

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY AND
COMPLIANCE DIVISION
Energy Branch

RESOLUTION G-2994
May 8, 1992

R E S O L U T I O N

RESOLUTION G-2994. PACIFIC GAS AND ELECTRIC COMPANY (PG&E) SUBMITS SUPPLEMENTAL TARIFFS AND RULES TO COMPLY WITH DECISION 91-02-040 UNDER ORDER INSTITUTING RULEMAKING (OIR) 86-06-006 AND 90-02-008 FOR THE CORE AGGREGATION PROGRAM.

BY SUPPLEMENTAL ADVICE LETTER 1637-G-E, FILED ON NOVEMBER 14, 1991.

SUMMARY

Pacific Gas & Electric Company (PG&E) submitted supplemental Advice Letter 1637-G-E to comply with Resolution G-2967, which ordered PG&E to provide core aggregators with access to Canadian supplies at Malin, Oregon. PG&E's filing was protested by two parties. This resolution denies reconsideration of issues raised by the Canadian Producer Group concerning access to Canadian supplies. However, this resolution does order PG&E to modify an appendix calculation in the core aggregators' contract to reinstate its original methodology used for reserving capacity on Pacific Gas Transmission Company's and El Paso Natural Gas Company's pipelines.

BACKGROUND

1. On February 21, 1991, the Commission adopted D.91-02-040, which set forth final rules for a pilot program providing transportation-only service to core customers who aggregate their loads.
2. PG&E filed Advice Letter (A.L.) 1637-G on March 15, 1991 and a full supplemental A.L. 1637-G-A on May 21, 1991, revising its residential and small commercial tariff schedules, amending its rules, and submitting pro forma contracts.
3. On June 19, 1991, the Commission adopted Interim Resolution G-2956, which addressed PG&E's A.L. 1637-G and ordered PG&E to revise its core aggregation filing accordingly. PG&E filed full supplemental tariffs under A.L. 1637-G-B on June 26, 1991.

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4. On July 24, 1991, the Commission approved Resolution G-2958, which addressed PG&E's supplemental A.L. 1637-G-A. PG&E filed another full supplemental A.L. 1637-G-C on July 31, 1991 for the program's implementation on August 1, 1991.

5. PG&E filed supplemental A.L. 1637-G-D on October 18, 1991 to comply with Resolutions G-2956 and G-2958, replacing some of the tariff sheets contained in A.L. 1637-G-C. PG&E also filed A.L. 1637-G-E on November 14, 1991 to comply with Resolution G-2967 issued November 6, 1991, replacing certain tariff language on some of the sheets contained in 1637-G-C and 1637-G-D.

6. PG&E's 1637-G-E compliance filing provides core aggregators access to Canadian supplies at PG&E's receipt point at Malin, Oregon. Existing customers will have the option of receiving service via Malin prior to the expiration of the term of their current service agreement, or may elect to maintain their current arrangements for the remainder of the two-year agreement term.

NOTICE

1. Public notice of the above mentioned advice letters was made by utility's mailing copies to other utilities, governmental agencies, to the service list of OIR 90-02-008, and to all interested parties who requested notification.

PROTESTS

1. Protests to PG&E's supplemental A.L. 1637-G-E were filed with the Commission Advisory and Compliance Division (CACD) on December 4, 1991 from the Canadian Petroleum Association (CPA) and from Access Energy Corporation (ACCESS). PG&E replied to both protests by separate letters dated December 12, 1991.

2. Access to Canadian Supplies

CPA recommends that the Commission reject A.L. 1637-G-E on the basis that implementation of the revised language contained by the advice letter:

- will abrogate long-term, internationally-approved contracts involving PG&E, PGT (Pacific Gas Transmission Company), A&S (Alberta and Southern Gas Co. Ltd.), and Canadian producers under contract of A&S;
- will revoke a previously-approved settlement agreement reserving PG&E's capacity rights on PGT for the purchase of gas from these producers; and
- will intrude upon matters within the jurisdiction of the FERC (Federal Energy Regulatory Commission) and

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DOE/FE (Department of Energy's Office of Fossil Energy).

