Decision _____________

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of California Cotton Ginners' Association to Adopt, Amend, or Repeal a Regulation pursuant to Pub. Util. Code Section 1708.5.	Petition 08-10-005 (Filed October 2, 2008)

DECISION GRANTING DISMISSAL OF PETITION WITHOUT PREJUDICE

In this decision, we grant the joint motion of the California Cotton Ginners' Association (CCGA) and Pacific Gas and Electric Company (PG&E) to dismiss without prejudice the petition filed by CCGA on October 2, 2008. As explained below, the parties have reached a settlement under which PG&E will file an advice letter seeking Commission approval of the Optimal Billing Program that was the subject of CCGA's petition. This proceeding is closed.

Background

The facts behind the dispute that led to the filing of CCGA's petition are summarized well in the petition. As the petition notes, the origins of the Optimal Billing Program (OBP) date to the mid-1990s and were designed to address a perceived unfairness resulting from the payment of excessive demand charges by PG&E customers such as CCGA's members:

> "In D.95-04-077, the Commission adopted PG&E's proposal to implement an experimental OBP for certain commercial customers on Schedules E-19 and E-20. The proposal was unopposed and fully supported by DRA and the California League of Food Processors . . . Its purpose was to alleviate the high average rates paid by certain commercial and industrial customers with high seasonal production patterns . . . Due to

> a mismatch between these customers' production cycle and their meter read dates, they paid significant demand charges in months (at the beginning and end of the production cycle) when their usage was relatively low." (Petition, p. 2; citations omitted.)

The petition gives the following example of the problem the OBP was designed to alleviate:

> "Cotton gins are a group of large customers who operate seasonally, based on when the cotton crop is harvested. Assume the cotton harvest begins on October 1, and a cotton ginner's regular meter read date is on the 4th of each month. The ginner is forced to commence ginning operations on October 1, when the harvest begins, to prevent damage to the harvested cotton. As a result, the gin will operate only three days during this billing cycle (October 1-4). If we assume this gin . . . uses 20,000 [kilowatt hours, or kWh] per day when operating, and has a demand of 1,500 kW, it will use only 60,000 kWh during the billing cycle. Nevertheless, it will pay the same demand charge as it would pay if it were a 30-day billing cycle. As a result of this demand charge, its average rate during this billing cycle will be more than $0.50 per kWh, far in excess of the rates paid by any PG&E customer group. The same problem occurs at the end of the production cycle." (*Id.* at 2-3.)

The petition notes that as a result of Decision (D.) 95-04-077, PG&E added special conditions to its commercial schedules whereby a customer was eligible for the OBP if its summer kWh usage was at least twice its winter kWh usage, and the meter read dates chosen by the customer were no more than 45 days apart. In 1999, PG&E filed an advice letter that eliminated the requirement about summer usage, and made eligibility for the OBP depend on whether usage in the customer's highest seasonal production cycle was at least twice the usage during its lowest cycle, whenever those cycles might be. (*Id.* at 3.)

According to the petition, the OBP was a successful program until the Commission issued D.03-04-059, in which it concluded that a group of cotton ginners should be served on agricultural rates rather than the commercial rates that had previously been applied to them. Since the agricultural rates in question did not have an OBP provision, an "unintended consequence" of D.03-04-059 was that cotton ginners could no longer participate in the OBP program. This trend was further accelerated by D.05-05-048, in which the Commission decided, based on D.03-04-059, that a group of almond hullers who had previously been served on commercial rates should also be eligible for the lower agricultural rates. (*Id.* at 4.) Because of the decline in usage, PG&E's OBP was eliminated on May 1, 2006. However, Southern California Edison Company (SCE) instituted an OBP in 2000 that continues to work well. (*Id.* at 5-6.)

In its petition here, CCGA seeks to have an OBP provision added to the agricultural tariffs that now apply to cotton ginning:

> "For all of the same reasons that justified PG&E's creation of the OBP in 1995 and its continued implementation for 11 years; and for all the same reasons that justified SCE's creation of an OBP in 2000 and its continuing implementation for the past 8 years; the Commission should now adopt a regulation to reinstitute the OBP in PG&E's service territory and make it available to agricultural customers." (*Id.* at 8.)

Terms of the Settlement

Under Rule 6.3(d) of the Commission's Rules of Practice and Procedure, PG&E's response to CCGA's petition was due on November 3, 2008. Shortly before that deadline, however, counsel for PG&E requested a 30-day extension of time from the assigned Administrative Law Judge (ALJ) because, in counsel's opinion, CCGA and PG&E were reasonably close to a settlement of their dispute. The ALJ extended the time for PG&E's response until December 3, 2008, which was further extended until December 10, 2008. On December 9, 2008, CCGA informed the ALJ that it had reached a settlement with PG&E and would be filing papers shortly.

In the Joint Motion for Dismissal Without Prejudice that they filed on December 16, 2008, CCGA and PG&E describe the terms of their settlement as follows:

> "Pursuant to the settlement, PG&E will submit an advice letter filing to the Commission within 30 days of the dismissal of the Petition without prejudice.
>
> "The advice letter filing will propose adoption of an OBP tariff consistent with the following basic terms:
>
> - The billing cycles of customers participating in the OBP will coincide with the start date and/or end date of their high seasonal production cycle.
> - The start date and/or end date of the customer's high seasonal production cycle will be as designated by the customer, subject to certain limitations.
> - The OBP will be available to agricultural customers on Schedules AG-5C or AG-5F with demands greater than 500 kW who apply for OBP service in the manner specified.
> - The annual fee for participation in the OBP will initially be $160.00 per meter.
> - The OBP will be a pilot program limited to 50 meters on a first come, first serve basis." (Joint Motion, p. 1.)

Discussion

We have decided to grant the requested dismissal because the terms on which PG&E and CCGA have agreed appear reasonable. There is no question that when it was first approved in 1995, the OBP addressed an inequity that affected primarily the cotton ginners. It also comes as no surprise that in light of D.03-04-059 and D.05-05-048, use of the OBP quickly fell off in PG&E's service area.

CCGA's petition noted that since the average annual savings per cotton ginning customer from reinstitution of the OBP would be about $6,000, the revenue impact of the program on PG&E could be limited to $600,000 by limiting the number of eligible customers to 100. (Petition, pp. 7-8.) The advice letter resulting from the settlement will apparently cut that figure in half by limiting the number of eligible customers to 50.

We also note that if CCGA believes the PG&E advice letter deviates in some material respect from the terms described in the Joint Motion, it is free to file another petition pursuant to Pub. Util. Code § 1708.5, since the dismissal granted herein is without prejudice.

Waiver of Comments

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2) and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

Assignment of Proceeding

John A. Bohn is the assigned Commissioner, and A. Kirk McKenzie is the assigned ALJ in this proceeding.

Findings of Fact

1. On October 2, 2008, CCGA filed a petition pursuant to Pub. Util. Code § 1708.5 seeking adoption of a regulation that would reinstate the OBP in PG&E's service area.

2. On December 16, 2008, CCGA and PG&E filed a Joint Motion stating that they had agreed to reinstitute the OBP for PG&E customers with demands greater than 500 kW who take service under Schedules AG-5C or AG-5F, subject to certain conditions.

3. The OBP described in the preceding Finding of Fact will be limited to 50 meters.

4. The estimated revenue impact on PG&E from the reinstitution of the OBP described above is $300,000.

Conclusions of Law

1. The Joint Motion filed by CCGA and PG&E should be granted.

2. The dismissal of the petition herein should be without prejudice.

O R D E R

IT IS ORDERED that:

1. The Petition to Adopt, Amend, or Repeal a Regulation Pursuant to Pub. Util. Code § 1708.5 filed by the California Cotton Ginners' Association (CCGA) on October 2, 2008, is dismissed without prejudice.

2. Petition 08-10-005 is closed.

This order is effective today.

Dated ______________________________, at San Francisco, California.