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Decision June 2, 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND)
 ELECTRIC COMPANY and THE REGENTS)
 OF THE UNIVERSITY OF CALIFORNIA)
 for an order authorizing them to)
 carry out the terms and conditions)
 of those agreements, dated May 19,)
 1982, for the sale and delivery of)
 electric power to THE REGENTS OF THE)
 UNIVERSITY OF CALIFORNIA for use at)
 the University of California Campus)
 in Berkeley, California, and the)
 Lawrence Berkeley Laboratory)
 Facilities in Berkeley-Oakland,)
 California.)

Application 82-05-54
(Filed May 24, 1982)

(Electric)

OPINION AND ORDER

Summary

In this order, we approve the agreements reached May 19, 1982 between Pacific Gas and Electric Company (PG&E) and The Regents of the University of California (Regents) which will settle a longstanding dispute concerning contract electric rates, and which will permit PG&E to wheel electricity for use at the Lawrence Berkeley Laboratory at Berkeley and Oakland.

The application is granted on an emergency basis without public agenda notice pending further review based on the allegations in the application that expedited approval by June 2, 1982 is required to preserve allocations of electric power by Western Area Power Administration (WAPA) to the United States Department of Energy (DOE) for ultimate use at Lawrence Berkeley Laboratory.

Background

By Advice Letter 262-E, dated November 15, 1965, PG&E has furnished electricity under contract to the University of California campus at Berkeley (UC Berkeley) and to Lawrence Berkeley Laboratory facilities at Berkeley and Oakland.

A dispute arose between PG&E and Regents as to the terms of the contract. That dispute is the subject of a suit filed by Regents in the Alameda County Superior Court entitled Regents of UC v PG&E, Action 517070-4. The main thrust of the lawsuit is the method of inclusion of fuel cost adjustment charges (ECAC, FAC, and GCOC) in the formula for monthly billing in the contract. The two agreements which are the subject of this application were reached in settlement of that suit.

Agreements for Which Approval is Sought

The principal provisions of the agreements between PG&E and Regents (copies of which are attached as Exhibits 2 and 3 to the application), are as follows:

1. The General Campus Area and Lawrence Berkeley Laboratory facilities are, for the first time, treated as separate services. Regents initially is the customer and contracting party under both Agreements, although DOE may be substituted as the customer under the Lawrence Berkeley Laboratory Facilities Agreement.
2. Under the Agreement for service to the Lawrence Berkeley Laboratory facilities the major portion of the total load, served through Grizzly Substation Transformer Bank No. 1, will be interruptible and pursuant to the standard form PG&E Contract for Interruptible Service--Time Metered, and PG&E's Schedule No. A-18B. The remainder of the load to these facilities, served through Grizzly Substation Transformer Bank No. 2, shall be pursuant to the standard form PG&E Contract for Electric Service General Service--Time Metered, and Schedule No. A-23.

3. PG&E has agreed that, if requested by the WAPA in accordance with Contract No. 14-06-200-2948A between PG&E and WAPA, it will wheel an allocation of firm electric power on a long-term basis by WAPA to Lawrence Berkeley Laboratory facilities. A diversity allocation has been made by WAPA to DOE laboratories, and it is anticipated that DOE will designate all or a portion of that allocation for delivery to and use by Lawrence Berkeley Laboratory facilities. In connection with this commitment, PG&E has agreed to waive the requirement that the wheeled electric power be used outside the boundaries of a municipality within which PG&E serves at retail.
4. Under the Agreement for the General Campus Area, a portion of the service--6 MW of the large DC magnet load of the Low Temperature Laboratory--is designated as interruptible. Moreover, a firm service level of 16 MW has been established for the Campus and all demand load in excess of the firm load is subject to curtailment.
5. PG&E and Regents jointly have undertaken a unique Conservation and Load Management Project Program. Under this Program, PG&E has committed to contribute \$500,000 per year, and Regents has committed to contribute \$300,000, in 1982 and 1983, for conservation and load management projects specified and selected as provided in the Project document attached as Exhibit B to the Agreement. The parties have also committed, subject to specific further approval by this Commission, to expend an additional \$400,000 each in 1984 and in 1985 on such conservation projects.
6. Regents has granted easements to PG&E over campus property for the towers and power lines leading to Grizzly Substation, for the substation itself, and for the rights-of-way leading over the campus from Grizzly Substation to University Substation. Under the terms of the easements, PG&E will have the

right to transmit power from Grizzly Substation to University Substation for service to the Berkeley grid, removing a restraint against such use of these facilities which existed in the 1965 contract.

7. Regents has agreed to dismiss their claims for excessive charges under the 1965 contract, and for the period through December 31, 1981, will receive the rate as PG&E contended that the 1965 contract should be construed if still in effect. A credit will be issued for any payments made in excess of that rate. Effective as of January 1, 1982, a new rate will be established under which Regents will pay the full fuel cost offset specifically designated by the Commission (i.e. the Energy Cost Adjustment Clause and the Annual Energy Rate, or any similar energy acquisition costs, the recovery of which by PG&E in rates specifically intended to offset such costs may be authorized by the Commission) and, in consideration of the service characteristics and benefits described above, the balance of the charges otherwise applicable under PG&E's current Schedule No. A-23, General Service-Time Metered, or any successor schedule, with a multiplicative factor of 0.8025.
8. PG&E has also agreed that it will not refuse to wheel a firm allocation of electric power on a long-term basis from an agency of the United States or the City and County of San Francisco to the General Campus Area, notwithstanding the fact that the electricity so to be delivered will be within a municipality within PG&E's Service Area.
9. The Agreements are subject to termination by Regents on thirty (30) days' written notice and by PG&E on thirty (30) days' written notice on and after January 1, 1995. The Agreements are at all times subject to such changes or modifications as the Commission may direct.

Request for Expedited Approval

The application states that the agreements are the result of extensive negotiations and lengthy settlement conferences held in Alameda County Superior Court. Expedited approval of this application by ex parte order is sought because of the urgent necessity to commence implementation of the agreements without delay. WAPA is seeking to implement the system diversity allocation of its new Marketing Plan, referred to in subparagraph 3(a)(2) of the agreement with respect to the Lawrence Berkeley Laboratory facilities, as of June 1, 1982, and the DOE must now designate those laboratories that will receive all or portions of that allocation. Applicants assert that if the requested order is not granted by no later than June 1, 1982, it may be impossible for Lawrence Berkeley Laboratory facilities to receive any portion of the long-term allocation of this federal hydroelectric power. The loss by Lawrence Berkeley Laboratory facilities of the substantial savings to be realized from the use of such power will, because of the extreme budgetary constraints under which Lawrence Berkeley Laboratory facilities is presently operating, require the immediate termination of major portions of the research and programs currently underway at Lawrence Berkeley Laboratory facilities, including the shutdown from about June 7 to the start of the new DOE fiscal year on October 1, 1982, of the recently improved Bevalac accelerator, which recently produced a notable technological breakthrough in accelerating heavy particles, and curtailment of the Bevalac programs in biomedical research and cancer therapy. In addition, there is significant energy-related research conducted by Regents at these and campus facilities which may have to be curtailed without expedited approval of these agreements.

Expedited approval is sought to permit Lawrence Berkeley Laboratory facilities forthwith to commence receiving a portion of its service subject to interruption, with the consequent savings to be derived under Schedule A-18B. Expedited approval also is sought to

permit immediate implementation of the agreement with respect to the General Campus Area, and commencement of the Conservation and Load Management Project Program. Prompt commencement of these projects assertedly will ensure maximum utilization of the fixed amounts designated for the program, without diminution by reason of escalating costs and without delaying realization of the reduced energy consumption which it is anticipated will result from these projects.

Applicants state that the proposed agreements, by their terms, require approval by the Commission and not mere acceptance for filing, to become effective. However, the approval of the proposed agreements is requested on an expedited basis consistent with the Commission's policy stated in Section X-B of General Order 96-A with regard to filing regarding service to governmental agencies, and the terms of the agreements are consistent with the policy reflected in the general order concerning the furnishing of service to governmental agencies at rates and upon terms and conditions departing from the filed tariff schedules.

Discussion

It is apparent that the complex agreements have been reached after long negotiation between the parties. The agreements, in addition to settling the dispute raised in the Superior Court action, also establish different bases of rates for the future under which a portion of the load will be served under interruptible tariffs; sizeable annual contributions will be made by PG&E and Regents to specified conservation and load management projects, and a tariff deviation is requested to permit the wheeling of WAPA power to Lawrence Berkeley Laboratory.

Among the most important provisions of the agreements is the commitment of PG&E to wheel low-cost federal power to the Lawrence Berkeley Laboratory facilities and to the Berkeley campus in the event additional such power should become available. The budgetary constraints currently being experienced by Lawrence Berkeley Laboratory assertedly are so extreme that, without this low-cost power, the laboratory will be

required to suspend or terminate highly significant accelerator research within a matter of weeks.

Regents and PG&E urged immediate approval of the application because an allocation of federal energy from WAPA is scheduled to be made on or about June 2, 1982. Assertedly, if the application has not been approved by that date, the Regents cannot assure federal authorities that it is in a position to accept such power, and there is a serious risk that such power would be lost.

We believe that our staff, as well as the Commission, should have more time to analyze this application than the short period between the date of the filing of this application and the date on which approval is sought. In order to assure an allocation of low-cost energy will not be lost to Regents, and also to permit more careful analysis by our staff of terms of the agreement, the agreement will be approved subject to review by our staff and the Commission. It is noted that the agreements provide that they are at all times subject to such changes or modifications as the Commission may direct, hence the further review should present no impediment to implementation of the agreements as approved herein.

We find that, pending further review, the agreements will result in just and reasonable rates and provisions, and that any increases in rates or charges resulting from the application of terms of the agreements are justified.

We conclude the application should be granted as provided in the following order. The order should become effective on the date of signing because of the need for an immediate order to ensure WAPA's allocations of energy to Regents.

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) and The Regents of the University of California (Regents) may enter into the agreements attached as Exhibits 2 and 3 to Application 82-05-54.

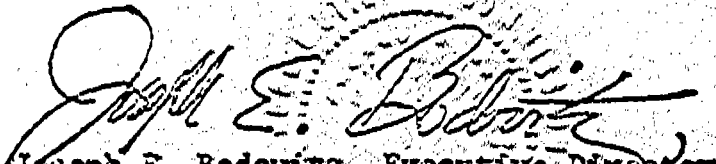
2. This proceeding shall remain open so that our staff may complete analyses of the provisions of the agreements. The staff of the Commission's Utilities Division shall notify PG&E, Regents, and the assigned Commissioner and Administrative Law Judge on or before July 30, 1982 whether, in its opinion, a hearing is necessary.

This order is effective today.

Dated June 2, 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

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


Joseph E. Bodovitz, Executive Director

ALJ/lk/bw

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