Decision 99-09-027

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Gas and Electric Company (U 39 E) for Modification of Resolution E-3423 to Bring Ratemaking Treatment for the Exxon Agreement into Conformance with PU Code Section 372(b)(3)	Application 99-01-005 (Filed January 7, 1999)

OPINION

Summary

Pacific Gas and Electric Company's (PG&E) application to modify the ratemaking treatment in Resolution E-3423 is approved, permitting a 100% ratepayer funding of the discount in its Exxon cogeneration deferral agreement. The proposed funding change is approved on a prospective basis, not retroactive to the initial date of PG&E's application. The Commission exercises General Order 96-A, Section X, ordering termination of the Exxon contract effective December 31, 2001, or effective upon cessation of the rate freeze, whichever date is earlier.

Background

In Resolution E-3423 (October 18, 1995), the Commission approved a cogeneration deferral agreement between PG&E and Exxon Company USA (Exxon). PG&E was permitted to offer Exxon a discounted rate contract to deter Exxon from constructing its own generation capacity. The Commission's approval was based on an analysis demonstrating that the discount offered was forecast to remain above the floor of PG&E's marginal costs, providing a positive contribution to margin. PG&E proposed that its shareholders would be fully responsible for any shortfall occurring below the floor, and also proposed to shoulder 50% of the discounted rate for the duration of the contract.

The contract terms were for four years through November 1999, with an option to renew the contract on an annual basis, upon one year's advance notice by either party. Early termination provided for complete or partial repayment of the negotiated rate by Exxon.

The Commission accepted the contract with PG&E and Exxon and authorized it with certain conditions pertaining to confidentiality and waiver of General Order (GO) 96-A, but without making any findings regarding contract reasonableness. PG&E was ordered to amend its Contracts and Deviations by listing the Exxon contract, to modify its Preliminary Statement, Section D.6, outlining the specific revenue flow and sharing mechanisms addressed by the Resolution, and to remove the waiver of General Order 96-A from the Exxon Agreement. In anticipation of electric restructuring, the Commission also required PG&E shareholders to shoulder 100% of the discounted rate once electric restructuring began. Also, Ordering Paragraph (OP) 5 required PG&E shareholders to assume full risk for any future costs of uneconomic assets not assigned to the customer under the Agreement with restructuring of the California electric services industry.

PG&E accepted the Resolution's conditions and revised its Contracts and Deviations listing, its Preliminary Statement Section D.6, and removed the waiver of General Order 96-A from the agreement. In addition, PG&E amended the contract to comply with Resolution E-3423, OP 5, by adding a section to ensure that Exxon will continue to be responsible for any competition transition charges (CTC) in effect at the time after the Agreement is terminated.

Restructuring Legislation

Assembly Bill 1890 (Ch. 854, Stats.1996), codifies the parameters for a restructured electric industry, encouraging competition among electricity providers and directing customer rate reductions beginning in 1998. The law adds § 372(b)(3) to the Public Utilities (PU) Code:

"[C]onsistent with state policy, with respect to self-cogeneration or cogeneration deferral agreements, the [C]ommission shall do the following:

(b)(3) Subject to the fire wall described in subdivision (e) of Section 367 provide that the ratemaking treatment for self-cogeneration or cogeneration deferral agreements executed prior to December 20, 1995, or executed pursuant to paragraph (1) shall be consistent with the ratemaking treatment for the contracts approved before January 1995."

The legislation also adds § 372(b)(2)(A):

"(b) Further, consistent with state policy, with respect to self-cogeneration or cogeneration deferral agreements, the commission shall do the following:

(b)(2) Provide that a customer that holds a self-cogeneration or cogeneration deferral agreement that was in place on or before December 20, 1995, or that was executed pursuant to paragraph (1) in the event the agreement expires, or is terminated, may do any of the following:

(A) Continue through December 31, 2001, to receive utility service at the rate and under terms and conditions applicable to the customer under the deferral agreement that, as executed, includes an allocation of uneconomic costs consistent with subdivision (e) of Section 367."

The Governor signed AB 1890 in law on September 23, 1996. Electric rates were frozen as of June 10, 1996. Electric restructuring became effective on January 1, 1998, and the direct access program began on March 31, 1998.

Procedural History

On November 24, 1998, PG&E filed a Petition to Modify Resolution E-3423 pursuant to Rule 47(d) of the Commission's Rules of Practice and Procedure. PG&E explains that its petition was not filed within a year of the petition it sought to modify, because it relied upon D.97-11-071, which was not issued until two years following the Resolution approving the advice letter filing. On January 19, 1999, PG&E recast its original Petition to Modify Resolution E-3423 as an application (Application) to comply with Rule 6(a)(1), since the Commission does not permit petitions for modification of resolutions.

No party filed a response to PG&E's Application. On May 4, 1999 the Energy Division issued a data request asking PG&E to address specific ratemaking issues raised by the Application. PG&E responded by letter, submitted under PU Code §583, on May 24, 1999.

