

In the Matter of the Application of)
THE GAS COMPANY, LLC
For Approval of Petroleum Feedstock)
Agreement with Tesoro Hawaii
Corporation to be Included in TGC's)
Fuel Adjustment Clause.

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FD-36

OF THE STATE OF HAWAII

THE GAS COMPANY, LLC

For Approval of Petroleum Feedstock)

Agreement with Tesoro Hawaii)

Corporation to be Included in TGC's)

Fuel Adjustment Clause.)

DECISION AND ORDER

THE GAS COMPANY, LLC's ("TGC") Petroleum Feedstock Agreement ("2008 PFA")¹ and Services and Emergency Supply Agreement ("SESA") with Tesoro Hawaii Corporation ("Tesoro").

I.

Background

to manufacture and supply gas as a public utility within the State of Hawaii ("State").² TGC's regulated gas operations consist of the purchase, production, transmission, and

¹TGC's Petroleum Feedstock Agreement; Verification; Testimony of Mr. Thomas K.L.M. Young (T-1) with Exhibits; and Certificate of Service, filed May 16, 2008 (collectively "Application").

²Pursuant to Decision and Order No. 15899, filed on September 10, 1997, in Docket No. 97-0035 ("Decision and Order No. 15899") and Decision and Order No. 22449, filed on May 3, 2006, in Docket No. 05-0242 ("Decision and Order No. 22449").

distribution of synthetic natural gas ("SNG") and liquid propane gas ("LPG") to residential, commercial, and industrial customers on the islands of Oahu, Hawaii, Kauai, Maui, Molokai, and Lanai. Its non-regulated gas operations involve the purchase, distribution, and sale of tanked and bottled LPG to residential, commercial, and industrial customers.³

Tesoro is a subsidiary of the Tesoro Petroleum Corporation and formerly known as BHP. Tesoro purchased a refinery ("Tesoro Refinery") from BHP Petroleum Americas Refining, Inc. ("BHPPAR"), and converts crude oil into refined petroleum products for sale and delivery to customers in the State.⁴

A.

Application

On May 16, 2008, TGC filed an application for approval of its 2008 PFA, dated April 30, 2008, to be included in its fuel adjustment clause, pursuant to Hawaii Administrative Rules ("HAR") § 6-60-6.⁵ The 2008 PFA is an agreement between TGC and Tesoro which replaces a 1997 Petroleum Feedstock Agreement

³Decision and Order No. 22449, at 3.

⁴Application, at 3.

⁵The DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), is an ex officio party to this proceeding pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and HAR § 6-61-62. TGC and the Consumer Advocate are hereafter jointly referred to as the "Parties."

("1997 PFA").⁶ Both Petroleum Feedstock Agreements ("PFAs") pertain to the feedstock supply for TGC's Synthetic Natural Gas Plant ("SNG Plant"), which provides utility gas to approximately 32,000 customers on the island of Oahu.⁷

By Decision and Order No. 15899, TGC's predecessor in interest, Gasco, Inc. ("Gasco") and the Citizens Utilities Company ("Citizens") obtained commission approval for, among other things: (1) the sale by BHP Hawaii, Inc. ("BHP") to Citizens of all of the outstanding stock of Gasco; (2) the merger of Citizens and Gasco, with Citizens as the surviving regulated entity; and (3) various ancillary agreements, including the 1997 PFA.⁸ By Decision and Order No. 20354, filed on July 25, 2003, in Docket No. 03-0051, the commission approved a sales transaction of TGC from Citizens to K-1 USA Ventures, Inc. ("K-1") via Hawaii Gas Company, LLC, n.k.a. the Gas Company, LLC as Buyer-Assignee in the sales transaction. Among other things, the commission also approved the transfer of the 1997 PFA, consequently, the 1997 PFA between Citizens and BHP continued to provide TGC with the petroleum feedstock needed for the SNG Plant. By Decision and Order No. 22449, the commission approved the transfer of control of TGC's upstream ownership to Macquarie Gas Holdings, LLC.⁹ It did not include a

⁶The 1997 PFA was approved by the commission in Decision and Order No. 15899.

