

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED
12-11-09
04:59 PM

Application of Pacific Gas and Electric Company (U39E) for Approval of Novation of the California Department of Water Resources Agreements Related to the Calpine Transaction, and Associated Cost Recovery (U39E)

A.09-10-034
(Filed October 30, 2009)

Application of Pacific Gas and Electric Company (U39E) 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)

A.09-10-022
(Filed October 16, 2009)

**PRE-HEARING CONFERENCE STATEMENT
OF THE DIVISION OF RATEPAYER ADVOCATES**

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December 11, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION
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Application of Pacific Gas and Electric Company (U39E) for Approval of Novation of the California Department of Water Resources Agreements Related to the Calpine Transaction, and Associated Cost Recovery (U39E)

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**PRE-HEARING CONFERENCE STATEMENT
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I. INTRODUCTION

Pursuant to the Ruling of Administrative Law Judge (ALJ) Kenney setting a consolidated prehearing conference (PHC) and requiring parties to file PHC statements, the Division of Ratepayer Advocates (DRA) submits the following PHC Statement. ALJ Kenney's ruling directed parties to address specific issues involving both Applications (A.09-10-034 and A.09-10-022) and include any issues they find necessary for the resolution of the case. The guidance and direction in the ALJ's Ruling portends efficiency and better informs the process, even as the ALJ considers DRA's Motion to Consolidate the two proceedings and the Motion to Dismiss of the Alliance for Retail Energy Markets (AREM) and the California Large Energy Consumers Association

(CLECA). In the time since the ALJ's Ruling, parties in the consolidated proceedings met and discussed schedules and issues as directed by the ALJ's Ruling.

DRA believes hearings will be necessary to resolve factual issues in the two proceedings, and will further identify the factual issues that will form the basis of the hearings.

II. PHC STATEMENT ISSUES

A. The Exact Issues That Need To Be Decided In A.09-10-034 and A.09-10-022

The issues that need to be decided in A.09-10-034 and A.09-10-022 are the same issues. They differ only in so far as they pertain to different plants in different locations, but the policies, reasonableness, controlling authorities, and cost-considerations for Parties in both proceedings are the same. On December 9, 2009, Parties held a teleconference to identify these issues as directed by the ALJ's Ruling. Parties agreed the ALJ should consider the following issues in determining the scope of this proceeding:

- A. Whether D.07-12-052 precludes PG&E from exceeding 1,512 MW
- B. Whether D.08-11-056 authorized utilities to execute long-term procurement contracts as part of the novation process;
- C. Whether the policies underlying the Commission's decision in D.08-11-056 have been superseded by Senate Bill (SB) 695;

Cost including:

- Whether the price of the proposed transactions comprising the GWF Transaction and the Calpine Transaction are cost effective over the life of the contracts;
- Whether PG&E should submit a cost-benefit analysis of the novated contracts, replacement agreements, and transition agreement (and not the Power Purchase Agreements (PPAs) that is based on the cost-benefit analysis set forth in D.08-11-056.
- Whether PG&E should provide a forecast of the cost of the power delivered to PG&E by each PPA during the term of the agreement

(including the yearly cost, total cost, and cost per MWH) based on the following three scenarios:

- Scenario 1: Each unit operates 1,000 hours per year at 80% of July peak capacity.
 - Scenario 2: Each unit operates 2,000 hours per year at 80% of July peak capacity.
 - Scenario 3: Each unit operates 4,000 hours per year at 80% of July peak capacity.
- Whether this procurement is just and reasonable.

B. Whether the ratemaking proposed by PG&E for the GWF Transaction and the Calpine Transaction is reasonable.

Parties agreed that from this list, issues A-C and E should be dealt with through legal briefs, while issue D should be addressed through testimony and if necessary, evidentiary hearings.

