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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authorization to Enter into Long-Term Natural Gas Transportation Arrangements with Ruby Pipeline, for Cost Recovery in PG&E's Gas and Electric Rates and Nonbypassable Surcharges, and for Approval of Affiliate Transaction. (U39G and U39E)

Application 07-12-021
(Filed December 21, 2007)

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING MOTION TO PROVIDE MARKET-SENSITIVE
INFORMATION TO CERTAIN ATTORNEYS OF MARKET PARTICIPANT**

1. Summary

This ruling denies the motion filed by Gas Transmission Northwest Corporation (GTN) to compel Pacific Gas and Electric Company (PG&E) to provide market-sensitive material to certain attorneys representing GTN.

2. Background and Summary of GTN's Motion to Compel

In Application 07-12-021, PG&E requests authority for a long-term contract to transport gas on the proposed Ruby Pipeline (Ruby). Ruby and GTN are interstate natural gas pipeline companies that have competing pipeline projects to serve Northern California starting in 2011.

On April 11, 2008, GTN filed a motion to compel PG&E to provide responses to certain data requests. In response to the motion, the assigned Administrative Law Judge (ALJ) issued a ruling on April 22, 2008, that directed PG&E to provide specified materials to GTN's "reviewing representatives" by

April 29, 2008. The ruling defined “reviewing representatives” in accordance with Decision (D.) 06-12-030. PG&E refused to provide the specified material to GTN’s outside attorneys at Manatt, Phelps & Phillips, LLP (MP&P), who are representing GTN in this proceeding.

On April 30, 2008, GTN filed a motion to compel PG&E to provide the specified material to MP&P attorneys. GTN asserts that PG&E refused to provide the material to MP&P attorneys because they represent GTN, which is a market participant. PG&E contends that it is allowed by D.06-12-030 to withhold market-sensitive material from attorneys who represent market participants.

GTN argues that PG&E’s interpretation of D.06-12-030 is inconsistent with D.06-12-030, which “allows market participants to designate representatives (outside experts, consultants or attorneys) as long as such representatives have no involvement in energy marketing and related activities and work in a different firm from, or are ethically screened from, such representatives.”¹ GTN states that MP&P attorneys have not engaged in the proscribed conduct and thus qualify as reviewing representatives under D.06-12-030. GTN adds that even if an attorney falls outside the definition of reviewing representative, D.06-12-030 states at page 19 that “the best practice is to deal with such situations in the terms of the model protective order and nondisclosure agreement.”

3. Summary of PG&E’s Response

PG&E filed a response and a supplemental response on May 1, 2008, in which PG&E opposes GTN’s motion. PG&E states that it was instructed by the ALJ’s ruling to provide specified material to only those reviewing

¹ D.06-12-030, *mimeo.*, p. 17.

representatives of GTN who satisfy the criteria contained in D.06-12-030. PG&E contends that MP&P attorneys do not satisfy these criteria.

PG&E asserts that GTN will not be unduly disadvantaged if MP&P attorneys do not have access to the disputed material, since PG&E has already provided this material to three reviewing representatives. One was Stefan Krantz, a partner with the law firm of Hogan & Hartson, LLP in Washington D.C. Mr. Krantz and his law firm are listed on many of GTN's filings in this docket as counsel for GTN. The other two were Paul Carpenter and Steven Levine. Both are economists with the Brattle Group in Massachusetts. PG&E understands they are preparing testimony on behalf of GTN. PG&E believes that GTN's interests are adequately protected by this arrangement.

4. Ruling

In D.06-12-030, the Commission created a "narrow exception" to its general holding that market participants may not have access to market-sensitive data. This narrow exception allows market participants to designate "reviewing representatives" to access market-sensitive material as long as such representatives have no involvement in energy marketing and related activities, and work in a different firm from, or are ethically screened from, such representatives. The purpose of this narrow exception is to allow some data access to all parties, including market participants, under conditions designed to ensure that market-sensitive data is not used to the detriment of ratepayers.²

There is no dispute that GTN is a market participant and that the material at issue is market sensitive. Thus, GTN's motion boils down to the single issue of

² D.06-12-030, *mimeo.*, p. 17.

whether MP&P attorneys representing GTN in this proceeding qualify as a “reviewing representative” as defined in D.06-12-030.

A close reading of D.06-12-030 indicates MP&P attorneys do not qualify as reviewing representatives. Specifically, the Commission held in D.06-12-030 that an attorney who simultaneously represents both market participants and non-market participants should not have access to market-sensitive data because:

[S]imultaneous representation of both groups presents a more serious risk that market sensitive information will be revealed to market participants. Just as it might be a conflict of interest for an attorney or consultant to represent both sides of a dispute in certain circumstances, we believe a professional who simultaneously represents both sides of the market participant equation could inadvertently compromise the holder of market sensitive information...an attorney or consultant that simultaneously represents market participant(s) and non-market participant(s) may not have access to market sensitive data. (D.06-12-030, *mimeo.*, p. 20. Footnote omitted.)

The above passage in D.06-12-030 evinces the Commission’s intent that outside attorneys hired by a market participant to act as the market participant’s primary representative in a Commission proceeding should not have access to market-sensitive information, i.e., cannot act as a reviewing representative. Because MP&P attorneys are GTN’s primary representative in this proceeding, they do not qualify as a reviewing representative under D.06-12-030 and, consequently, should not have access to market-sensitive information.

GTN argues that the Commission intended the primary representatives of market participants to have access to market-sensitive material because, as stated on page 19 of D.06-12-030, “the best practice is to deal with such situations in the terms of the model protective order and nondisclosure agreement.” GTN misconstrues D.06-12-030. The situation addressed in the quoted statement

concerns an attorney who obtains confidential information while representing a non-market participant who later commences work as a market participant's representative. The Commission concluded on page 19 of D.06-12-030 that in order to protect market-sensitive information without creating a serious limitation on professionals' livelihoods, "the best practice is to deal with such situations in the terms of the model protective order and nondisclosure agreement." It was clearly not the Commission's intent that the primary representatives of market participants should have access to market-sensitive information. D.06-12-030 strictly limited such access to reviewing representatives.³

IT IS RULED that Gas Transmission Northwest Corporation's motion is denied for the reasons set forth in the body of this ruling.

Dated May 6, 2008, at San Francisco, California.

/s/ TIMOTHY KENNEY

Timothy Kenney
Administrative Law Judge

³ This ruling does not bar MP&P attorneys from acting as reviewing representatives if it were demonstrated that there is an ethical wall at MP&P between the attorneys acting as reviewing representatives and the attorneys that serve as GTN's primary representatives in this proceeding. No such demonstration was made in GTN's motion.

INFORMATION REGARDING SERVICE

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Dated May 6, 2008, at San Francisco, California.

/s/ ELIZABETH LEWIS

Elizabeth Lewis