

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4323

April 22, 2010

R E S O L U T I O N

Resolution E -4323. Pacific Gas & Electric Company (PG&E).

PROPOSED OUTCOME: This resolution approves with modifications PG&E's proposed *Special Agreement for Unmetered Electrical Service: Limited Exception between PG&E and Clear Channel Outdoor, Inc.* This resolution accommodates the mutual desire of PG&E and the City and County of San Francisco (CCSF) to more than double the electrical load of some 800 transit shelters in San Francisco while not compromising resolution of a related issue that is outside the Commission's jurisdiction.

PG&E is to file in a supplemental Advice Letter a revised *Special Agreement* which deletes all references to whether shelter loads are municipal or retail loads, and which provides an updated inventory that classifies how each shelter is served, whether from a PG&E circuit, or from other circuits whose owners such as CCSF must grant PG&E permission to use them.

ESTIMATED COST: None

By Advice Letter 3591-E filed on January 12, 2010

SUMMARY

The Commission approves a higher wattage for unmetered San Francisco transit shelters, but does not address any ongoing negotiations about PG&E service over lines owned by CCSF or others, nor does it address a third issue of whether transit shelter service constitutes municipal wholesale or PG&E retail load.

PG&E proposes to grandfather a deviation from its *Form 79-972 – Agreement for Unmetered Electrical Service (Standard Agreement)* by means of a *Special Agreement for Unmetered Electrical Service: Limited Exception between PG&E and Clear Channel Outdoor, Inc.* The deviation increases to 400 W the allowable unmetered load of all nonsolar shelters and applies only to the loads and connections of existing transit shelters, some of which are connected to street light circuits.

A supplemental AL will include a complete, uniform inventory without duplicates of each shelter covered by the Special Agreement (that is, not including metered shelters or those still limited to 150 W). The inventory will identify for each shelter location whether PG&E service is now provided over PG&E circuits, or over CCSF streetlight circuits with CCSF's permission, or over other privately owned circuits, or other arrangements as described.

BACKGROUND

Unmetered electric service is offered by PG&E to low consumption customers where the installation of meters is uneconomical or not practical. The energy consumption is calculated from the verified fixed demand of the served equipment and the time of use as controlled by a timer or photo cell. One of those services is lighting of transit shelters for advertisement and/or NextBus indicators.

Unmetered service was offered without formal agreements before 2001, when PG&E filed AL 2141-E for approval of *Form 79-972- Agreement for Unmetered Electric Service*. That AL also asked specifically to grandfather unmetered loads above the 150 watt (W) cap of Form 79-972, but the AL did not address service by PG&E over third party circuits. AL 2141-E with attached Form was approved without a Resolution.

Clear Channel Outdoor, Inc. (Clear Channel) recently contracted with the CCSF's Municipal Transportation Agency (SFMTA) to install and maintain transit shelters that require up to 400 W, along with some existing shelters which already draw more than 150 W, precluding use of the *Standard Agreement*.

A complicating factor is that about 30% of the shelters are connected to CCSF owned street light circuits, but PG&E serves them and bills Clear Channel for energy. Furthermore PG&E and CCSF dispute whether transit shelter loads are municipal or PG&E retail loads under an existing FERC approved Interconnection Agreement beyond the Commission's jurisdiction.

Since the negotiations are expected to take more time than the contract between Clear Channel and CCSF allows for installation of replacement shelters, PG&E drafted the *Special Agreement* to preserve the status quo regarding existing connections to CCSF's streetlight circuits. CCSF, while welcoming the proposed increase in allowable load on the other hand believes the grandfathering

provision in the *Special Agreement* as filed could become a disadvantage in its negotiations with PG&E.

NOTICE

Notice of AL 3591-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

PG&E's Advice Letter AL 3591-E was timely protested by CCSF on February 1, 2010.

PG&E responded to the protest of CCSF on February 8, 2010.

DISCUSSION

Energy Division has reviewed PG&E's proposal, CCSF's protest, and PG&E's response.

PG&E's proposal

In order to formalize the increased consumption of some existing and pending replacement transit shelters in San Francisco, but not future shelters, PG&E proposes a *Special Agreement for Unmetered Electrical Service: Limited Exception, between PG&E and Clear Channel Outdoor, Inc.* as a deviation to the Standard Form 79-972, Agreement for Unmetered Electrical Service.

PG&E attached a list of the shelters to be covered by the *Special Agreement*, which includes shelters connected to PG&E circuits, to CCSF owned street light circuits and to private account circuits. The *Special Agreement* states that

"Transit shelters may remain connected to municipal owned street light circuits ...The maximum unmetered energy use allowable under this exception is 400 watts per transit shelter location. PG&E will bill the customer under the provision of this agreement, for energy use as if it were connected to PG&E's distribution facilities."

