

Decision 91-11-062 November 20, 1991

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Application of Pacific Gas and Electric Company For An Order Approving Amendment of the Long-Term Energy and Capacity Power Purchase Agreement Between Pacific Gas and Electric Company and BAF Energy. ) Application 91-05-047 (Filed May 22, 1991)

Application of Pacific Gas and Electric Company for an Order Approving Amendment of the Long-Term Energy and Capacity Power Purchase Agreement Between Pacific Gas and Electric Company and Gilroy Energy Company. ) Application 91-06-012 (Filed June 6, 1991)

OPINION

I. Summary

This decision approves the contracts that Pacific Gas and Electric Company (PG&E) has signed with BAF Energy (BAF) and the Gilroy Energy Company (Gilroy) for the purpose of complying with Decision (D.) 90-12-098. The contract terms are found to be reasonable. PG&E is authorized to recover the cost of purchases made pursuant to these contracts through its Energy Cost Adjustment Clause (ECAC). However, the reasonableness of PG&E's exercise of its rights and obligations under the contracts during any ECAC review period will be subject to prudence review.

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## II. Procedural Background

### A. The Qualifying Facilities

BAF operates a 120 MW gas-fired cogeneration facility located at the Basic American Foods vegetable dehydration plant in King City, California. Gilroy operates a 130 MW gas-fired cogeneration facility located at the Gilroy Foods Facility in Gilroy, California. Both qualifying facilities (QFs) currently purchase natural gas from PG&E to fuel their facilities.

BAF sells its electrical output to PG&E pursuant to a 30-year interim standard offer 4 contract, which was modified by the parties on May 28, 1987. The modifications require BAF to curtail energy deliveries during specified periods. PG&E retains the right to issue specific operating orders during the ordinarily curtailed period, and if BAF responds with energy within a stated period, it will receive reimbursement for the additional cost incurred to cycle its facility.

Gilroy executed a 30-year interim standard offer 4 contract with PG&E on December 19, 1983. The contract's June 9, 1986 amendment provides, in relevant part, that PG&E may annually elect whether or not to accept energy during certain months and during certain hours of the day. In exchange, PG&E pays Gilroy certain costs for cycling the facility plus an energy adder for deliveries made during the noncurtailable months.

### B. D.90-12-098

In 1989, PG&E exercised its right to curtail the Gilroy plant. The drop in Gilroy's natural gas consumption in early 1989, as compared with the same months in 1988, triggered the minimum bill provision of PG&E's rate schedule G-COG. Gilroy incurred large demand charges and brought a complaint to the Commission. BAF joined the complaint.

The Commission determined that PG&E had properly assessed the demand charges pursuant to its natural gas tariffs and denied

the complaint. However, the Commission ordered PG&E to renegotiate the power purchase agreements (PPAs) so that PG&E's electric ratepayers would compensate Gilroy and BAF for demand charges incurred as a result of the PPA's dispatchability provisions. D.90-12-098 ordered PG&E to submit the renegotiated contracts for Commission approval.

### III. Applications for Approval of Renegotiated PPAs

PG&E filed Application (A.) 91-05-047 and A.91-06-012, seeking approval of its renegotiated contracts with BAF and Gilroy, respectively. In each application PG&E requests a Commission order finding the following:

1. The terms of the PPA amendment are reasonable and PG&E's entering into the amendment is prudent.
2. The PPA as amended is conclusively presumed to be reasonable, and PG&E's payments required under the amended PPA are reasonable and may be recovered through PG&E's ECAC subject only to reasonableness review of PG&E's performance of its obligations and exercise of its rights under the amended PPA.
3. The application and the PPA, as amended, are approved.
4. This approval is final and not subject to further reasonableness review.

The two applications of PG&E were consolidated for procedural purposes. Both of the subject amendments require PG&E to compensate the QF for any natural gas use-or-pay surcharges and over/underbalance penalties required by PG&E's natural gas tariffs if the QF incurs these charges as a direct result of its compliance with PG&E's rescheduling of the QF's generation.

In addition, PG&E would be required to compensate BAF and Gilroy for any extra cost of incremental quantities of natural gas incurred as a direct result of PG&E's rescheduling of the QFs' operation on short notice. The PPA amendments also alter BAF and Gilroy's payment schedules. Each PPA amendment is described below.

**A. BAF**

The PPA amendment under review here (the Second Amendment) requires BAF to remit to PG&E the demand charges it incurred in 1989, which total \$1,621,212. BAF will then receive \$1,621,212 from PG&E in six monthly payments as compensation for PG&E's dispatch of the facility in 1989. The amendment restructures the curtailment schedule so that PG&E will be relieved of its obligation for a number of start-up payments. According to PG&E, this will provide ratepayers with savings that total a net present value of \$2.62 million. The Second Amendment's net present value to ratepayers is \$1 million, expressed in 1992 dollars.

The parties had previously agreed that the curtailment provisions would terminate on April 29, 1999, although the PPA will not terminate until 2018. PG&E now has an option to extend the curtailment provisions for up to two years beyond the current 10-year term.

**B. Gilroy**

Gilroy's PPA amendment (the Fourth Amendment) contains a number of provisions to simplify curtailment procedures. To the extent Gilroy fails to comply with timely operating orders from PG&E, its firm capacity payment will be reduced. Curtailment adders were shifted to the time of year during which dispatchability is most valuable to PG&E. By changing the incentive from an energy price adder to a capacity price adder, the parties avoided the risk that the cost of the adder would escalate if energy prices increase.

PG&E calculates the net ratepayer benefits from the Fourth Amendment to be approximately \$864,000. This benefit results from changing the load following reward from a percentage of energy payments to a percentage of capacity payments. Moreover, Gilroy will pay PG&E the entire amount of the gas demand charges disputed in the complaint, or \$1,231,650.

The Fourth Amendment, with its dispatchability provisions, will terminate after 1998, which is the end of the fixed price period under Gilroy's existing PPA.

#### IV. Comments of Division of Ratepayer Advocates

The Commission's Division of Ratepayer Advocates (DRA) filed comments on the renegotiated contracts. DRA believes that the amendments as a whole warrant Commission approval, although DRA characterized PG&E's obligation to reimburse the QFs for gas surcharges as imposing unnecessary ratepayer risk.<sup>1</sup> PG&E replied that the provisions on reimbursement for charges or penalties imposed under the PG&E natural gas tariffs are proper, since the Commission's rules are interim and the parties wish to avoid frequent renegotiation of the PPA.

DRA questioned the provisions in the amended PPAs which grant the QFs recovery from ratepayers of any cost above PG&E's average UEG tariff rate when the QF is required to obtain spot gas to comply with a PG&E operating order; DRA proposed that the QF should refund to ratepayers any spot gas savings it might enjoy under those circumstances. PG&E replied that the situation is unlikely to occur and electric ratepayers are indifferent to

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<sup>1</sup> Under the Commission's gas industry restructuring order, effective August 1, 1991, full-requirements natural gas customers are not liable for use-or-pay charges. DRA believes that PG&E should not offer to compensate the QFs for use-or-pay charges.

whether QFs can obtain gas at a cost lower than the benchmark price.

DRA was also concerned that the renegotiated PPAs could establish a precedent for imposing on ratepayers the risk of fluctuating gas costs to dispatchable QFs. PG&E responded that these agreements were negotiated in response to a specific Commission decision and should not be interpreted as setting any precedent.

### V. Discussion

The renegotiated PPAs accomplish what PG&E was directed to do in D.90-12-098. In the event that the QFs incur surcharges or penalties as a direct result of PG&E's rescheduling of their facilities operation, PG&E will reimburse them for the natural gas surcharge or penalty.

The natural gas demand charges that were the subject of the BAF and Gilroy complaint were related to the unpredictability of curtailment. This problem should be resolved by PG&E's agreement to provide an estimated dispatch schedule to the QF by May 1 during the period for which the QF must secure gas deliveries (the "gas year" - August 1 through July 31). PG&E will update the estimated schedule by July 1 each year. The QF will use the estimated schedule to plan its probable natural gas needs and contract for sufficient supplies.

Both BAF and Gilroy have agreed to contract for natural gas transportation service under the full requirements option of PG&E's natural gas tariffs, which were implemented August 1, 1991. The gas purchase demand charge was replaced on August 1, 1991, with an annual use-or-pay charge. This will apply only if on an annual basis, the QF has taken 75% or less of the natural gas contracted for.

We find that electric ratepayers would be unlikely to incur any responsibility for demand-related penalties because under ordinary circumstances, it is unlikely that PG&E would make significant changes to the estimated operating hours. BAF and Gilroy would only incur natural gas penalties if PG&E requires the facility to operate a significantly different number of hours than specified in the schedule. The coordination of the QF's operating hours and the new annual use-or-pay charge will significantly reduce the risk of the PPA amendments to ratepayers.

The changes in the calculation of start-up payments and curtailment adders also will result in net ratepayer benefits. As a whole, the amendments are reasonable and should be approved.

DRA had argued that the preapproval language requested by PG&E is overly broad because the applications request approval of the payments before they have been made. PG&E disagrees; it stresses that it is seeking only approval of the reasonableness of the terms of the amended PPA. PG&E agrees with DRA that its administration of the amended PPA may be subject to reasonableness review in its ECAC proceedings.

DRA has raised an important point. PG&E acknowledges the difference between preapproval of a PPA and preapproval of all payments made under that contract. This decision addresses only the reasonableness of the terms and conditions of the amended PPAs.

**VI. Conclusion**

We find the terms of the amended PPAs to be reasonable. Payments under these PPAs are subject to recovery in PG&E's ECAC. However, any concerns about the reasonableness of utility administration of the agreements must be satisfactorily addressed in the ECAC reasonableness review.

Findings of Fact

1. The amendment to the PPA between PG&E and BAF complies with D.90-12-098, safeguards ratepayer interests, and results in ratepayer benefits having a net present value of \$120 million.
2. The amendment to the PPA between PG&E and Gilroy complies with D.90-12-098, safeguards ratepayer interests, and results in ratepayer benefits having a net present value of \$864,000.
3. This order should be effective immediately to enable the QFs to plan their natural gas purchases in the most economically efficient manner.

Conclusions of Law

1. The terms of the Second Amendment to the BAF PPA are reasonable.
2. The terms of the Fourth Amendment to the Gilroy PPA are reasonable.
3. PG&E's execution of the Second Amendment to the BAF PPA was prudent.
4. PG&E's execution of the Fourth Amendment to the Gilroy PPA was prudent.

ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company's (PG&E) May 22, 1991 application for an order approving the Second Amendment to the BAF Energy (BAF) Power Purchase Agreement (PPA) is granted to the extent indicated in this decision.
2. PG&E's PPA with BAF, as amended by the Second Amendment, is approved.
3. PG&E's June 6, 1991 application for an order approving the Fourth Amendment to the Gilroy Energy Company (Gilroy) PPA is granted to the extent indicated in this decision.
4. The Gilroy PPA, as amended by the Fourth Amendment, is approved.



5. The terms of the BAF PPA, as amended by the Second Amendment, and the terms of the Gilroy PPA, as amended by the Fourth Amendment, are reasonable, and PG&E's payments required under the amended PPAs may be recovered through PG&E's Energy Cost Adjustment Clause or any other mechanism the Commission establishes which provides for recovery of such payments, subject only to reasonableness review of PG&E's performance of its obligations and PG&E's exercise of its rights under each of the amended PPAs.

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

7. This approval of the BAF PPA and the Gilroy PPA shall not be cited as precedent for the reasonableness of any utility PPA that imposes upon electric ratepayers the side of fluctuating gas costs.

8. Application (A.) 91-05-047 and A.91-06-012 are hereby closed.

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. SHULMAN, Executive Director