

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of Pacific Gas and Electric Company for Approval of the Novation of the California Department of Water Resources Agreements Related to the Calpine Transaction, and Associated Cost Recovery

A.09-10-034
(Filed October 30, 2009)

PROTEST
OF THE DIVISION OF RATEPAYER ADVOCATES TO PACIFIC GAS AND ELECTRIC COMPANY'S APPLICATION FOR APPROVAL OF THE NOVATION OF THE CALIFORNIA DEPARTMENT OF WATER RESOURCES AGREEMENT RELATED TO THE CALPINE TRANSACTION, AND ASSOCIATED COST RECOVERY

NOEL A. OBIORA
Attorney
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703- 5987
Fax: (415) 703- 2262
Email: nao@cpuc.ca.gov

MATTHEW TISDALE
Analyst
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703- 5137
Email: mwt@cpuc.ca.gov

November 19, 2009

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RESOURCES AGREEMENT RELATED TO THE CALPINE
TRANSACTION, AND ASSOCIATED COST RECOVERY**

Pursuant to Rule 2.6 of the Commission's Rules of Practices and Procedure, the Division of Ratepayer Advocates (DRA) submits its protest to the Application of Pacific Gas and Electric Company (PG&E) for Approval of the Novation of the California Department of Water Resources Agreements Related to the Calpine Transaction, and Associated Cost Recovery. The procurement of new resources for which PG&E seeks approval in this Application is unreasonable and unnecessary.

I. BACKGROUND

PG&E's Application seeks California Public Utility Commission (CPUC) approval of five transactions. Three of the transactions are associated with novation of the California Department of Water Resources' (DWR) Calpine 2 contract; PG&E refers to those three transactions as a Novation Agreement, a Replacement Agreement, and Los Esteros Critical Energy Facility (LECEF) Upgrade Power Purchase Agreement (PPA). The two remaining transactions are associated with novation of DWR's Calpine 3

contract; PG&E refers to these transactions as a Novation Agreement and a Replacement Agreement. Together, these transactions are referred to as the Calpine Transaction.

Each of the Novation Agreements would allow PG&E to take the place of the DWR as the buyer in existing PPAs. Significantly, in the Novation Agreement associated with Calpine 2, DWR has exercised an option to extend the Calpine 2 contract through 2012. Each of the Replacement Agreements provides PG&E power deliveries for the remainder of the contract terms.

The LECEF Upgrade PPA is a 10 year PPA that would allow Calpine to add 109 MW to its existing LECEF facility by converting that facility to a combine cycle plant. PG&E also requests that the Commission approve recovery of the costs of the Calpine Transaction through its Energy Resource Recovery Account (ERRA) and that any stranded costs associated with the Calpine Transaction be recovered through a non-by passable charge consistent with D.04-12-048 and D.08-09-012.

A. The Procurement Context

In D.07-12-052 the Commission approved PG&E's 2006 Long Term Procurement Plan, including authority to procure between 1,112 MW and 1,512 MW of new capacity in its service territory. In response to this authorization PG&E conducted a Long Term Request for Offer (LTRFO) through which PG&E received a variety of bids for resources to fill its authorized need. From the resources bid into the LTRFO, PG&E selected five projects totaling 1,743 MW of new capacity in its service territory and has filed applications before the Commission for approval of these five projects. D.09-10-017 authorized the first of these projects, PG&E's Mariposa PPA (184 MW).¹

¹ D.09-10-017 authorized PG&E's Mariposa PPA (184 MW); A.09-09-021 requests approval of PG&E's Marsh Landing PPA (719 MW) and Contra Costa Generating Station PSA (586 MW); A.09-10-022 requests approval of PG&E's Tracy Upgrade PPA (145 MW); A.09-10-034 requests approval of PG&E's LECEF Upgrade PPA (109 MW). In total, these agreements would add 1,743 MW to PG&E's service territory.

B. The Novation Context

D.08-11-056, the Commission determined that in order to “facilitate the removal of the Department of Water Resources from its role as a supplier of power to retail customers,”² utilities should consider novation of the DWR contracts. In directing that utilities consider novation of DWR contracts, the Commission also held that “any replacement agreement that would extend the term of a contract should also be reviewed by the Commission for consistency with the long-term procurement planning criteria, pursuant to Section 454.5.”³

The proceeding which resulted in D.08-11-056 was primarily opened to consider “whether, or under what conditions, ‘Direct Access’ may be reinstated.” At the time, the primary obstacle to reinstating “Direct Access” was the fact that Assembly Bill 1 from the First Extraordinary Session (AB1X) suspended Direct Access until DWR is no longer in the business of supplying power to retail customers. Since, D.08-11-056 was issued, AB1X has been amended to provide that the removal of DWR from its role as a supplier of power to retail customers, would not lift the suspension of Direct Access. New Legislation is now necessary to lift suspension of Direct Access.

II. POTENTIAL ISSUES

In light of the foregoing background and context, DRA presents the following issues:

- Whether the LECEF Upgrade PPA is consistent with the need approved for PG&E in D.07-12-052;
- Whether D.08-11-056 directed utilities to execute long term procurement agreements, as exemplified by the LECEF Upgrade PPA;
- Whether the policies underlying the Commission’s decision in D.08-11-056 have been superseded by new legislation;

² D.08-11-056, p. 1.

³ D.08-11-056, p. 81.

- Whether the price of the proposed transactions are cost effective over the life of the contract;
- Whether the ratemaking proposed by PG&E for the proposed transactions is reasonable;

DRA is still reviewing this Application and conducting discovery on these issues. Therefore, DRA reserves the right to raise additional issues and supplement its position as more information becomes available.

III. CATEGORIZATION

DRA agrees that the appropriate categorization for this proceeding is ratesetting.

IV. NEED FOR HEARINGS

Hearings will be necessary for this proceeding as the Application raises a material dispute regarding the utilities authorization for new resources outside of their long-term procurement planning projections.

V. SCHEDULE

PG&E's proposed schedule is unworkable. It is based in part on the assumption that hearings will not be necessary. DRA has moved to consolidate this proceeding with another Application by PG&E for novation of DWR contracts with Calpine Corporation (A.09-10-022). Until the issue of consolidation is resolved, DRA cannot now propose a detailed schedule as PG&E has done. Further, PG&E has not stated the exigency driving its request for an expedited schedule, in light of the fact that none of the resources in this application are necessary to meet PG&E's long-term procurement need.

DRA will be prepared to discuss and recommend a schedule at the prehearing conference.

VI. CONCLUSION

For all the reasons stated above, DRA respectfully requests that the Commission adopt its recommendations.

Respectfully submitted,

/s/ NOEL A. OBIORA

Noel A. Obiora

Attorney for the Division of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-5987
Fax: (415) 703-2262

November 19, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES TO PACIFIC GAS AND ELECTRIC COMPANY'S APPLICATION FOR APPROVAL OF THE NOVATION OF THE CALIFORNIA DEPARTMENT OF WATER RESOURCES AGREEMENT RELATED TO THE CALPINE TRANSACTION, AND ASSOCIATED COST RECOVERY** in **A.09-10-034** by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on November 19, 2009 at San Francisco, California.

/s/ CHARLENE D. LUNDY

Charlene D. Lundy

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

SERVICE LIST
A.09-10-034

alr4@pge.com
s2sc@PGE.COM
liddell@energyattorney.com
bcragg@goodinmacbride.com
crmd@pge.com
mrw@mrwassoc.com
steven@iepa.com
cbk@eslawfirm.com
mwt@cpuc.ca.gov
nao@cpuc.ca.gov
shi@cpuc.ca.gov