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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company To Revise Its Electric Marginal Costs, Revenue Allocation, and Rate Design, including Real Time Pricing, to Revise its Customer Energy Statements, and to Seek Recovery of Incremental Expenditures. (U39M)

Application 10-03-014
(Filed March 22, 2010)

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING MOTION TO STRIKE**

This ruling denies the Pacific Gas and Electric Company (PG&E) motion to strike portions of the August 5, 2011, prepared reply testimony of R. Thomas Beach submitted on behalf of the Solar Alliance. PG&E moves to strike the portion of Beach's reply testimony which quotes from prior testimony by William Marcus on behalf of the Utility Consumers' Action Network (UCAN) and Barbara Barkovich on behalf of the California Large Energy Consumers Association in Phase 2 of San Diego Gas & Electric Company's 2007 General Rate Case (Application 07-01-047).

PG&E moves to strike, arguing the testimony of Marcus and Barkovich constitutes hearsay, thereby denying PG&E the ability to cross-examine either of those individuals as to whether their statements are accurately represented or relevant here. PG&E argues that its cross-examination would ask about implications that may be drawn from the referenced testimony and data from the other proceedings, the circumstances under which the statements were made,

and the relevance or implications for this proceeding in the context of Solar Alliance's proposals.

Solar Alliance filed a response in opposition to the motion to strike on August 24, 2011. Solar Alliance explains that the testimony at issue relates to witness Beach's position that demand charges are not the appropriate way to recover capacity-related costs from customers that install renewable distributed generation (DG). The testimony that PG&E moves to strike responds to PG&E witness Andrew Bell's testimony on the Commission's past policy supporting demand charges for large customers. In support of his testimony, Bell cites Commission cases dating from the 1970s and 1980s. In testimony responding to Bell, Solar Alliance witness Beach takes the position that the Commission's policy has been moving away from reliance on demand charges. Because over the past several years, rate design phases of the general rate cases have typically been resolved through settlement, Solar Alliance offered evidence of this shift in policy in the testimony of experts who have participated in these proceedings rather than through analyses in Commission decisions. Solar Alliance thus explains that Beach provided the excerpts of testimony as illustrative examples of well respected rate analysts to support the claim that the move away from demand charges is not a novel idea, but has been recognized and supported in the industry for years.

Discussion

The motion of PG&E to strike the referenced testimony is denied. PG&E's objection essentially is that the disputed testimony is hearsay. PG&E argues that its interests would be prejudiced by admission into evidence of the referenced testimony where PG&E has no opportunity to cross-examine the authors

regarding their testimony's significance and applicability to the issues for which Solar Alliance uses them here.

The mere fact that testimony involves hearsay evidence does warrant excluding otherwise admissible evidence from the record. The hearsay objection is based upon technical rules of evidence that have evolved to protect the rights of parties to a criminal or civil trial. As noted in Rule 13.6 of the Commission's Rules of Practice and Procedure, however, the technical rules of evidence normally need not be applied in hearings before the Commission, provided that the substantial rights of the parties are preserved.

In this instance, Solar Alliance has provided a reasonable explanation regarding the purposes for which the statements of other experts are used in support of Beach's testimony. Striking the testimony would unfairly deprive Solar Alliance from presenting its full rebuttal to PG&E's testimony. During the hearings in this proceeding, PG&E will have a full opportunity to cross examine Beach concerning whatever meaning and significance Beach ascribes to the statements of Marcus and Barkovich. The Commission can assign the relevant evidentiary weight to account for the limited purposes for which the cited statements are being offered. Therefore, PG&E's interests are not prejudiced merely because the authors of the statements are not presented for cross examination. Following this procedural approach will preserve the substantial rights of all of the parties.

IT IS RULED that the motion of Pacific Gas and Electric Company to strike portions of the reply testimony of Thomas Beach on behalf of the Solar Alliance is denied.

A.10-03-014 TRP/acr

Dated August 26, 2011, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge