

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Application of Pacific Gas and Electric Company (U 39 E), for Approval of the Manzana Wind Project and Issuance of a Certificate of Public Convenience and Necessity.

A.09-12-002  
(Filed December 3, 2009)

**THE DIVISION OF RATEPAYER ADVOCATES' RESPONSE TO  
THE MOTION OF PACIFIC GAS AND ELECTRIC TO WITHDRAW  
APPLICATION 09-12-002**

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February 3, 2011

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Pursuant to Rule 11.1 of the California Public Utilities Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates ("DRA"), respectfully submits this response to the motion of Pacific Gas and Electric ("PG&E") to withdraw Application 09-12-002 ("the Application"). The Commission should reject PG&E's motion to withdraw the Application and should instead adopt the Proposed Decision, without modification, at the next Commission business meeting scheduled for February 24, 2011.

**I. BACKGROUND**

On January 19, 2011, PG&E filed a motion to withdraw Application 09-12-002 filed on December 3, 2009 on the grounds that the Application is now moot because Iberdrola Renewables, Inc. ("Iberdrola") terminated the Purchase and Sale Agreement ("PSA") for the Manzana Wind Project ("Project"). The termination letter attached to the motion indicates that Iberdrola terminated the PSA because Commission approval did not occur within 365 days of the filing date of the Application. The Proposed Decision of Administrative Law Judge Ebke rejecting the Application mailed on December 21, 2010.

Under the terms of the PSA, Iberdrola could have terminated the PSA for such cause as early as December 4, 2010, but Iberdrola waited until January 14, 2011.<sup>1</sup>

## II. ARGUMENT

The Commission should reject PG&E's motion to withdraw the Application at this late date. Rather, for the reasons explained in DRA's Reply Comments filed January 18, 2011, the Commission should adopt the Proposed Decision without modification at the next Commission meeting on February 24, 2011.

PG&E and Iberdrola waited until *after* receiving an unfavorable Proposed Decision that would have rejected the Application outright before respectively terminating the PSA and withdrawing the Application. However, the fact that Iberdrola terminated the PSA does not render the Proposed Decision moot at all. If voted out, the Proposed Decision will set important precedent – not only for PG&E, but also for other regulated utilities and independent power developers that may consider structuring and submitting to the Commission a proposal for utility-ownership of renewable generation. This well-reasoned and well-supported Proposed Decision should not languish on the shelves simply so that PG&E can avoid an unfavorable precedent. That outcome would deprive all market participants of having the benefits of the Commission's considerable work on the numerous issues that are raised by a proposal for utility ownership of renewable generation.<sup>2</sup>

Moreover, the Proposed Decision is not mooted by termination precisely because it would *reject - not approve -* the Application. Terminating the PSA is a natural

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<sup>1</sup> Iberdrola also submitted "comments" on the Proposed Decision as a written ex parte communication on January 11, 2011 – just days before it terminated the PSA – recommending approval of the project and other extensive changes to the Proposed Decision.

<sup>2</sup> The PD addresses numerous issues that have application and relevance beyond the Manzana Project. These discussions, findings of fact, and conclusions of law can and should be available as precedent for guiding future proponents of UOG renewable projects. Issues with broader relevance and application include, for example: demonstration of resource need, demonstration of the reasonableness of an assumed commercial operations schedule; what is an appropriate balancing of cost and risk-sharing between ratepayers and the utility, the need to address credible environmental concerns that could adversely impact project operations and economics; what are the appropriate benchmarks and methodology for assessing project cost competitiveness; what evidence is reasonable to rely upon for asserting an expected plant life.

consequence of the Commission's rejection of the application. The fact that Iberdrola terminated the PSA *before* the Commission had an opportunity to vote out the Proposed Decision does not mean the entire decision is moot. It simply confirms that PG&E did not receive the approval sought.

Granting PG&E's motion at this late hour would also undermine the integrity of Commission process. It would encourage parties to simply withdraw an application whenever they face an unfavorable proposed decision and thus establish negative Commission precedent. Furthermore, granting the motion is also inequitable to parties who successfully opposed the Application. DRA and The Utility Reform Network ("TURN") have devoted significant resources to this Proceeding and generated a considerable record in support of a Proposed Decision that has relevance and application well beyond the Manzana Project. Setting aside the Proposed Decision and granting withdrawal of the Application at this late juncture wastes these parties' and the Commission's considerable work in this proceeding and will incentivize withdrawal of other applications whenever they are facing an unfavorable proposed decision. In order to maintain the integrity of its process, the Commission should vote on the Proposed Decision of Administrative Law Judge Ebke.

Although DRA opposes the motion to withdraw, if the Commission grants PG&E's motion to withdraw the Application, it should do so with prejudice. Specifically PG&E should be precluded from ever resubmitting this Project as a utility-owned generation application. Permitting a party to withdraw an application without a conditional prohibition on resubmitting a project through a new application will undermine Commission process and encourage similar behavior from other parties in the future.

Respectfully submitted,

/s/ MARCELO POIRIER

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February 3, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day *served* a copy of “**THE DIVISION OF RATEPAYER ADVOCATES’ RESPONSE TO THE MOTION OF PACIFIC GAS AND ELECTRIC TO WITHDRAW APPLICATION 09-12-002**” in **A.09-12-002**.

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.

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Executed on **February 3, 2011** at San Francisco, California.

/s/ HALINA MARCINKOWSKI

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