

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Application of Pacific Gas and Electric  
Company for Authority to Increase Electric  
Rates and Charges to Recover Costs Relating  
to California Solar Photovoltaic  
Manufacturing Development Facility.  
(U39E)

Application 10.11-002  
(Filed November 1, 2010)

**THE DIVISION OF RATEPAYER ADVOCATES'  
REPLY BRIEF**

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The Division of Ratepayer Advocates (DRA) submits this brief in reply to PG&E's opening brief in support of its amended application for an increase in electricity rates to be invested in SVTC Solar's Photovoltaic Manufacturing Development Facility (PV MFD). PG&E's opening brief does not demonstrate that the proposed rate increase is just and reasonable. The Commission should deny PG&E's amended application.

**I. PG&E's PROPOSED INCREASE IN ITS REVENUE REQUIREMENT IS NOT JUST AND REASONABLE**

**A. Burden Of Proof**

This is a ratesetting proceeding. The Commission is responsible for ensuring that all rates demanded or received by a public utility are just and reasonable; "no public utility shall change any rate ... except upon a showing before the Commission, and a finding by the Commission that the new rate is justified."<sup>1</sup> Thus, in ratemaking applications, the burden of proof is on the applicant utility.<sup>2</sup>

In a 1980 decision, the Commission placed the burden of proof on the utility:

Of course the burden of proof is on the utility applicant to establish the reasonableness of energy expenses sought to be recovered. We expect a *substantial affirmative* showing by each utility with percipient witnesses in support of all elements of its application.<sup>3</sup> (Emphasis added)

In a later ratemaking proceeding, the Commission confirmed:

...the fundamental principle involving public utilities and their regulation by governmental authority is that the burden rests heavily upon a utility to prove it is entitled to rate relief and not upon the Commission, its Staff, or any interested party or protestant, such as TURN, to prove the contrary.<sup>4</sup>

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<sup>1</sup> Public Utilities Code Sections 451 & 454. Unless otherwise specified, all citations will be to the Public Utilities Code.

<sup>2</sup> Application of Pacific Gas and Electric Company (2000) D. 00-02-046, mimeo, p. 36, 2000 Cal. PUC LEXIS 239

<sup>3</sup> Re Energy Cost Adjustment Clauses (1980) 4 CPUC 2d 693, 701; D.92496.

<sup>4</sup> Re Southern California Edison Company (1983) 11 CPUC 2d 474, 475; D.83-05-036.

The Commission has noted that there is no distinction between types of ratemaking cases with respect to the utility's burden of proof:

The inescapable fact is that the ultimate burden of proof of reasonableness, whether it be in the context of test-year estimates, prudence reviews outside a particular test year, or the like, never shifts from the utility which is seeking to pass its costs of operations onto ratepayers on the basis of the reasonableness of those costs.<sup>5</sup>

As the Applicant in this ratesetting proceeding, PG&E has the burden of proving that its request for \$17.8 million in revenue requirements to fund the development of a silicon PV manufacturing plant is reasonable.

### **B. Standard Of Proof**

PG&E must meet its burden of proof with clear and convincing evidence.<sup>6</sup> Evidence Code Section 190 defines "proof" as the establishment by evidence of "a requisite degree of belief." The Commission affirmed this long-standing rule in its 2004 decision in a ratemaking application.<sup>7</sup>

To meet the "clear and convincing evidence" standard, "... the applicant must produce evidence having the greatest probative value."<sup>8</sup> As the Commission further explained, clear and convincing evidence is "proof by evidence that is clear, explicit and unequivocal; that is so clear as to leave no substantial doubt; or that is sufficiently strong to demand the unhesitating assent of every reasonable mind."<sup>9</sup>

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<sup>5</sup> Application of Pacific Gas and Electric Company (2000) D. 00-02-046, mimeo, p. 36, 2000 Cal. PUC LEXIS 239 citing Re Pacific Bell (1987) 27 CPUC 2d 1, 21, D.87-12-067.

<sup>6</sup> See In the Matter of the Application of California Water Company (2003) D.03-09-021, mimeo, p. 17.

<sup>7</sup> Application of Southern California Edison Company (2004) D. 04-07-022, mimeo, p. 10; See also In the Matter of the Application of California Water Company (2003) D.03-09-021.

<sup>8</sup> See Application of Pacific Gas and Electric Company (2000) D.00-02-046, mimeo, p. 38 quoting from Application of PT&T Co. for A General Rate Increase (1970) 2 CPUC 2d 89, 98-9 D.90462.

<sup>9</sup> Application of Pacific Gas and Electric Company (2000) D.00-02-046, mimeo, pp. 36-37, 2000 Cal. PUC LEXIS 239.) Any doubts "...must be resolved against the party upon whom rests the burden of proof." (Application of PT&T Co. for A General Rate Increase (1970) 2 CPUC 2d 89, 98-9, D.90462.

