

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of Pacific Gas and Electric
Company (U39E) for Approval of 2008
Long-Term Request for Offer Results
and for Adoption of Cost Recovery and
Ratemaking Mechanisms

A.09-09-021
Filed September 29, 2009

**PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES
AND REQUEST FOR A HEARING**

I. INTRODUCTION

Pursuant to Rule 2.6 of the Commission's Rules of Practice and Procedure, Section 1701.1 et. seq. of the California Public Utilities Code and the Revised Alternate Proposed Decision (RAPD), the Division of Ratepayer Advocates (DRA) submits its Protest to the Second Application of Pacific Gas and Electric Company's (PG&E) for Approval of the Purchase and Sale Agreement (PSA) between PG&E and Contra Costa Generating Station, LLC, in the 2008 Long-Term Request for Offer Results (LTRFO) and for Adoption of Cost Recovery and Ratemaking Mechanisms. PG&E filed a Petition for Modification of Decision (D.) 10-07-045 on August 23, 2010 seeking approval of the PSA after it was rejected. The Administrative Law Judge issued a PD denying the PFM, but Commissioner Bohn issued an Alternate Proposed Decision (APD) approving the PFM. However, on December 9, 2010, three working days to the last Commission meeting of 2010, Commissioner Bohn revised the APD and in the RAPD held that the PFM was an inappropriate procedural vehicle for approving the PSA, but *sua sponte* changed the PFM to an Application for approval of the PSA.

II. DRA REQUESTS A HEARING ON THE CATEGORIZATION OF THE OF NEW APPLICATION DETERMINED SUA SPONTE BY THE RAPD

DRA objects to the categorization of the Application in the RAPD and requests a hearing on categorization. Section 1701.1 of the California Public Utilities Code provides that a party may request a hearing on the categorization of any Application before the Commission within 10 days of the Commission decision on categorization. In this proceeding the RAPD converted the PFM to an Application, but did not assign a new docket number to the new Application, hence implicitly leaving it under the same categorization as the originally filed PFM. Therefore, DRA objects to the continuing categorization of the new Application as ratesetting upon the grounds that there is insufficient information on the new Application upon which such categorization could be implied. Further, DRA objects upon the grounds that the categorization of a new Application must be explicit not implicit and all parties must be given the opportunity to object to the categorization and request an appeal of the categorization.

DRA is entitled to a hearing on the categorization of the new Application as required by the Public Utilities Code and the Commission's Rules of Practice and Procedure, Rule 2.6 (d). Public Utilities Code Section 1701.1 provides:

(a) The commission, consistent with due process, public policy, and statutory requirements, shall determine whether a proceeding requires a hearing. The commission shall determine whether the matter requires a quasi-legislative, an adjudication, or a ratesetting hearing. The commission's decision as to the nature of the proceeding shall be subject to a request for rehearing within 10 days of the date of that decision....

DRA hereby requests a hearing on the Commission's determination that this proceeding is a ratesetting proceeding, and in the alternative, the Commission's failure to establish a categorization for this proceeding.

III. DRA REQUESTS A HEARING ON THE REASONABLENESS OF NEW APPLICATION DETERMINED SUA SPONTE BY THE RAPD

The RAPD did not give parties to this proceeding an opportunity to request a hearing on the myriad issues in the new Application created *sua sponte* in the RAPD because the RAPD decided the application *sua sponte* as well. DRA believes the new Application has substantial cost implications for ratepayers, far in excess of the cost of the original Application, because the new application would deliver the Oakley Power Plant two years later than the original application for a shorter life span (by two years) but still cost ratepayers the same as the original application and with a revenue requirement of more than \$1.5 billion dollars.

Therefore, DRA requests a hearing on the reasonableness of the revised terms of the PSA in the new Application and reserves the right to raise other issues as they arise.

Respectfully submitted,

/S/ NOEL A. OBIORA

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December 15, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES AND REQUEST FOR A HEARING**” to the official service list in **A.09-09-021** 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 **December 15, 2010** at San Francisco, California.

/S/ MARTHA PEREZ

Martha Perez

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