

Decision 99-05-026 May 13, 1999

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application for Approval of Exemption From Competition Transition Costs Pursuant to Public Utilities Code Section 372(c)(1) of Pacific Gas and Electric Company and (1) City of Bakersfield, (2) Bay Area Senior Services (dba Peninsula Regent), (3) Ernest Tschannen (dba Sequoia Towers), and (4) I.B.A.M. (dba In Motion Fitness).

(U 39 B)

**ORIGINAL**

Application 99-03-035  
(Filed March 18, 1999)

**OPINION**

**Summary**

Pacific Gas and Electric Company (PG&E), City of Bakersfield, Bay Area Senior Services (dba Peninsula Regent), Ernest Tschannen (dba Sequoia Towers),<sup>1</sup> and I.B.A.M. (dba In Motion Fitness) (collectively, joint applicants) filed a joint application on March 18, 1999 seeking approval of the exemption from competition transition charges (CTC)<sup>2</sup> pursuant to Pub. Util. Code § 372(c)(1)<sup>3</sup> for

<sup>1</sup> The original application named Sequoia Towers as the joint applicant. The parties subsequently requested that the application be amended to name Ernest Tschannen, the individual proprietor of Sequoia Towers, as the joint applicant. It is so amended.

<sup>2</sup> The application technically seeks approval of exemption from certain transition costs authorized by statute, as described below. The CTC is a separate nonbypassable charge delineated on each customer's bill which generates revenue to allow the utilities to recoup their transition costs. The statutory requirement that the allocation of transition cost responsibility not result in rate increases above the June 10, 1996 levels (Pub. Util. Code § 368(a)) means that the CTC portion of a given bill must be computed on a residual basis, i.e., the difference between the total rate and all other authorized charges,

*Footnote continued on next page*

on-site load served by cogeneration. We approve the request for exemption from CTC.

### **Background**

Section 372(a) exempts certain cogeneration and self-cogeneration projects from CTC. Section 372(c) allows the utility to seek further CTC exemptions for certain load and requires that we authorize the joint application within 60 days if certain conditions are met.

Section 372(c) states, in relevant part:

"The commission shall authorize, within 60 days of the receipt of a joint application from the serving utility and one or more interested parties, applicability conditions as follows:

"(1) The costs identified in Sections 367, 368, 375, and 376 shall not, prior to June 30, 2000, apply to load served onsite by a nonmobile self-cogeneration or cogeneration facility that became operational on or after December 20, 1995."

The costs addressed in §§ 367, 368, and 375 delineate the excluded transition costs, e.g., the net above-market costs associated with uneconomic generation-related assets and obligations and employee-related transition costs. Section 376 concerns how recovery of other costs affects the scheme for recovery of transition costs.

---

including the Power Exchange price. Thus, the CTC is a component of the frozen rate and, if an exemption is granted, the applicants are, in effect, exempt from the CTC.

<sup>3</sup> All further statutory references are to the Public Utilities Code.

### The Joint Application

Joint applicants assert that their application meets all of the criteria specified in § 372(c)(1). The joint application seeks an exemption only for service to on-site loads; the exemption will not apply to loads served off-site from the cogeneration facility. The projects are expected to operate as cogenerators, with operations consistent with § 218.5.<sup>4</sup> Each cogeneration plant covered by this application is nonmobile. The cogeneration plants utilized by joint applicants Peninsula Regent, Sequoia Towers, and In Motion Fitness became or will become operational after December 20, 1995. According to the supplemental declaration of Fred Kloepper, wastewater manager for the City of Bakersfield, the City's cogeneration facility, with a nameplate capacity of 200 kW, became operational in 1985. As such, this facility was exempted from CTC pursuant to § 372(a)(1) as a facility that became operational prior to December 20, 1995. The City now proposes to upgrade the facility by 50 kW, to a nameplate capacity of 250 kW. It seeks an exemption for the additional 50-kW post-December 20, 1995 output.

As required by § 372(d), joint applicants have verified that their operations will be consistent with § 218 as it existed on December 20, 1995.<sup>5</sup>

Joint applicants request that ratemaking be consistent with the provisions of § 367(e) and the associated ratemaking mechanisms prescribed in Decision (D.) 97-06-060. Section 367(e) provides that a firewall be established so that the

---

<sup>4</sup> Section 218.5 sets forth standards a generation facility must meet in order to be considered a cogeneration facility.

