

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY
AND COMPLIANCE DIVISION
Energy Branch

RESOLUTION G-3046
March 24, 1993

R E S O L U T I O N

RESOLUTION G-3046. PACIFIC GAS AND ELECTRIC COMPANY SUBMITS PROPOSED SERVICE AGREEMENTS FOR INTERSTATE CAPACITY TO FULLY IMPLEMENT THE CAPACITY BROKERING PROGRAM CONSISTENT WITH THE PROVISIONS IN DECISIONS 92-07-025 AND 91-11-025, ET AL.

BY ADVICE LETTER 1746-G, FILED ON JANUARY 15, 1993 AND
ADVICE LETTER 1746-G-A, FILED ON FEBRUARY 18, 1993.

SUMMARY

1. This Resolution conditionally approves the interstate service agreements submitted by Pacific Gas and Electric Company (PG&E), pending submittal and approval of a compliance filing to reflect the modifications ordered in the Resolution.
2. The service agreements offered in Advice Letters (A.L.) 1746-G and 1746-G-A will not be effective until capacity reallocation programs for either El Paso Natural Gas Company (El Paso) or Pacific Gas Transmission Company (PGT) have been authorized by the Federal Energy Regulatory Commission (FERC), the programs are in place, and the contracts between PG&E and its customers for interstate capacity are accepted by the interstate pipelines and effective.

BACKGROUND

1. On September 11, 1992, PG&E filed A.L. 1714-G requesting approval of its proposed tariff schedules and rules to fully implement the Capacity Brokering program set forth in Decision (D.) 91-11-025 and D.92-07-025. PG&E filed A.L. 1714-G-A on October 2, 1992, which supplements and supercedes portions of A.L. 1714-G.
2. Commission Resolution G-3021 issued on December 16, 1992, conditionally approved A.L. 1714-G and 1714-G-A, in part, deferring review of the proposed rates and service agreements to a subsequent resolution. Resolution G-3021 ordered PG&E to submit a new advice letter containing all service agreements necessary to fully implement Capacity Brokering, tariff language to implement load aggregation, and any other changes not authorized by Resolution G-3021. On January 15, 1993, PG&E

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filed A.L. 1746-G which contained interstate capacity service agreements as ordered. On February 17, 1993, PG&E filed supplemental A.L. 1746-G-A which removed all references to Transwestern Pipeline Company interstate capacity from PG&E's service agreements as ordered in Commission Resolution G-3031.

3. Commission Resolution G-3045 issued on March 10, 1993, conditionally approved A.L. 1720-G and 1720-G-A, PG&E's Partial Implementation program. In G-3045, PG&E was ordered to use interstate capacity service agreements found in A.L. 1746-G and 1746-G-A, pending Commission approval.

4. This Resolution addresses PG&E's A.L. 1746-G and 1746-G-A which incorporates the modifications ordered in G-3021 and G-3031.

NOTICE

Public notice of A.L. 1746-G and 1746-G-A was made by publication in the Commission calendar, and by PG&E's mailing copies to all parties of record in R.88-08-018 and to all interested parties who requested notification.

PROTEST

1. The Indicated Producers protested PG&E's A.L. 1746-G in a letter dated February 4, 1993. PG&E received the letter on February 8, 1993 and responded on February 12, 1993.

2. The Division of Ratepayer Advocates (DRA) protested PG&E's A.L. 1746-G on February 4, 1993. PG&E responded on February 12, 1993.

3. Sunrise Energy Services Inc./SunPacific Energy Management, Inc. (together known as "Sunrise"), protested PG&E's A.L. 1746-G and 1746-G-A in a letter dated February 5, 1993. After agreement to a late filing by Sunrise, PG&E received the letter on February 8, 1993 and responded on February 19, 1993. Sunrise's protest will be considered in this Resolution.

Discussion

The protest issues will be considered by issue rather than discussing them by party.