This list of issues discussed during the December 9, 2009 telephone conference call encompasses the issues in DRA's protests to A.09-10-034 and A.09-10-22. However, since DRA filed those protests, there have been other developments that further inform the process. First, at a PHC for PG&E's Application for approval of resources from its long-term procurement planning solicitation (A.09-09-021) PG&E acknowledged that it has exceeded its approved need determination. There, PG&E stated, "if you added up the total megawatts of new generation that would be built from all of those applications [A.09-04-001, A.09-09-021, A.09-10-022, A.09-10-034], it would exceed 1512 megawatts."¹ Therefore, there is no longer any dispute that unless the Commission rejects some portion of the new capacity sought through these applications, both the Tracy Upgrade PPA and the Los Esteros Critical Energy Facility (LECEF) Upgrade would exceed PG&E's approved need determination. Second, an Assigned Commissioner Ruling (ACR) issued on November 18 stays the expedited schedule for novating DWR contracts as set forth in D.08-11-056, citing "revised priorities pursuant to

¹ PHC Transcript, p. 24.

SB 695.”² The ruling goes on to encourage IOUs to “continue their best efforts to implement novation or renegotiation of DWR contracts where it is cost-effective to do so.”

1. The issues that should be excluded from A.09-10-034 and A.09-10-022

Whether the GWF Tracy and Calpine Upgrades provide environmental benefits or support beneficial state re-powering policies are not relevant issues in this proceeding because no amount of environmental benefit can justify building an unneeded plant which would in any respect produce a high degree of emissions, even as it claims to be efficient. Similarly, the LTPP intended that State re-powering policies must be addressed within the confines of the need approved in the LTPP, and thus modeled retirements in reaching those estimates.

The issue of whether the GWF Tracy and Calpine Upgrades may be necessary to support reliability in the event of contract failure from any of the contracts currently approved for PG&E in the LTPP should also be excluded from this proceeding. The Commission addressed this issue in the LTPP and concluded that PG&E was not entitled to any kind of insurance from contract failures, in part because its estimates likely exceeded need³. Further, the current economic climate and the California Energy Commissions (CEC) update to the Integrated Energy Policy Report (IEPR) indicate that PG&E’s service need estimates have falling far below what PG&E had stated in its LTPP.

2. The division of issues between A.09-10-034 and A.09-10-022

Each of these Applications must ask the same questions. As DRA stated in its Motion to Consolidate, the scope of issues relevant to each of these applications is the same. The cost effectiveness analyses of the pricing information will necessarily be

² R.07-05-025, *Assigned Commissioner Ruling on Procedures to Address Senate Bill 695 Issues Relating to Direct Access Transactions*. November 18, 2009. p. 8.

³ D.07-12-052, pp.104-105 and Ordering Paragraph 4.

different for the two plants that form the basis of the applications, but even then, there may be a need to compare these prices in both proceedings to ensure that they arise from or are comparable to prices from competitive solicitations.

3. The division of issues between: (1) A.09-10-034 and A.09-10-022 and (2) A.09-09-021

All three applications must determine whether PG&E has the authority to exceed the need determination made in the LTPP decision (D.07-12-052), and if so by how much and on what grounds.

DRA believes it is critical that the Commission's consideration of these three applications be highly coordinated to prevent PG&E over-procuring. Approval of even one of these Applications without knowing the outcome of the other two would undermine the Commission's established LTPP program because it begins a new process for procurement of new resources outside the LTPP.

There are two distinguishing characteristics between (A.09-10-022 and A.09-10-034) on the one hand and A.09-09-021 on the other hand, and they are:

- None of the transactions for which PG&E seeks approval in A.09-09-021 are associated with DWR or Commission policy stemming from D.08-11-056; whereas, A.09-10-022 and A.09-10-034 seek approval for both novated DWR contracts and new resources which do not stem from D.08-11-056.
- The ratemaking questions posed by PG&E's A.09-09-021, especially the Oakley Generating Station Purchase and Sale Agreement, will likely be far more sophisticated than those raised in A.09-10-022 and A.09-10-034.

4. What additional information, if any, PG&E should be required to provide and when the information should be provided.

D.04-12-048⁴ and D.07-12-052⁵ provide that PG&E's applications for long term procurement should be supported by a report from an Independent Evaluator (IE). PG&E

⁴ Ordering Paragraph 28

⁵ Ordering Paragraphs 9-12

has not provided an IE report in support of A.09-10-022 or A.09-10-034. Because the Upgrade PPAs constitute a 10 year PPA for new capacity at a significant price to ratepayers, DRA requests that the Commission order PG&E to provide a complete IE report. Parties should have an opportunity to review the report for at least 7 days before filing testimony on the instant application.

PG&E has indicated that it intends to provide this information to DRA through discovery; however, DRA raises the issue herein to encourage PG&E to make the IE report available to all parties.

5. The procedures that should be used to resolve disputed issues (e.g., workshops, written comments, evidentiary hearings, etc.).

PG&E requests approval of significant ratepayer investment. Each of these applications includes long-term investments, which warrant the Commission's thorough review. As such, DRA recommends a deliberate and careful proceeding, including evidentiary hearings. The specific procedural opportunities requested by DRA are listed in its later discussion of the proceeding schedule.

6. Whether evidentiary hearings are necessary.

Hearings may be necessary for resolving the factual issues and addressing the data PG&E has presented to support the approval of A.09-10-022 and A.09-10-034. DRA intends to assess the quality of data available to the Commission through testimony and rebuttal testimony and determine on that basis whether it believes hearings will be necessary. If hearing are necessary, the factual issues that will likely be in dispute include:

- Whether PG&E has provided an accurate valuation of the Tracy Upgrade PPA and LECEF Upgrade PPA, as presented in Chapter 3 of each application.
 - DRA plans to submit evidence challenging the valuation provided by PG&E.
- Whether when accurately valued, the Tracy Upgrade PPA and LECEF Upgrade PPA represent “just and reasonable” procurement.

- DRA plans to submit evidence challenging PG&E's claim that this procurement is just and reasonable.
 - Whether the Calpine 3 Replacement Agreement is a cost-effective procurement solution.
 - DRA plans to submit evidence challenging the cost-effectiveness of the Calpine 3 Replacement Agreement.
- 7. The dates and milestone for a proceeding schedule that result in a proposed decision being ready for the Commission meeting on April 22, 2010.**

Milestone	Date
Prehearing Conference	December 16, 2009
Scoping Memo	January 4, 2010
Testimony	January 15, 2010
Rebuttal	January 22, 2010
Briefs (on Legal Issues)	January 29, 2010
Reply Briefs (Legal Issues)	February 6, 2010
Hearings (if necessary)	1 day; week of January 25th or February 1st
Decision	April 22, 2010

III. CONCLUSION

For all the foregoing reasons, DRA requests that the Commission adopt its recommendations.

Respectfully submitted,

/s/ NOEL A. OBIORA

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December 11, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **PRE-HEARING CONFERENCE STATEMENT OF DIVISION OF RATEPAYER ADVOCATES** to each party of record on the official service list in **A.09-10-034 et al.** via electronic mail.

Parties who did not provide an electronic mail address, were served by U.S. mail with postage prepaid listed on the official service list.

Executed on December 11, 2009 at San Francisco, California.

/s/ NANCY SALYER

NANCY SALYER

CERTIFICATE OF SERVICE

I hereby certify that I have this day *reserved* a copy of the **PRE-HEARING CONFERENCE STATEMENT OF THE DIVISION OF RATEPAYER ADVOCATES** to each party of record on the official service list in A.09-10-034 et al. via electronic mail.

Parties who did not provide an electronic mail address, were served by U.S. mail with postage prepaid listed on the official service list.

Executed on December 14, 2009 at San Francisco, California.

/s/ NANCY SALYER

Nancy Salyer

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