PG&E's opening brief offers no evidence to support its amended application for a rate increase. The Commission should deny the amended application.

## **II. PG&E OFFERS NO MATERIAL EVIDENCE TO SUPPORT GRANTING PG&E'S AMENDED APPRICATION**

PG&E lists five "undisputed" key facts which purport to support its amended application. Not only have these facts been disputed, they've been disproven. The Commission should reject the five key facts deny PG&E's amended application.

### **A. The SVTC Solar Manufacturing Development Facility Is Not Research And Development**

PG&E claims that a key undisputed fact is that the PV MFD is a research, development and demonstration project. But even a cursory review of the record shows otherwise. DRA, The Utility Reform Network (TURN), the Greenlining Institute, the Western Power Trading Forum, Direct Access Customer Coalition and Marin Energy Authority have all disputed PG&E's characterization of the venture as research and development.<sup>10</sup> As the Greenlining Institute observed: "PG&E has consistently maintained that this project should be thought of as a R&D project rather than an early stage venture capital investment. Yet, the structure of the investment is that of a classic Silicon Valley early stage venture capital preferred stock arrangement."<sup>11</sup> PG&E's claim is even more untenable because SVTC Solar itself did not describe the venture as R&D until it realized that the only way to get ratepayers dollars was to transform a manufacturing plant into a R&D facility.<sup>12</sup> PG&E's first "undisputed" key fact should be rejected.

If the Commission finds that the venture is R&D, then it should direct SVTC Solar to submit its funding proposal in Rulemaking 11-10-003; a proceeding this Commission

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<sup>10</sup> See, e.g. TR 13: 25-28, 14: 1-14, 18:7-28, 19:1-10. Protest of the Western Power Trading Forum, Direct Access Customer Coalition, and Marin Energy Authority p. 4-5.

<sup>11</sup> Protest of The Greenlining Institute, August 15, 2011, p. 2.

<sup>12</sup> See Proposal Overview Presentation DOE PVMI Oral Review Meeting January 25, 2011 p. 21 and TR 29:22.

opened specifically to examine continuing renewable energy incentives and Research and Development funding threatened by the statutory sunset of the Public Goods Charge.

**B. Governor Brown’s Support For The DOE Grant Is Irrelevant To PG&E’s Amended Application**

While Governor Brown may have supported DOE funding for the venture, PG&E offers no evidence that Governor Brown also supports an electricity rate increase so that PG&E ratepayers can provide the matching funds. The point is particularly important because SVTC Solar’s investors are able to provide the matching funds.<sup>13</sup> PG&E’s second “undisputed” key fact should be rejected.

**C. SVTC Solar’s Parent Companies Can Provide Funds To Match The DOE Grant**

PG&E would like this Commission to believe that the sky will fall on \$30 million in federal funding if it does not authorize a rate increase so that ratepayers provide matching funds. The record offers no support for this doomsday scenario. On the contrary, as TURN points out in its opening brief, SVTC Solar has substantial backing from two private equity firms who are able to provide the matching funds for the DOE grant.<sup>14</sup> PG&E’s third “undisputed” key fact should be rejected.

**D Ratepayers Are Unlikely To Benefit From The Venture**

PG&E states that its shareholders will receive no financial benefit from the venture and that any return or profits would go back to PG&E’s customers.<sup>15</sup> The statement begs the question: why should PG&E’s shareholders receive any benefit when they haven’t invested in the venture?<sup>16</sup> More importantly, any ratepayer benefit is unlikely. First, solar manufacturing facilities are unlikely to succeed in California because they cannot compete with the cheap labor, low energy costs, heavily subsidized

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<sup>13</sup> See SVTC Press Release, May 6, 2009: SVTC Technologies Receives Additional Funding; PG&E Response to TURN DR8, Q.6; TURN DR 8-13, Attachment 2; TURN Opening Brief p. 8-11.

<sup>14</sup> TURN Opening Brief p. 5-11.

<sup>15</sup> PG&E Opening Brief p. 3.