PG&E states that Advice Letter 1637-G-E was filed in compliance with D.91-02-040 and Resolutions G-2956, G-2958, G-2960, and G-2967. PG&E responds that without admitting or denying any of the allegations set forth in CPA's protest, PG&E notes that it has filed an Application for Rehearing of Resolution G-2967, dated December 6, 1991, and that "pursuant to Section 1735 of the State of California Public Utilities Code (PUC), PG&E must implement the Commission's order regardless of its pending application for rehearing".

Discussion

PG&E filed A.L. 1637-G-E to comply with Commission orders under Resolution G-2967. The resolution required conversion of some of PG&E's firm sales rights to firm transportation rights on PGT in order to provide core aggregators access to Canadian supplies, to offer this service on a nondiscriminatory basis, and to not restrict this service to the purchase of gas from producers holding contracts with A&S. These orders were issued to compel tariff compliance with D.91-02-040.

CPA's protest of PG&E's A.L. 1637-G-E attempts to relitigate issues it raised in its Application for Rehearing of D.91-02-040, dated March 28, 1991. CPA was denied rehearing by the Commission under D.91-05-058 on May 22, 1991. CPA also has raised the identical issues of contract abrogation, revocation of the settlement agreement, and regulatory preemption in their rehearing request of D.91-11-025, which outlines our rules for capacity brokering. The Commission denied rehearing of these issues on February 10, 1992 under D.92-02-042.

Under Section 1756 of the California Public Utilities Code, CPA could have appealed the denial of rehearing under D.91-05-058 to the California Supreme Court had it applied to do so within 30 days of May 22, 1991. CPA made no such filing. Relitigation is precluded under the doctrines of res judicata (which applies to all issues that were either raised or could have been raised) and collateral estoppel, and is also precluded under Section 1709 of the California Public Utilities Code which states that: "In all collateral actions or proceedings, the orders and decisions of the Commission which have become final shall be conclusive". Because CPA's protested issues to PG&E's A.L. 1637-G-E have been previously litigated, CACD recommends denial of CPA's protest.

3. Pro Rata Access for Core Transporters

ACCESS protests that under PG&E's amended Natural Gas Core Transportation Service Agreement, PG&E provides that no more than 50% of the cumulative MDQ (Maximum Daily Quantity) of a core customer transport group may be transported from either Topock, Arizona or Malin, Oregon, and that this mechanism effectively

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halves the Commission's directive under Resolution G-2967. ACCESS submits that operational feasibility, as opposed to artificially-imposed percentage limitations, should control the core customer transport volumes.

ACCESS contends that core transport customers will not get their fair share of available capacity on any given day at either Topock or Malin, because the service agreement places an inappropriate and unjustified 50% limit on the MDQ from either location. ACCESS argues that PG&E's 50% MDQ limit should be a floor for, not a ceiling on, the usage of available capacity at either receipt point. ACCESS protests that since PG&E takes advantage of this operational flexibility in meeting its own core system supply requirement, core transport customers should be afforded the same operational flexibility.

PG&E responds that pursuant to D.91-02-040, mimeo., p.4, PG&E provides pro rata capacity reservations on PGT and El Paso pipelines for the core transportation program. PG&E provides core transporters with ten percent of the 1200 MMcf/day of capacity reserved for core requirements, split equally over PGT and El Paso.

PG&E replies that the MDQ specifies the pro rata share of PG&E's core capacity per customer in the core aggregator's group and that the MDQ calculation restricts the maximum daily take of Agent-Identified gas transported under PG&E's firm transportation rights from both supply sources. However, PG&E explains, the MDQ does not restrict the amount of gas that can flow outside of PG&E's firm rights on behalf of the Group. PG&E adds that by limiting the MDQ via Malin to 50% of the total MDQ does not mean that 50% of the gas purchased must be transported via Malin. "For most of the year, the total daily demand of the Group is below the total MDQ. On days when the total MDQ is not needed to meet customer demand, it is possible to deliver a greater than 50 percent share from either source".

Discussion

Under D.91-02-040 and other related decisions for procurement and capacity brokering, the Commission has provided the general guideline that access to capacity for core aggregators be pro rata with the available capacity provided by the LDC (Local Distribution Company) for the core. To comply with this policy, PG&E has devised a method requiring the core aggregator to list the estimated sum of its customers' MDQ by month and then total and split the sum equally between PG&E's two access points, Malin and Topock. These totals include gas purchased from PG&E and amounts to be banked under storage.

In a presumed move to ensure fairness, PG&E has accomplished an impractical result. PG&E's restrictions on the core aggregator's MDQ forces strict adherence to a 50-50 split of reserved capacity

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over the El Paso and PGT pipelines. As a result, the core aggregator who is 1 therm short of capacity from Malin for its contracted gas cannot borrow from the capacity reserved for its supplies at Topock to meet the capacity shortfall. Instead, it must rely on interruptible service to transport this therm of gas.

PG&E has modified this calculation in Appendix B of the Core Aggregator contract from its original filing to provide core aggregators access to Canadian supplies from Malin. However, in the process of providing this access, PG&E has rigidly structured all access so as to inhibit an open market to available supplies. This limit on reserved capacity also serves to frustrate the ability of core aggregators to pool supplies for their customers on a daily basis. The result is that customer flexibility is denied and the optimization of the available capacity for core aggregators on any given day may not be achieved. CACD suggests that the Commission require PG&E to reinstate its original methodology reserving capacity by MDQ, but not also by pipeline, so that core aggregators may transport up to their total MDQ from either pipeline for flexibility.

FINDINGS

1. Advice Letter 1637-G-E was filed to comply with D.91-02-040 and Resolutions G-2956, G-2958, G-2960, and G-2967.
2. Advice Letter 1637-G-E provides core aggregators access to Canadian supplies through PG&E's receipt point at Malin, Oregon.
3. CPA's protest of PG&E's A.L. 1637-G-E relitigates issues it raised in its Application for Rehearing of D.91-02-040, dated March 28, 1991. CPA was denied rehearing by the Commission under D.91-05-058 on May 22, 1991.
4. CPA raised the issues of contract abrogation, revocation of the settlement agreement, and regulatory preemption in their rehearing request of D.91-11-025. The Commission denied rehearing of these issues on February 10, 1992 under D.92-02-042.
5. PG&E provides pro rata capacity reservations on PGT and El Paso pipelines for the core transportation program.
6. PG&E provides core transporters with ten percent of the 1200 MMcf/day of capacity reserved for core requirements, split equally over PGT and El Paso.
7. The core aggregator's MDQ specifies the pro rata share of PG&E's core capacity per customer in the core aggregator's group.
8. The MDQ calculation restricts the maximum daily take of Agent-Identified gas transported under PG&E's firm transportation rights from Malin and Topock.

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CONCLUSIONS

1. Relitigation is precluded under the doctrines of res judicata and collateral estoppel, and is also precluded under Section 1709 of the California Public Utilities Code.
2. CPA's protested issues to PG&E's A.L. 1637-G-E have been previously litigated and should be denied.
3. PG&E should reinstate its original methodology used to calculate capacity reservations for core aggregators to provide access up to their total MDQ from either PGT and El Paso.

THEREFORE, IT IS ORDERED that:

1. Pacific Gas and Electric Company shall file a revised tariff sheet for Appendix B of the Core Aggregator Service Agreement in accord with the provisions of General Order 96A, consistent with the findings and conclusions above.
2. With the exception of Appendix B of the Core Aggregator Service Agreement, Advice Letter 1637-G-E fully complies with Commission orders and is approved.
3. Pacific Gas and Electric Company shall submit a revised tariff five days from the effective date of this Resolution.
4. This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on May 8, 1992. The following Commissioners approved it:


NEAL J. SHULMAN
Executive Director

DANIEL WM. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners