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CC-30
HC

CITY COUNCIL MEETING

AUGUST 4, 1982

On motion of Mayor Reid, Snider second, Council, by the following vote denied the Claim for Money for Non-Payment of Bill filed by Pacific Gas and Electric Company.

Ayes: Council Member - Olson, Snider, and Reid

Noes: Council Member - Pinkerton

Absent: Council Member - Murphy

CITY COUNCIL

FRED M. REID, Mayor
ROBERT G. MURPHY,
Mayor Pro Tempore
EVELYN M. OLSON
JAMES W. PINKERTON, Jr.
JOHN R. (Randy) SNIDER

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
POST OFFICE BOX 320
LODI, CALIFORNIA 95241
(209) 334-5634

HENRY A. GLAVES, Jr.
City Manager

ALICE M. REIMCHE
City Clerk

RONALD M. STEIN
City Attorney

September 20, 1982

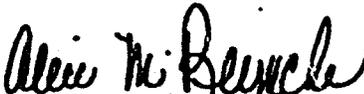
Mr. Nolan H. Daines
Vice President
Planning and Research
Pacific Gas and Electric Company
77 Beale Street
San Francisco, CA 94106

Dear Mr. Daines:

Please be advised that the claim of Pacific Gas and Electric Company for money for nonpayment of bills which was received by this office July 30, 1982 was presented to the Lodi City Council at its regular meeting of August 4, 1982.

The Council, by motion action at that meeting, voted to deny the subject claim.

Very truly yours,


Alice M. Reimche
City Clerk

AMR:JJ

PACIFIC GAS AND ELECTRIC COMPANY

RECEIVED

1982 JUL 30 AM 9 45

77 BEALE STREET • SAN FRANCISCO, CALIFORNIA 94106 • (415) 781-4211

PG&E

ALICE M. REINICHE
CITY CLERK
CITY OF LODI

NOLAN H. DAINES
VICE PRESIDENT
PLANNING AND RESEARCH

July 27, 1982

Mr. Fred M. Reid, Mayor
City of Lodi
P.O. Box 320
City Hall
221 West Pine Street
Lodi, California 95241

Dear Mr. Reid:

The City of Lodi has not paid \$504,336.71 of its bill for the electric service provided to it by PGandE during May 1982. PGandE delivered the May bill to the City of Lodi on June 17, 1982, and to the extent that it has not been paid, it is now delinquent.

In his July 6, 1982, letter, Mr. David K. Curry of the City of Lodi attempted to justify the city's refusal to pay for electric services provided to it by PGandE by claiming that the energy was supplied by the Northern California Power Agency ("NCPA") pursuant to a letter agreement between NCPA and the Western Area Power Administration ("WAPA") dated May 28, 1982. Under this arrangement WAPA purports to sell relatively inexpensive surplus hydroelectric power from the Pacific Northwest to NCPA. However, existing contracts between WAPA and PGandE provide that such surplus hydroelectric power is purchased by PGandE. In effect, WAPA is attempting to sell energy to NCPA that rightfully belongs to PGandE, thus depriving PGandE customers of inexpensive power that is lawfully theirs.

The WAPA/NCPA agreement is therefore illegal, and NCPA has no such energy to sell. The energy purchased by Lodi was bought from and transmitted by PGandE under their resale contract. As you know, such contract is also a tariff filed with the Federal Energy Regulatory Commission and has the force of law. Both the city and PGandE must abide by that tariff; the city cannot legally purchase electricity or have it transmitted except under those terms and conditions prescribed by FERC. In Montana-Dakota Utility Co. v. Northwest Public Service Co. (1951)

Mr. Fred M. Reid

-2-

July 27, 1982

341 U.S.C. 246, 251, the United States Supreme Court said that under the Federal Power Act, a customer "can claim no rate as a legal right other than the filed rate, whether filed or merely accepted by the Commission and not even a court can authorize commerce in the commodity on other terms."

We have reviewed the May bill and have determined to our satisfaction that it should not be adjusted downward as proposed by Mr. Curry. I am sure that you realize that your continued failure to pay that bill in full would place an unfair burden on PGandE's other customers. If you persist in your refusal to pay for the service we are rendering, we will have no choice but to institute appropriate proceedings to protect our other customers.

In light of the above discussion, we do not believe that your refusal to pay is based on a legitimate dispute as to the correctness of the May bill, within the meaning of the "Disputed Bills" section of the tariff. (Original Volume No. 2, Sheet No. 26.) If, however, you believe that this section applies, we hereby give you notice of its provisions by the attached copy of it.

Very truly yours,



N. H. Daines

cc: David K. Curry
Utility Director

GENERAL TERMS AND CONDITIONS

6. DISPUTED BILLS

A. Correctness of Bill

If the correctness of a bill is questioned or disputed by a customer, an explanation should be promptly requested from the Company. If the bill is determined to be incorrect, the Company will issue a corrected bill in accordance with "Rendering and Payment of Bills" herein.

B. Bill Review Procedure

When the customer and the Company fail to agree on the amount of the bill and upon review the Company has determined to its satisfaction that the bill is correct, and the disputed bill is not paid within 15 days after date of presentation, the Company will explain to the customer:

1. That in lieu of paying the entire disputed bill, he may deposit with a mutually satisfactory escrow company, that portion of the amount claimed by the Company to be due which is in dispute. The balance shall be paid to the Company.
2. That checks or other forms of remittance for such deposit should be made payable to the escrow fund.
3. That service will not be discontinued for nonpayment of the disputed bill when deposit has been made with the escrow company pending the outcome of the dispute.
4. That failure of the customer to make such deposit within 15 days after the date upon which notice was given will warrant discontinuance of his service without further notice.
5. That if before resolution of the dispute additional bills become due which the customer wishes to dispute, he shall also deposit with the escrow company the disputed portions of the additional amounts claimed by the Company to be due for such additional bills before they become past due and shall pay the balance to the Company and that failure to do so will warrant discontinuance of his service.

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1987 JUL 30 AM 9:46

1 Claim of
PACIFIC GAS AND ELECTRIC COMPANY,)

2 Claimant,

ALICE M. REIMCHE FOR MONEY FOR
CITY CLERK PAYMENT OF BILLS
CITY OF LODI (Gov. Code § 910)

3 vs.)

4 CITY OF LODI, a municipal)
5 corporation.)
6 _____)

7
8
9 TO: MS. ALICE M. REIMCHE
10 CLERK OF THE CITY OF LODI
City Hall
11 221 West Pine Street
Lodi, California 95241

12
13 PLEASE TAKE NOTICE that Pacific Gas and Electric
14 Company ("PGandE"), whose principal place of business is
15 located at 77 Beale Street, in the City and County of San
16 Francisco, State of California, claims money from the City
17 of Lodi ("City"), a municipal corporation, in the amount,
18 computed as of the date of presenting this claim, of
19 \$504,536.71, plus interest at the maximum rate permitted by
20 law.

21 Claimant entered into a written contract with the
22 City on or about April 1, 1970, whereby the claimant agreed
23 to sell and the City agreed to buy all the electricity
24 required by the City for its own use and for resale to its
25 customers. This contract has been amended in ways not
26 relevant to this controversy.

1 The April 1, 1970, contract is now, and at all
2 times herein mentioned was, in full force and effect.

3 Pursuant to said contract, during the month of May
4 1982, claimant delivered and sold its electric power and
5 energy to the City in the amounts demanded by the City.

6 As a consequence thereof the City became indebted
7 to claimant in the total sum of \$704,058.21.

8 Bills in this amount, copies of which are attached
9 hereto, were presented to the City on or about June 17,
10 1982.

11 Said bills are now past due, but the City has
12 unlawfully refused and failed to pay \$504,536.71 of said
13 amount. Accordingly, claimant submits this claim pursuant
14 to the provisions of California Government Code section 910
15 for the amount of said past due unpaid bills plus interest
16 at the maximum rate permitted by law from July 2, 1982.

17 To the best of claimant's information and belief,
18 the public employees responsible for the City's refusal and
19 failure to pay its debts to claimant are Henry A. Graves,
20 David K. Curry, and Fred M. Reid.

21 Claimant is informed and believes that the City
22 will refuse to pay subsequent bills for electric power and
23 energy and that the City will incur further indebtedness to
24 claimant. Pursuant to Government Code section 910.2, each
25 regular bill or invoice for such continued sale of

26 ///

1 electricity, to the extent that it is not paid, shall
2 constitute an additional claim.

3 By presenting this claim, and any future claims,
4 PGandE does not concede that it is required to file such
5 claim or claims, and does not intend to waive any rights it
6 may have to have the issue adjudicated.

