

BEFORE THE PUBLIC UTILITIES COMMISSION OF  
THE STATE OF CALIFORNIA



**FILED**

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Application of Pacific Gas and Electric  
Company for Approval of the Manzana  
Wind Project and Issuance of a Certificate of  
Public Convenience and Necessity.

Application 09-12-002  
(Filed December 3, 2009)

**RESPONSE OF THE UTILITY REFORM NETWORK TO THE MOTION OF  
PACIFIC GAS & ELECTRIC TO WITHDRAW APPLICATION 09-12-002**



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February 3, 2011

## RESPONSE OF THE UTILITY REFORM NETWORK TO THE MOTION OF PACIFIC GAS & ELECTRIC TO WITHDRAW APPLICATION 09-12-002

Pursuant to Rule 11.1 of the Rules of Practice and Procedure, The Utility Reform Network (TURN) submits this response to the motion of Pacific Gas & Electric (PG&E) to withdraw Application 09-12-002. TURN urges the Commission to reject PG&E's motion and approve the Proposed Decision (PD) of ALJ Ebke at the next Commission meeting.

PG&E claims that it decided to file the motion because Iberdrola gave unilateral notice of its intention to terminate the Purchase and Sale Agreement (PSA). The letter from Iberdrola (attached to the motion) states that the termination was due to the fact that Commission approval had not occurred within 365 days of the application filing date.<sup>1</sup>

TURN believes that PG&E invited Iberdrola to terminate the PSA in order to avoid an adverse Commission decision on the merits of the application. Iberdrola chose to wait until the final days prior to the Commission meeting, well after the 365 day period had passed, to exercise this termination option. Only three days before sending the termination letter to PG&E, Iberdrola circulated an extensive 13-page single-spaced *ex-parte* communication to Commissioner Peevey arguing against the PD and urging the Commission to approve the application.<sup>2</sup> There was no indication in this *ex-parte* communication that Iberdrola had any intention of terminating the PSA despite the fact that the Commission had not acted within 365 days of the application being filed. Indeed, Iberdrola could not have reasonably expected the Commission to act on these recommended changes prior to the January 14<sup>th</sup> termination notice since major revisions would require time for additional comments by parties. Iberdrola clearly had an

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<sup>1</sup> PG&E motion, attached Iberdrola letter.

<sup>2</sup> Comments of Iberdrola and Notice of Ex-Parte Communication, A.09-12-002, January 11, 2011. The Iberdrola letter to PG&E is dated January 14, 2011.

expectation that its ex-parte communication could lead to changes in the PD and future approval of the application.

It should be obvious that Iberdrola and PG&E determined shortly after January 11<sup>th</sup> that there was little hope the Commission would revise or reject the PD. Rather than face the near certainty of an ignoble rejection by the Commission, PG&E chose to surrender under the cover of Iberdrola's purported unilateral decision to terminate the PSA. The notion that Iberdrola chose to terminate the deal on its own volition -- within days of circulating an impassioned defense of the application -- is simply not plausible. The motion fails to explain the true motivations of the parties seeking a withdrawal of the application. Because the motion is deficient in this respect, it should be denied.

The Commission should adopt the PD. TURN and DRA invested substantial resources litigating important issues in this application. The PD carefully considered the merits of various positions and reached conclusions that are relevant to a broad range of Commission proceedings and future utility applications. Absent a final adopted decision, there will be limited opportunities to cite the findings of fact, policy direction, and conclusions of law in future proceedings.

The PD makes a series of findings that send an important message to PG&E and other utilities and should represent official Commission policy. For example, the PD finds that "as a utility-owned generation project, ratepayers are at risk if the Manzana wind project produces less than expected."<sup>3</sup> As a result, the PD concludes "it is reasonable to consider potential costs if the forecasted assumptions for the Manzana Wind Project change."<sup>4</sup> The PD makes findings and conclusions regarding the use of Net Market Value to determine the competitiveness of the project,<sup>5</sup> the reasonableness of assuming

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<sup>3</sup> Proposed Decision, Finding of Fact #5

<sup>4</sup> Proposed Decision, Conclusion of Law #6.

<sup>5</sup> Proposed Decision, Conclusion of Law #3.

delays and potential curtailments,<sup>6</sup> and the importance of comparing Manazana to “all available offers for renewable projects.”<sup>7</sup> The PD also properly observes that the application would subject ratepayers to a variety of risks while shareholders would be insulated from any reduction in their expected profits regardless of project performance.<sup>8</sup> Based on this careful analysis, the PD rejects the application because it “will not further Commission policies relating to utility-owned generation of renewable resources given the lack of a showing of a need, and the risks and costs the application poses to ratepayers.”<sup>9</sup>

These findings, observations and conclusions provide critically important guidance to utilities and other parties participating in future applications for utility-owned renewable generation. It would be a mistake for the Commission to withdraw the PD and deprive stakeholders of a final decision on the merits. This is the outcome PG&E seeks -- to erase any precedential impact created by this proceeding -- rather than facing the prospect of having to demonstrate that a future application does not suffer from the same infirmities.

TURN and DRA worked diligently to provide the Commission with a complete record and request a final decision on the merits. The PD is ready to be adopted without modification at the next Commission meeting. Rather than bowing to PG&E’s self-serving request, the Commission should approve the PD and ensure that the important policy conclusions reached in this proceeding are preserved rather than tossed unceremoniously into the ash heap of history.<sup>10</sup>

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<sup>6</sup> Proposed Decision, Conclusions of Law #1, #2.

<sup>7</sup> Proposed Decision, Conclusion of Law #5.

<sup>8</sup> Proposed Decision, pages 2-3.

<sup>9</sup> Proposed Decision, page 3.

<sup>10</sup> See [http://en.wikipedia.org/wiki/Ash\\_heap\\_of\\_history](http://en.wikipedia.org/wiki/Ash_heap_of_history)

Respectfully submitted,

/S/

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Dated: February 3, 2011

CERTIFICATE OF SERVICE

I, Larry Wong, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On February 3, 2011, I served the attached:

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on all eligible parties on the attached list **A.09-12-002** by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List.

Executed this February 3, 2011, at San Francisco, California.

/S/  
Larry Wong

**Service List for A.09-12-002**

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