

Decision 03-09-019 September 4, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SierraPine Limited for Waiver of
Collection of Direct Access Cost Responsibility
Surcharge for Its Rocklin Facility.

Application 03-08-008
(Filed August 12, 2003)

**OPINION GRANTING APPLICATION FOR
WAIVER OF SURCHARGE**

1. Summary

SierraPine Limited (SierraPine) asks that the Commission waive collection of the direct access cost responsibility surcharge (DA CRS)¹ for its facility in Rocklin, California. The application is filed pursuant to Pub. Util. Code § 367.3, which took effect August 11, 2003. Section 367.3 authorizes the Commission to waive the collection of the DA CRS if specified criteria are met, including evidence that without such a waiver the facility faces certain and imminent closure. SierraPine has met all required criteria of Section 367.3. Accordingly, this decision waives collection of the DA CRS for SierraPine's Rocklin facility.

¹ The DA cost responsibility surcharge refers to the cost elements and surcharge mechanism adopted in Rulemaking (R.) 02-01-011 (implementation of DA suspension pursuant to Assembly Bill 1X), addressed in Decision (D.) 02-11-022, and most recently in D.03-07-030.

2. Background

Assembly Bill 1284 (Leslie) became effective immediately as an urgency statute on August 11, 2003, when it was signed by Governor Davis. The statute adds Section 367.3 to the Public Utilities Code.

Under Section 367.3, a “qualifying direct transaction customer” (as defined by the statute) may submit an application to the Commission within seven days of the operative date of the statute accompanied by a declaration from an officer, director, or owner “stating that unless relieved of the expense of the direct access cost responsibility surcharge, the plant or facility that purchases electric service under the direct transaction contract, faces certain and imminent closure.”

If such an application is filed, Section 367.3 directs this Commission as follows:

If the commission finds it is in the public interest and there is no feasible alternative, the commission may defer or waive the collection of a portion of the cost responsibility surcharge otherwise applicable to a qualifying direct transaction customer, to the extent necessary to mitigate [the certain and imminent closure]. That deferral or waiver may not result in any shifting of costs to bundled service customers, either immediately or over time, or delay the full and timely recovery of costs from direct access customers as a group. (Pub. Util. Code § 367.3(b).)

The Commission is required to act on an application filed under Section 367.3 on or before September 4, 2003, and the statute waives the requirements of Pub. Util. Code §§ 311(d) and (g) to permit a decision to issue in less than 30 days following filing and service of the proposed decision.

In order to be a “qualifying direct transaction customer” under Section 367.3, an electricity customer must meet each of eight requirements. These requirements are:

- The customer entered into a direct transaction with an electric service provider (ESP) for electric service for a California plant or facility by executing a contract prior to January 1, 2000, that extended through at least February 1, 2001.
- The plant or facility was, after February 1, 2001, returned to a public electrical utility because the ESP terminated service under the direct transaction contract.
- The plant or facility entered into a new direct transaction with an ESP and a direct access service request (DASR) was submitted within 90 days from the date the most recent direct transaction contract was involuntarily terminated.
- The plant or facility continuously participated in an interruptible or curtailable service program.
- The plant or facility had an average total cost of electric service, as a percentage of sales, in excess of 8% for the five years beginning January 1, 1996, to December 31, 2000.
- The plant or facility had an average net profit margin as a percentage of sales of greater than 2%, for the five years beginning January 1, 1996, and continuing to December 31, 2000.
- The average total electric service cost as a percentage of sales exceeded the average net profit margin as a percentage of sales for the five years beginning January 1, 1996, to December 31, 2000.
- The customer submits an application to the Commission within seven days of the operative date of Section 367.3 with a declaration that unless relieved of the direct access cost responsibility surcharge, the plant or facility faces certain and imminent closure.

3. SierraPine's Application

SierraPine is a California limited partnership headquartered in Roseville, California. It is a family-owned producer of a variety of composite panel products, including medium-density fiberboard (MDF), particleboard and moulding. SierraPine operates nine plants, three of which are located in California.

The Rocklin facility, a division of SierraPine, produces MDF and thin MDF, 84% of which is ultimately used in California. According to the application, the facility is the last producer of MDF and thin MDF in California. The manufacturing process employed by the facility recycles over 200,000 tons of wood waste a year. The application states that the facility employs more than 200 persons and contributes \$60 million a year to the local and state economy.

According to the application, the production of MDF is a low margin business that involves substantial energy costs. The product manufactured at Rocklin competes in a commodity market with MDF manufactured by competitors outside of California that have lower energy costs. Applicant states that the imposition of the DA CRS resulted in energy cost increases at Rocklin that the division was unable to pass along and unable to absorb within an already thin profit margin. Due to these increases, the application states that the Rocklin facility cannot continue to operate and will face certain closure unless the relief authorized by Section 367.3 is granted.

4. Meeting the Criteria of Section 367.3

The application and its attached exhibits show that SierraPine's Rocklin facility meets the eight criteria set forth in Section 367.3(a), and therefore it is a qualifying direct transaction customer for purposes of Section 367.3 relief.

4.1 Section 367.3(a)(1)

Pursuant to Section 367.3(a)(1), the customer must have entered into a direct transaction contract for a plant or facility prior to January 1, 2000 that extended service through at least February 1, 2001. Exhibits attached to the application show that SierraPine entered into a Power Sales agreement with PG&E Energy Services Corporation on December 30, 1997. The agreement provided that PG&E Energy Services Corporation would provide direct access service to the Rocklin facility for at least three years, and thereafter unless terminated by either party on 30 days' notice.

4.2 Section 367.3(a)(2)

Pursuant to Section 367.3(a)(2), the plant or facility must have been involuntarily returned to bundled service after February 1, 2001, as a result of the ESP terminating electrical service under the direct transaction contract. On April 15, 2001, Enron Energy Marketing Corporation, successor-in-interest to PG&E Energy Services Corporation, terminated service under the SierraPine agreement. Exhibits to the application show that the Rocklin facility was returned to bundled service after the termination.

4.3 Section 367.3(a)(3)

Section 367.3(a)(3) requires that the plant or facility must have entered into a new direct transaction with an ESP and a DASR must have been submitted within 90 days from the date the plant or facility's direct transaction contract was involuntarily terminated. SierraPine on June 29, 2001, entered into an Energy Services Agreement with APS Energy Services Company, Inc. (APS) for service to, among other locations, the Rocklin facility. Exhibits to the application show that a DASR to switch service from Pacific Gas and Electric Company (PG&E) to APS was submitted on July 2, 2001.

4.4 Section 367.3(a)(4)

Under Section 367.3(a)(4), a plant or facility must have continuously participated in an interruptible or curtailable service program. Based on an exhibit attached to the application, the Rocklin facility has continuously participated in an interruptible or curtailable service program with PG&E.

4.5 Section 367.3(a)(5)

Section 367.3(a)(5) requires that a plant or facility must have had an average total cost for all aspects of electric service, as a percentage of sales, in excess of 8% for the period January 1, 1996 to December 31, 2000. A summary financial statement for the Rocklin facility shows that average total cost of electricity as a percentage of sales for the relevant period exceeded 8%.

4.6 Section 367.3(a)(6)

Section 367.3(a)(6) requires that the plant or facility must have had an average net profit margin as a percentage of sales greater than 2% for the period January 1, 1996, to December 31, 2000. A summary financial statement for the Rocklin facility shows that it had an average net profit margin as a percentage of sales greater than 2% for the relevant five-year period.

4.7 Section 367.3(a)(7)

Pursuant to Section 367.3(a)(7), the average total electric service cost as a percentage of sales must exceed the average net profit margin as a percentage of sales for the facility for the period January 1, 1996, to December 31, 2000. Exhibit 13 of the application is a summary financial statement for the Rocklin facility showing that the average total electric service cost as a percentage of sales exceeded the average net profit margin for the relevant five-year period.

4.8 Section 367.3(a)(8)

Section 367.3(a)(8) requires that an application be submitted within seven days of the operative date of that section, and be accompanied by a declaration

from an officer stating that unless relieved of the expense of the DA surcharge, the facility faces certain and imminent closure. The application was submitted to the Commission within seven days of August 11, 2003. Attached to it as Exhibit 14 is the declaration of Jim Skinner, vice president and chief financial officer of SierraPine, stating that the Rocklin facility cannot continue to operate without relief from the DA CRS and that the facility faces certain and imminent closure.

Based on the application and its exhibits, we conclude that SierraPine's Rocklin facility meets the eight criteria of Section 367.3 and is therefore a "qualifying direct transaction customer" within the meaning of that statute.

5. Discussion

The application asks that the Commission waive collection of the entire amount of the DA CRS for SierraPine's Rocklin facility. Pursuant to Section 367.3(b), the Commission may do so for a qualifying direct transaction customer if it finds that such a waiver is in the public interest and there is no feasible alternative. The Commission is authorized to waive collection to the extent necessary to mitigate the threat of imminent and certain closure of the facility.

5.1 Public Interest Consideration

We conclude on this record that waiving collection of the DA surcharge for the Rocklin facility is in the public interest. The Rocklin facility employs more than 200 individuals. Absent relief, the facility will be forced to close, resulting in the loss of those 200 jobs and the loss of \$60 million that the facility adds to the local and state economy.

Additionally, if the facility shuts down, PG&E will receive no distribution, transmission, generation or other revenues from Sierra Pine. Included in PG&E's

rates is a Commission-determined reasonable rate of return. Sierra Pine (like any other customer) contributes to PG&E's return. If Sierra Pine shuts down, the contribution to margin provided by Sierra Pine will be spread to all other PG&E customers. This decision does not discount any portion of Sierra Pine's bill other than the DA CRS . Therefore, it is in the public interest to maintain Sierra Pine as a viable entity in order to avoid cost-shifting.

Moreover, closure of the facility would have environmental repercussions. The Rocklin facility recycles 200,000 tons of wood waste per year. The California Integrated Waste Management Board has honored the Rocklin facility with a Waste Reduction Awards Program award for the past two years. Closure of the plant would result in the loss of this recycling effort.

5.2 Avoiding Imminent Closure

The record shows that absent waiver of the DA CRS, there is no other feasible alternative that will allow the Rocklin facility to stay in operation. The application notes that the facility is now operating on a reduced schedule due to the high cost of electricity. Waiver of the surcharge may permit the facility to return to full operation.

5.3 Shifting of Costs

We conclude that the waiver of the DA CRS will not result in any shifting of costs to bundled service customers or delay full and timely recovery of costs from direct access customers as a group. Any reduction in the amount of DA CRS collected will be no different than the reduction that would occur were the Rocklin facility to close, an inevitable result should the Commission decline to grant the waiver. The waiver will not shift any cost responsibility to bundled customers, since direct access customers as a group will remain responsible for the same costs whether or not a waiver is granted. Finally, deferral of the DA

CRS collection would not afford SierraPine the necessary relief, since the historically thin margins in the MDF business would not allow SierraPine to pay DA CRS amounts in the future.

Accordingly, for the reasons set forth in this decision and pursuant to the direction given to us in Pub. Util. Code § 367.3, the Commission waives collection of the DA CRS for SierraPine's Rocklin facility.

6. Procedural Requirements

In Resolution ALJ 176-3117, the Commission preliminarily categorized this proceeding as ratemaking and determined that hearings were not required. We confirm the designation of this proceeding as ratemaking and conclude that hearings are not necessary.

By separate motion, SierraPine moved for a reduction in the 30-day protest period in this proceeding. By an Chief Administrative Law Judge (ALJ) Ruling, the time for filing protests to this application was shortened to five days from the date of the ruling. No protests were received.

SierraPine also moved for waiver of the 30-day comment period specified in Pub. Util. Code § 311. Pursuant both to Section 367.3 and Rule 77.7(f)(9) of the Rules of Practice and Procedure, we conclude that the public interest in the Commission adopting a decision within the time period required by Section 367.3 outweighs the public interest in having the 30-day period for review and comment. Waiver of the 30-day comment period is granted.

Waiver of the 30-day comment period also is appropriate under Pub. Util. Code § 311(g)(2), since this is an uncontested matter in which the decision grants the relief requested.

7. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Glen Walker is the assigned ALJ in this proceeding.

Findings of Fact

1. Pub. Util. Code § 367.3 permits a qualifying direct transaction customer to apply for relief from direct access CRS if to pay them would cause certain and imminent closure of the customer's plant or facility.

2. SierraPine filed this application on August 12, 2003, within seven days of the operative date of Section 367.3, as required.

3. SierraPine's Rocklin facility produces MDF and thin MDF, recycling over 200,000 tons of wood waste per year.

4. The Rocklin facility employs more than 200 persons and contributes \$60 million per year to the local and state economy.

5. Imposition of the DA surcharge results in energy cost increases at the Rocklin facility that SierraPine is unable to pass along or to absorb within the facility's profit margin.

Conclusions of Law

1. SierraPine's Rocklin facility is a "qualifying direct transaction customer" for purposes of seeking relief under Pub. Util. Code § 367.3.

2. Waving collection of the DA CRS, as authorized by Section 367.3, is in the public interest.

3. Absent waiver of the DA CRS, there is no other feasible alternative that will allow the Rocklin facility to stay in operation.

4. Waiver of the DA CRS will not result in any shifting of costs to bundled service customers or delay full and timely recovery of costs from direct access customers as a group.

5. The application should be granted, and collection of DA CRS for SierraPine's Rocklin facility should be waived, effective immediately.

O R D E R

IT IS ORDERED that:

1. Collection of the direct access cost responsibility surcharge for the SierraPine Limited Rocklin facility is waived, effective immediately, pursuant to Pub. Util. Code § 367.3.

2. Because the Commission is required to act on this application on or before September 4, 2003, the protest period has been reduced to five days.

3. Pursuant to Pub. Util. Code § 367.3 and Rule 77.7(f)(9) of the Rules of Practice and Procedure, the 30-day comment period for this proceeding is waived.

4. Application 03-08-008 is closed.

This order is effective today.

Dated September 4, 2003, at San Francisco, California.

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

SUSAN P. KENNEDY

Commissioners