⁷Application, at 2.

⁸Decision and Order No. 15899, at 29-31.

⁹Decision and Order No. 22449.

direct sale of TGC and accordingly, the 1997 PFA remained unaffected.

In 1974, the SNG Plant and the Tesoro Refinery were built and began operations under the same parent company, Pacific Resource, Inc. Shared infrastructure which provided synergies between the two facilities included interconnecting piping to deliver feedstock to the SNG Plant, the flare system, radio repeater, emergency supplies, perimeter lighting, and fire water (collectively "Shared Infrastructure").¹⁰ On October 31, 1997, as part of the sale of TGC by BHP to Citizens, BHPPAR, a subsidiary of BHP, entered into the 1997 PFA to supply petroleum feedstock to Citizens for use in SNG production and provisions to allow TGC to continue to use the Shared Infrastructure within the BHPPAR facilities.¹¹ Subsequently, BHPPAR sold its refinery to Tesoro. In approving the sale of TGC to Citizens, in Decision and Order No. 15899, the commission also approved the ancillary agreements, which included the 1997 PFA. Although TGC was sold on two subsequent occasions, first to k1 Venture Limited on August 8, 2003 and then to Macquarie Infrastructure Company LLC on June 6, 2006, the 1997 PFA remained in effect, preserving the synergistic relationship originally created when the refinery and the SNG Plant were owned by Pacific Resources, Inc.¹²

¹⁰Application, at 2-3.

¹¹Decision and Order No. 15899, at 18.

¹²Application, at 3.

In the last quarter of 2005, TGC contacted Tesoro to begin discussions on renewal of the 1997 PFA which would expire in 2007.¹³ TGC states:

Although [Tesoro] expressed an interest in continuing to supply TGC with feedstock for its SNG Plant, [Tesoro] wanted to do so under revised terms and conditions, and, therefore, on July 27, 2007, [Tesoro] issued its Notice of Cancellation of the [1997] PFA.

Application, at 3. On October 24, 2007, Amendment No. 1 to the 1997 PFA extended the term to January 31, 2008, with provisions for two successive three-month renewal periods, ending on April 30, 2008 and July 31, 2008, respectively. On April 30, 2008, TGC and Tesoro executed the 2008 PFA to replace the 1997 PFA.¹⁴ TGC states:

Similar to the [1997 PFA,] the [2008 PFA] represents TGC's fuel cost to manufacture synthetic natural gas for distribution through its utility system on the island of Oahu.

Application, TGC T-1, at 16. On May 16, 2008, TGC filed an Application requesting approval of the 2008 PFA to be included in its fuel adjustment clause, and for approval of the SESA.

B.

Statement of Position

On July 10, 2008, the Consumer Advocate submitted its Statement of Position indicating that it does not object to the commission's approval of TGC's 2008 PFA and SESA

¹³Application, T-1, at 4.

¹⁴Application, T-1, at 4.

with Tesoro.¹⁵ The Consumer Advocate analyzed the 1997 PFA and compared it with the 2008 PFA in several different areas, including the price of feedstock, duration of agreement, the obligation to purchase feedstock, emergency and other special services, and insurance coverage.¹⁶ The Consumer Advocate considered the following in its review of the Application:

1. Are the terms and conditions of the 2008 PFA reasonable, prudent, and in the public interest?
2. Is the price per gallon for feedstock supplied pursuant to the 2008 [PFA] reasonable, prudent, and in the public interest?
3. Are the terms and conditions of the SESA between Tesoro and TGC reasonable, prudent, and in the public interest?
4. Is the inclusion of TGC's purchased feedstock costs in TGC's Energy Cost Adjustment Clause reasonable, prudent, and in the public interest?

Statement of Position, at 17. The Consumer Advocate states:

- Most of the provisions contained in the 2008 PFA and the SESA were approved by the [c]ommission in Decision and Order No. 15899 . . .
- Most of the significant changes contained in the 2008 PFA, with the exception of the feedstock pricing formula contained in . . . the 2008 [PFA] are administrative . . .
- The modifications to the 1997 PFA pricing formula appear to be fair and reasonable

¹⁵Statement of Position, at 1.

¹⁶Statement of Position, at 7-17.

- HAR § 6-60-6(2) states, in relevant part, that, "[n]o changes in fuel . . . costs may be included in . . . [a utility's] fuel adjustment clause unless the contracts or prices for the purchase of such fuel . . . [has] been previously approved or filed with the [c]ommission." As discussed above, the Consumer Advocate finds that the 2008 PFA appears to be reasonable and in the best interest of TGC and its customers. If the commission approves of TGC's 2008 PFA in the instant docket, the Consumer Advocate believes that TGC's 2008 PFA fuel costs should be included in TGC's already approved fuel adjustment clause because the 2008 PFA merely replaces the 1997 PFA, which provides for the procurement of TGC's SNG feedstock.

Statement of Position, at 17-23. Furthermore, the Consumer Advocate states that it "does not object to the [c]ommission's approval of TGC's SESA with Tesoro, which simply places the Emergency and Other Special Services provisions of the 1997 PFA in a separate agreement between Tesoro and TGC."¹⁷

II.

Discussion

HAR § 6-60-6 states:

The utility's rate schedules may include automatic rate adjustment clauses, only for those clauses previously approved by the commission. Upon effective date of this Chapter, any fuel adjustment clause submitted for commission approval shall comply with the following standards:

- (1) "Fuel adjustment clause" means a provision of a rate schedule which provides for increases or decreases or both, without prior hearing, in rates reflecting increases or decreases or

¹⁷Statement of Position, at 23.

both in costs incurred by an electric or gas utility for fuel and purchased energy due to changes in the unit cost of fuel and purchased energy.

- (2) No changes in fuel and purchased energy costs may be included in the fuel adjustment clause unless the contracts or prices for the purchase of such fuel or energy have been previously approved or filed with the commission.

HAR § 6-60-6.

The commission notes that many of the details of the 2008 PFA and SESA were submitted under protective order due to the sensitive nature of such information. The commission has reviewed all of the documents in this file and based on that review, finds that the 2008 PFA is largely similar to the 1997 PFA which was previously approved by the commission. Many of the differences between the two PFAs appear to be made to bring the PFA to current standards and practices. The 2008 PFA between TGC and Tesoro continues a mutually beneficial relationship between the companies with arrangements for Shared Infrastructure. The feedstock is a necessary part of TGC's operations and the 2008 PFA with Tesoro will insure that TGC has the necessary feedstock and means to continue to provide utility gas services. The commission finds the terms, conditions, and pricing of the 2008 PFA to be reasonable, prudent, and in the public interest. As such, it is reasonable to permit TGC to include the purchased feedstock costs in TGC's fuel adjustment clause. With regard to the SESA,

the commission finds that the provisions therein are similar to prior agreements, it will continue the two companies' relationship, and it is reasonable, prudent, and in the public interest.

III.

Orders

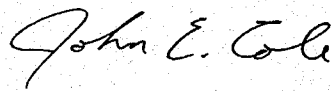
THE COMMISSION ORDERS:

1. TGC's request for commission approval of the 2008 PFA to be included in its fuel adjustment clause, is approved.
2. The SESA between TGC and Tesoro is also approved.

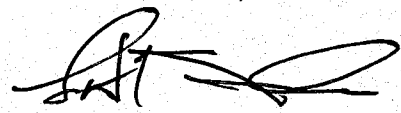
DONE at Honolulu, Hawaii DEC 31 2008.

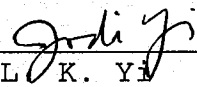
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

APPROVED AS TO FORM:

By: 
Leslie H. Kondo, Commissioner


Jodi L. K. Yi
Commission Counsel

2008-0090.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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