7 Please send all notices to:

8 Charles T. Van Deusen, Esq.
9 Arthur L. Hillman, Jr., Esq.
10 John N. Frye, Esq.
11 Joshua Bar Lev, Esq.
12 Shirley A. Sanderson, Esq.
13 P.O. Box 7442
14 San Francisco, California 94120

15 Dated: July 27, 1982.

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Shirley A. Sanderson
Attorney for Claimant
PACIFIC GAS AND ELECTRIC COMPANY

PG&E Pacific Gas and Electric Company

7 COPIES

MAIL PAYMENTS TO
ADDRESS SHOWN ON
REVERSE SIDE OF BILL

Your Account Number **Service To**
* ZXFN2 49511-7 5 31 82

CITY OF LODI
ATTN DAVE CURRY
UTILITY DEPT
221 WEST PINE ST
LODI CA 95240

XF

ZXF #7
N2
49511-7

VARIOUS LOCATIONS
LODI CA 95240

PLEASE
PAY THIS
AMOUNT

\$688665.97

211

Please return this portion with payment - Bring entire bill when making payment in office.

When making inquiries contact
our office at
12 WEST PINE ST
LODI CA 95240
369-3535

CITY OF LODI
ATTN DAVE CURRY
VARIOUS LOCATIONS
LODI CA 95240
FPC SCHEDULE R 1
EXP-M

PG&E

Your Account Number
ZXFN2 49511-7

MAY, 1982

*GAS THERMS = DIFFERENCE BETWEEN
METER READINGS TIMES MULTIPLIER

Rate Schedule			
R	IND FWR		
Type of Service	From	To	Billing Days
ELEC RKVA	4 30	5 31	31

BILLING DEM 42154
CREATED DEM 42154
PREV HI DEM 68161
PREV HI DEM MO JUN

METER READINGS		Reading Difference	Gas Therms	Electric kWh	AMOUNT
Prior	Present				
			14082295	229872	774067.88

STATE SURCHARGE EXEMPT

TOTAL CURRENT CHARGES	774067.88
PREVIOUS BALANCE	740777.55
5/28 PAYMENT-THANK YOU	602601.12-
ADJUSTMENT	222837.58-
INTEREST	740.76-

TOTAL AMOUNT NOW DUE **\$688665.97**

BILL PERIOD	DAYS	GAS THERMS BILLED	ELECTRIC kWh BILLED	THIS MONTH THIS YEAR	LAST YEAR
				NOT AVAILABLE	NOT AVAILABLE

COMPARE YOUR AVERAGE DAILY USE WITH LAST YEAR

ZXFN2
49511-7

PG&E Pacific Gas and Electric Company

7 COPIES

MAIL PAYMENTS TO
ADDRESS SHOWN ON
REVERSE SIDE OF BILL

Your Account Number	Service To	
ZXFN1 49511-9	5 31 82	1539224

CITY OF LODI XF ZXF #8
ATTN DAVE DURRY NI
UTILITY DEPT 49511-9
221 W PINE ST
LODI CA 95240

VARIOUS LOCATIONS
LODI CA 95240

PLEASE
PAY THIS
AMOUNT **15392.24** 181

Please return this portion with payment - Bring entire bill when making payment in office.

When making inquiries contact
our office at

12 WEST PINE ST
LODI CA 95240
369-3535

CITY OF LODI
ATTN DAVE CURRY
VARIOUS LOCATIONS
LODI CA 95240
EXP-M

PG&E

Your Account Number
ZXFN1 49511-9

MAY, 1982

*GAS THERMS = DIFFERENCE BETWEEN
METER READINGS TIMES MULTIPLIER

Rate Schedule	
R	IND PWR

Type of Service	SERVICE PERIOD		Billing Days	METER READINGS		Reading Difference	Multiplier	Gas Therms Elec KWHR	AMOUNT
	From	To		Prior	Present				
ELEC RKVA	4:30	5:31	31					272687 0	14963.85

STATE SURCHARGE EXEMPT

TOTAL CURRENT CHARGES	14963.85
PREVIOUS BALANCE	14701.80
ADJUSTMENT	4264.93-
05/28 PAYMENT-THANK YOU	10000.00-
INTEREST	8.48-
TOTAL AMOUNT NOW DUE	15392.24

BILL PERIOD		DAYS	GAS THERMS BILLED	THERMS PER DAY	ELECTRIC KWHR BILLED	KWHR PER DAY
THIS MONTH	THIS YEAR					
THIS MONTH	THIS MONTH LAST YEAR	31			272687	8796
					NOT AVAILABLE	

COMPARE YOUR AVERAGE DAILY USE WITH LAST YEAR

ZXFN1
49511-9