PG&E states in its AL that all existing Clear Channel transit shelter usage is appropriately billed as “retail load” by PG&E.

CCSF’s protest

In its protest CCSF discussed three issues:

1. The increased wattage of each shelter;
2. PG&E use of CCSF lines; and
3. A dispute whether shelter loads are CCSF municipal or PG&E retail loads.

CCSF supports provision of unmetered service to transit shelters and the increased allowable load of 400 W. However CCSF protests the AL on two grounds:

- CPUC has no authority to allow PG&E to use CCSF’s street light circuits to provide electricity to the shelters absent evidence that CCSF agreed to it, which CCSF states it has not given; and
- PG&E is using the AL process to obtain an unfair advantage over CCSF in a dispute between CCSF and PG&E as to which entity should provide electricity to transit shelters.

In its protest CCSF states that it has a tight schedule for installation of replacement shelters by Clear Channel. Since CCSF does not anticipate a quick resolution of the dispute it is pursuing an interim agreement with PG&E, outside of the Commission’s jurisdiction, to allow PG&E to serve over CCSF street light circuits.

CCSF also asks the Commission to extend the increased 400 W maximum unmetered service to future shelter locations that would otherwise be limited to 150 W under the *Standard Agreement*.

PG&E’s response to CCSF’s protest

PG&E claims that CCSF’s December 2007 contract with Clear Channel expressly allows Clear Channel to connect to CCSF’s facilities. PG&E quoted Section 8.4.7 of that contract reading:

“Power to Shelters and Kiosks. Contractor will bear the full responsibility, including all costs, of furnishing, installing and maintaining any required electrical service to each Structure authorized under this Agreement....To the extent necessary, Contractor (Clear Channel, sic) will be responsible for

contracting with PG&E for required electricity. If obtaining service directly from PG&E, Contractor will be responsible for obtaining an agreement from PG&E to allow unmetered electrical service. *Contractor may use City owned street lighting circuits and conduits, including the nearest available connection*, to obtain power for a Structure where reasonably available and on terms approved by the San Francisco Public Utilities Commission ("SFPUC"). The rates charged by the SFPUC for electrical service will be the then-current rates approved by the SFPUC for commercial users. *All electrical service lines at the site of each Structure must be underground and must originate from the point-of-service designated by the SFPUC or by PG&E.*" [Emphasis added by PG&E.]

PG&E explains that Clear Channel made connections to CCSF's streetlight circuits per above agreement.

PG&E agrees with CCSF that the dispute over the provision of electricity (municipal or PG&E retail) is outside the jurisdiction of the CPUC, and PG&E is not addressing that issue in this AL.

PG&E will not agree to CCSF's interim proposal without modifications because it unnecessarily alters the status quo. PG&E believes that CCSF allowed Clear Channel's predecessor to connect to the closest facility (circuit), whether it was PG&E's (about 66%) or CCSF's (about 33%) and PG&E has since supplied all of the shelters' electricity. PG&E would like to honor Clear Channel's request to continue serving over the current connections.

PG&E also rejects CCSF's 1) proposed extension of the increased allowable load to future new shelter locations and 2) proposal that new shelter locations connected to CCSF streetlight circuits will only be served by CCSF.

Analysis

This AL raised three issues:

1. Increase in unmetered load;
2. PG&E service over lines owned by others; and
3. Whether service to Clear Channel's transit shelters is PG&E retail load or municipal wholesale load.

Increase in unmetered load

AL E-2141 in 2001 asked for approval to grandfather loads above 150 W at shelters existing at that time, and was approved for those shelters, but AL E-2141 did not ask approval to serve customers over third party circuits.

This resolution confirms and extends approval of unmetered service to loads up to 400 W to transit shelters under the *Special Agreement*.

PG&E service over lines owned by others

Rule 15 states that PG&E *shall not be required* to serve an Applicant from Distribution Line Extension Facilities that are not owned, operated and maintained by PG&E.

Thus, as with easements, the Commission cannot approve PG&E's use of CCSF or other third party property because use (but not safety) of such circuits is outside Commission jurisdiction.

It follows that PG&E needs CCSF's approval to use CCSF's circuits to serve some of the transit shelters.

Further, PG&E states that some shelters are connected to other "private" metered circuits which it also asks to grandfather. Specific grandfathering by CPUC of unmetered service to the few transit shelters connected to private accounts is not needed because Rule 18, Section 2.c states:

"PG&E will furnish and meter electricity to each individual nonresidential premises or space, except:

- c. Where in the sole opinion of PG&E, it is impractical for PG&E to meter individually each premises or space. In such a case, PG&E will meter those premises or spaces that it is practical to meter, if any."

