PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY
AND COMPLIANCE DIVISION
Energy Branch

RESOLUTION E-3423
October 18, 1995

RESOLUTION

RESOLUTION E-3423. PACIFIC GAS AND ELECTRIC COMPANY REQUESTS AUTHORITY TO SERVE EXXON COMPANY U.S.A. UNDER THE TERMS AND CONDITIONS OF AN AGREEMENT FOR DEFERRAL FOR THE CONSTRUCTION OF COGENERATION FACILITIES.

BY ADVICE LETTER NO. 1526-E filed on July 20, 1995.

SUMMARY

1. In this advice letter Pacific Gas and Electric Company (PG&E) requests authority to serve Exxon Company U.S.A. (Exxon) under the terms and conditions of an Agreement for Deferral of the Construction of Cogeneration Facilities (Agreement) for an initial period of four years after approval by the California Public Utilities Commission (CPUC), with the possibility to extend the agreement annually.

2. In its advice letter filing PG&E proposes that funding of the discount to Exxon be the same as that ultimately approved by the CPUC in the PG&E Rate Design Window (RDW) proceeding (A.91-11-036).[1] Additionally, PG&E commits its shareholders to be solely, financially responsible for the difference between its forecasted and actual marginal costs if PG&E's actual marginal costs to serve Exxon are greater than the forecasted marginal costs contained in the Agreement.

3. This resolution authorizes PG&E to serve Exxon under the Agreement without making any findings regarding contract reasonableness and with certain conditions pertaining to confidentiality and waiver of CPUC General Order 96-A.

BACKGROUND

1. Exxon currently receives transmission level service from PG&E under Schedule E-20--Service to Customers with Maximum Demands of 1,000 Kilowatts or More.

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1 In the RDW proceeding, PG&E proposed a 50% shareholder responsibility for the revenue shortfall resulting from cogeneration deferral discount contracts.

2. Exxon has demonstrated to PG&E that construction and operation of a cogeneration facility at Exxon's Benicia refinery is financially feasible. PG&E's advice letter filing contains a declaration by Exxon made under penalty of perjury which outlines its efforts to pursue a cogeneration facility.

3. Under the Agreement, PG&E will provide service to Exxon at a discount from its Schedule E-20 rates but above the marginal cost of serving Exxon. PG&E calculates a positive contribution to margin during the term of the Agreement.

4. The term of the agreement is for four years, commencing after Commission approval, with the possibility for extension annually.

5. The rates charged under the Agreement 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 rates will not fall below its marginal cost of service for Exxon. To support this analysis, PG&E commits its shareholders to be solely, financially responsible for the difference between its forecasted and actual marginal costs if PG&E's actual marginal costs to serve Exxon are greater than the forecasted marginal costs contained in the Agreement.

6. The electrical load covered by the Agreement is separate from the loads to be served under the cogeneration deferral tariff's which PG&E submitted in its RDW proceeding. In the RDW tariffs, the cogeneration discounts are applicable to specified loads up to 10 megawatts (MWs) each, with an overall program limit of 100 MWs. The Exxon Agreement applies a discount to an assumed Exxon load, with incremental demand tied to Schedule E-20.

7. The Agreement includes termination provisions identical to those considered in the cogeneration deferral contracts in PG&E's RDW proceeding. If Exxon terminates before the end of the initial four year term, it must repay to PG&E all or a portion of the savings it received pursuant to the Agreement. The formula to calculate the amount of repayment is the same as that in the RDW proceeding.

8. In the event that Exxon contracts with a third party supplier to deliver power over PG&E transmission lines for all or a portion of its load served by the Agreement (i.e., under a Direct Access scheme proposed under the electric industry restructuring), Exxon must repay to PG&E all or a portion of the savings it received for that load. The formula for repayment is the same as the formula in the termination provision.

9. PG&E requests approval of the Agreement to serve Exxon at rates which deviate from tariffed rates. PG&E has filed a proposed tariff sheet listing the Agreement under <u>Contracts and Deviations</u>. The original Advice Letter requests Public

Utilities Code (P.U. Code) Section 583 confidentiality and submits the Agreement to the ongoing jurisdiction of the CPUC, excepting the right of the CPUC to modify or terminate the agreement pursuant to General Order 96-A.

NOTICE

The original Advice Letter was noticed in accordance with section III of General Order 96-A by publication in the Commission Calendar and distribution to PG&E's advice letter filing service list.

PROTESTS

No protests have been received by the Commission Advisory and Compliance Division (CACD) for this Advice Letter filing.

DISCUSSION

1. Since PG&E seeks approval to serve Exxon at rates which deviate from the applicable tariffs, a resolution is required to approve the advice letter filing.

2. CACD has considered the relationship between the Exxon Agreement and PG&E's RDW programs and whether the Agreement should be viewed as contributing to the 100 MW program cap for cogeneration discounts proposed in the RDW proceeding. CACD's comparison of the Agreement and PG&E's request in the RDW proceeding reveals that the Agreement is substantially different from the standard cogeneration deferral tariffs of the RDW proceeding. The Agreement's term, size and pricing provisions are each different from those of the proposed standard cogeneration deferral tariffs in the RDW proceeding. These differences, combined with the standing policy of the Commission to allow for rate discounts to defer uneconomic bypass, support CACD's recommendation to examine the Agreement outside the context of the RDW proceeding.

3. In order to approve PG&E's request for authority to serve Exxon under the terms and conditions of the Agreement, CACD must be satisfied that several conditions are met. The level of review for this special contract is similar to that received by special contracts in the closed, electric Expedited Application Docket (EAD). In the EAD, the purpose of the review was to ensure that other ratepayers were not unfairly subsidizing special contract customers and that the rate under the special contract covered at least the costs of producing the power sold under the contract. The viability of the bypass project was subject to scrutiny. In addition, reasonableness was not an issue in the EAD:

> "the nature of the review of a special contract...is not one that results in a finding that the level of prices is reasonable and

> prudent. Rather, approval merely indicates that the contract's prices are high enough so that other classes of ratepayers are not unreasonably harmed." (D.88-03-008, mimeo. p.40)

Because the EAD expired for electric utilities in 1990 and because the Exxon Agreement deviates from the cogeneration deferral tariffs under the RDW, PG&E seeks review of this contract through an Advice Letter. Because no findings of reasonableness are requested, CACD believes that expedited review through the Advice Letter process, though not optimal, is acceptable.

4. The threshold question in a bypass threat is whether the project planned by the customer in lieu of a special contract poses an imminent and credible threat of the customer leaving the utility's system. Based on PG&E's feasibility review of Exxon's proposed cogeneration project and the declaration of Exxon in support of the Agreement, CACD believes that the project planned by Exxon meets the threshold test of posing a credible and imminent threat to leave PG&E's system.

5. In conjunction with the viability test, consideration must be made to determine whether the proposed contract is needed to avert uneconomic bypass. Bypass is considered uneconomic when a customer leaves the utility system even though the cost of the bypass is greater than the marginal cost of utility service. In this scenario, bypass would be uneconomic to the utility's ratepayers who could still receive some positive contribution to margin if the customer stayed on the utility system and paid a rate less than or equal to the cost to bypass, but still higher than the utility's marginal cost. Economic bypass occurs when a customer's cost to bypass a utility's system is less than the marginal cost needed for the utility to serve this customer. Allowing the customer to bypass would be economic to the utility's ratepayers since no positive contribution can be made if the utility, in order to compete with the customer's cost to bypass, had to offer a negotiated rate which was below the utility's marginal cost needed to serve the customer. Analysis provided by PG&E and reviewed by CACD supports that the proposed discount to serve Exxon will produce revenues above the marginal cost to serve Exxon, and that the contract is necessary to avert uneconomic bypass.

6. CACD recommends that PG&E be allowed to serve Exxon under the terms and conditions of the Agreement. CACD recommends that no findings of reasonableness should be associated with this recommendation since CACD has only applied the EAD guidelines in

its analysis of PG&E's advice letter filing request.[2] CACD recommends that reasonableness of this Agreement be reviewed in the next Energy Cost Adjustment Clause (ECAC) proceeding and that revenue shortfall amounts attributable to ratepayers be reflected in the Energy Rate Adjustment Mechanism (ERAM). To ensure that this element is captured, CACD also recommends modification of PG&E's Preliminary Statement, Section D.6, outlining the specific revenue flow and sharing mechanisms addressed by this resolution for Exxon.

7. In recommending approval of the Agreement, CACD also considers the impact the Agreement could have on collection of any future costs of uneconomic assets. It is possible that the costs of uneconomic assets assignable to a customer such as Exxon could be in excess of the rate Exxon pays PG&E under this Agreement, in which case other ratepayers could be unfairly burdened with their recovery. Therefore, CACD recommends that the Commission apply to PG&E the same risk responsibility as it has in earlier decisions (Genentech, D.94-09-071; USS-Posco, D.94-11-023), where the Commission required PG&E shareholders to assume the risk for any future costs of uneconomic assets should there be a restructuring of the California electric services industry. Costs of uneconomic assets that are not assigned to the customer by this Agreement should be borne by PG&E shareholders, not by other ratepayers.

8. Given that PG&E proposes that its shareholders fund 50% of the Exxon rate discount in the same way as that proposed in PG&E's RDW proceeding for cogeneration deferrals, CACD also recommends that PG&E's shareholders fund 100% of the discounts after restructuring begins, parallel to the Genentech and USS-Posco decisions cited above.

9. Upon submission of the advice letter, PG&E requested confidentiality under P.U. Code section 583 of the specific power amounts and discounts applicable under the contract. The Agreement binds PG&E and Exxon to hold specific details of the contract confidential and outlines specific remedies for each providing information to third parties. PG&E provided CACD a redacted and an unredacted copy of the contract and costing development to enable a full analysis. The proposed RDW decision addresses the issue of confidentiality of the cogeneration deferral contracts, directing PG&E to file an advice letter containing a nondisclosure agreement to be approved by resolution to enable protection of customer-specific information. Until a resolution concerning the nondisclosure agreement, or some other method for dealing with

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2 CACD notes that the EAD process also included use of the Ratepayer Impact Measure test. Given that PG&E shareholders will bear a portion of the revenue shortfall (as proposed by PG&E in the RDW proceeding), CACD believes that the ratepayer impacts are sufficiently addressed and protected.

confidentiality, has been adopted by the CPUC, the Exxon Agreement should remain confidential under P.U. Code section 583. Once adopted, the nondisolosure agreement, or other approach for dealing with confidentiality, should apply to the Exxon Agreement.

10. In addition to the request for confidential treatment, PG&E requests a waiver of General Order (GO) 96-A which enables the CPUC's right to modify or terminate the Agreement. Although CACD recommends adoption of the Exxon contract, CACD recommends that the request for a waiver of GO 96-A should be denied without prejudice and is a matter more properly addressed through a formal application.

FINDINGS

1. PG&E filed Advice Letter 1526-E on July 20, 1995 to request authority to serve Exxon under the terms and conditions of the Agreement for Deferral of the Construction of Cogeneration Facilities for an initial period of four years, with the possibility to extend the agreement annually.

2. The cogeneration bypass project planned by Exxon meets the threshold test of posing a credible and imminent threat to leave PG&E's system.

3. Analysis provided by PG&E and reviewed by CACD supports that the proposed discount to serve Exxon will produce revenues above the marginal cost to serve Exxon and that the contract is necessary to avert uneconomic bypass.

4. The Agreement's prices ensure that the rate under the special contract covers at least the costs of producing the power sold.

5. Reasonableness of this Agreement should be reviewed in the next Energy Cost Adjustment Clause (ECAC) proceeding.

6. Under the Agreement, PG&E will provide service to Exxon at a discount from the Schedule E-20 rates, but above the marginal cost of serving Exxon. PG&E calculates a positive contribution to margin during the term of the Agreement.

7. PG&E proposes that its shareholders be responsible for revenue shortfalls resulting from the Agreement in the same manner as proposed in PG&E's RDW proceeding (A.91-11-036). CACD recommends that PG&E's shareholders fund 50% of the discount before restructuring begins and 100% after restructuring begins.

8. PG&E proposes that its shareholders be solely, financially responsible for the difference between its forecasted and actual marginal costs if PG&E's actual marginal costs to serve Exxon are greater than the forecasted marginal costs contained in the Agreement.

9. The Agreement should be addressed independent of the MW limits of the RDW proceeding. That is, the MW load covered by the Agreement should not be applied to the MW limit contemplated in the RDW proceeding.

10. Revenue shortfall amounts attributable to ratepayers should be reflected in the Energy Rate Adjustment Mechanism (ERAM). PG&E should modify its Preliminary Statement, Section D.6, outlining the specific revenue flow and sharing mechanisms addressed by this resolution for Exxon.

11. Until a resolution concerning the nondisclosure agreement has been adopted by the CPUC, or until some other method for dealing with confidentiality has been adopted pursuant to the RDW proceeding, the Exxon contract should remain confidential under P. U. Code Section 583. Once the resolution or other methodology is adopted, it should apply to the Exxon Agreement.

12. A waiver of GO 96-A should be denied without prejudice. It is a matter more properly addressed through a formal application.

THEREFORE, IT IS ORDERED that:

1. Pacific Gas and Electric Company's Advice Letter No. 1526-E is authorized subject to the following modifications:

    a. PG&E shall amend its Contracts and Deviations listing for Exxon to reflect this resolution number.

    b. PG&E shall add a separate tariff sheet to modify its Preliminary Statement, Section D.6, outlining the specific revenue flow and sharing mechanisms addressed in this resolution.

    c. PG&E shall remove from the Exxon Agreement the waiver of General Order 96-A.

2. Should PG&E choose to implement the Agreement as modified, it may file a Supplemental Advice Letter within 20 days, amending its tariffs and the Agreement, consistent with this resolution.

3. PG&E's shareholders shall be responsible for revenue shortfalls resulting from the Agreement in the same manner as ultimately adopted in PG&E's RDW proceeding (A.91-11-036).

4. PG&E's shareholders shall be solely, financially responsible for the difference between its forecasted and actual marginal costs if PG&E's actual marginal costs to serve Exxon are greater than the forecasted marginal costs contained in the Agreement.

5. PG&E's shareholders shall assume full risk for any future costs of uneconomic assets not assigned to the customer under the Agreement should there be a restructuring of the California electric services industry. Restructuring includes any Commission imposed regulatory scheme which allows customers to receive the financial benefits of obtaining power from non-PG&E sources.

6. The reasonableness of the Agreement will be reviewed in PG&E's first ECAC reasonableness review subsequent to Commission approval of the Agreement and revenue shortfalls attributable to ratepayers will be reflected in ERAM.

7. Confidentiality of the Exxon contract requested under P.U.Code Section 583 shall be maintained by CACD until a nondisclosure agreement has been approved by future resolution, or until some other method for dealing with confidentiality has been adopted pursuant to the RDW proceeding, at which time the nondisclosure agreement, or other method, shall apply to the Exxon Agreement.

8. Upon satisfactory receipt of supplemental and additional tariff sheets and modified Agreement, as ordered herein, Advice Letter 1526-E and the accompanying tariff sheets shall be marked to show that they were approved by Commission Resolution E-3423.

9. PG&E's request for a waiver of General Order 96-A is denied without prejudice.

10. This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities commission at its regular meeting on October 18, 1995. The following Commissioners approved it:

Wesley Franklin

WESLEY FRANKLIN
Acting Executive Director

DANIEL WM. FESSLER
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P. GREGORY CONLON
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