

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

April 27, 2004

Agenda ID #3490

TO: PARTIES OF RECORD IN RULEMAKING 01-10-024

This is the draft decision of Administrative Law Judge (ALJ) Walwyn. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:jva

Attachment

Decision **DRAFT DECISION OF ALJ WALWYN (Mailed 4/27/2004)****BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

**OPINION ON PACIFIC GAS AND ELECTRIC COMPANY'S
DECEMBER 4, 2003 PETITION TO MODIFY DECISION 02-10-062****I. Summary**

This decision grants, in part, Pacific Gas and Electric Company's (PG&E) December 4, 2003 "Petition to Modify Decision (D.) 02-10-062 for Waiver for Gas Transmission Northwest Corporation (GTN) Services in connection with California Department of Water Resources' (DWR) PPM Energy Inc. Contract (PPM)" (petition). The requested relief we grant is a waiver of D.02-10-062's prohibition on affiliate transactions for the purpose of PG&E's transactions with GTN as a limited agent for DWR in connection with the new rights DWR has secured under its amended contract with PPM.¹ We deny PG&E's request for a

¹ GTN is a subsidiary of National Energy & Gas Transmission, Inc. (NEGT), a subsidiary of PG&E Corporation (PG&E's parent company). A pending sale of GTN to Trans-Canada Corporation was announced on February 24, 2004. This sale will be subject to bankruptcy court approval since NEGTE filed for protection under Chapter 11 of the U.S. Bankruptcy Code in July 2003.

waiver from D.02-10-062's requirement to use a competitive procurement process for obtaining additional transmission pipeline-related services needed to achieve fuller benefits of the GTN capacity rights. For these additional services, PG&E may transact with GTN under the waiver granted here but must use the solicitation standards adopted in Resolution (Res.) E-3825 and D.04-01-050.

II. Discussion

Pursuant to Res. E-3825 and Res. E-3845, PG&E is required to obtain a waiver from the standards of behavior adopted in D.02-10-062 if it seeks to use an affiliate company to obtain and/or manage gas supplies for the DWR contracts it administers.² In accordance with this requirement, PG&E filed this petition on December 4, 2003. No party filed a response to PG&E's petition.

In its petition, PG&E seeks a waiver to transact with its affiliate GTN on behalf of DWR under the November 10, 2003 amended DWR contract with PPM. This waiver is necessary because DWR has acquired new rights under its PPM contract to (1) supply gas to the PPM generation facility at Klamath Falls, Oregon when it is dispatched by PG&E and (2) have the use and benefit of PPM's firm capacity on GTN's gas transmission pipeline.

PG&E also seeks a waiver to transact with GTN for additional services to enhance DWR's new pipeline transmission rights and, in conjunction with this, to secure a waiver to obtain these services from GTN without using a competitive solicitation process. PG&E anticipates using the following additional GTN services:

- Pool to pool transfers (moving DWR's gas from the GTN system to another shipper or to the PG&E system. No fees are involved in this transfer under GTN's present tariffs.)
- Parking and lending services (tariff-based services for short-term storage and borrowing gas).
- Transportation services (backhaul, interruptible and brokered firm capacity).

PG&E asserts that in order to maximize the effectiveness of its administrative and operational responsibilities for managing the PPM contract, it must obtain the above services from GTN and deal directly with GTN on behalf of DWR. PG&E states that as DWR's limited agent, it will not pursue firm capacity on GTN's system directly with GTN without review by DWR, PG&E's procurement review group, and Commission staff.

Based on the facts set forth in its petition, PG&E has shown that the amended contract DWR has secured with PPM makes it necessary for PG&E to transact with GTN in order to realize the benefits of DWR's new rights. The Commission recognized that PG&E may need to transact with affiliates in administering DWR contracts in Res. E-3825 and made these transactions subject to review via a Petition to Modify D.02-10-062. In D.04-01-050, we ordered a management audit to further address our concerns and adopted the following exception to our permanent ban on affiliate transactions:

“Transactions for natural gas services between SDG&E and SoCalGas and between PG&E and affiliates and operating divisions that are found necessary and beneficial for ratepayer interests. These transactions should be subject to the rules

² These resolutions approved PG&E's Gas Supply Plans for obtaining and managing gas supplies for the DWR contracts it was allocated to administer under D.02-09-053.

adopted in Res. E-3838 and Res. E-3825 pending receipt and review of the management audits ordered here.” (D.04-01-050 at page 79.)

We find that PG&E has shown that transactions with its affiliate GTN, in connection with the new rights DWR has secured under its amended contract with PPM Energy, are necessary and beneficial for ratepayer interests. Therefore, we will grant PG&E’s request for a waiver from D.02-10-062 in order to allow these transactions to occur.

We do not agree with PG&E’s assertion that it requires a waiver from D.02-10-062’s requirement to use a competitive procurement process in order to obtain additional transmission pipeline related services. In particular, parking and lending and capacity brokering are services with other suppliers, and other services³ cited by PG&E may also have, or develop, potential suppliers. In instances where GTN or PG&E’s own facilities are a supplier, PG&E should use the solicitation procedures set forth in Res. E-3825 and D.04-01-050.

Therefore, we deny PG&E’s request for a waiver of D.02-10-062’s requirement for use of competitive solicitations and find instead that the standards set forth in Res. E-3825 and D.04-01-050 for PG&E’s use of its own facilities in administering DWR contracts are the applicable standards for use here.

³ For parking and lending services, the alternative supplier is PG&E’s own utility provided service.

III. Comments on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure.

IV. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Christine M. Walwyn is the assigned ALJ in this proceeding.

Findings of Fact

1. The DWR has acquired new rights under a November 10, 2003 amendment to its contract with PPM. These new rights are (1) for DWR to supply gas to the PPM generation facility at Klamath Falls, Oregon when it is dispatched by PG&E, and (2) for DWR to have the use and benefit of PPM's firm capacity on GTN's gas transmission line.

2. The new amendment benefits ratepayer interests.

3. Given the ratepayer benefit, it is permissible for PG&E to transact directly with its affiliate GTN in PG&E's role as a limited agent for DWR in connection with the new rights DWR has secured under its amended contract with PPM.

4. Some of the additional transmission pipeline related services PG&E anticipates using in connection with DWR's new rights have competitive suppliers.

5. Until a management audit is completed and reviewed, it is reasonable for PG&E to use the solicitation standards for dealings with its own facilities set forth in Res. E-3825 and D.04-01-050, in acquiring additional transmission pipeline related services from PPM or its own facilities. These standards are:

- (a) In cases where PG&E is considering use of its utility owned facilities and services, we are concerned about PG&E's ability to engage in earnest negotiations as an

agent of DWR for services offered and provided by the utility.⁴ In some cases there may be competitive alternatives available to PG&E and the utility has discretion to use its own facilities or those of another provider (e.g., gas storage). A conflict of interest is inherent in such bargaining because the utility has opposing goals to increase utility profits yet protect the interests of DWR, the principal, and minimize costs. To remedy this conflict, we need a standard to gauge whether PG&E's negotiated prices for these services on behalf of DWR are the product of the competing interests of a buyer and seller in an arm's-length transaction. An additional factor for consideration is PG&E's request for offers (RFO) and bids received from competitors to provide services. We expect PG&E to seek such bids in all cases where competitive services are available.

- (b) We will presume in such cases where an RFO is issued and offers are received that a reasonable price is paid if PG&E's charge to DWR for the use of the utility's facilities or services is the same as or lower than the bid(s) received. In cases where there are no competitive alternatives for comparison, we will presume that a reasonable price is paid if PG&E's charge to DWR for the use of the utility's facilities or services is either: (1) the tariff recourse rate for the service, or (2) if the price is negotiated, no higher than the volume weighted average of the price the utility negotiated (except for DWR) for each similar service in the same month and for the same period the service is provided. PG&E will be required to show why any transaction entered into above the weighted average price level was appropriate and reasonable. Whether the utility's decision to use such services was prudent will be considered in our reasonableness review.

⁴ In some instances PG&E's tariff allows the utility to negotiate prices with its customers for certain services (e.g., parking and lending).

6. PG&E, as DWR's limited agent, will not pursue firm capacity on GTN's system directly with GTN without review by DWR, PG&E's PRG, and Commission staff.

Conclusions of Law

1. PG&E request for a waiver of D.02-10-062's prohibition on affiliate transactions for the purpose of PG&E's transactions with GTN as a limited agent for DWR in connection with the new rights DWR has secured under its amended contract with PPM should be granted.

2. PG&E's Petition to Modify D.02-10-062 should be denied in all other respects.

3. PG&E should use the solicitation standards for use of its own facilities set forth in Res. E-3825 and D.04-01-050 as the standard for procurement of other services in connection with the amended DWR/PPM contract, pending receipt and review in Rulemaking 04-04-003 of the management audit ordered in D.04-01-050.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company's (PG&E) request for a waiver of Decision (D.) 02-10-062's prohibition on affiliate transactions for the purpose of PG&E's transactions with its affiliate Gas Transmission Northwest Corporation (GTN) in PG&E's role as a limited agent for California Department of Water Resources (DWR) in connection with the new rights DWR has secured under its amended contract with PPM Energy, Inc. (PPM) is granted.

2. In all other respects, PG&E's Petition to Modify D.02-10-062 is denied.

3. PG&E shall use the competitive solicitation standards for use of its own facilities set forth in Resolution E-3825 and D.04-01-050 as the standard for procurement of other services in connection with the amended DWR/PPM contract, pending receipt and review of the management audit ordered in D.04-01-050.

4. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.