

Decision 95-08-019 August 11, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Sierra Pacific Power Company for Authority to Implement its Energy Cost Adjustment Clause (ECAC), its Electric Revenue Adjustment Mechanism (ERAM), and its Low-Income Rate Assistance (LIRA) Surcharge

ORIGINAL

David Norris, Attorney at Law, for Sierra Pacific Power Company, applicant.
Catherine Johnson, Attorney at Law, for the Division of Ratepayer Advocates, and Raymond Chavez, for the Commission Advisory and Compliance Division.

OPINION ADOPTING SETTLEMENT AGREEMENT AND IMPLEMENTING SIERRA PACIFIC POWER COMPANY'S ENERGY COST ADJUSTMENT CLAUSE, ELECTRIC REVENUE ADJUSTMENT MECHANISM, AND LOW-INCOME RATE ASSISTANCE SURCHARGE

Summary

By this decision, we adopt a settlement agreement proffered by Sierra Pacific Power Company (Sierra) and the Division of Ratepayer Advocates (DRA) which we believe resolves all outstanding issues pertaining to the reasonableness portion of the last of Sierra's annual Energy Cost Adjustment Clause (ECAC), Electric Revenue Adjustment Mechanism (ERAM), and Low-Income Rate Assistance (LIRA) Surcharge proceedings. In the future, Sierra will follow a triennial update schedule.

settlement is attached to this order as Appendix A. Because there were no other parties, there was no formally noticed settlement

conference as provided by Rule 21.1 of the Commission's Rules of 1 Public Utilities Code § 739.1, effective January 1, 1995, designated the Commission's program of assistance to low-income customers as the California Alternate Rates for Energy (CARE) program. For consistency with the application, the caption, and the parties' usage, we will in this decision use "LIRA" to refer to this program.

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Procedural Background

On August 29, 1994, Sierra filed an application requesting authority to change certain rates for its electric customers in California. With its application, and pursuant to established Commission procedures, Sierra also submitted a report on the reasonableness of its electric operations for the 12-month record period from July 1, 1993 through June 30, 1994.

A protest was filed by DRA, but no other protests or objections to the application were filed.

DRA's investigation into Sierra's application was divided into the forecast phase and the reasonableness phase. In December 1994, DRA filed its "Forecast Report on Sierra Pacific Power Company For the Period of April 1, 1995 through December 31, 1995." This report (Exhibit 10) describes DRA's examination of Sierra's request to revise its rates for the forecast period and presents its own independent forecast analysis of Sierra's revenue needs.

In February 1995, DRA filed its "Reasonableness Report on Sierra Pacific Power Company For the Period July 1, 1993 through June 30, 1994" (Exhibit 9). That report contains the results of DRA's investigation into the reasonableness of Sierra's operations during the stated record period.

The presiding Administrative Law Judge (ALJ) convened a Prehearing Conference (PHC) on December 13, 1994 in San Francisco, California. Sierra and DRA were the only parties who entered appearances at the PHC and are the only parties of record in these proceedings.

In May 1995, Sierra and DRA entered into a settlement resolving all the issues in this proceeding. A copy of the

settlement is attached to this order as Appendix A. Because there were no other parties, there was no formally noticed settlement

conference as provided by Rule 51.1 of the Commission's Rules of Practice and Procedure. We agree that, under the circumstances,

there was no need for a formally noticed settlement conference, and

we waive the necessity for such formal notice pursuant to the provisions of Rule 51.10. Further, because the parties have reached a settlement of all issues, no hearing on the application is required.

The following exhibits have been admitted into evidence and constitute the record upon which the settlement agreement between the parties and our decision approving that settlement herein are based:

- Exhibit 1 Application dated 08/29/94
- Exhibit 2 Sierra BRAM Forecast Report dated 08/29/94
- Exhibit 3 Sierra LIRA Forecast and Reasonableness Report dated 08/29/94
- Exhibit 4 Sierra ECAC Forecast Report dated 08/29/94
- Exhibit 5 Sierra Reasonableness Report - Reasonableness of Operations During the Record Period July 1993 - June 1994, dated 08/29/94
- Exhibit 6(a) Sierra Appendix G Master Data Request - Data Request Nos. 1 through 83 - dated 08/29/94
- Exhibit 6(b) Sierra Appendix G Master Data Request - Data Request Nos. 84 through 111 - dated 08/29/94
- Exhibit 7 Sierra Appendix G Master Data Request - Data Request Nos. 112 through 149, dated 08/29/94
- Exhibit 8 Sierra ECAC/ERAM/LIRA Workpapers - dated 08/29/94
- Exhibit 9 DRA Reasonableness Report on Sierra Pacific Power Company For The Period July 1, 1993 through June 30, 1994, dated 02/95
- Exhibit 10 DRA Forecast Report on Sierra Pacific Power Company For The Period April 1, 1995 through December 31, 1995 - dated 12/94

Settlement Criteria

In Decision (D) 92-12-019 (Application 92-11-024) provided in Investigation 92-02-004, we had occasion to consider the role of settlements in disposing of the Commission's responsibilities. In that decision, after discussing settlements in general and the settlement in that application in particular, we enunciated a settlement policy or standard by which future "all party" settlements would be measured or evaluated. We stated that

"As a precondition to our approval the Commission must be satisfied that the proposed all party settlement:

a. commands the unanimous sponsorship of all active parties to the instant proceeding;

b. that the sponsoring parties are fairly reflective of the affected interests;

c. that no term of the settlement contravenes statutory provisions or prior Commission decisions; and,

d. that the settlement conveys to the Commission sufficient information to permit us to discharge our future regulatory obligations with respect to the parties and their interests." (D, 92-12-019, December 9, 1992, 46 CPUC 2d 538, 550-551.)

We are satisfied the the settlement proposed in the application now before us meets each of the above criteria, and should be approved. (a) The proposed settlement was entered into by and between Sierra, representing the company's interests, and DRA, representing the interests of the ratepayers. No other parties responded to the application or entered an appearance at any stage of the proceedings; (b) the sponsoring parties fairly reflect the interests of those affected by this proceeding, namely, the company and its shareholders, and the ratepayers; (c) examination of the proposed settlement fails to reveal any provision that would contravene any statutory provision over which

the Commission has jurisdiction over any Commission decision, and (d) the settlement contains sufficient information to allow the Commission to discharge its future regulatory obligations with respect to the parties to the settlement and their interests.

Waiver of 30-Day Period Section 311(d) of the Public Utilities (PU) Code specifies that the Commission shall issue its decision not sooner than 30 days following filing and service of the proposed decision by the ALJ, except that the 30-day period may be reduced or waived by the Commission in an unforeseen emergency situation or upon the stipulation of all parties to the proceeding.

Here, all parties to the proceeding, namely Sierra and DRA, have stipulated to waiver of the 30-day period contained in PU Code § 311(d). Thus, the Commission may act upon Sierra's application at any time subsequent to the filing and service of the ALJ's proposed decision.

Waiver of 20-Day Comment Period

Rule 77.21 of the Commission's Rules of Practice and Procedure allows the parties 20 days after the filing of the ALJ's proposed decision in which to file comments to the proposed decision. Here, since no one other than the parties to the settlement agreement appeared in this proceeding and all parties that appeared have signed the settlement agreement and further in view of the fact that the parties have waived the 30-day period contained in § 311(d) of the PU Code, no reason exists why the 20-day comment period should not be dispensed with.

Findings of Fact

1. On August 29, 1994, Sierra filed the instant application seeking authority to implement its ECAC, BRAM, and LIRA surcharge.

2. The only parties which appeared or expressed interest in this proceeding are Sierra and DRA.

3. Sierra and DRA fairly represent the interests of those affected by this proceeding, namely, the company and its shareholders, and the ratepayers.

4. Sierra and DRA have reached a settlement agreement disposing of all issues involved in this proceeding, and have requested our approval of the same. A copy of that settlement agreement is annexed to this decision as Appendix A. In D.92-12-019, we set forth four criteria by which all future all party settlements would be judged, and adopted the policy that any all party settlements meeting those criteria would be approved.

5. The settlement proposed herein meets each of the criteria set forth in D.92-12-019.

6. The settlements proposed herein should be approved. All parties to this proceeding have waived the 30-day period specified in PU Code § 311(d).

7. The 20-day comment period contained in Rule 77.2 of the Commission's Rules of Practice and Procedure should be waived.

Conclusions of Law

1. Sierra and DRA are the only parties to this proceeding.
2. Sierra and DRA have reached a settlement agreement which resolves all outstanding issues in this proceeding.
3. The settlement proffered by the parties satisfies the four preconditions to our approval of settlements expressed in D.92-12-019.

4. All parties to this proceeding have waived the 30-day period contained in PU Code § 311(d).

5. The 20-day comment period contained in Rule 77.2 should be waived.
6. The settlement should be approved.

O R D E R

IT IS HEREBY ORDERED that:

1. The settlement agreement by and between Sierra Pacific Power Company (Sierra) and the Division of Ratepayer Advocates, attached hereto as Appendix A, is approved.

2. Upon the stipulation of the parties, the 30-day period specified in Public Utilities Code § 311(d) is waived.

3. The 20-day comment period contained in Rule 77.2 is waived.

This order is effective today.

Dated August 11, 1995, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners

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

Wesley Franklin

Acting Executive Director

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Sierra Pacific Power Company for Authority to Implement its Energy Cost Adjustment Clause (ECAC), its Electric Revenue Adjustment Mechanism (ERAM), and its Low-Income Rate Assistance (LIRA) Surcharge.

Sierra will utilize data compiled in the best rate case performed on Valley Unit No. 1 in 1982 to determine the performance analysis to be used in the three-year incentive ECAC

SETTLEMENT AGREEMENT

Pursuant to Rule 51.3 of the Commission's Rules of Practice and Procedure, the parties to this motion, SIERRA PACIFIC POWER COMPANY ("Sierra") and the DIVISION OF RATEPAYER ADVOCATES ("DRA"), by and through their undersigned counsel, will jointly propose that the Commission adopt the settlement agreement reached by the parties in this proceeding as set forth below.

The parties agree that the California Public Utilities Commission shall have exclusive jurisdiction over any issues consistent with the law, and in the public interest.

1. The parties request that Sierra's Application and DRA's Reasonableness Report be identified as exhibits and admitted into the record as evidence. Specifically, Volumes 1 through 8 of Sierra's Application and DRA's Reasonableness Report in its entirety should be admitted.

2. The parties agree that the Commission may review Sierra's gas transfer pricing methodology in a subsequent ECAC proceeding.

3. When Sierra makes its three-year incentive ECAC filing as provided in D.94-10-057, it shall utilize the lower of the weighted average spot market price or the firm transfer price to account for gas prices.

4. In future contracts with Qualified Facilities (QF's), Sierra agrees to enter negotiations with the intent to include dispatch provisions, however, Sierra recognizes that dispatch provisions may be less valuable to the ratepayers than other provisions such that each negotiation must be evaluated on its own merit and value to each of the parties. In addition, for

evaluation purposes, Sierra will consider the costs associated with administering such provisions as well as the system constraints involved in utilizing the dispatch provisions. Sierra shall provide all support or summaries in the determination of decisions regarding future contracts upon request by the DRA.

5. Sierra will utilize data compiled in the heat rate test performed on Valmy Unit No. 2 in 1993 to determine the thermal performance analysis to be used in its three-year incentive ECAC filing.

6. Sierra will utilize data compiled in the heat rate test performed on Ft. Churchill Unit No. 2 in 1992 to determine the thermal performance analysis to be used in its three-year incentive ECAC filing and the updated revenue requirements for the current ECAC/ERAM/LIRA filing (A.95-01-032) in September 1995, and will provide such data to the DRA by May 1, 1995.

7. The parties agree that the California Public Utilities Commission shall have exclusive jurisdiction over any issues related to this Settlement Agreement, and that no other court, regulatory agency, or other governing body shall have jurisdiction over any issue related to the interpretation of this agreement, the enforcement of the agreement, or the rights of the parties to the agreement (with the exception of the California Supreme Court in connection with review of any Commission decision). All rights and remedies are limited to those available before the California Public Utilities Commission. The parties further agree that no signatory to this Settlement Agreement, nor any member of the staff of the Public Utilities Commission, assumes any personal liability as a result of this Settlement Agreement. The Settling Parties agree that no legal action may be brought in any state or federal court, or in any other forum, against any individual signatory, party representative, or staff member related to this Settlement Agreement.

8. The DRA is charged with representing the interests of the ratepayers of the State of California, and its participation as a party to this Settlement Agreement is premised upon the

conclusion that the adoption of the settlement by the Commission would be in the interests of the ratepayers of the State of California. If, at any time prior to the Commission's adoption of this Settlement Agreement, DRA determines for any reason that it cannot support this Settlement Agreement because it believes that adoption of the Settlement would not be in the interests of the ratepayers of the State of California, then DRA may withdraw as a party to this Settlement Agreement. In the event that DRA exercises this right, DRA must provide written notice to SIERRA and provide an explanation of the basis for its withdrawal.

9. The parties further agree that at any time after the Commission issues a decision adopting this Settlement Agreement, DRA has the right to petition the Commission for modification of that decision (or modification of its terms in any other related proceeding) if DRA believes that adherence to the terms of the Settlement Agreement is no longer in the interests of the ratepayers of the State of California.

Edward P. Norris
Attorney at Law

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Date: *May 18, 1995*

Ira R. Alderson, Jr.
IRA R. ALDERSON, JR.
Staff Counsel
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Date: *May 24, 1995*

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conclusion that the adoption of the settlement by the Commission would be in the public interest. **CERTIFICATE OF SERVICE** would be in the public interest. If, at any time prior to the Commission's adoption of this Settlement Agreement, DRA determines for any reason that I hereby certify that I have this day served the foregoing document upon all known parties of record in this proceeding by mailing by first class a copy thereof properly addressed to the following: In the Settlement Agreement, DRA must provide written notice to SIERRA and provide an explanation of the basis for the withdrawal. 3. The parties further agree that the Commission issues a decision on the Settlement Agreement. DRA has the right to petition for modification of that decision (or modification of its terms in any other related matter) at any time. **Dated at San Francisco, California, this 18th day of June, 1995** Settlement Agreement is no longer in the interests of the ratepayers of the State of California.

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Bessie J. Klaut
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[Signature]
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Date: May 18, 1995

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Date: May 21, 1995