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APR 23 1997

Decision 97-04-071 April 23, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Gas Company (U 904 G) for Approval Pursuant to the Expedited Application Docket of a Long-Term Agreement with Recot, Inc., dba Frito-Lay, Inc.	(EAD) Application 96-12-007 (Filed December 4, 1996)

ORIGINAL

OPINION

Southern California Gas Company (SoCalGas) seeks approval of a long-term gas transportation agreement between Recot, Inc., doing business as Frito-Lay, Inc. (Frito-Lay) and SoCalGas which was entered into on November 14, 1996. The agreement provides for gas transportation service under negotiated rates to Frito-Lay's Kern Plant located west of Bakersfield. A copy of the agreement is attached to the application. Citing concerns about competitive and trade secrets, SoCalGas has redacted the prices, term and contract quantities by which Frito-Lay would receive service. However, SoCalGas asserts that it expects the agreement to contribute $1.04 million more to margin than the utility could hope to collect without the agreement.

SoCalGas requests that the Commission approve this agreement unconditionally and without modification. The utility also request that we find as follows: (1) as of the time SoCalGas negotiated the terms of the agreement, there was a substantial and imminent threat of bypass by the customer, and the agreement would prevent uneconomic bypass; (2) revenues over the life of the agreement will generate a positive contribution to margin and will not fall below the weighted average of the class average long-run marginal cost of serving high-pressure customers (customer bands using over 200Mdth/year) and cogeneration customers as quantified in the order adopting the long-run marginal cost implementation settlement (Decision(D.)93-05-006); and (3) the terms of the agreement are reasonable given the bypass options that were available to Frito-Lay.

SoCalGas also requests that we make a specific finding that the utility was prudent in negotiating this agreement. The utility asks that this finding be considered dispositive of any future prudence issues that might arise, absent a showing of special circumstances as enumerated in D.92-11-052, which established an expedited application docket (EAD) for these types of applications.[1]

SoCalGas alleges that it entered into the agreement with Frito-Lay in order to avoid economic bypass, which the Commission defines as occurring "when a customer leaves the utility system even though its cost to bypass is more than the marginal cost of utility service. In that situation, the utility could still meet the bypass rate and obtain a positive contribution to its fixed costs, which helps to keep other rates down" (D.92-11-052, mimeo. p.4). The Frito-Lay facility which uses the utility service at-issue is located in Kern and is a snack food cooking facility with a 6 MW cogeneration unit that is fired by natural gas. SoCalGas states that Frito-Lay's Kern plant is located "in close proximity" to the east side lateral of the Kern/Mojave pipeline, although the utility does not specify the actual distance. The pipeline is owned jointly by Mojave Pipeline Company and Kern River Gas Transmission Company. SoCalGas reports that this pipeline is in service and is underutilized. SoCalGas states that Frito-Lay could join with two other large customers near its plant to build a spur line connecting them with the Kern/Mojave Pipeline. In a declaration accompanying the application, Daniel P. Lopez, Manager of Hydrocarbon Procurement for Frito-Lay, states that the company has been presented with multiple proposals by various parties interested in building bypass projects that would provide firm reliability at rates lower than SoCalGas' tariffed service. Lopez states that his company "will pursue a gas delivery pipeline project to totally bypass the SoCalGas system" if this agreement is not approved.

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[1] Concurrent with the filing of this application, SoCalGas provided the Office of Ratepayer Advocates and the Commission's Energy Division with responses to the Master Data Request contained in Appendix B to D.92-11-052. No protests to this application have been filed.

Under the terms of the Global Settlement approved in D.94-04-088, SoCalGas shareholders accept the full risk of any revenue shortfalls resulting from this agreement over the next five years. Under the same settlement, SoCalGas' shareholders will remain at risk for any shortfall from the utility's authorized tariff over the next ten years, so long as the Commission does not substantially change the method of setting rates for noncore customers.

We will approve this agreement because it meets our test for approval. The threat of bypass is imminent. The agreement creates a positive contribution to margin. For these reasons, the agreement appears to be reasonable. Consistent with D.94-04-088, however, we impose the conditions that (1) any discount to the Interstate Transition Cost Surcharge must be borne by utility shareholders and (2) SoCalGas shall not recover in rates, nor include in cost allocation forecasts, any revenue shortfall that occurs as a result of this agreement.

We note that SoCalGas has offered only a cursory indication of the total volumes of gas that are currently sold through agreements such as this. Although shareholders are at risk for these contracts, the pipeline capacity tied up in these volumes might become a concern at a future date if too much capacity is dedicated to such arrangements. While approving this contract, we will direct SoCalGas to augment its master data request response by submitting to the Energy Division a table, showing all of the cumulative anti-bypass contract volumes to date, by contract, compared to the total noncore throughput as well as SoCalGas' intrastate and interstate pipeline capacity. In any future expedited applications, SoCalGas should provide an updated version of this table.

Findings of Fact

1. There are no protests to this application and no public hearing is necessary.
2. There is an imminent threat of bypass posed by the existing Kern/Mojave pipeline which can be reached by Frito-Lay by constructing a spur line in consortium with neighboring large users.
3. The agreement appears designed to provide a positive contribution to margin.

4. The bypass likely to result in the absence of the agreement may be uneconomic.

5. Subject to the conditions set forth below, the rates and terms of the agreement do not pose an unreasonable risk to ratepayers.

6. Based upon all facts and circumstances known to the Commission at this time, SoCalGas' decision to enter in the agreement is prudent.

Conclusions of Law

1. The agreement should be approved as set forth below.

2. Due to the imminent threat of bypass, this decision should be effective today.

ORDER

IT IS ORDERED that:

1. Subject to the conditions set forth below, the Gas Transportation Service Agreement between the Southern California Gas Company (SoCalGas) and Recot Inc., doing business as Frito-Lay Inc. (Frito-Lay), as entered into on November 1, 1996 is approved under the procedures, terms and conditions set forth in Decision 92-11-052.

2. The agreement is approved on the condition that SoCalGas' shareholders shall assume all of the risk for the Interstate Transition Cost Surcharge costs associated with this agreement. SoCalGas shall file with the Energy Division a written acceptance of this condition within 15 days of the effective date of this order.

3. The agreement shall expressly provide that SoCalGas shall obtain the Commission's approval, prior to effectiveness, of any modifications, including modifications which may be the result of mediation.

4. Section IX and X of General Order 96-A are suspended to the extent that those sections require that this agreement is subject to future modifications by the Commission.

5. SoCalGas shall not recover in rates, nor include in cost allocation forecasts, any portion of any revenue shortfall resulting from the agreement.

6. Approval of the agreement is dispositive of all prudence questions which might arise at a later date regarding the agreement, absent a showing of:

a. Misrepresentation or omission of material facts of which the utility is aware in connection with the utility's request for contract approval;

b. Gross negligence in determining whether a realistic threat of bypass exists; or

c. Imprudence in the utility's performance under the negotiated agreement.

7. Within 20 days, SoCalGas shall augment its master data request response by submitting to the Energy Division a table, showing all of the cumulative anti-bypass contract volumes to date, by contract, compared to the total noncore throughput as well as SoCalGas' intrastate and interstate pipeline capacity. In any future expedited applications, SoCalGas should provide an updated version of this table.

8. Application 96-12-007 is closed.

This order is effective today.

Dated April 23, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners