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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric
Company (U 39-E) for Authorization to
Procure Energy Storage Systems during the
2016-2017 Biennial Procurement Period
Pursuant to Decision 13-10-040

And Related Matters.

Application 16-03-001
(Filed March 1, 2016)

Application 16-03-002
Application 16-03-003

**GREEN POWER INSTITUTE
PETITION FOR MODIFICATION OF D.16-09-007**

October 11, 2016

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**GREEN POWER INSTITUTE
PETITION FOR MODIFICATION OF D.16-09-007**

Pursuant to Rule 16.4 of the Commission's Rules of Practice and Procedure, in Consolidated Applications A.16-03-001, A.16-03-002, A.16-03-003, the Green Power Institute, the renewable energy program of the Pacific Institute for Studies in Development, Environment, and Security (GPI), respectfully provides this Green Power Institute Petition for Modification of D.16-09-007.

The Green Power Institute (GPI) is the renewable energy program of the Pacific Institute, a non-profit environmental and social advocacy group. Under the direction of Dr. Gregory Morris, the Green Power Institute performs research and provides advocacy on behalf of renewable energy systems and the contribution they make to reducing the environmental impacts of fossil-based energy systems. The Green Power Institute is located in Berkeley, California.

A summary of our Petition is as follows:

- GPI was removed as an active party in this proceeding despite having participated actively in the initial portion of the proceeding. GPI submitted detailed Protests of SCE's and PG&E's applications, participated at the prehearing conference, and participated in numerous discussions with Commission staff via email and phone calls on the issues that GPI raised in its Protests. GPI passed on only the Opening and Reply Brief participation opportunities before being removed as an active party in the Proposed Decision. The Commission's Rules of Practice and Procedure do not require a party to participate in every aspect of a proceeding in order to remain an active party.
- Due to a clerical error made by the Process Office, in which Tam Hunt's email address was incorrectly entered, GPI attorney Hunt, who is the lead on this case, did not receive notifications of rulings and other documents in this proceeding. As a

consequence, GPI did not receive notification of the briefing schedule or the issuance of the proposed decision.

- GPI requests reinstatement as an active party in this proceeding because, in fact, we were an active party, and because our failure to submit opening or reply briefs resulted directly from the clerical error by the Process Office.
- Being removed as a party without due process inflicts additional harm on intervenors seeking compensation because it complicates the intervenor's ability to claim Substantial Contribution.
- For all of these reasons, GPI requests that the Commission modify the final decision to remove GPI from the list of parties removed from active Party status.

Petition for Modification

GPI respectfully requests that the Commission modify the Decision to correct a number of issues that resulted from the Process Office's mistake regarding GPI attorney Hunt's email address. As Commission staff and the ALJ acknowledge, Hunt's email address was incorrect on the service list (it should have been tam@communityrenewables.biz, rather than tam@communityrenewables.org).

Rule 16.4 allows parties to submit a petition for modification of a decision as follows:

(a) A petition for modification asks the Commission to make changes to an issued decision. Filing a petition for modification does not preserve the party's appellate rights; an application for rehearing (see Rule 16.1) is the vehicle to request rehearing and preserve a party's appellate rights.

(b) A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

The Commission should reinstate GPI as an active party in this proceeding because GPI was an active participant

GPI was removed as an active party in this proceeding in the proposed decision and final decision. At the outset of this proceeding, on April 11, 2016, GPI submitted detailed protests of both the SCE and PG&E energy storage applications. In addition, GPI attorney Hunt attended the prehearing conference and raised a number of issues at the conference. GPI also actively worked with Energy Division staff in trying to have some of the concerns that GPI raised in the Protests and previous rounds of comments in the storage rulemaking (R.12-10-007), which have not yet been addressed (specifically, GPI has had numerous conversations by email and by phone with staff about the cost-effectiveness requirement in AB 2514 for new-energy-storage procurement and the related issue of Above Market Costs). Our Protests, participation in the PHC, and follow-up work as described above, in and of itself constitutes active participation in the Applications.

