capacity Power Purchase Agreement between Pacific Gas and Electric Company and Dexzel, Inc.	ORIGINAL Application 91-03-049 (Filed March 21, 1991)
Dexzel, Inc., a corporation, Complainant, vs. Pacific Gas and Electric Company, a corporation, Defendant.	Case 90-07-068 (Filed July 27, 1990)

OPINION

1. The Complaint

Dexzel, Inc. (Dexzel) operates a 29 megawatt natural gas-fired combined cycle enhanced oil recovery (EOR) cogeneration facility located in Kern County, near Bakersfield, California. The gas turbine generator has a nominal capacity of 23 megawatts. Its electrical output is not affected by EOR steaming operations. The steam turbine generator has a nominal output of approximately 8.5 megawatts which give the combined cycle facility a nominal capacity of approximately 31.5 megawatts. With EOR operations, the steam available to the steam turbine generator is reduced, causing a

reduction in that unit's electric production. This facility first generated electricity into Pacific Gas and Electric Company's (PG&E) grid on November 30, 1989, pursuant to an Interim Standard Offer 4 power purchase agreement (PPA).

The PPA provides that PG&E may receive firm capacity of 29 megawatts and that if so "PGandE's obligation to pay for firm capacity shall begin on the firm capacity availability date." The PPA defines the "firm capacity availability date" as

> [t]he day following the day during which all features and equipment of the Facility are demonstrated to PGandE's satisfaction to be capable of operating simultaneously to deliver firm capacity continuously into PGandE's system as provided in this Agreement.

To satisfy itself that a qualifying facility (QF)[1] is capable of operating simultaneously to deliver firm capacity continuously into its system, PG&E requires the QF to take a firm capacity demonstration test (FCDT). By passing the FCDT, the QF fulfills the condition precedent to receiving firm capacity payments.

On February 20, 1990, Dexzel completed a 10 consecutive day FCDT at its Bakersfield facility. Dexzel conducted the FCDT without simultaneously conducting EOR operations in the oil fields adjacent to its facility. According to Dexzel, performing the FCDT in such a manner was appropriate because Dexzel does not intend to conduct EOR operations during any on-peak hour of any summer peak month. Thus, in performing the FCDT without simultaneously conducting EOR operations, Dexzel asserted it operated the facility and generated electricity under the identical operating conditions that will exist during the peak hours of the summer peak months.

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1 A qualifying facility is an independent electrical generating plant that qualifies for certain benefits under the Federal Public Utility Regulatory Policies Act of 1978.

Dexzel asserted that the facility therefore will satisfy the performance requirements of the PPA.

In March 1990, PG&E began paying Dexzel for the energy its facility was delivering to PG&E. PG&E disputed, however, the validity of Dexzel's FCDT. Because Dexzel performed the test without simultaneously conducting EOR operations, PG&E was unaware of the extent to which the facility's electrical output would be reduced during such operations. PG&E, therefore, asserted that Dexzel's FCDT was invalid and Dexzel was not entitled to payments for firm capacity because Dexzel had not demonstrated to PG&E's satisfaction that the facility was capable of operating simultaneously to deliver the specified amount of firm capacity continuously into PG&E's system as required by the PPA.

On July 27, 1990, Dexzel filed Complaint 90-07-068 in which Dexzel requested, among other things, that the Commission determine the following: (1) for purposes of the PPA, the Dexzel facility qualified for a firm capacity rating of 29 megawatts effective February 20, 1990; (2) February 20, 1990 was the firm capacity availability date for the facility; (3) PG&E was obligated to make firm capacity payments to Dexzel calculated by using a firm capacity rating of 29 megawatts; (4) Dexzel was entitled to interest on the capacity payments PG&E withheld; (5) the timing of PG&E's payments for firm capacity was not in accordance with the PPA; and (6) PG&E breached its duty to act towards Dexzel in good faith.

In August 1990, the parties executed an interim agreement regarding Dexzel's disputed right to receive firm capacity payments. In that agreement, which was to remain in effect pending resolution of the complaint case, PG&E agreed to make an initial capacity payment to Dexzel for the period February 20, 1990 through June 30, 1990, and for the future, agreed to pay Dexzel each calendar month a capacity payment based on 27.5 megawatts.

After PG&E filed its answer to the complaint, the parties engaged in further settlement negotiations which produced the settlement agreement described below and submitted with Application (A.) 91-03-049.

