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Decision 91-11-046 November 20, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Amendment to Joint Application of)
 Pacific Gas and Electric Company and)
 GWF Power Systems, L.P., for an)
 Expedited Order Approving Settlement)
 of a Dispute Over Interpretation of)
 a Standard Offer Power Purchase)
 Agreement and an Amendment to That)
 Power Purchase Agreement.)
 (U 39 E))

ORIGINAL

Application 91-06-059
 (Filed June 25, 1991;
 amended September 18, 1991)

OPINION

This decision approves an application filed jointly by Pacific Gas and Electric Company (PG&E) and GWF Power Systems, L.P. (GWF). The parties filed this application on June 25, 1991 and subsequently amended it on September 18, 1991 to reflect changed circumstances.

GWF executed an Interim Standard Offer 4 power purchase agreement (PPA) with PG&E in 1985. The PPA is for a 23 megawatt coal-fired cogeneration facility located at Hanford.

The PPA provides for 100% fixed energy prices for the first ten years of operation and a firm capacity price of \$178 per kilowatt per year. The contract was amended to extend the on-line date to August 1991, due to an alleged force majeure event.

On June 28, 1991, PG&E and GWF filed a joint application for approval of a settlement agreement which resolves a dispute between the parties regarding whether GWF had satisfied its five-year on-line date. On September 18, 1991, PG&E and GWF filed an amendment to the application which requests approval of a subsequent agreement. The second agreement provides that, in exchange for a \$5 kilowatt per year reduction in capacity price, the primary fuel source for the facility would be converted from

coal to a co-firing of petroleum coke and natural gas. This second amendment results from a zoning change prohibiting coal-burning plants passed by the City of Hanford.

Division of Ratepayer Advocates (DRA) filed comments on the application. DRA comments that the issues presented in the application do not require Commission preapproval. Given the small size of the project, the strength of the force majeure claims, and the likelihood of ratepayer benefits under the settlements, DRA believes the application addresses minor administration issues which could have been more efficiently reviewed in PG&E's annual ECAC. Nevertheless, DRA recommends approval of the contract on the basis that the contract amendments are projected to result in benefits to PG&E's ratepayers. It believes that over the life of the contract the contract amendments are likely to result in an estimated present value savings to ratepayers of about \$1.4 to \$1.6 million, as compared to the original contract.

Discussion

PG&E and GWF modified their PPA the first time to permit an extension of the five-year on-line date. PG&E now seeks approval of the amendments to the PPA in order to be assured that it may recover the costs associated with the PPA.

Decision (D.) 88-10-032 adopted guidelines for electric utilities' administration of their standard offer contracts with qualifying cogeneration and small power productions facilities (QFs). Under those guidelines, the five-year on-line date may be extended where a force majeure event occurs. In this case, the first settlement resolves GWF's allegation that its inability to secure all necessary permits prior to its on-line date is a force majeure event. GWF did not have all final operating permits because the state Court of Appeal ruled that the City of Hanford's environmental impact report and site plan, upon which GWF's local permits were granted, were inadequate. PG&E alleged that the

court's ruling was not a force majeure event because it was foreseeable and controllable.

The second settlement addresses GWF's claim that the City of Hanford's prohibition on coal-fired cogeneration is a force majeure event. PG&E challenges GWF's force majeure claim on the basis that GWF did not notify PG&E on a timely basis of the passage of the pertinent zoning change.

The pending joint application does not resolve whether the events in question are legitimate force majeure claims nor do the settlements waive the parties' rights with regard to the force majeure claims. Rather, the settlements preclude GWF from asserting a force majeure claim if the Commission approves the joint application. A court ruling which was favorable to GWF could be costly to PG&E and its ratepayers because of the possibility that PG&E could be required to adhere to the original contract terms. If PG&E prevailed in litigation, it could be excused from a high cost standard offer 4 contract.

We cannot determine on the basis of the record whether GWF's force majeure claims would be honored by the courts. It appears, however, that the claims have some validity, as DRA comments. The application, if approved, would resolve these force majeure claims and reduce the uncertainty of associated litigation. The quid pro quo for GWF's agreement to waive its future legal claims are price concessions in the first settlement which are estimated in present value terms to save ratepayers between \$550,000 to \$750,000, depending on whether PG&E or GWF prevailed in a legal action. Price concessions in the second settlement are estimated to save ratepayers about \$810,000.

The original PPA would have cost ratepayers more than the one which is the subject of the joint application by about \$1.5 million. Moreover, under the terms of the amended PPA, the GWF project appears to be environmentally superior to the original

coal-fired project. The joint application presents a reasonable resolution of the parties' dispute and is supported by DRA.

We find the amended PPA reasonable and will approve the application as filed.

Findings of Fact

1. As compared to the original PPA, the amended PPA is estimated to save ratepayers approximately \$1.5 million over the life of the agreement, and provides for an energy project which appears environmentally superior to the original project.

2. The amended PPA, filed as part of the amended application in this proceeding, and associated pricing provisions are reasonable.

Conclusions of Law

1. The pricing provisions of the amended PPA should not be subject to further reasonableness review by this Commission, but the Commission should be able to ascertain that the PPA is being administered prudently and that any payments are made in accordance with the amended terms thereof.

2. The amended PPA should be approved.

ORDER

IT IS ORDERED that:

1. The amended Standard Offer No. 4 Power Purchase Agreement for Long-Term Energy and Capacity (PPA) is approved.

2. The pricing provisions of the amended PPA are reasonable, and PG&E is entitled to recover all payments made pursuant thereto through PG&E's Energy Cost Adjustment Clause or any other mechanism the Commission may establish which provides for full recovery of such payments.

3. The Commission's approval of the amended PPA is final and not subject to further reasonableness review, except as otherwise provided herein.

4. Any recovery of payments under the PPA is subject to Commission review of the reasonableness of PG&E's performance and administration of its obligations and exercise of its rights under the PPA.

5. This final order disposes of all issues in A.91-06-059 and closes this proceeding.

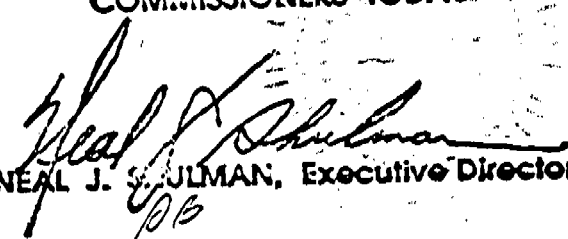
This order is effective today.

Dated November 20, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

Commissioner John B. Ohanian,
being necessarily absent, did not
participate.

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


NEAL J. SULMAN, Executive Director