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Decision 98-10-029 October 8, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authorization to Sell Certain Generating Plants and Related Assets Pursuant to Public Utilities Code Section 851. (U 39 E)	ORIGINAL Application 98-01-008 (Filed January 15, 1998)

INTERIM OPINION ON HUNTERS POINT POWER PLANT

Summary

In this decision, we approve the request of Pacific Gas and Electric Company (PG&E) to withdraw its request for authorization to sell the Hunters Point Power Plant. We also approve an agreement between PG&E and San Francisco, which sets out the steps for closing the Hunters Point Plant.

Procedural History

PG&E filed this application on January 15, 1998. PG&E filed an amendment to its application on July 17, 1998. PG&E originally requested that the Commission grant it authority to sell and transfer its Hunters Point, Potrero, Pittsburg, and Contra Costa fossil-fuel plants and its Geysers geothermal plants (one set in Sonoma County and one set in Lake County) pursuant to Public Utilities (PU) Code Section 851. The amendment disclosed that PG&E had withdrawn the Hunters Point Plant from the proposed auction, pursuant to an agreement dated July 9, 1998 with the City and County of San Francisco (Agreement), contingent upon Commission approval of the Agreement and PG&E's requested ratemaking treatment for the Hunters Point Plant.

PG&E is adding to the Purchase and Sale Agreement for the Potrero Plant a provision in the Agreement requiring the new owner to meet and confer in good faith with the Mayor of San Francisco or his designee to evaluate the environmental and community impacts of any development or expansion plans for the facility, and PG&E is making no other changes to the auction process described in its original application.

PG&E seeks ratemaking authorization for (1) the sunk costs of the Hunters Point Plant and site; (2) reasonable capital additions made to the facility in 1996, 1997 and the first quarter of 1998; (3) decommissioning and remediation costs; and (4) transaction costs (by way of the usual netting of gross proceeds).

Because PG&E has agreed to retire the Hunters Point Plant as soon as it is no longer needed for reliability purposes and has agreed to record a restrictive covenant that will prohibit others from using the site for power generation, the facility will have no market value as a generation asset upon retirement. Its market value would be limited to its salvage and land value. For purposes of recovery of the Competition Transition Charge (CTC), PG&E requests that the market value be deemed to be zero, and that it be authorized to amortize in the CTC the sunk costs approved in Decision (D.) 97-11-074 and confirmed by the Sunk Cost Audit ordered by the Commission. Following the closure of the Hunters Point Plant, PG&E proposes to credit back to the CTC any salvage value and the net sale proceeds of the land. In addition, PG&E will credit back to the Transition Cost Balancing Account (TCBA), on an annual basis, any revenues earned from the sale of electricity in excess of the facility's going-forward costs (including capital additions added after the first quarter of 1998), using the Must-Run Fossil Plant Memorandum Account.

Consistent with the Commission's process for review and recovery of capital additions adopted in D.97-08-048 (as modified by D.98-04-065), PG&E requests that the reasonable capital additions cost for the Hunters Point Plant in 1996, 1997, and the first quarter of 1998 be added to the net book value and be recoverable in CTC.

PG&E requests recovery of decommissioning costs of the Hunters Point Plant, including, but not limited to, environmental remediation, demolition and site restoration work, consistent with the framework established in D.97-11-074.

Finally, PG&E requests that it be permitted to recover the transaction costs that it incurred specifically related to the Hunters Point Plant, in addition to those incurred in respect of its second auction group of plants generally.

On August 24, 1998, the Office of Ratepayer Advocates (ORA) filed a protest to the amendment. On September 17, PG&E and the City and County of San Francisco (CCSF) filed a supplemental response to ORA's protest.

Applicable Legal Standard Set by PU Code Section 363(c)

On August 21, 1998, Senate Bill (SB) 1589 was chaptered by the Secretary of State of the State of California. Among other things, SB 1589 amended PU Code 363 by adding subsection (c):

> (c) For those bayside fossil fueled electric generation and associated transmission facilities that an electrical corporation has proposed to divest in a public auction and for which the Legislature has appropriated state funds in the Budget Act of 1998 to assist local governmental entities in acquiring the facilities or to mitigate environmental and community issues, and where the local governmental entity proposes that the closure of the power plant would serve the public interest by mitigating air, water and other environmental, health and safety, and community impacts associated with the facilities, and where the local governmental entity and electrical corporation have engaged in significant negotiations with the purpose of shutting down the power plant, and where there is an agreement between the electrical corporation

> and the local governmental entity for closure of the facilities or for the local governmental entity to acquire the facilities, the commission shall approve the closure of these facilities or the transfer of these electric generation and associated transmission facilities to the local governmental entity and shall consider the utility transactions with the community to be just and reasonable for its ratepayers. For purposes of calculating the Competition Transition Charge, the commission shall not use any inferred market value for the facilities predicated on the continued use of the plant, the construction of successor facilities or alternative use of the site and shall net the costs of the depreciated book value of the power plant and the unrecovered costs of decommissioning, environmental remediation and site restoration against the net proceeds received from the local governmental entity for the acquisition or closure of the facilities. Thereafter, any net proceeds received from the ultimate disposition, by the electrical corporation, of the site shall be credited to recovery of Competition Transition Charges.

The assigned administrative law judge (ALJ) issued a ruling on September 9, 1998 that permitted PG&E to supplement the record by (1) requesting official notice of the relevant portion of the Budget Act of 1998; (2) requesting official notice of the resolution or other act of the appropriate body of CCSF; and (3) describing the substantive course of the negotiations between PG&E and CCSF to establish that such negotiations were significant by virtue of their content. On September 17, PG&E and CCSF filed a request for official notice.

As described in the application, the Hunters Point Plant qualifies as a bayside fossil fueled electric generation facility which an electrical corporation has proposed to divest in a public auction.

As requested by PG&E, we take official notice that the Budget Act of 1998 appropriated state funds to assist CCSF, a local governmental entity, in acquiring the Hunters Point Plant or to mitigate environmental and community issues. (Stats. 1998, ch. 324, pp. 615-616.)

As requested by PG&E, we take official notice that Resolution 98-0181 of Public Utilities Commission of CCSF and File No. 98-1256 of the San Francisco Board of Supervisors, adopted September 14, 1998, proposed that the closure of the Hunters Point Plant would serve the public interest by mitigating air, water and other environmental, health and safety, and community impacts associated with the facility.

PG&E and CCSF's supplemental response to ORA's protest establishes that the negotiations between PG&E and CCSF were significant in that (1) they were conducted at a senior level; (2) over several sessions; and (3) resulted in modifications by each party of their initial positions to a substantial extent.

The Agreement between PG&E and CCSF provides for the closure of the Hunters Point Plant.

PU Code Section 363(c) requires, in these circumstances, that the Commission "shall approve the closure of these facilities" (*i.e.*, the Hunters Point Plant) "and shall consider the utility transactions with the community to be just and reasonable for its ratepayers."

ORA's Arguments

PG&E and CCSF Should Consider the Positions of Other Parties

Rule 51.1(b) of the Rules of Practice and Procedure provides that prior to signing and stipulation or settlement, the settling parties shall convene at least one conference with notice and opportunity to participate provided to all parties for the purpose of discussing stipulations and settlements. The parties dispute whether the Agreement is a settlement on a "mutually acceptable outcome to the proceedings." However, it is clear that the Agreement is at least a "stipulation" within the meaning of Rule 51(d), and, therefore, Rule 51.1(b) applies by its terms.

Were the amendment to the application governed solely by PU Code Section 851 and similar statutes in which we exercise discretion, we would agree with ORA that failure to have provided the opportunity required by Rule 51.1(b) would necessitate an order to PG&E and CCSF for further consultation with non-joining parties. However, PU Code Section 363(c) provides us with little discretion, and we will not seek to frustrate the will of the Legislature by enacting procedural roadblocks to an outcome so clearly directed by the statute.

Agreement Not Shown to be in the Public Interest

ORA's argument that PG&E has failed to show that the Agreement is in the public interest must fail for the same reason: the test of the Agreement is not whether it is in the public interest, but, rather, whether it conforms to the requirements of PU Code Section 363(c), for the Legislature has already determined that the outcome is in the public interest.

Environmental and Reliability Issues Must be Examined

ORA argues that permanently closing the Hunters Point Plant would reduce reliability of electricity in the area and possibly create adverse environmental impacts. Assuming that this is true, however, does not convert our ministerial responsibilities under PU Code Section 363(c) into a duty to substitute our independent judgment for that of the Legislature. As our decision is not one that requires the exercise of discretion, it is not subject to the requirements of the California Environmental Quality Act.

Need for Evidentiary Hearings

ORA claims the right to an evidentiary hearing on the Agreement. Were not PU Code Section 363(c) the exclusive basis for this decision, ORA would have that right. However, ORA has not raised any factual issue with respect to the predicates for our decision, solely legal issues. There is no dispute that the Hunters Point Plant is a "bayside generation plant," or that the Budget Act of

1998 contained the appropriations referred to, or that PG&E and CCSF engaged in negotiations. ORA disputes that the negotiations were "significant" because no party represented ratepayer interests, but that is not a standard to be found in the statute. Without disputed issues of material fact, there is no need for an evidentiary hearing.

No Return on Investment for Premature Closure

ORA argues that it has been past Commission policy to deny utilities a return on investment when the utility has voluntarily or involuntarily retired power plants prior to the end of their useful life. Once more, the Legislature has predetermined the result: Qualifying transactions are "just and reasonable" as a matter of law.

No Transaction Costs for the Hunters Point Plant

ORA's final argument is that PG&E should be precluded from recovering any costs specifically related to the attempted sale of the Hunters Point Plant. This argument must fail for the same reasons: The Legislature has already determined that the transactions are just and reasonable.

Ratemaking Treatment

PG&E's requested ratemaking treatment is generally consistent with our treatment of other divested generation plants. However, its proposal blurs and confuses the distinction between the CTC, transition costs, and the TCBA. Transition costs are defined in the PU Code as the "uneconomic generation-related assets and obligations" listed in Sections 367 and 840(f), reasonable and necessary capital additions (Sections 367, 840(f)), and certain employee-related costs (Sections 375, 367(a)(1)). (*See* Sections 330(s)-(u), 368.) We are required to offset the value of uneconomic generation assets against the value of economic assets (Section 367(b)) and to keep track of when the transition costs as defined by the Legislature are fully recovered (Sections 367(a), 368(a)). We established the TCBA to track both transition costs and the revenues devoted to compensate the utility for those costs. The CTC is one source of the revenues used to offset transition costs. The CTC is a rate component calculated residually from the frozen rates required by Section 368(a), after accounting for the utility's reasonable costs, including the costs of delivering power to customers and the costs of buying power from the Power Exchange.

With these distinctions in mind, we will review the four elements of PG&E's ratemaking proposal.

Sunk Costs

Because PG&E will retire the Hunters Point Plant when it is no longer needed for reliability, PG&E concludes that the market value of the plant after retirement is essentially zero, with some possible residual proceeds from the salvage of the generating facility and the sale of the land. PG&E asks the Commission initially to deem the market value of the plant to be zero, and this request is consistent with the provisions of SB 1589. PG&E's request for authority to fully amortize the Hunters Point Plant's sunk costs in the CTC is confusing, because the CTC is merely a rate component; amortization of the net book value of generation plants is accounted for in the TCBA. (D.97-11-074, slip op. at 180, 189-190.) In addition, full recovery of investments meeting the definition of transition costs depends on the amount of excess revenues (or "headroom") generated during the transition period. The Legislature has instructed this Commission not to allow recovery of transition costs after December 31, 2001, with certain statutory exceptions, and any transition costs that have not been recovered by that date will not be recovered unless the Legislature provides otherwise. (Section 367(a).)

PG&E's proposal to credit back any salvage value and net proceeds from the sale of the site "to the CTC" raises the same confusion, but this proposal is appropriate if the credits are made to the TCBA. Credits to the TCBA might have the ultimate effect of reducing the duration of the period when CTC is collected, and this seems to be the intent of PG&E's proposal. PG&E's proposal, prior to the retirement of the Hunters Point Plant, to credit the TCBA with any revenues earned from its contract with the Independent System Operator for reliability must-run services in excess of the facility's going-forward costs (*see* Section 367(c)) is consistent with our previous decisions on similar revenues.

Capital Additions

PG&E requests that reasonable capital additions to the Hunters Point Plant made in 1996, 1997, and the first quarter of 1998 should be "recoverable in CTC." This request is generally consistent with Section 367 and D.97-08-048, as modified by D.98-04-065. We construe the request that capital additions costs found reasonable are "recoverable in CTC" to mean that these investments are transition costs that can be debited to the TCBA, and that will be recovered as sufficient revenues, from the CTC and other sources, are credited to the TCBA, subject to the restriction that no recovery will be allowed of transition costs that are not recovered by December 31, 2001, except as provided by statute. (Section 367(a).)

PG&E's request to recover 1996 capital additions to its non-nuclear generating units was resolved in D.98-05-059. Its request for recovery of 1997 and first quarter 1998 capital additions will be considered in A. 98-07-058.

Decommissioning, Remediation, and Site Restoration

PG&E's proposal for treatment of decommissioning, remediation, and site restoration is based on the treatment we adopted for these types of costs in D.97-11-074 and is consistent with SB 1589, except the proposal contains some of the semantic confusion discussed above. Specifically, the amortization of decommissioning costs should occur through the mechanism of the TCBA, rather than "in the CTC." We will follow D.97-11-074, and approve PG&E's proposal to the extent it is consistent with that decision.

Transaction Costs

In our decisions approving the sale of other PG&E plants, we allowed the reasonable transaction costs associated with the sale to be netted against the proceeds and the balance entered into the TCBA. (D.97-12-107, slip op. at 5-6.) PG&E here requests authority to submit a statement of transaction costs incurred in connection with its market valuation of the Hunters Point Plant in the Annual Transition Cost Proceeding and to recover such costs in the CTC. PG&E's proposal is proper, except that recovery will take place through the mechanism of the TCBA, and subject to that exception, PG&E's request is approved. The costs will be reviewed for reasonableness and approved for recovery to the extent found reasonable.

Findings of Fact

1. The Hunters Point Plant qualifies as a bayside fossil fueled electric generation facility which an electrical corporation has proposed to divest in a public auction.

2. The Budget Act of 1968 appropriated state funds to assist, CCSF, a local governmental entity, in acquiring the Hunters Point Plant or to mitigate environmental and community issues.

3. Resolution 98-0181 of the Public Utilities Commission of CCSF and File No. 98-1256 of the San Francisco Board of Supervisors, adopted September 14, 1998, proposed that the closure of the Hunters Point Plant would serve the public interest by mitigating air, water and other environmental, health and safety, and community impacts associated with the facility.

4. The negotiations between PG&E and CCSF were significant in that (1) they were conducted at a senior level; (2) over several sessions; and (3) resulted in modifications by each party of their initial positions to a substantial extent.

Conclusions of Law

1. PU Code Section 363(c) requires the Commission to approve the closure of the Hunters Point Plant.

2. The Agreement is just and reasonable to ratepayers.

3. PG&E and CCSF's Request for Official Notice, dated September 17, 1998, is granted.

INTERIM ORDER

IT IS ORDERED that:

1. The request of Pacific Gas and Electric Company (PG&E) to withdraw its request for authorization to sell the Hunters Point Power Plan, as stated in PG&E's amendment to Application 98-01-008, is granted.

2. The agreement by and between PG&E and the City and County of San Francisco, dated July 9, 1998, is approved.

3. Subject to the modifications stated in the text of this opinion, PG&E's requested ratemaking, based on a deemed value of the Hunters Point Plant of zero for market valuation purposes, is approved.

This order is effective today.

Dated October 8, 1998, at Laguna Hills, California.

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