Whether service to Clear Channel's transit shelters is PG&E retail load or municipal wholesale load

The Commission cannot and does not address this issue due to lack of jurisdiction.

Thus in the "Exceptions and Deviations" Section of the proposed *Special Agreement* the clauses should be deleted that refer to "grandfathering" and connection to municipal owned streetlight circuits .

The list of transit shelters attached to the *Special Agreement* of this AL contains several sub lists which may contain duplication, as the titles suggest. This list needs to be clarified as to which shelters are included in this *Special Agreement*, after PG&E obtains CCSF's express consent to include them.

This list may again be modified upon dispute resolution pursuant to Section 4 of the proposed *Special Agreement*.

COMMENTS

Public Utilities Code section 311(g) (1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g) (2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

All parties stipulated to reduce the 30-day comment period for the draft of this resolution to 27 days. Accordingly, on March 25, 2010 this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda for April 22, 2010.

On April 5, 2010 PG&E and CCSF commented on the draft resolution and on April 8 filed replies.

PG&E and CCSF comments have been incorporated throughout, except where they refer to issues other than increase in wattage.

This Resolution allowing an increase in wattage at unmetered shelters applies only to existing and not future transit shelter locations per paragraph 4 of the *Special Agreement*. Per paragraph 12 of that *Agreement* PG&E may decide whether to meter future shelter locations.

FINDINGS AND CONCLUSIONS

1. PG&E filed an Advice Letter to request approval of a *Special Agreement* for Unmetered Electric Service – Limited Exception between PG&E and Clear Channel, Inc. to remedy Clear Channel’s predecessor’s violations of standard Form 79-972 due to loads exceeding 150 W at existing transit shelters in San Francisco.
2. The AL seeks to increase to 400 W the maximum allowable unmetered loads at existing shelter locations, including shelters connected to CCSF owned streetlight circuits and private circuits.
3. The list of shelters PG&E attached to the proposed *Special Agreement* contained duplicates and inconsistent formatting.
4. PG&E seeks to “grandfather” its service to existing shelters that are connected to CCSF-owned streetlight circuits and to circuits owned by others.
5. CCSF protests that approval of PG&E’s entire AL as filed would appear to legitimize PG&E’s use of CCSF streetlight circuits even though CCSF did not permit such use and the Commission has no authority to permit it.
6. CCSF favors the increase from 150 W to 400 W maximum unmetered load of the shelters.
7. CCSF asks that future shelter locations not included in PG&E’s inventory also be allowed the same increase. PG&E rejected that proposal.
8. A CCSF-proposed interim agreement to allow PG&E to serve over CCSF owned circuits pending resolution of their municipal load dispute was rejected by PG&E because it would change the status quo.
9. AL 2141-E in 2001 specifically requested an increase in load but was silent regarding connections to CCSF owned circuits.
10. The CPUC has no jurisdiction over lines not owned, operated and maintained by PG&E, over PG&E agreements with their owners, or over CCSF agreements with their contractors.
11. Electric Rule 15 neither requires nor prohibits PG&E service over nonowned lines.
12. The *Special Agreement* should make no reference to Commission approval of PG&E service over nonowned lines.
13. Under Electric Rule 18.2.c PG&E may choose to not individually meter shelters.
14. The *Special Agreement* allows modification of the shelter inventory at a future time in accord with Rule 18.2.c.

15. All language in the *Special Agreement* should be deleted that refers to “grandfathering”, that implies that transit shelters are connected to “municipal owned streetlight circuits” or to other circuits not owned, operated and maintained by PG&E, and that “PG&E will bill the customer...as if it were connected to PG&E’s distribution facilities”.

THEREFORE IT IS ORDERED THAT:

1. Advice Letter AL 3591-E is approved with modifications allowing PG&E to enter into a *Special Agreement with Clear Channel, Inc. for Unmetered Electric Service – Limited Exception between PG&E and Clear Channel Outdoor Inc.*
2. PG&E shall revise the *Special Agreement* and submit within 10 days a supplemental AL to delete all references to “grandfathering”, to delete all implications that transit shelters are connected with or without permission to “municipal owned streetlight circuits” or to other circuits not owned, operated and maintained by PG&E, and to delete language stating that “PG&E will bill the customer...as if it were connected to PG&E’s distribution facilities”.
3. The supplemental AL shall include a complete, uniform inventory without duplicates of each shelter covered by the *Special Agreement* which does not include metered shelters or those still limited to 150 W. The inventory will identify shelter locations that PG&E is now serving over PG&E circuits, or over CCSF streetlight circuits with CCSF’s permission, or over other privately owned circuits.

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 April 22, 2010; the following Commissioners voting favorably thereon:

/s/ Paul Clanon

Paul Clanon
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners