

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4279

October 15, 2009

R E S O L U T I O N

Resolution E-4279 Pacific Gas and Electric (PG&E). **PROPOSED OUTCOME**: This resolution approves lease amendments between PG&E and affiliates of CalPeak Power, LLC for siting generation on land adjacent to utility substations pursuant to Public Utilities Code Section 851. **ESTIMATED COSTS**: Not applicable

By Advice Letter 3499E. Filed on July 21, 2009.

SUMMARY

This Resolution approves PG&E's Advice Letter 3499E seeking approval under Public Utilities (PU) Code Section 851 for PG&E to enter into two amended lease extension agreements on PG&E-owned real properties commonly known as the Vaca Dixon Substation and Panoche Substation. The leases being amended are between PG&E and CalPeak Power-Vaca Dixon, LLC and CalPeak Power-Panoche, LLC, and their affiliates (collectively "CalPeak"). The Lease Extensions would permit CalPeak to extend the current leases by an additional term of 25 years to allow these existing 49.3 megawatt (MW) summer peaking power plants to continue operating to meet California's energy needs.

BACKGROUND

Utilities proposing to sell, lease, dispose of, or otherwise encumber property must comply with PU Code Section 851. Ordinarily, such a proposal would entail a full Application to the Commission, including a review pursuant to CEQA or a demonstration that such a review is not necessary. The Commission on August 25, 2005, initiated a 24-month pilot program per Resolution ALJ-186 that provides for an expedited process for certain transactions meeting criteria specified in the Resolution. On August 23, 2007, the Commission approved Resolution ALJ-202, which extends the pilot program an additional 36 months. Resolution ALJ-202 provides for an expedited process for certain transactions meeting criteria specified in the ALJ Resolution. For proposals that meet the

requirements, an Advice Letter may be filed demonstrating the applicability of the pilot program to the utility's proposal and requesting an expedited review of the Advice Letter, resulting in a Resolution confirming that the proposal meets the requirements of Resolution ALJ-202 and granting approval to the proposed project.

On July 21, 2009, PG&E filed Advice Letter 3499E pursuant to the pilot program requesting approval of two lease amendments between PG&E and CalPeak for siting generation on land adjacent to two utility substations (PG&E's Vaca Dixon Substation and Panoche Substation, respectively). Protests or comments were due to the Commission on August 10, 2009. No protests or comments were filed.

CalPeak owns and operates five combustion gas turbine peaking power generation plants – two 49.3MW plants on PG&E land and CalPeak is located at 7365 Mission George Rd. Suite C in San Diego, California. CalPeak is a joint venture between Starwood Energy Group Global, LLC, and Tyr Energy, LLC (a subsidiary of Itochu Corporation) formed to supply power to California.

PG&E, as landlord, has two expiring ten-year leases of utility property, one with CalPeak Power-Vaca Dixon, LLC, as tenant, and one with CalPeak Power-Panoche, LLC, as tenant, for CalPeak to operate natural gas-fueled electric generators on substation property PG&E owns in the Vacaville-Dixon and Panoche areas (4.685 acres for Panoche in Fresno County and 2.075 acres for Vaca Dixon in Solano County). These leases, previously acted on by the Commission in Decision (D) 01-08-070, will expire in late 2011. However CalPeak is negotiating power purchase agreements (PPAs) where approval of the PPA require certainty of a 25 year lease agreement term at each of these sites by October 2009.

CalPeak shall pay PG&E an annual base rent calculated as provided in the Leases and possibly a percentage rent. For the first year of each of the original leases, the base rent was \$100,000 and this was increased each year thereafter by the Consumer Price Index (CPI). The percentage rent for each calendar year, if any, is equal to the amount by which one and eighty-one one-hundredths percent of the gross revenue from CalPeak's sale of energy produced by the Units to all

parties during such calendar year minus the cost of fuel incurred in the production of such energy exceeds the base rent for such calendar year.

As of the date of the last Anniversary adjustment in December 2008, the Base Rent had risen to \$117,967.52 and no percentage rent has been due since 2006, when the amount was \$6,800 for Vaca Dixon and \$1,526 for Panoche. The same term will continue under the proposed 25-year lease extension, under which CalPeak will pay PG&E base rent of \$100,000 increased by the CPI escalation factor of (June 20xx CPI/June 2001 CPI)¹. However, starting on the tenth anniversary of the original lease commencement date, there is a periodic “re-opener” clause which will allow PG&E to confirm every five years, using market comparisons, that CalPeak is being charged a fair market rent. This clause, where the base rent can only further increase, protects customer interests by maximizing these revenues over the long term.

This transaction is exempt from environmental review under Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines because it can be seen with certainty that there is no possibility that this approval will have a significant effect on the environment. These lease extensions do not have the potential for resulting in either a direct physical change or a reasonably foreseeable indirect physical change to the environment, and therefore these lease extensions are not a “project”, and CEQA review is not required.

NOTICE

Notice of Advice Letter 3499E was made by publication in the Commission’s Daily Calendar on July 24, 2009.

PROTESTS

No protests or comments to Advice Letter 3499E were filed.

1. ¹ For example, to find the 2009 rent you multiply \$100,000 by (June 2008 CPI/June 2001 CPI), i.e. $\$100,000 \times 225.181 / 190.9 = \$117,957$

DISCUSSION

The Energy Division has reviewed PG&E's Advice Letter 3499E and finds that it satisfies the criteria for inclusion in the pilot program specified in Resolution ALJ-202. Additionally, AL 3499E satisfies the filing requirements specified in Appendix A Section IV. 1-13 of Resolution ALJ-202.

The Energy Division has determined that this transaction is exempt from environmental review under Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines because it can be seen with certainty that there is no possibility that this approval will have a significant effect on the environment.

The Energy Division finds that expedited treatment pursuant to Section II of Resolution ALJ-202 is appropriate for AL 3499 and that no reason to deny the approval of Advice Letter 3499 exists pursuant to Section VII. A. 3 of Resolution ALJ-202.

COMMENTS

This is an uncontested matter in which the resolution grants the relief requested. Accordingly, pursuant to PU Code 311(g)(2), and Rule 14.6 (c) (2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is being waived.

FINDINGS

1. On July 21, 2009, PG&E filed Advice Letter 3499E pursuant to the pilot program requesting approval of lease amendments between PG&E and affiliates of CalPeak Power, LLC for siting generation on land adjacent to utility substations.
2. PG&E filed AL 3499E pursuant to a pilot program specified in Resolution ALJ-202.
3. No protests or comments were received by the Commission.
4. CalPeak owns and operates five combustion gas turbine peaking power generation plants, two of which are on PG&E land.
5. PG&E, as landlord, has two expiring ten-year leases of utility property with CalPeak, as tenant, for CalPeak to operate natural gas-fueled electric

generators on substation property PG&E owns in the Vacaville-Dixon and Panoche areas.

6. These leases, previously acted on by the Commission in Decision (D) 01-08-070, will expire in late 2011. PG&E requests to extend the term of these leases for an additional 25 years.
7. CalPeak is negotiating power purchase agreements (PPAs) where approval of the PPAs require certainty of a 25 year lease agreement term at each of these sites by October 2009.
8. CalPeak shall pay PG&E an annual base rent calculated as provided in the Leases and possibly a percentage rent. The same terms will continue under the proposed 25-year lease extension, under which CalPeak will pay PG&E base rent of \$100,000 increased by the CPI escalation factor and if any, a percentage rate calculated using gross rent and fuel costs amounts.
9. The Energy Division has determined that this transaction is exempt from environmental review under Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines because it can be seen with certainty that there is no possibility that this approval will have a significant effect on the environment.
10. The Energy Division has reviewed PG&E's Advice Letter 3499E and finds that it satisfies the criteria for inclusion in the pilot program specified in Resolution ALJ-202.
11. PG&E's Advice Letter 3499E satisfies the filing requirements specified in Section IV, 1-13 of Resolution ALJ-202 and includes all of the information necessary to provide a satisfactory review of this proposed transaction.
12. The Energy Division finds that expedited treatment pursuant to Section II of ALJ-202 is appropriate for AL 3499E and that no reason to deny the approval of Advice Letter 3499E exists.
13. This is an uncontested matter in which the resolution grants the relief requested.

THEREFORE IT IS ORDERED THAT:

1. The request of PG&E for approval of the lease amendments between PG&E and CalPeak entities for siting generation on land adjacent to utility substations is granted.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on October 15, 2009 the following Commissioners voting favorably thereon:

/s/ Paul Clanon

Paul Clanon
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners