PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY
AND COMPLIANCE DIVISION
Energy Branch

RESOLUTION E-3164
November 3, 1989

R E S O L U T I O N

RESOLUTION E-3164. PACIFIC GAS & ELECTRIC COMPANY AUTHORIZED TO FILE A NEGOTIATED SETTLEMENT AGREEMENT WITH ARVIN-EDISON WATER STORAGE DISTRICT, LOCATED IN KERN COUNTY, WHICH AMENDS A PREVIOUSLY AUTHORIZED AGREEMENT AND RESOLVES A BILLING DISPUTE AND RELATED LAWSUIT BETWEEN THE TWO PARTIES.

BY ADVICE LETTER 1257-E, FILED AUGUST 2, 1989

SUMMARY

1. By Advice Letter 1257-E, filed August 2, 1989, Pacific Gas & Electric Company (PG&E) requests authorization to accept a negotiated settlement agreement with Arvin-Edison Water Storage District (Arvin-Edison), dated March 29, 1989. This settlement agreement resolves a billing dispute and related lawsuit between the two parties. The settlement agreement also amends a prior agreement between PG&E and Arvin-Edison.

2. This resolution approves PG&E's request.

BACKGROUND

1. In December, 1967, PG&E signed a letter agreement with Arvin-Edison and the United States Bureau of Reclamation (Bureau) regarding the furnishing of transmission, exchange, and other services to the Bureau in order that Central Valley Project (CVP) electrical power could be delivered to Arvin-Edison's pumping installations in Kern County.

2. The Bureau has subsequently become known as the Department of Energy, Western Area Power Alliance of the United States (WAPA). WAPA is the marketing agency of the Department of Energy and as such, markets federal power produced from federal dams and other sources.

3. Under the provisions of the 1967 letter agreement, Arvin-Edison must maintain its pumping load so as to not exceed the maximum power allocation available from WAPA at any time. In the event of such "excess load" Arvin-Edison will designate a specific pumping installation as having received the excess purchased power from PG&E rather than transported power. The

specified installation will be billed for service from PG&E under the applicable PG&E tariff. Once such service is initiated under the applicable PG&E tariff, Arvin-Edison is obligated to continue such service for the full minimum term of that tariff.

4. On April 11, 1984 at 3 p.m., Arvin-Edison produced a peak pumping load demand of 32,382 kw. This was in excess of the 30,000 kw power allocation available to Arvin-Edison from WAPA.

5. A billing dispute arose between PG&E and Arvin-Edison due to differing interpretations of the Federal Energy Regulatory Commission (FERC) tariff under which Arvin-Edison received power.

6. Due to the complexity of the issues, the billing dispute ultimately went to litigation in a state court. The proposed settlement agreement presented by this filing represents a negotiated settlement of the issues litigation.

NOTICE

1. Public notification of this filing has been made by publication in the Commission's calendar and by mailing copies of the advice letter to other utilities, governmental agencies and to all interested parties who requested such notification.

2. To conserve mailing costs, PG&E did not mail copies of the settlement agreement to all parties, but a copy of the agreement is available upon written request.

PROTESTS

1. No protests have been received.

DISCUSSION

1. Under the provisions of the 1967 agreement, in the event of excess load delivered, Arvin-Edison was required to designate specific pumping installations to eliminate the excess load. Such pumping installations are considered as having received PG&E power rather than PG&E transported WAPA power and would then be billed at the applicable PG&E tariff rate, including the minimum term for such tariff.

2. Arvin-Edison had the option of securing, within 30 days, a sufficient retroactive increase in its power allotment from WAPA to cover the excess load situation.

3. The applicable PG&E rate schedule in this case is PA-1, Agricultural Power. This rate schedule requires a one year minimum contract, thereby requiring PG&E to bill Arvin-Edison for the specific period of April 1, 1984 through March 31, 1985,

unless Arvin-Edison secured a sufficient power allotment increase from WAPA.

