



FILED

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of Agreements Related to the Novation of the California Department of Water Resources Agreement with GWF Energy LLC, Power Purchase Agreement with GWF Energy II LLC, and Associated Cost Recovery (U39E).

Application 09-10-022
(Filed October 16, 2009)

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 (U39E).

Application 09-10-034
(Filed October 30, 2009)

**ADMINISTRATIVE LAW JUDGE'S RULING
GRANTING THE UTILITY REFORM NETWORK'S MOTION
TO FILE CONFIDENTIAL MATERIAL UNDER SEAL**

This ruling grants The Utility Reform Network's (TURN) motion to file Appendix A of its protest under seal. This ruling is provisional and may be reversed following a final determination of whether the information in TURN's Appendix A that has been designated as confidential by Pacific Gas and Electric Company is, in fact, confidential.

Background

On October 16, 2009, Pacific Gas and Electric Company (PG&E) served written testimony in support of PG&E's Application (A.) 09-10-022 for approval of PG&E's proposed contracts for the procurement of electric power from

GWF Energy LLC entities.¹ The written testimony includes material that PG&E has designated as confidential. PG&E attached to its testimony a declaration made under penalty of perjury that explains why the testimony qualifies for confidential treatment pursuant to the criteria set forth in Decision 06-06-066.

On November 20, 2009, The Utility Reform Network (TURN) filed a protest to A.09-10-022. Appendix A of TURN's protest (Appendix A) contains material from PG&E's testimony that PG&E has designated as confidential.

TURN concurrently submitted with its protest a motion to file Appendix A under seal. In its motion, TURN describes Appendix A as "TURN's discussion and analysis of information presented in Confidential Appendix 3 of PG&E's prepared testimony... which contains the utility's economic analysis of the short-listed bids in its 2008 Long-Term Request for Offers."² TURN states that because its Appendix A contains information from PG&E's testimony that has been designated as confidential by PG&E, TURN's Appendix A should be placed under seal to the same extent that PG&E's testimony is placed under seal.

There was no response to TURN's motion.

Ruling

TURN seeks to file Appendix A under seal because the document contains information that has been designated as confidential by PG&E. Therefore, the issue of whether to grant TURN's motion hinges on whether PG&E has properly designated the information in TURN's Appendix A as confidential.

PG&E has designated the information as confidential pursuant to Decision (D.) 08-04-023 and D.06-06-066. These decisions provide that in situations where

¹ PG&E's A.09-10-022 was subsequently consolidated with PG&E's A.09-10-034.

² TURN motion, p. 1.

information regarding energy procurement is contained in written testimony that has been served but not yet offered into evidence, as is the case here, there is no need to file a motion to keep the information confidential. Instead, a declaration under penalty of perjury must accompany the testimony that explains why the testimony meets the criteria for confidential treatment that are set forth in D.06-06-066, Ordering Paragraph 2.³ Subsequently, when the party offers the testimony into evidence, the party must make an oral or written motion to admit the evidence under seal. This motion must demonstrate that the testimony meets the criteria for confidential treatment set forth in D.06-06-066.⁴

The parts of PG&E's written testimony that are contained in TURN's Appendix A satisfy the requirements for confidential treatment on a provisional basis because (1) the testimony pertains to energy procurement, and (2) PG&E included with its testimony a declaration that explains why the testimony meets the criteria for confidential treatment set forth in D.06-06-066. The final determination on whether PG&E's testimony is, in fact, confidential will be made when PG&E submits a motion to admit the testimony into evidence under seal.

If PG&E's testimony is admitted into evidence under seal, the question arises how long the testimony (and TURN's Appendix A) should remain under seal. The declaration that accompanied PG&E's testimony states the testimony qualifies for confidential treatment in accordance with D.06-06-066, Appendix 1, page 18, Category VIII.B.⁵ Information in this category may be placed under seal for a three-year period beginning on the date that PG&E selected the winning

³ D.08-04-023, p. 22.

⁴ D.08-04-023, pp. 21-22.

⁵ See PG&E's Declaration of Dennis L. Sullivan, as revised on November 13, 2009.

bids of its recent long-term request for offers.⁶ For the purpose of this ruling, the date that PG&E selected the winning bids is deemed to be the date that PG&E filed A.09-09-021 wherein PG&E requests Commission approval of the winning bids. PG&E filed A.09-09-021 on September 30, 2009.

For the foregoing reasons, TURN's motion to file Appendix A under seal is granted. Appendix A shall remain under seal until the earlier of (1) the end of the three-year period that begins on September 30, 2009, or (2) a final determination, if any, that the information in Appendix A that PG&E has designated as confidential is, in fact, not confidential.

IT IS RULED that:

1. The motion of The Utility Reform Network (TURN) to file Appendix A of its protest to Application 09-10-022 under seal is granted. Appendix A shall remain under seal until the earlier of (i) the end of the three-year period that begins on September 30, 2009, or (ii) a final determination, if any, that the information in Appendix A that PG&E has designated as confidential is, in fact, not confidential.

2. The document placed under seal at the Commission pursuant to this ruling shall not be provided to anyone other than the Commission and its staff except on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as the Law and Motion Judge.

⁶ D.06-06-066, Appendix 1, page 18, Category VIII.B.

Dated December 24, 2009, at San Francisco, California.

/s/ TIMOTHY KENNEY
Timothy Kenney
Administrative Law Judge

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Dated December 24, 2009, at San Francisco, California.

/s/ ANTONINA V. SWANSEN
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N O T I C E

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