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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company
to Implement and Recover in Rates the Costs of
its Photovoltaic (PV) Program

A.09-02-019

**COMMENTS ON PROPOSED DECISION BY THE
CONSUMER FEDERATION OF CALIFORNIA**

The Proposed Decision of the Administrative Law Judge authorizes a procedure that is not recognized in the Code or Commission rules. Public Utilities Code (“PU Code”) section 454.5(b) is intended to be the exclusive means by which an electric utility adds renewable generation to its procurement portfolio. The Proposed Decision does customers of Pacific Gas & Electric (“PG&E”) a great disservice by allowing PG&E to circumvent the planning process and avoid showing implementation of its PV Program would result in the best-fit/least-cost generation for its customers. PG&E’s Application should have been dismissed as both unlawfully filed and totally unsubstantiated.

A. The Commission Should Not Condone Evasion of
The Procurement Plan Review Process

The procurement plan process of PU Code section 454.5(b) was enacted after the Energy Crisis and was intended to ensure Commission review of all generation-related debt incurred by California’s utilities. The legislature intended “to reform elements of the renewables portfolio standard program relating to cost containment. ... [T]he Legislature intends to restructure the renewables portfolio standard program to streamline the approval of contracts executed by electrical corporations for the purchase of electricity generated by eligible renewable energy resources involving costs above the market prices determined in subdivision (c) of Section 399.15 of the Public Utilities Code,”¹ The legislature did not restrict the term “contracts” to “some contracts” or “contracts the utility decides should be submitted.” It intended that all contracts for the purchase of

¹ SB 1036 (2007)

renewable energy, including the contracts proposed in this proceeding, be reviewed by the Commission.

The Commission is required to “review and accept, modify, or reject each electrical corporation's procurement plan,” not its contracts.”² PG&E did not demonstrate that the Commission has the authority to allow PG&E to build something new without reconciling its costs and ‘fit’ with all other generation in its procurement plan, so that PG&E’s procurement is the least cost, best fit generation for its customers.

The record does not support a finding that PG&E’s PV Program is the Best Fit/ Lowest Cost option for customers..

1. There is No Evidence the Program Will Benefit Customers.

PG&E offered no evidence that its proposed program would benefit ratepayers. The Proposed Decision, referring to DRA’s position, states:

DRA argues that because currently there is no mechanism to quantify the the value of solar displacing fossil fuel or shaving off peak demand in electric rates, ratepayers will not receive any of those benefits. Although the above benefits are not quantified in this proceeding, they are among the known and unique benefits of PV technology and cannot be overlooked.

The problem with this conclusion is that there is no evidence to support it. Mr. McDonald testified that “no specific study or analysis “of the costs and benefits of adding this number of MWs to PG&E’s supply portfolio” was conducted.”³ Since the benefits are not quantified, there is no way to determine whether they are equal to or exceed the costs of the Program, as proposed or as modified by the PD. If benefits do not at least equal the costs, ratepayers receive no benefit.

2. PG&E is Already Overstocked With Solar, An Expensive Technology.

Further, by PG&E’s own standard, the acquisition of additional solar generation is not the best fit for its customers. PV is more costly and is available only during peak periods.”⁴ PG&E’s portfolio contains “a lot” of solar, “in the range of 20 or 30 contracts.”⁵

² PU Code 454.5(c)

³ Ex. 603, Response of MacDonald to DR 3 (Ch. 2)

⁴ PG&E failed to respond to a data request which asked for the price of solar (Ex. 603, DR 25 (ch. 1)), but its President has said, “Technology for energy efficiency costs about 3 to 4 cents per kilowatt-hour, Darbee said. Harvesting energy from a renewable resource might cost 10 to 15 cents a kilowatt-hour”⁵

The California Energy Commission's ("CEC") "IOU Contract Database", reflected in Exhibit 600, shows that solar constitutes approximately 85 percent of PG&E's renewable portfolio.⁶ As PG&E said, a portfolio made up of predominantly one technology is not in the public interest:

[I]f PG&E and other California load-serving entities are to timely achieve the State's RPS goals, we must pursue a diversified strategy involving all promising renewable technologies. Given the still relatively nascent state of the renewable power industry, a strategy that focuses exclusively or even predominantly on just one sector or technology would not be in the public interest because it would effectively put all of the customers' "eggs in one basket."⁷

3. PG&E has Undertaken No Analysis to Determine Whether the Program is the Best Fit and the Lowest Cost for its Customers.

The legislature has adopted a 'least-cost and best-fit' standard,⁸ and directed utilities to "create or maintain a diversified procurement portfolio."⁹ The Commission has previously expressed concern that the renewable procurement processes developed in the RPS proceeding ... are not circumvented.¹⁰

In this proceeding, the evidence showed no LCBF analysis had been performed:

Q. [H]ave you performed a least-cost analysis or have you been directed to perform a least-cost analysis before purchasing?

A We do what we call a least-cost/best-fit.

Q Has such an analysis been done for this PV project?

A Not that I'm aware of.¹¹

To gain approval of its PV Program in a procurement plan proceeding, PG&E would have had to submit, "consistent with the goal of procuring the least-cost and best-fit eligible renewable energy resources, ... [a]n assessment of annual or multiyear portfolio supplies and demand to determine the optimal mix of eligible renewable energy

or more. Rooftop solar panels have historically hovered around 40 cents a kilowatt-hour, he said." Ex. 605: GREEN TECH, "Will PG&E give rebates for old air conditioners" (April 29, 2008).

⁵ Testimony of Fong Wang, Tr. at 14.

⁶ PG&E's portfolio is much more than 85% solar because PG&E has not been counting the MW of solar power generated by rooftop panels installed under the California Solar Initiative program.

⁷ Rebuttal Testimony of Fong Wan, ch. 1, p. 1-2

⁸ PU Code § 399.14(a)(3).

⁹ PU Code § 454.5(b)(9)(B).

¹⁰ D.07-12-052 at 153 (Dec. 21, 2007).

¹¹ Tr. Vol. 3, page 343

resources with deliverability characteristics that may include peaking, dispatchable, baseload, firm, and as-available capacity.”¹² This type of analysis benefits customers.

The goals referenced in the PD -- to recognize the “importance and environmental benefits of renewable energy” and to facilitate “the expeditious installation and operation of additional renewable facilities in California and bring benefits to the ratepayers” -- would be achieved at what might be a lower cost to customers if the PV Program was reviewed as part of PG&E’s procurement plans. As CLECA pointed out, “if approved, ratepayers will be burdened with the cost of the PV Program at three times more than the existing portfolio when other less expensive renewable alternatives exist.”¹³ PG&E’s own figures show the market price referent (12¢) was half of a time-differentiated, 24¢ cost of the PV program.¹⁴

The Proposed Decision allows PG&E to evade the review required by PU Code section 454.5, but offers no legal justification for that action.

4. This Application is the Tip of the Iceberg.

It appears this filing is the tip of the iceberg. PG&E may seek Commission approval of future projects the same way, and not through the Procurement Plan process.

“A Is your question do I see us filing project by project individual Applications? Yes, I do.

Mr. O’Flanagan seems to think “Well, generally speaking, when you talk about major projects or programs that -- of this magnitude, they’re not considered in a General Rate Case; they are considered in a separate -- in a separate Application.”¹⁵ Such precedent

¹² PU Code § 399.14(a)(3)(A) (*emphasis added*).

¹³ PD at 10

¹⁴ Testimony of Fong Wan, Tr. 30-31. The PD uses extra-record evidence to contest this evidence: “A more recent RETI report indicates that solar PV costs may be lower than exhibited in the Farm Bureau’s testimony.” (PD at 18) the statement made by PG&E’s witness Wan during hearings, which noted that prices for PV have been declining is also consistent with some of the recent trade publications showing a trend in declining PV prices overtime. (PD at 19, *citing* <http://www.solarbuzz.com/FastFactsIndustry.htm>). The RETI report and solarbuzz are not proper subjects for official notice in the Proposed Decision. “[D]ue process requires, when in an adjudication an agency intends to rely on members’ expertise to resolve legislative-fact issues, that it notify the parties and provide an opportunity for rebuttal. *Franz v. Board of Medical Quality Assurance*, 31 Cal. 3d 124, 140 (Cal. 1982). See also, Gov. Code 11515, EVID. Code § 450 *et seq.*

¹⁵ Testimony of O’Flanagan, Tr. 141.

should not be set¹⁶. It will undermine the legislative purposes sought to be achieved with the enactment of PU Code section 454.5.

B. PG&E's Application Should Have Been Dismissed as A Speculation Venture Which Even Its Own Executive Could Not Justify.

PG&E's Application should have been dismissed, not only because it was not submitted through the statutory procurement process, but also because PG&E offered no evidence to support a decision in its favor.

PG&E estimated the cost of building 250 MW of solar power plants at \$1.45 billion,¹⁷ but provided no evidence supporting the estimated cost.¹⁸ PG&E didn't know where it would build the plants; how much land it might have to buy or what it would pay for additional land; whether its property would meet environmental standards; how large the plants would be or how long it would take to build them; what solar technology it would use; how it would finance the investment; how it would connect plant to the grid; what contractor would be hired, if any; etc. PG&E's Vice President for Energy Procurement would later admit that with all the decisions yet to be made, he didn't think he would advise going ahead with the project.¹⁹

Section 454 of the Public Utilities Code says no public utility shall change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the commission and a finding by the commission that the new rate is justified. The proposed decision recognizes PG&E did not make the requisite showing:

We do not adopt PG&E's cost estimates and the contingency factors for UOG projects.²⁰

We are persuaded by concerns raised about the program costs, specifically the concerns that the program cost estimates are not fully justified ...²¹

PG&E has provided cost estimate based on a five MW project. However, these estimates are not sufficiently supported.²²

¹⁶ Admittedly, the Commission has already started down that road with Southern California Edison. But one need not repeat a mistake which is so costly to customers because another utility says, "Me, too."

¹⁷ Opening Testimony of Fong Wan, ch. 1, p. 1-1.

¹⁸ CFC Opening Br. at 5.

¹⁹ Testimony of Fong Wan, Tr. 41-42

²⁰ PD at 20.

²¹ PD at 19.

PG&E's response that the unknown factors are implementation details is not reasonable. These are important factors that could have significant impacts on the estimated cost of not only the UOG portion, but also the PPA portion, and the entire PV Program. Unless these cost details are known, it would be difficult to verify if PG&E's claims for the total cost of the program are accurate and reasonable. ... We are not persuaded that we have sufficient information to determine a reasonable price for UOG projects. Further, PG&E's estimates are based on a blend of information gained from various sources, thus it is difficult to determine their credibility.²³

[I]t would not be in the ratepayers' interest to adopt PG&E's cost estimates given information suggesting these estimates appear high relative to the market price for a similar product."²⁴

Rather than dismissing the application at this point, however, the Proposed Decision creates a pricing strategy which allows PG&E to go forward with the purchases it proposed, but allows it to collect no more than the weighted average price per kWh bid by independent power producers.²⁵ An alternative to the remedy selected in the Proposed Decision would be to dismiss this case and require PG&E to include the PV Program in its Procurement Plan. In order to request approval of the PV Program, PG&E would have to show the PV program satisfied a Low Cost – Best Fit standard.

The Proposed Decision requires PG&E to "amend its 2010 Procurement Plan to include its PV Program. The Commission will then review contracts executed under the PV Program for consistency with PG&E's approved Procurement Plan and compliance with all other relevant RPS procurement requirements."²⁶ What purpose would such a review achieve. If the Commission finds that PG&E does not need all the MWs of solar power for which it has contracted as authorized by the Proposed Decision, will the contracts be voided? If PG&E begins charging rates allowed by the Proposed Decision, will they be collected subject to refund at the end of the procurement plan proceeding if the Commission finds one or more of the contracts PG&E has signed is not needed and

²² PD at 21.

²³ PD at 21-22.

²⁴ PD at 22.

²⁵ CFC is not quite clear on how this process would work, e.g., why would an independent power producer bid on a project which PG&E plans to build? It might be useful to allow another round of briefing, and hearing if necessary, to explore this option.

²⁶ PD at 36-37.

imprudently entered? Will the parties be precluded from litigating issues in the procurement proceeding because they have been litigated in this proceeding? It would be better to follow a regular procedure by dismissing this Application and allowing PG&E to file it in a procurement proceeding.

CONCLUSION

PG&E's Application for Approval of the PV Program should be dismissed.

DATE: February 16, 2010

CONSUMER FEDERATION OF CALIFORNIA

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A.09-02-019

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2010, I served on all parties on the service list for A.09-02-019, by email, true copies of the original of the following documents which are attached hereto:

**COMMENTS ON PROPOSED DECISION BY THE
CONSUMER FEDERATION OF CALIFORNIA**

The e-mail addresses to which these documents were sent are shown on an attachment.

Dated: February 17, 2010 at San Mateo, CA.

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