4. Arvin-Edison failed to secure this allotment increase within the prescribed 30 day time limit. Arvin-Edison also did not make such pump designations, as required by the agreement, but instead offered three alternatives as a solution to the dispute:

a. Repeat an earlier pump installation designation.
b. Subsequently seek a retroactive adjustment in the contract rate of delivery from WAPA for the specific month of April, 1984.
c. Designate individual pumps rather than pumping installations operating at the peak demand time in question, whose combined loads would equal or exceed the excess demand of 2,382 kw.

5. PG&E rejected these three alternatives as unacceptable and contrary to the requirements of the agreement. PG&E's reasons being:

a. The previously designated pumps had a combined recorded peak demand of 1,547 kw during the April 11, 1984 time frame, which did not cover the full amount of the excess demand over and above the 30,000 kw WAPA allocation and thus did not fully contribute to the excess load created at that time.
b. Any retroactive adjustment to the contract rate of delivery sought by Arvin-Edison was not done within the 30 day period following the billing for the excess demand as required by the conditions of the 1967 agreement. There are no provisions in the agreement for a temporary adjustment to the contract rate of delivery to cover one specific time period.
c. Pumps must be designated by pumping installations rather than by individual pumps so that PG&E can properly carry out its metering responsibilities. Designation of some but not all pumps within given pumping installations would make it impossible to rely on PG&E tape-recording meters for billing and would require PG&E staff to spend an excessive amount of time using manual pump meter records supplied by Arvin-Edison to calculate bills. In addition, the applicable CPUC-filed tariff for PG&E requires separately metered service.

6. This matter was still not resolved several months later and on January 14, 1985, PG&E served notice on Arvin-Edison that unless Arvin-Edison supplied written designation of specific pumping installations within ten days, PG&E would make its own

designation based on the pumping installations that were exceeding the specific allocated demand on April 11, 1984.

7. Accordingly, On January 24, 1985, PG&E designated 20 Arvin-Edison pumping installations with a combined maximum connected load of 4,712 kw as having contributed to the excess demand on April 11, 1984.

8. Based on actual consumption of electrical energy by these 20 pumping installations during the period from April 1, 1984 and March 31, 1985, PG&E calculated a bill to Arvin-Edison of $634,597.08 under the applicable PA-1 rate schedule in effect during that time period.

9. Arvin-Edison disputed this billing and the matter has been in contention ever since. The amount in question was placed in escrow by Arvin-Edison and has accrued interest during the period of dispute.

10. The primary electric energy received by Arvin-Edison is WAPA energy which is transported by PG&E and delivered under FERC tariffs. The FERC tariffs do not provide for the transporting utility to terminate service due to a billing dispute and thus PG&E was not able to avail itself of this method of collection.

11. The matter was referred to the Kern County Superior Court (Docket #190142) and on March 29, 1988, a settlement agreement was reached between the two parties.

12. The settlement agreement calls for a payment by Arvin-Edison to PG&E of $460,000 plus accumulated interest of approximately $41,000 as the negotiated payment for the disputed billing.

13. In addition to the settlement of the bill, PG&E and Arvin-Edison agreed to avoid such disputes in the future by amending the applicable section of the 1967 agreement to allow Arvin-Edison thirty-five (35) days from the date that PG&E issues a written notice or bill to provide PG&E with a written notice from the Federal government that a retroactive increase in the contract delivery rate sufficient to meet the monthly maximum demand will be granted.

14. This revision differs from the original agreement in that Arvin-Edison's obligation to PG&E changes from 30 days from date of billing to <u>secure</u> a retroactive increase in the contract rate of delivery to 35 days to obtain <u>written verification</u> that an increase in contract delivery will be granted. The increase would be in effect until subsequently modified by both Arvin-Edison and WAPA, with the exception that once Arvin-Edison starts taking service under an applicable PG&E tariff the obligation to continue the service will continue for the full minimum term of the tariff.