<sup>16</sup> TR 67: 27-28, 68:1

financing and other advantages foreign manufacturers enjoy. Second, the evidence does not support the two purported benefits to PG&E ratepayers – price reductions for solar panels and reduced costs for large scale power procured from PV sources. The price of solar panels is determined by factors well beyond SVTC’s and PG&E’s control such as government subsidies, European Feed-In Tariffs, manufacturing economies of scale and the price of silicon.<sup>17</sup> The price of solar panels has been consistently falling.<sup>18</sup> It is unlikely that the venture will suddenly reverse this trend and generate huge profits for ratepayers. Nor will ratepayers benefit from lower power costs. PG&E has conceded that the prices of its current contracts will not be reduced for at least 23 years.<sup>19</sup> Third, the allocation of equity shares is biased against ratepayers: ratepayers do not receive an equity share commensurate with the cash PG&E requests that they contribute. The lion’s share of equity holdings goes to SVTC’s shareholders.<sup>20</sup> Thus, even if the venture fails, SVTC’s shareholders will recover their investment while ratepayers stand to lose theirs.<sup>21</sup> Finally, the benefits PG&E touts -- “technology innovation and demonstration, advancement of scientific knowledge and the testing of scientific and commercial hypotheses”<sup>22</sup> -- are benefits to society as a whole. PG&E ratepayers should not singularly bear the burden of these benefits. PG&E’s fourth “undisputed” key fact should be rejected.

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<sup>17</sup> TURN Opening Brief p. 17.

<sup>18</sup> DRA Opening Brief p. 10; “Solar Generation of Electricity At Grid Parity A Reality In Selected Geographies And 16% Per Year Cost Decline For Next 5 Years Implies Major Markets Are Next: Exclusive Interview With Industry Expert” The Wall Street Transcript, March 4, 2011 <http://www.twst.com/yagoo/zaman9.html>.

<sup>19</sup> PG&E Response to DRA DR 001-05, Supplemental 01.

<sup>20</sup> TURN Opening Brief (Confidential Version) p. 14 citing PG&E Response to TURN DR 8, Q18.

<sup>21</sup> Id.

<sup>22</sup> PG&E Opening Brief p. 8.

### **E. The Amount Of The Rate Increase Is Irrelevant: Ratepayers Are Unlikely To Benefit From The Venture**

PG&E argues that compared to other RD&D programs utility customers fund under Sections 399.8(d) and 2851(c)(1) and Rulemaking 11-10-003, the amount of its request is modest.<sup>23</sup> But PG&E has not proffered other projects for comparison. Without a basis for comparison, the Commission cannot tell whether the amount is modest or not. More importantly, PG&E has not demonstrated that ratepayers will benefit from the venture. PG&E's fifth "undisputed" fact should be rejected.

### **III. PG&E SHOULD FOCUS ON PROVIDING ITS CUSTOMERS WITH SAFE, RELIABLE SERVICE**

This Commission has approved several PG&E renewable energy power purchase agreements at prices substantially higher than those in contracts for newly built gas-powered plants.<sup>24</sup> For example, PG&E contracted to buy the power generated by the California Valley Solar Ranch for 25 years at a price of \$150 to \$180 a megawatt hour – about 50 percent more than the expected market cost of electricity in California from a newly built gas-powered plant.<sup>25</sup> While DRA does not believe the high prices are always justified, the renewable energy contracts fulfill PG&E's mandate to provide safe, reliable electricity. Also, the California RPS Program requires each retail seller of electricity to increase its total procurement of eligible renewable energy resources so that 33 percent of retail sales are served by eligible renewable energy resources no later than December 31, 2020.<sup>26</sup> Thus, the high priced renewable energy contracts arguably comply with the RPS

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<sup>23</sup> PG&E Opening Brief p. 3.

<sup>24</sup> See, e.g., Resolution E-4433 approving cost recovery for the long-term renewable power purchase agreement between PG&E and Mojave Solar, LLC (November 10, 2011); Resolution E-4315 approving cost recovery for a power purchase agreement resulting from PG&E's 2008 RPS solicitation between PG&E and AV Solar Ranch 1 (now NRG Energy).

<sup>25</sup> "A Gold Rush of Subsidies in Clean Energy Search"  
<http://www.nytimes.com/2011/11/12/business/energy-environment>

<sup>26</sup> SB 2 (1x), Pub. Util. Code Section 399.15(b)(2)(B).

Program. But neither SB 1078<sup>27</sup> which created the RPS Program nor SB 2 (1x)<sup>28</sup> which imposed the 33 percent goal, authorizes this Commission to allow PG&E to use ratepayer dollars for venture capital in a solar manufacturing plant. That a project has something to do with solar power does not justify a ratepayer subsidy. The Commission should not make ratepayers investors in a speculative venture.

#### **IV. CONCLUSION**

PG&E has offered no evidence that any potential ratepayer benefit from SVTC's venture is justified by the risk of the investment. Prices of solar panels will continue to fall regardless of the venture. PG&E's ratepayers will continue to pay high rates for solar energy under already existing long term power purchase agreements. SVTC Solar's shareholders will benefit from the venture whether it succeeds or not. But if it fails, ratepayers may lose their entire investment. The Commission should protect ratepayer interests and deny PG&E's amended application.

Respectfully submitted,

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<sup>27</sup> SB 1078 (Sher, Chapter 516, Statutes of 2002)

<sup>28</sup> SB 2 (1x) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session)