

Decision 00-04-020 April 6, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application For Expedited And *Ex Parte*
Approval Of Termination Of Power
Purchase Contract Between Pacific Gas
And Electric Company (U 39 E) and East
Bay Municipal Utility District.

Application 99-12-027
(Filed December 17, 1999)

OPINION

1. Summary

Pacific Gas and Electric Company (PG&E) seeks Commission approval of a settlement that would terminate a 1981 power purchase agreement with the East Bay Municipal Utility District (EBMUD). Under the agreement, EBMUD would make payments estimated at \$7.6 million to be credited to PG&E ratepayers. No protests have been filed. The application is approved.

2. Nature of Application

PG&E seeks approval of a Termination Agreement, attached to the application as Exhibit 1, that would end an existing Power Purchase Contract between PG&E and EBMUD.¹ Under the Power Purchase Contract, EBMUD is required to sell and PG&E is required to buy the entire net output of EBMUD's 30-megawatt Pardee and 12-megawatt Camanche powerhouses. Both facilities are located in Amador County.

¹ The Power Purchase Contract, attached to the application as Exhibit 3, consists of a Revised Contract for Purchase of Electric Power dated February 10, 1981, as amended by a First Amendment executed as of December 4, 1986.

Upon termination of the Power Purchase Contract, EBMUD would make monthly payments to PG&E extending through the year 2008. The Termination Agreement is contingent on Commission approval by April 30, 2000. In the meantime, the parties have entered into a Bridging Agreement through which EBMUD is making payments to PG&E until the Termination Agreement takes effect.

According to PG&E, these and related agreements are part of a settlement that would avoid litigation and resolve disputes between the parties. EBMUD in 1998 filed a written claim stating that it is entitled to a 40% increase in energy payments and a 130% increase in capacity payments. Moreover, EBMUD claims that the price adjustment should be retroactive to 1983, a 15-year period. PG&E denies these claims and has asserted a counterclaim against EBMUD for allegedly not operating its plants at full capacity in certain years.

Evidence submitted with the application shows that EBMUD believes that it has a valid claim to a price adjustment for energy and capacity payments retroactive to 1983. It asserts that PG&E's refusal to permit such adjustments amounts to a contractual breach. (Exhibit 4, Appendix B.)

3. Settlement Terms

In a settlement leading to the proposed Termination Agreement, the Power Purchase Agreement would end on April 30, 2000. The Termination Agreement establishes a formula by which monthly payments by EBMUD to PG&E would be calculated. The following additional terms are contemplated:

- EBMUD would be free to market power from the two powerhouses in the competitive market, and PG&E would be released from any purchase obligation through January 1, 2009, when the Power Purchase Agreement would have expired.

- PG&E and EBMUD would release each other from claims arising out of or related to the Power Purchase Agreement.
- PG&E would be relieved of any obligation to provide transmission service or to schedule any power for EBMUD. EBMUD would arrange for transmission service through the California Independent System Operator if it desires access to the state's grid.

PG&E has agreed to provide interconnection and special facilities agreements to EBMUD subject to their approval by the Federal Energy Regulatory Commission. PG&E states that the rates for these services are expected to recover all costs. PG&E also has agreed to provide standby services at tariffed rates.

PG&E estimates that base payments from EBMUD under the Termination Agreement and the Bridging Agreement will total about \$7,618,000 through the year 2008. According to PG&E, this provides a greater benefit to ratepayers than any of the alternatives likely if the parties turn to litigation and if EBMUD is even partially successful in its claims. Payments received from EBMUD under the Termination Agreement and the Bridging Agreement will be credited to the Purchase Power Agreement entries in PG&E's Transition Cost Balancing Account or its successor mechanism.

4. Discussion

This application is filed under Sections 701 and 2821 of the Public Utilities Code, which authorize and require the Commission to approve terms and conditions of agreements between an electrical corporation and a private energy producer.

The restructured agreements negotiated by PG&E and EBMUD appear to be beneficial to both parties. Base payments to be credited to PG&E ratepayers will be \$7.6 million. According to PG&E, the settlement is intended to resolve

the parties' dispute and (from PG&E's perspective) be essentially the economic equivalent of the Power Purchase Contract. Instead of receiving power from and providing EBMUD with payment and services, PG&E will receive cash payments from EBMUD.