15. On February 28, 1989, PG&E filed with the FERC the settlement agreement and by letter dated June 6, 1989, the FERC notified PG&E that the filing had been accepted and that the settlement was designated as "Supplement No. 33 to Rate Schedule FERC No. 79". Since no protests to PG&E's submittal were filed within 30 days after the FERC's notification of acceptance, the FERC's action is now final, thereby closing FERC Docket No. ER89-390-000.

16. The agreement provides that Arvin-Edison shall pay PG&E the settlement amount within 30 days. However, since the settlement relates to CPUC-jurisdictional sales and service, the funds have been held by PG&E pending CPUC approval, at which time this billing dispute will be considered closed.

17. The $460,000 settlement amount, plus $41,000 of accrued interest represents approximately 79% of the total amount billed. However, PG&E believes that this represents a fair and equitable settlement in that it concerns a complex billing dispute involving two regulatory jurisdictions and a state court.

18. It has been five years since the incident that precipitated this dispute and PG&E believes that this settlement represents a reasonable balance between further litigation and the likelihood of being able to prevail in state court, at FERC and ultimately with the CPUC.

19. The funds received by PG&E are booked as revenue in the year received. The difference between the billed amount and the amount received is charged to Account #8071, Uncollectible Accounts. The write-off is netted against the CPUC-authorized fund PG&E holds for uncollectible revenues and is not subject to future collection.

20. The Commission Advisory and Compliance Division (CACD) has reviewed this filing and believes that given the risk involved with such litigation, the settlement is reasonable.

21. PG&E alleges that this filing will not increase any rate or charge, cause the withdrawal of service, nor conflict with other rate schedules or rules.

FINDINGS

1. The settlement agreement with Arvin-Edison, as presented by PG&E in Advice letter 1257-E, represents the conclusion of a complex billing dispute involving two regulatory jurisdictions and a state court.

2. The settlement amount and the revision to the previously filed agreement have been reached after several years of protracted discussions and represent terms mutually acceptable to both parties.

3. The revised agreement and the settlement amount have already been approved by the Federal Energy Regulatory Commission and only CPUC approval is required for PG&E to conclude this billing dispute.

4. PG&E was prevented by the provisions of the FERC tariffs from utilizing normal collection procedures, such as termination of service. This left litigation as the only avenue of recovery.

5. The uncollected amount over and above the settlement agreement is balanced against the cost of future litigation and allows the two parties to conclude this dispute under terms mutually acceptable to both parties.

6. By settling this matter out of court, the risk of failing to prevail in the court is eliminated.

7. The proposed revision to the 1967 letter agreement with Arvin-Edison should eliminate the possibility of future misunderstandings of this nature.

8. For all of the above reasons, this settlement agreement should be approved.

THEREFORE IT IS ORDERED that:

1. Pacific Gas & Electric Company is authorized under the provisions of Section X.A. of General Order No. 96-A and Section 491 of the Public Utilities Code to amend the prior letter agreement with Arvin-Edison Water Storage District, as presented by Advice Letter 1257-E.

2. Pacific Gas & Electric Company is authorized to file the negotiated settlement agreement with Arvin-Edison as presented by Advice letter 1257-E.

3. The effective date of the amendment to the letter agreement and the negotiated settlement agreement shall be the effective date of this resolution.

4. Within thirty (30) days after the effective date of this resolution Pacific Gas & Electric Company shall file an advice letter amending the List of Contracts and Deviations to include the negotiated settlement agreement and the amendment to the 1967 letter agreement with Arvin-Edison.

5. Advice letter 1257-E and accompanying attachments shall be marked to show that they were accepted for filing by Resolution E-3164.

I hereby certify that this resolution was adopted by the California Public Utilities Commission at its regular meeting on November 3, 1989. The following Commissioners approved it:

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Wesley Franklin

WESLEY FRANKLIN
Acting Executive Director