Position of PG&E

PG&E asks the Commission to modify Resolution E-3423 to bring the ratemaking treatment for the Exxon Agreement into conformance with PU Code §372(b)(3), and to be consistent with similar treatment afforded Southern California Edison's Unocal Agreement under Decision (D.)97-11-071 issued November 19, 1997.[1]

PG&E states that its agreement with Exxon provides for 50% shareholder funding of the contract's discounted rate. PG&E believes that the legislative mandate of PU Code §372(b)(3) is met by allowing PG&E to roll-back the 50% shareholder funding of the contract to permit 100% ratepayer funding, consistent with the contracts approved before January 1995.

Assuming that its application requesting a change in the discount sharing mechanism for the Exxon contract will be approved, PG&E requests the Commission make the funding change effective as of November 24, 1998, the original filing date of its request.

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[1] D.97-11-071 changes the shareholder discount responsibility for SCE's Unocal agreement from 25% to 0%.

Discussion

PG&E first requests modification of Resolution E-3423 to permit 100% ratepayer funding of the discount for the Exxon cogeneration deferral agreement. In consideration of §372(b)(3), D.97-11-071 concluded that two types of ratemaking treatment for cogeneration deferral contracts were in effect prior to January 1995, one assigning no portion of any discounts to shareholders and the other assigning a portion of the discount to shareholders. PG&E, as a party in that proceeding, identified it had two cogeneration contracts falling under the pre-January 1995 category. The first one was a contract with USS-Posco and the second with Genetech. Both contracts were executed prior to January 1995, and both contain a 25% shareholder discount responsibility. PG&E also stated that it signed three cogeneration deferral contracts between January and December 1995, two of these had 100% ratepayer discount responsibility and the third, Exxon, had a 50% shareholder discount responsibility.

D.97-11-071 reviews the shareholder discount treatment for cogeneration and cogeneration deferral contracts before January 1995 and notes that the majority of these contracts, approved in the late 1980s, contained 100% ratepayer and 0% shareholder funding. D.97-11-071 excludes PG&E's USS-Posco contract from consideration, since, under D.94-11-043, its adoption was due to a settlement and was defined as non-precedential. D.97-11-071 also excludes PG&E's Genentech contract from consideration because it was classified as a "business attraction" contract, not a cogeneration or cogeneration deferral contract.

The threshold issue is whether the Exxon contract meets the specific category of the legislation. We believe it does. Although D.97-11-071 declines to address PG&E's Exxon contract specifically, it is clear that this contract meets the criteria of §372(b)(3). The Exxon contract was adopted during the relevant timeframe of January through December 1995, and the contract contains a shareholder discount of 50%, which is not consistent with the ratemaking treatment of similar contracts prior to January 1995. Therefore, to be consistent with the policy for cogeneration deferral contracts' ratemaking treatment prior to

January 1995, PU Code §372(b)(3), and D.97-11-071, the 50/50 sharing of the Exxon discount should be revised, shifting shareholder responsibility and risk to zero, with ratepayers bearing 100% of the Exxon discount. We shall modify the ratepayer/shareholder responsibility that we adopted in Resolution E-3423 to reflect this change.

PG&E submitted a confidential response to the Commission's data request under PU Code §583. The rates charged Exxon under the contract are indexed to fuel costs and inflation, under a formula tied to marginal costs and the annual Schedule E-20T rates. PG&E's analysis indicates that the discounted rates have not fallen below its marginal cost of service for Exxon.

PG&E replies that, as ordered by Resolution E-3423, it began recording 100% shareholder responsibility for the Exxon discount April 1998, the starting date for electric restructuring. PG&E also states that since 1998, shareholders are indifferent to the discount. Therefore, by shifting all of the discounted risk to ratepayers, the current ratemaking impact is zero.

Assuming Commission approval of shifting the full Exxon discount risk responsibility from shareholders to ratepayers, PG&E requests an effective date of November 1998, or the date it originally applied for the relief. Under PU Code §454, a "proposed rate change does not become effective until it has been approved by the Commission." Therefore, retroactive treatment of this request is denied. The ratemaking change should become effective upon Commission approval. Upon approval of the revised sharing mechanism we adopt today, PG&E should revise its Preliminary Statement, Section D.6 outlining the changed revenue flow and sharing mechanisms addressed.

Responding to questions posed concerning termination of the contract, PG&E notes that PU Code §372(b)(2)(A) allows Exxon to "[C]ontinue through December 31, 2001, to receive utility service at the rate and under terms and conditions applicable to the customer under the deferral agreement that, as executed, includes an allocation of uneconomic costs consistent with subdivision (e) of §367." Also, upon termination of the contract, PG&E replies that Exxon has the opportunity through December 31, 2001 to pay a reduced competition

transition charge (CTC) to the extent that its cogeneration deferral contract results in a rate less than its otherwise applicable rate schedule.