<sup>5</sup> Stanford Energy owns and operates the onsite cogeneration facility for joint applicant Peninsula Regent. Because all of the input will be sold onsite to Peninsula Regent, the service will be consistent with Section 218. As the owner of the load, Peninsula Regent is the party that would have to pay the CTC in the absence of an exemption. It is an interested party under § 372(c) and an appropriate joint applicant herein.

costs of CTC exemptions granted to members of the combined class of residential and small commercial customers are recovered only from those customers, and that the costs of CTC exemptions granted to members of the combined class other than residential and small commercial customers be recovered only from those customers. These customers are called "Large Customers" in PG&E's electric preliminary statement. All of the load addressed in this application falls within the "Large Customer" class.

Finally, joint applicants request that approval for this exemption be granted as of the date the respective cogeneration units became operational.

#### **Discussion**

As set forth in Application (A.) 99-03-035 and the accompanying exhibits, joint applicants meet the criteria established by § 372(c)(1); therefore, this application should be approved. Prior to June 30, 2000, Peninsula Regent, Sequoia Towers, and In Motion Fitness are exempt from CTC to the extent that load is served onsite by a nonmobile self-cogeneration or cogeneration facility that became operational on or after December 20, 1995.<sup>6</sup>

Prior to June 30, 2000, the City of Bakersfield's 50-kW post-December 20, 1995 increase in capacity in its onsite nonmobile cogeneration facility is also exempt from CTC pursuant to § 372(c)(1); it is not exempt pursuant to § 372(a)(1). This is a case of first impression.

D.97-12-039 establishes that § 372(a)(1) grants exemptions only to increases in capacity of nonmobile facilities serving load onsite or under an over the fence

---

<sup>6</sup> Section 372(a)(4) provides that the uneconomic costs specified in §§ 367, 368, 375, and 376 shall not apply after June 30, 2000, to any load served onsite or under an over the fence arrangement by any nonmobile self-cogeneration or cogeneration facility.

arrangement which do not exceed 120% of installed capacity as of December 20, 1995, stating that "[t]he CTC shall be levied on any load served by the on-site cogeneration unit or under an over the fence arrangement that exceeds the statutory exemption." (D.99-12-039, slip op. at p. 16.)<sup>7</sup> The City of Bakersfield's proposed upgrade of its pre-December 20, 1995 facility with a nameplate capacity of 200 kW to a nameplate capacity of 250 kW represents a 25% increase in capacity. Thus, the upgrade is not exempt pursuant to § 372(a)(1).

The City of Bakersfield, however, contends that its upgraded facility qualifies for an exemption pursuant to § 372(a)(1) because in November of 1995 its cogeneration facility actually generated approximately 225 kW of electricity. Thus, it argues, an increase to 250 kW falls within the 20% increase permitted by § 372(a)(1). PG&E disagrees, arguing that the CTC exemption criteria must be evaluated upon the nameplate capacity of the cogenerator and not on the kilowatt hours produced in a single month.

We agree with PG&E that the CTC exemption criteria must be evaluated on the nameplate capacity of the cogenerator and not on the kilowatt hours produced in a single month. It is paramount that these rules be applied in a uniform, standardized, and simple manner. Adopting the City of Bakersfield's position would inject uncertainty into this procedure and could potentially result in disparate treatment of exemption applications. The City of Bakersfield has admitted in its declarations that the capacity of its preexisting cogenerator is

---

<sup>7</sup> Section 372(a)(1) provides for an automatic exemption from CTC for onsite nonmobile cogeneration facilities that were operational on before December 20, 1995 and for "increases in the capacity of such a facility to the extent that such increased capacity was constructed by an entity holding an ownership interest in or operating the facility and does not exceed 120 percent of the installed capacity as of December 20, 1995. . . ."

200 kW. Since it seeks to expand the capacity of the cogenerator by 50 kW, or 25%, the expansion is not exempt from CTC under section 372(a)(1).

The increased 50-kW capacity, which was not on-line on December 20, 1995, however, is exempt pursuant to § 372(c)(1).