2. The Application

In A.91-03-049, PG&E seeks an order that:

(1) finds the terms of the "Settlement Agreement and Mutual Releases" (settlement agreement) which resolve the complaint case Dexzel, Inc. (Dexzel) filed against PG&E on July 27, 1990 (Case (C.) 90-07-068) are reasonable and prudent and will serve the ratepayers' interests, and approves the settlement agreement and this application;

(2) determines that all payments made pursuant to the settlement agreement and the Interim Standard Offer 4 power purchase agreement (PAA) to which it relates, as amended consistent with the settlement agreement, are reasonable, and that PG&E is authorized to recover all such payments through PG&E's Energy Cost Adjustment Clause (ECAC) or any other mechanism the Commission establishes which provides for full recovery of such payments;

(3) determines that Commission approval of this settlement agreement is final and not subject to further reasonableness review;

(4) dismisses, with prejudice, the complaint and the supplement amendment thereto that Dexzel filed against PG&E.

At issue in the complaint case is whether Dexzel has satisfied a condition precedent to Dexzel's right to receive firm capacity payments at the level specified in Dexzel's PPA. The PPA provides that such payments begin only after "all features and equipment of [Dexzel's] facility are demonstrated to PGandE's satisfaction to be capable of operating simultaneously to deliver

firm capacity continuously into PGandE's system . . . ." PG&E maintained that Dexzel had not demonstrated to PG&E's satisfaction Dexzel's ability to deliver continuously the specific level of firm capacity.

The settlement agreement includes prohibitions and protective features that give Dexzel added incentives to deliver firm capacity to PG&E during all on-peak and partial-peak hours when PG&E's capacity needs are greatest. Moreover, PG&E asserts that these features provide PG&E and its ratepayers protection and financial remedies should Dexzel fail to comply with the settlement agreement. They ensure that PG&E and its ratepayers pay for firm capacity based only on the level of firm capacity Dexzel actually delivers as specified in the settlement agreement and in accordance with the provisions set forth in the PPA.

With the settlement agreement in place, PG&E is now satisfied that Dexzel can and will deliver to PG&E the level of firm capacity specified in Dexzel's PPA. The settlement agreement, in PG&E's opinion, not only places the parties in the position they would have been in had the dispute never arisen, it actually places them in improved positions. Dexzel's performance obligations regarding firm capacity deliveries are now clarified. PG&E and its ratepayers benefit from the increased incentives Dexzel now has to deliver firm capacity when PG&E needs it the most.

3. The Settlement Agreement

3.1. The Problem

The performance requirements provision of Dexzel's PPA in pertinent part provides:

> To receive full capacity payments, the firm capacity shall be delivered for all of the on-peak hours in the peak months on the PGandE system, which are presently the months of June, July, and August . . . .

During the parties' settlement negotiations, Dexzel stressed that it had no intention of conducting EOR operations during the on-peak hours of the summer peak months, and its FCDT showed it could deliver 29 megawatts when the facility ran without EOR operations. Dexzel, therefore, maintained that because it had performed the FCDT in the manner it would actually operate its facility during the on-peak hours of the summer peak months, it was entitled to capacity payments based on 29 megawatts.

PG&E maintained that if Dexzel wanted firm capacity payments based on 29 megawatts, the PPA required Dexzel to be able to deliver the full 29 megawatts regardless of when, during the year, the deliveries occurred. Thus, Dexzel's FCDT was not satisfactory because if Dexzel chose to conduct EOR operations during on-peak and partial-peak periods, PG&E would be paying for firm capacity based on 29 megawatts without the assurance that Dexzel could in fact deliver 29 megawatts while simultaneously performing EOR operations.

3.2 The Solution

3.2.1 Dexzel's Increased Performance Commitments

In return for PG&E's recognition of February 20, 1990 as the firm capacity availability date and its agreement to make firm capacity payments based on 29 megawatts subject to the terms and conditions of the PPA and the settlement agreement, Dexzel promises not to conduct EOR operations during the on-peak and partial-peak hours of PG&E's peak summer months (currently June, July, and August). Dexzel further agrees not to conduct EOR operations during the on-peak and partial-peak hours of the nine remaining months of the year.

The settlement agreement enables PG&E to monitor Dexzel's compliance with the foregoing restrictions. It obligates Dexzel to submit to PG&E a monthly written report which identifies every half-hour period during the prior month when Dexzel conducted EOR operations during any portion of an on-peak or partial-peak hour.

PG&E has the right to inspect Dexzel's facility and to review its records evidencing the hours of its EOR operations to verify the reports Dexzel submits pursuant to the settlement agreement. Moreover, if Dexzel fails to submit its monthly report within the requisite time period, PG&E may defer any firm capacity payments otherwise due to Dexzel for the previous month until Dexzel supplies PG&E the missing report.

3.2.2 Penalties for Non-compliance

In the event Dexzel conducts EOR operations during any half-hour interval of the proscribed periods of one of the peak summer months (currently June, July, and August), PG&E's firm capacity payment to Dexzel for that entire month will be based on 27.5 megawatts rather than 29 megawatts. For Dexzel, this monetary penalty for conducting just one-half hour of prohibited EOR operations during any one of these months could be over $50,000. Moreover, in any month in which Dexzel is paid capacity payments based on 27.5 megawatts, Dexzel will continue to receive as-delivered capacity payments only for generation in excess of 29 megawatts as provided in the PPA.

If Dexzel conducts EOR operations during any half-hour interval of the proscribed periods of the remaining nine months of the year, PG&E's firm capacity payment to Dexzel will be based on 27.5 megawatts for those proscribed hours during which Dexzel conducted EOR operations. For the remaining hours during which Dexzel did not conduct EOR operations, Dexzel's firm capacity payment will be based on 29 megawatts.

In addition to these capacity payment penalties, Dexzel's conduct of EOR operations during a proscribed period gives PG&E certain economic curtailment rights. Essentially, for every two hours that Dexzel conducts EOR operations during a proscribed time period, PG&E may in the following year curtail Dexzel's energy deliveries during the off-peak and super off-peak hours in the

months of November through June for one hour up to a maximum of 1,000 hours.

4. Discussion

The Division of Ratepayer Advocates (DRA) has reviewed the complaint, application, and settlement agreement and recommends approval of the settlement, subject to later Commission review of the reasonableness of PG&E's performance and administration of its obligations and the exercise of its rights under the PPA and settlement agreement. PG&E has agreed to this recommendation. DRA believes that the enforcement provisions of the settlement agreement provide a strong incentive to Dexzel to deliver 29 megawatts of firm capacity as provided by the PPA and that those provisions protect the ratepayers.

We have reviewed the settlement agreement and its underlying documents and find that the settlement is in the public interest and should be approved subject to the condition requested by DRA. We wish to make one point of clarification. We are approving the terms of the settlement agreement, which includes the underlying purchase power agreement, but we are not finding reasonable any payments. We have not been given any detail on payments.

Findings of Fact

1. The terms of the Settlement Agreement and Mutual Releases which resolve C.90-07-068 are reasonable and PG&E's entering into them is prudent and will serve the ratepayers' interests.

2. (a) The Settlement Agreement and Mutual Releases are approved.

(b) This approval is final and not subject to further reasonableness review.

3. All payments made pursuant to the Settlement Agreement and the Interim Standard Offer 4 power purchase agreement to which

it relates, as amended consistent with the settlement agreement, may be recovered by PG&E through its ECAC or any other mechanism the Commission establishes which provides for the recovery of such payments.

4. Any payments made by PG&E under the PPA, as amended, are subject to Commission review of the reasonableness of those payments, as are PG&E's performance and administration of its obligations and exercise of its rights under the PPA.

Conclusions of Law

1. The application should be granted as set forth in the following order.

2. C.90-07-068 should be dismissed with prejudice.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement and Mutual Releases dated as of November 30, 1990 between Dexzel, Inc., and Pacific Gas and Electric Company (PG&E) are approved.

2. All payments made pursuant to the Settlement Agreement and the Interim Standard Offer 4 power purchase agreement (PPA) to which it relates, as amended consistent with the settlement agreement, may be recovered by PG&E through its Energy Cost Adjustment Clause or any other mechanism the Commission establishes which provides for the recovery of such payments.

3. Any payments made by PG&E under the PPA, as amended, are subject to Commission review of the reasonableness of those payments, as are PG&E's performance and administration of its obligations and exercise of its rights under the PPA.

4. C.90-07-068 is dismissed with prejudice.

This order is effective today.

Dated June 19, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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

NEAL J. SHULMAN, Executive Director