Resolution E-3423 for Exxon denies waiver of GO 96-A, Section X, which allows the Commission to modify a contract. The contract is scheduled to end in November 1999, with the option to renew annually. It is in the public interest to allow the general policy of electric restructuring and the resulting competitive market to operate freely without cogeneration deferral agreements. We follow the policy direction of electric restructuring and direct access, upholding the intent of AB1890 and § 372(b)(2), and provide notice to PG&E and to Exxon that, under GO 96-A, the contract should be terminated under the legislative date restrictions imposed. Therefore, consistent with §372(b)(2)(A), termination of the Exxon contract should be effective December 31, 2001, or upon cessation of the rate freeze, whichever date occurs first.

Comments on Draft Decision

The draft decision of the Examiner in this matter was mailed to the parties in accordance with PU Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed on July 15, 1999 by the Office of Ratepayer Advocates (ORA). Late-filed comments were filed by PG&E on July 22, 1999. PG&E also filed Supplemental comments on August 18, 1999. No reply comments were filed.

ORA comments that it supports the draft decision's modification of the ratemaking treatment for the contract to begin on a prospective basis. ORA also comments that it supports the termination of the contract effective the earlier of December 31, 2001 or upon cessation of the rate freeze.

In its original comments, PG&E asserted factual error concerning shareholder responsibility for the discount should the rate fall below the marginal cost floor. PG&E retracted the assertion in its Supplemental Comments, stating that the draft decision contained no factual error.

Also in its original comments, PG&E stated that the draft decision's allegation that cogeneration deferral contracts were "anticompetitive" was

unsubstantiated by the record in the case, and that referring to such contracts as anticompetitive could prejudice future proceedings. We have deleted these references because PG&E is correct that we do not presently have record support for them. However, this change does not materially affect the outcome of the draft decision and, in all other respects, it is unchanged.

Findings of Fact

1. Resolution E-3423 approved a cogeneration deferral agreement between PG&E and Exxon, providing for a 50/50 shareholder and ratepayer sharing mechanism for the contract's discounted rate on October 18, 1995.
2. Assembly Bill 1890 added §372(b)(3) to the PU Code and establishes that the Commission shall provide consistent ratemaking treatment for cogeneration deferral contracts signed between January 1 and December 20, 1995, with the policy in effect prior to January 1995.
3. In an interpretation of PU Code §372(b)(3), Decision 97-11-071 approves rollback of shareholder funding of a Southern California Edison cogeneration contract discount agreement made during 1995.
4. Resolution E-3423 should be modified to conform to PU Code §372(b)(3) and Decision 97-11-071, providing for 100% ratepayer responsibility for the cogeneration deferral discount.
5. PU Code §454 provides that a rate change does not become effective until approved by the Commission.
6. A retroactive ratemaking treatment requested by PG&E should be denied.
7. PG&E's Preliminary Statement, Section D.6, should be revised to outline the changed revenue flow and sharing mechanism.
8. PU Code §372(b)(2)(A) allows Exxon to continue to receive service under the deferral agreement through December 31, 2001.
9. General Order 96-A, Section X, allows the Commission to modify contracts.
10. The contract between PG&E and Exxon does not waive the Commission's rights under GO 96-A.

11. Electric restructuring is intended to provide a competitive marketplace.

12. Cogeneration and cogeneration deferral contracts should terminate upon December 31, 2001, or upon the end of the rate freeze, whichever is earlier.

Conclusions of Law

1. Assembly Bill 1890 added §372(b)(3) to the PU Code and establishes that the Commission shall provide consistent ratemaking treatment for cogeneration deferral contracts signed between January 1 and December 20, 1995, with the policy in effect prior to January 1995.

2. Resolution E-3423 should be modified to conform to PU Code §372(b)(3) and Decision 97-11-071, providing for 100% ratepayer responsibility for the cogeneration deferral discount.

3. PU Code §454 provides that a rate change does not become effective until approved by the Commission. A retroactive ratemaking treatment requested by PG&E should be denied.

4. PG&E's Preliminary Statement, Section D.6, should be revised to outline the changed revenue flow and sharing mechanism.

5. PU Code §372(b)(2)(A) allows Exxon to continue to receive service under the deferral agreement through December 31, 2001.

6. Cogeneration and cogeneration deferral contracts should terminate upon December 31, 2001, or upon the end of the rate freeze, whichever is earlier.

ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company's Application to modify the ratemaking treatment for the Exxon Agreement in Resolution E-3423 to conform with California PU Code Section 372(b)(3) is approved.

2. Pacific Gas and Electric Company shall modify its Preliminary Statement, Section D.6, outlining the specific change in revenue flow and sharing

mechanisms addressed by this decision, effective upon approval of the Commission.

3. Pacific Gas and Electric Company's request for retroactive ratemaking treatment is denied.

4. Termination of the Exxon contract shall be effective December 31, 2001, or upon cessation of the rate freeze, whichever date occurs first.

This order is effective today.

Dated September 2, 1999, at San Francisco, California.

RICHARD A. BILAS
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