GPI did not submit an opening or a reply brief in this proceeding due to the lack of notification to Hunt via the service list, and GPI was subsequently removed from active party status in the proposed decision after only three months of inactivity in the proceeding. A hiatus of only three months is not enough time to alert us to inactivity as it is not uncommon for six or more months to elapse without activity in a proceeding. Our failure to submit opening or reply briefs stemmed directly from a mistake by the Process Office with respect to Hunt's email address – it was recorded as tam@communityrenewables.org rather than .biz. (It appears that when we brought this discrepancy to the attention of the process office the email address was mis-corrected to .net, rather than .biz, so it remains wrong on the service list today.) Even if this mistake had not been made, it would be our right as a Party to choose to forego the Briefing round in the proceeding, for any number of reasons without jeopardizing our Party status. This should in no way negate the contributions we made in our Protests, participation at the PHC, and subsequent follow-up participation with Commission staff.

The only remedy available to GPI to correct this mistake and our resulting removal from active party status is this PFM. This is the case because we were not aware of the proposed

decision until after it was issued and after the comment deadline. Accordingly, a PFM is the appropriate procedural vehicle to achieve our desired changes to the final decision.

Specifically, we request that the following paragraph on page 20 of the Decision be modified as follows:

The following parties were granted party status but did not actively participate in the proceeding and thus their party status is rescinded and they will be moved to information only status consistent with the Scoping Ruling at 7: Utility Consumers Action Network, ~~GPI~~; MegaWatt Storage Farms, Inc.; and Stem, Inc.

And the same with respect to ordering paragraph 7, as follows:

Utility Consumers Action Network, ~~Green Power Institute~~, MegaWatt Storage Farms, Inc.; and Stem, Inc. are converted from party status to Information Only status.

The effect of these changes will be to restore GPI to active party status.

Failure to take part in every aspect of a proceeding does not constitute grounds for the removal of parties as active parties

In the present case GPI, as described above, submitted detailed protests of both the PG&E and SCE applications for the 2016 energy storage procurements. GPI submitted its protests on April 11, 2016. GPI attorney Hunt also attended the prehearing conference on May 24, 2016. Subsequent to the deadline for protests there was only one other opportunity for parties to make a formal before the proposed decision (PD), which was issued on July 29, 2016.

The ALJ removed GPI as an active party in the PD, citing GPI's lack of involvement in the proceeding. As described above, however, GPI missed only two chances to participate in this proceeding (Opening and Reply Briefs) before being removed as an active party. And, as also described above, this was because the process office entered Hunt's email incorrectly on the service list. Even if Hunt's email had been correct, however, missing one comment opportunity should in no way invalidate a Party's active-party status.

Many parties have limited resources and cannot participate in every aspect of a proceeding. This should in no way infringe upon the seriousness of, or degree to which the Commission considers, party comments or other filings that they do submit. Participation as a party in any given proceeding is not an all-or-nothing matter. Effective participation in a proceeding can come from a single, well-crafted filing. This may be all that some parties have time and resources for in many cases, or it may be that particular party's preferred approach for advocacy.

Moreover, with respect to parties who are also intervenors, to deny an intervenor active party status because not every comment opportunity is seized is to turn the intervenor compensation statute upside down. The intervenor compensation program statute was created and designed explicitly to encourage intervenor participation by offering the opportunity to receive compensation for active participation and substantial contributions. The statute states (Pub. Util. Code section 1801.3(b):

The provisions of this article shall be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process.

The ALJ's decision to remove GPI and others from Party status in this proceeding prevents intervenors who were not active in every aspect of the proceeding from having their concerns fully considered in the final Decision, and also hinders intervenors' ability to claim Substantial Contributions.

Again, in this proceeding GPI missed only two comment opportunities (submitting opening and reply briefs on the scoping memo) before being removed as an active party. This removal is an infringement of our rights as an intervenor and as a party to this proceeding, and has a discouraging effect on intervenor participation, which is the opposite of the statutory intent to encourage participation by intervenors. We request that the Commission in a timely manner correct these errors in the final decision.

Conclusion

For the reasons described above, we urge the Commission to grant our requests in this Petition for Modification.

Dated: October 11, 2016, at Berkeley, California.

Respectfully Submitted,



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