While the viability of a power producer is a pertinent inquiry in a buy-out of a qualified facility contract, such an inquiry is not essential here, where an independent power producer is paying PG&E to terminate a power purchase agreement. In any event, EBMUD is a large, well-funded public agency, and there is no question that the Pardee and Camanche powerhouses are viable. The powerhouses have operated successfully for nearly 20 years under the Power Purchase Contract, and EBMUD states that it fully intends to continue operating the powerhouses.

By settling its disputes with EBMUD, PG&E and its ratepayers will be spared the time and expense associated with litigation. This Commission has long endorsed the "strong public policy favoring the settlement of disputes to avoid costly and protracted litigation." (Re Pacific Gas and Electric Company (1988) 30 CPUC2d 189, 221.) Exhibit 4, attached to the application, makes a persuasive case that the parties' settlement is more beneficial to ratepayers than any of four scenarios likely to follow if no settlement is reached.

In reviewing a settlement proposal, the Commission must find that it is reasonable in light of the whole record, consistent with law, and in the public interest. (Rule 51.1(e) of the Rules of Practice and Procedure.) In a settlement involving energy suppliers, the Commission examines whether the relief sought is fair, adequate, and reasonable. (Re Southern California Edison Company (1993) 48 CPUC2d 352, 361-362.)

We have reviewed the Termination Agreement, and we conclude that the termination of the long-term power purchase agreement with EBMUD on the terms and conditions set forth in this application should be approved.

In Resolution ALJ 176-3030 dated January 6, 2000, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings would be necessary. Our examination of the record persuades us that a public hearing is not necessary. Accordingly, we confirm the designation of this proceeding as ratesetting, but we amend the designation to eliminate the requirement for hearing.

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

Findings of Fact

1. Under a proposed Termination Agreement, PG&E and EBMUD would terminate an existing Power Purchase Contract.
2. The Power Purchase Contract requires EBMUD to sell and PG&E to buy the entire net output of EBMUD's Pardee and Camanche powerhouses.
3. EBMUD claims that it is entitled to a 40% increase in energy payments and a 130% increase in capacity payments, retroactive to 1983.
4. PG&E denies the claimed under-payments and has asserted a counterclaim against EBMUD.
5. Under a settlement leading to the proposed Termination Agreement, EBMUD would be free to market power from the two powerhouses in the competitive market, and PG&E would be released from any obligation to purchase such power.

6. Under the settlement agreement, EBMUD would agree to make payments through the year 2008 of about \$7.6 million to be credited to PG&E ratepayers.

7. The Termination Agreement provides a greater benefit to ratepayers than any of the alternatives likely if the parties litigate and if EBMUD is even partially successful in its claims.

Conclusions of Law

1. No protests have been filed, and a hearing is not necessary.

2. The application is filed under Sections 701 and 2821 of the Public Utilities Code.

3. The agreements negotiated by PG&E and EBMUD are beneficial to both parties and to ratepayers.

4. The Commission has long endorsed the strong public policy favoring the settlement of disputes.

5. The settlement proposed here is reasonable in light of the whole record, consistent with law, and in the public interest.

6. The application should be approved.

7. The determination that hearings would be required in this application should be changed to state that hearings are not required.

O R D E R

IT IS ORDERED that:

1. The application of Pacific Gas and Electric Company (PG&E) for approval of a termination of the Power Purchase Agreement between PG&E and East Bay Municipal Utility District (EBMUD), as set forth more fully in the application and its exhibits, is approved.

2. The Termination Agreement and the Bridging Agreement set forth in the application are reasonable.

3. PG&E is directed to credit payments received from EBMUD under the Termination Agreement and the Bridging Agreement to the Purchase Power Agreement entries in the Transition Cost Balancing Account or its successor mechanism.

4. PG&E shall notify the Director of the Commission's Energy Division in writing of the actual date of termination of the Power Purchase Agreement within 10 days of such termination.

5. The preliminary determination in Resolution ALJ 176-3030 that a hearing would be necessary in this proceeding is changed to a determination that a hearing is not necessary.

6. The authority granted in this order shall expire if not exercised within 12 months after the effective date of this order.

7. Application 99-12-027 is closed.

This order is effective today.

Dated April 6, 2000, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
CARL W. WOOD
Commissioners