I. Form 79-776: Agreement For Assignment of Interstate Capacity

A. Transwestern Capacity

DRA protests PG&E's inclusion of Transwestern bid capacity in its bid form in Exhibit A of Form 79-776. In its protest, DRA agrees with CACD's concerns that brokering

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Transwestern capacity may place too much capacity on the market, thereby lowering the potential revenues from the brokering of PG&E's capacity on other pipelines. The lower revenues from brokering translate into higher stranded costs which PG&E's core and noncore ratepayers will bear.

Sunrise protests the inclusion of Transwestern capacity because according to Sunrise, the Commission made it clear that PG&E may not broker Transwestern capacity in Resolution G-3031.

PG&E responded to DRA and Sunrise that it will remove the Transwestern references in its agreements in accordance with Finding Paragraph 5 of Resolution G-3031, dated February 3, 1993.

Discussion

In its supplemental filing A.L. 1746-G-A, PG&E removed all references to Transwestern capacity from Form 79-776 as ordered in Resolution G-3031. Therefore, DRA's and Sunrise's protest are satisfied.

B. Indemnification and Liability of Shippers

Indicated Producers protest PG&E's Agreement for Assignment of Interstate Capacity because PG&E seeks indemnification for any and all expenses or liabilities related to capacity assignment. They note that D.92-07-025 permitted the utilities to specify their rights against the shipper where the shipper fails to pay the pipeline company for contracted transportation service. Indicated Producers note that the Commission ordered SoCalGas to remove broad indemnification language from its tariffs in Resolution G-3023.

PG&E responded that Resolution G-3023 allowed SoCalGas to indemnify itself to protect ratepayers. PG&E notes that unlike SoCalGas, its indemnification is clearly limited to losses, expenses and costs related to capacity covered by the agreement. Therefore, PG&E argues that its language is appropriate.

Discussion

CACD agrees with PG&E that it is allowed to indemnify itself and ratepayers when they may be held liable for increased costs by ensuring that the utility has some recourse for recovery and the language in Form 79-776 is clearly limited to recourse associated with charges related to the capacity being released. CACD recommends that the Indicated Producers' protest be denied.

C. Creditworthiness of Replacement Shipper

Sunrise claims it is improper for PG&E to require a replacement shipper to establish credit with PG&E for interstate capacity.

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PG&E responded that "Form 79-776 is filed pursuant to the CPUC's Capacity Brokering Program. The CPUC has not precluded LDCs [Local Distribution Company] from requiring replacement shippers to satisfy the LDC's creditworthiness standards before being able to place bids.

Discussion

In a separate A.L. 1749-G, PG&E has requested approval of a new rule requiring shippers to establish credit with PG&E. The Commission will review A.L. 1749-G in a future Commission resolution. Until that time, CACD recommends that PG&E remove references in Form 79-776 and Form 79-780 with regard to establishing credit with PG&E. CACD also recommends that Sunrise's protest be addressed in the resolution addressing A.L. 1749-G.

D. Payment Default Provisions

Sunrise protests PG&E's provision to not accept any nominations from a defaulting shipper for deliveries into PG&E's system. Sunrise argues that such provision is an unlawful "tying" of interstate and intrastate service.

Sunrise objects to PG&E's provision that defaulting shippers will not be allowed to participate in any future release of capacity with PG&E. Sunrise argues that this provision violates the FERC's rule that only the pipeline can determine which potential shippers qualify to bid for capacity.

In its response, PG&E argues that it is appropriate that PG&E has the right to terminate capacity release to shippers that are in default of their payments to the interstate pipeline. PG&E argued that it should have the additional remedy of refusing access to its intrastate system for shippers who are in default.

Discussion

CACD agrees with Sunrise that PG&E should not be allowed to refuse intrastate nominations or intrastate service to customers who are in payment default for interstate capacity assigned or released to them by PG&E. CACD believes it was the Commission intent that no contractual ties remain between a utility's interstate capacity and intrastate service except for those allowed in bundled service that the utility may offer. In its Form 79-776, PG&E has ample provisions to allow it to recover expenses associated with interstate capacity and Rule 7 of its current tariffs allow PG&E to recover expenses related to intrastate service. Therefore, CACD recommends that Sunrise's protest be accepted and PG&E should not restrict a customer's nomination into the intrastate system if the customer is in default for interstate capacity.

CACD does agree with PG&E that the utility should be able to refuse to assign or release additional capacity to customers that are in default on other assignments or releases

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of interstate capacity from PG&E. CACD notes that Sunrise is correct that only the interstate pipelines may determine which potential shippers qualify to bid for capacity. The determination will be made using criteria supplied by the releasing shipper. Therefore, PG&E cannot prevent a defaulting shipper from bidding on additional capacity, but PG&E may specify that in its bid criteria that the shipper is not in default to PG&E for other released interstate capacity.

E. Relinquishment of Capacity

Sunrise protests PG&E's request to recall capacity if PG&E has the opportunity to release, reassign or relinquish the capacity for the remaining term of the service agreement at the full as-billed rate. Sunrise believes that PG&E should only be able to recall capacity for relinquishments as they argued in their protest to SoCalGas' A.L. 2133. In that protest Sunrise notes that in D.92-07-025, the Commission's use of the term "relinquishment" with respect to recallable capacity is important. Sunrise interprets a "relinquishment" of the utility's capacity as only possible during a discrete period after the termination of the pipeline's restructuring process. "Relinquishments" are not possible after that time. Sunrise interprets a "permanent release" of capacity under the capacity release rules as different from a relinquishment. Sunrise presumes that the Commission understood the difference between the two terms and meant to limit the recall provision to instances where the utility has an offer to relinquish its capacity.

PG&E responded that "D.92-07-025, at page 52, states that the intent of the Commission in granting utilities the ability to recall during the limited capacity relinquishment period is to provide protection from stranded investment. Therefore, PG&E believes that the tariffs, as stated, achieve the Commission-desired protections.[sic]"

Discussion

CACD does not agree with Sunrise's interpretation of relinquishments as ordered in FERC Order 636, et al. CACD does not interpret Order 636 as prohibiting relinquishments after restructuring, rather the order does not require post-restructuring relinquishments to be mandatory. In Order 636, et al., FERC decided that relinquishments should be mandatory during the restructuring proceeding to allow interstate pipeline customers full flexibility to adapt to the new regulatory market. If a shipper found a replacement shipper that satisfied the pipeline's creditworthiness rules and was willing to take the service agreement for the remainder of its term at the full as-billed rate, then FERC ordered that the pipeline must accept the relinquishment during the restructuring period.

After the restructuring period, a shipper may find a replacement shipper to assume the contract for the full term and price but it is not incumbent upon the pipeline to allow the relinquishment. It is CACD's belief and understanding that

Order 636 does not prevent contract modifications or negotiations between a pipeline and shippers. CACD also does not agree with PG&E's expansion of recall provisions to permanent release. While a permanent release does relieve the utility of pipeline demand charges for the remainder of its service agreement, a permanent release does not remove the financial liability from the utility. Therefore, CACD believes the Commission did not intend to include permanent releases in its discussion of recalling capacity for relinquishments. CACD recommends that PG&E modify Form 79-776 to limit recalls to relinquishments except as noted below.

In D.92-07-025, the Commission did require that the existing shipper bid the full as-billed rate or give up that capacity where the utility receives relinquishment for that same capacity. CACD clarifies that bidding the full as-billed rate for the full term of the utility's contract with the interstate pipeline constitutes a relinquishment offer. The Commission allows the existing shipper to match the relinquishment offer, otherwise the Utility may recall the capacity. Therefore, CACD recommends Sunrise's protest be denied.

F. Recalling Capacity for Core Needs

Sunrise protests PG&E's provision allowing them to recall a shippers capacity to meet core needs. Sunrise does not object to the recalling of capacity, but to PG&E's lack of provisions governing when such recalls would occur.

PG&E responded that it is appropriate that the specific recall provisions be spelled out as conditions at the time the capacity is put up for bid, as the need for recall is variable, given core requirement seasonal changes which will strongly influence whether PG&E determines a need to broker subject to recall.

Discussion

CACD agrees with PG&E and Sunrise that PG&E can recall capacity to serve core needs and that such recalls must be known at the time when capacity is put up for bid. CACD reminds PG&E that while it may recall capacity to serve core needs, PG&E may not hold more than 1200 MMcf/d of interstate capacity in reservation to serve core and wholesale customers. To exceed this reservation, PG&E must file a Petition to Modify D.91-11-025 which established PG&E's core reservation.

G. Earnest Money Deposit

Sunrise protests PG&E's requirement that earnest money deposits must accompany bids.

PG&E responded that the Commission has not precluded them from requiring an earnest money deposit.

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Discussion

CACD agrees with PG&E that it is allowed to collect an earnest money deposit. CACD recommends that Sunrise's protest be denied.

II. Form 79-780, Agreement for Assigned Interstate Capacity for Service to Core Customers

A. Sunrise's Protest

Sunrise reiterates its protests of PG&E's Form 79-776 to the similar provisions in Form 79-780. The only exception is that Sunrise does not protest recallability because PG&E does not include any provisions.

PG&E responded that Sunrise's protest had been addressed by PG&E in its response to Sunrise's protests of Form 79-776.

Discussion

CACD recommends that Sunrise's protests be addressed as CACD has recommended with regard to their protests of PG&E's Form 79-776 as discussed above. PG&E should modify its Form 79-780 in accordance with CACD's recommendations for modifications of PG&E's Form 79-776.

Findings

1. In a separate A.L. 1749-G, PG&E has requested approval of a new rule requiring shippers to establish credit with PG&E. The Commission will review A.L. 1749-G in a future Commission resolution. Until that time CACD recommends that PG&E remove references in Form 79-776 and Form 79-780 with regard to establishing credit with PG&E. CACD also recommends that Sunrise's protest be addressed in the resolution addressing A.L. 1749-G.
2. CACD recommends that PG&E should not restrict a customer's nomination into the intrastate system if the customer is in default for interstate capacity.
3. CACD recommends that PG&E specify in its bid criteria that the shipper can not be in default to PG&E for other released or assigned interstate capacity.
4. CACD recommends PG&E modify Form 79-776 to limit recalls to relinquishments except as noted in Finding Number 5.
5. CACD reminds PG&E that while it may recall capacity to serve core needs, PG&E may not hold more than 1200 MMcf/d of interstate capacity in reservation to serve core and wholesale customers. To exceed this reservation, PG&E must file a

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Petition to Modify D.91-11-025 which established PG&E's core reservation.

6. CACD recommends that PG&E should modify its Form 79-780 in accordance with CACD's recommendations for modifications of PG&E's Form 79-776.

THEREFORE, IT IS ORDERED that:


1. Pacific Gas and Electric Company shall file revised tariffs by April 1, 1993 that are identical to Advice Letters 1746-G and 1746-G-A except for any changes identified in the findings above and any other minor modifications requested by the Commission Advisory and Compliance Division.

2. Advice Letters 1746-G, 1746-G-A shall be marked to show that they have been superseded and supplemented by the advice letters containing the revised tariffs.

3. The revised tariffs shall be approved April 7, 1993, pending written consent by the Commission Advisory and Compliance Division.

4. Pacific Gas and Electric Company's pro forma service agreements for interstate capacity shall be available pending the Federal Energy Regulatory Commission's approval of capacity reallocation programs for El Paso Natural Gas Company or Pacific Gas Transmission Company.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on March 24, 1993. The following Commissioners approved it:



Executive Director

DANIEL Wm. FESSLER
President
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
P. GREGORY CONLON
Commissioners