This section authorizes an exemption for on-site load served by cogeneration or load served by cogeneration through an over the fence arrangement when the cogenerator or other interested party and utility jointly file an application requesting such an exemption. While this section references "facilit[ies] that became operational" on or after December 20, 1995, we must construe it in accord with the policy set forth in the statute. Section 372(a) states that:

"It is the policy of the state to encourage and support the development of cogeneration as an efficient, environmentally beneficial, competitive energy resource that will enhance the reliability of local generation supply, and promote local business growth."

Thus, it is reasonable, in light of this statutory policy, to interpret § 372(c)(1) to apply to the post-December 20, 1995 increased load of a preexisting on-site cogeneration facility that was granted an exemption pursuant to § 372(a)(1). The City of Bakersfield's 50-kW post-December 20, 1995 increase in capacity in its onsite nonmobile cogeneration facility is exempt from CTC pursuant to § 372(c)(1).

Ratemaking should be consistent with the provisions of § 367(e) and the associated ratemaking mechanisms prescribed in D.97-06-060, such that the provisions of the firewall are met. PG&E must track and maintain records of this exemption.

### **Effective Date of Exemptions**

The exemptions are granted as of the date of this decision. The City of Bakersfield upgraded facility is estimated to be operational as of May 1999. The Peninsula Regent facility is expected to be operational as of March 1999. The Sequoia Towers facility was operational prior to the filing of this application, and the In Motion Fitness facility was estimated to be operational as of October 1998. We cannot approve exemptions that pre-date the issuance of our decision today.

### **Ratesetting**

In Resolution ALJ 176-3013, dated April 1, 1999, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received, although Southern California Edison Company (Edison) has responded to the application in order to apprise the Commission of its interest in this proceeding. Edison does not object to the relief sought in the joint application. Given this status, public hearing is not necessary, and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3013.

### **Section 311(g)(2) Waiver of Public Review and Comment**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

The joint application is granted.

### **Findings of Fact**

1. The projects are expected to operate as cogenerators, with operations consistent with § 218.5.

2. The CTC exemption authorized in § 372(c)(1) applies only to service for on-site loads and the exemptions will not apply to loads served off-site from the cogeneration facility.

3. Prior to June 30, 2000, Peninsula Regent, Sequoia Towers, and In Motion Fitness are exempt from CTC to the extent that load is served onsite by a nonmobile self-cogeneration or cogeneration facility that became operational on or after December 20, 1995.

4. The City of Bakersfield's proposed upgrade of its pre-December 20, 1995 facility with a nameplate capacity of 200 kW to a nameplate capacity of 250 kW represents a 25% increase in capacity; thus, the upgrade is not exempt from CTC pursuant to § 372(a)(1).

5. Prior to June 30, 2000, the City of Bakersfield's 50-kW post-December 20, 1995 increase in capacity in its onsite nonmobile cogeneration facility is exempt from CTC pursuant to § 372(c)(1).

6. Ratemaking should be consistent with the provisions of § 367(e) and the associated ratemaking mechanisms prescribed in D.97-06-060, such that the provisions of the firewall are met. PG&E must track and maintain records of this exemption.

#### **Conclusions of Law**

1. Section 372(c) authorizes the Commission to grant a joint application seeking further CTC exemptions to certain load and requires that we authorize the joint application within 60 days if certain conditions are met.

2. As set forth in A.99-03-035 and the accompanying exhibits, joint applicants meet the criteria established by § 372(c)(1); therefore, this application should be approved.



3. Joint applicants have verified that their operations will be consistent with § 218 as it existed on December 20, 1995, as required by § 372(d).

4. The exemptions are granted as of the date of this decision.

5. No protests have been received; therefore, public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3013.

6. This order should be effective today, so that the CTC exemptions can be implemented in an expeditious manner.

7. This proceeding should be closed.

#### ORDER

IT IS ORDERED that

1. The joint application of Pacific Gas and Electric Company (PG&E), City of Bakersfield, Bay Area Senior Services (dba Peninsula Regent), Ernest Tschannen (dba Sequoia Towers), and I.B.A.M. (dba In Motion Fitness) for an exemption from competition transition costs pursuant to Pub. Util. Code § 372(c)(1) is granted.

2. PG&E shall track and maintain records of the exemptions granted today in a manner consistent with that established by Pub. Util. Code § 367(e) and the ratemaking established in Decision 97-06-060, such that the provisions of the firewall are met.

3. The exemptions are effective as of the issuance of this decision.
4. Application 99-03-035 is closed.

This order is effective today.

Dated May 13, 1999, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners