

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



FILED

11-17-09

04:59 PM

Application of Pacific Gas and Electric Company to
Implement and Recover in Rates the Costs of its
Photovoltaic (PV) Program. (U39E)

Application 09-02-019
(Filed February 24, 2009)

**REPLY BRIEF OF THE GREENLINING INSTITUTE ON THE IMPACT OF SENATE
BILL 32 AND ASSEMBLY BILL 920**

SAMUEL S. KANG
STEPHANIE C. CHEN
The Greenlining Institute
1918 University Avenue, Second Floor
Berkeley, CA 94704
Telephone: 510 898 0506
Facsimile: 510 926 4010
E-mail: stephaniec@greenlining.org

November 17, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company to
Implement and Recover in Rates the Costs of its
Photovoltaic (PV) Program. (U39E)

Application 09-02-019
(Filed February 24, 2009)

**REPLY BRIEF OF THE GREENLINING INSTITUTE ON THE IMPACT OF SENATE
BILL 32 AND ASSEMBLY BILL 920**

I. Introduction

The Greenlining Institute (“Greenlining”) respectfully submits the following reply brief to the California Public Utilities Commission (“Commission” or “CPUC”) in proceeding A.019-02-019, *Application of Pacific Gas and Electric Company to Implement and Recover in Rates the Costs of its Photovoltaic (PV) Program* (“Application”) (“PG&E”). The brief is in response to Administrative Law Judge (“ALJ”) Ebke’s Ruling Requesting Briefs on the Impact of Senate Bill (“SB”) 32 and Assembly Bill (“AB”) 920.

Between federal, state and local programs, renewable energy policy in California is already a veritable constellation of incentives, rebates, financing plans, and subsidies (to say nothing of the staggering array of accompanying acronyms). The Commission is aware of both the problem and its repercussions. Yet here PG&E asks the Commission to deliberately make available two programs, in the service area of only one utility, that would pay (presumably) different prices for exactly the same kind of projects – 1-3 MW independently-generated solar PV. It asks the Commission to do so despite being unable to predict the degree of practical overlap that will result between the two programs, despite the fact that it would further fragment state solar policy, and despite the fact that the Commission would be superseding brand-new

state legislative policy in so doing. If the Commission approves PG&E's application as originally proposed, it would overlap with SB 32. Therefore, PG&E is requesting that the Commission rule in a manner that may adversely impact the implementation of SB 32. The Commission should not oblige.

II. Background

SB 32 increases the maximum capacity eligible to participate in the feed-in tariff ("FiT") from 1.5 MW to 3 MW, and increases the overall statewide cap to 750 MW.¹ It requires the tariff price to be set at the market price referent, adjusted to include environmental compliance costs.² PG&E's proposed program includes installations of 3 MW or less,³ and as such certain potential sites may be eligible for both programs. PG&E's prices on the utility owned generation ("UOG") side would be determined by competitive bid.⁴ On the Power Purchase Agreement ("PPA") side, PG&E would pay a fixed price of \$295/MWh, or 29.5 cents per kilowatt hour.⁵

AB 920 allows net energy metering customers with installations up to 1 MW to sell excess energy to their utility, at a price to be determined by the Commission in a later proceeding.⁶ Again here, potential installation sites up to 1 MW would be eligible for either net energy metering or PG&E's proposed program. It seems to be the consensus of the parties, based on Opening Supplemental Briefs filed on November 10, 2009, that AB 920 will have little to no impact on PG&E's proposed program.

¹ Stats. 2009, ch. 328.

² Id.

³ Application of PG&E, p. 4 ("[PG&E] requests explicit authority to develop projects of any size below 20 MW.").

⁴ Application of PG&E, p. 5.

⁵ Opening Testimony of PG&E, pp. 3-8.

⁶ Stats. 2009, ch. 376.

III. PG&E’s Position Rests On Speculation About Installer Response To A FiT Price That Has Not Yet Been Established

PG&E posits in its Opening Brief that “it is possible that the price offered under SB 32 for FIT contracts will be no higher than the prices offered under the existing FIT,” and concludes as a result that it is “highly unlikely that the SB 32 FIT will attract investment in mid-sized PV.”⁷ However, the fact remains that the SB 32 FiT rate remains undetermined. PG&E’s final PPA price also remains undetermined, as the Commission has not yet approved its application. Without knowing what either price will be, it is impossible to predict the likelihood that a target facility will participate in one program over the other. This prediction is key to assessing the degree to which the programs might overlap once both are up and running.

PG&E therefore asks the Commission to find no overlap between two programs that both cover the same solar PV installations, based only on the assumption that installers will not respond to a tariff price that has yet to be determined. The Commission should reject PG&E’s request for it to essentially pre-empt its own rulemaking, and should limit PG&E’s program to installations larger than 3 MW to avoid potential overlap between it and SB 32’s FiT (if it approves the application at all).

IV. A Statewide Price Is Imminent, Negating The Need For A Piecemeal Determination Now

The Commission is just about to re-examine the statewide FiT price pursuant to a bill intended to stimulate the statewide market for PV installations between 1-3 MW.⁸ If PG&E’s application is approved, installers in its service territory of projects in the 1-3 MW range will

⁷ Pacific Gas & Electric Company’s (U 39-E) Opening Brief on the Impact of Senate Bill 32 and Assembly Bill 920, p. 3.

⁸ SB 32 Section 1(b) states that “[s]ome tariff structures and regulatory structures are presenting a barrier to meeting the requirements and goals of the California Renewables Portfolio Standard Program.”

face a choice between PG&E's PV program and the FiT. How easy that choice will be will depend on the FiT price as compared to the PG&E price (which, as noted above, has yet to be established). But it is certain that two programs would be available for the same installations.

By adding a second option to this corner of the solar landscape, available only in PG&E's service territory, the Commission would engage in the very sort of piecemeal policymaking Commissioner Grueneich cautioned against in her concurrence in D.09-06-049. Moreover, it would do so in a manner that would further complicate the already-crowded and fractured solar incentive structure. Even more troubling, the additional fixed price this program would impose on the solar landscape is based, at least as proposed, on one utility's cost estimates that are padded with generous contingencies,⁹ which would serve to keep at least Northern California mid-range PV prices artificially high. The Commission should find this sort of policymaking, lacking in statewide cohesion, to be ill-advised, and should seek to eliminate the overlap between the programs.

But perhaps most troubling of all is PG&E's assumption that the post-SB 32 FiT will be no different from the existing FiT, and should likewise be treated as having no material impact on PG&E's proposed program.

V. PG&E Asks The Commission To Supersede Newly Enacted State Policy

PG&E essentially asserts that the existing FiT is a failure, and as such argued in its opening testimony that it has no material impact on its proposal.¹⁰ Now it advocates for the same treatment of the SB 32 FiT, before the Commission has even begun to explore the proper price

⁹ See Opening Brief of the Division of Ratepayer Advocates, filed October 1, 2009, p. 8.

¹⁰ See PG&E's Opening Brief on the Impact of SB 32 and AB 920, pp. 2-3, citing Exhibit 1, Testimony of Fong Wan, at p. 1-7, lines 21-14 [sic].

for the new program.¹¹ Essentially PG&E is asking the Commission to find that SB 32's FiT is likewise a failure before it has even gotten started, and to preemptively approve its program as an alternative. The Commission should not follow PG&E in prematurely assuming that SB 32 will not succeed. As The Utility Reform Network ("TURN") noted, if SB 32's tariff does not live up to expectations, it can be legislatively modified.¹² In fact, SB 32 is itself an illustration of legislative action taken to boost a previously-enacted tariff that was lackluster in its performance. The Commission should not supersede legislative processes to create an expensive alternative to an existing statewide program that would be available in only one utility's service territory.

VI. Conclusion

For the foregoing reasons, as well as those set forth in Greenlining's Opening Brief on the Impact of Senate Bill 32 and Assembly Bill 920, Greenlining urges the Commission to deny PG&E's application as an expensive and unnecessary addition to California's already-complicated panoply of renewable energy programs. Should the Commission elect to approve the application, it should limit the program to installations larger than 3 MW, to avoid conflict with SB 32's FiT.

¹¹ Id. at p. 3.

¹² Opening Brief of The Utility Reform Network Addressing the Impact of SB 32 and AB 920 on the Proposed Photovoltaic Program of Pacific Gas & Electric Company, p. 4.

Dated: November 17, 2009

Respectfully submitted,

/s/ Samuel S. Kang

Samuel S. Kang

The Greenlining Institute

/s/ Stephanie C. Chen

Stephanie C. Chen

The Greenlining Institute

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company to
Implement and Recover in Rates the Costs of its
Photovoltaic (PV) Program. (U39E)

Application 09-02-019
(Filed February 24, 2009)

CERTIFICATE OF SERVICE

I, Stephanie Chen, am 18 years of age or older and a non-party to the within proceeding.
I hereby certify that I have this day served a copy of

**REPLY BRIEF OF THE GREENLINING INSTITUTE ON THE IMPACT OF SENATE
BILL 32 AND ASSEMBLY BILL 920**

on all known parties to A.09-02-019 by transmitting an e-mail message with the document
attached to each party named in the official service list and by faxing or mailing a properly
addressed copy by first-class mail with postage prepaid to those whose e-mail address is not
available.

I certify that the foregoing is true and correct.

Executed in Berkeley, California on November 17, 2009.

/s/ Stephanie Chen
Stephanie Chen

SERVICE LIST FOR A.09-02-019

spatrick@sempra.com
douglass@energyattorney.com
angelica.morales@sce.com
ek@a-klaw.com
mdjoseph@adamsbroadwell.com
cec@cpuc.ca.gov
matthew@turn.org
abrowning@votesolar.org
bcragg@gmssr.com
jarmstrong@goodinmacbride.com
crmd@pge.com
lex@consumercal.org
wbooth@booth-law.com
info@calseia.org
martinhomec@gmail.com
dgeis@dolphingroup.org
rliebert@cfbf.com
julien.dumoulin-smith@ubs.com
LPaskett@FirstSolar.com
case.admin@sce.com
ckebler@SempraGeneration.com
mburke@semprageneration.com
liddell@energyattorney.com
brian.cowan@kyocera.com
dniehaus@semprautilities.com
liangG@sharpsec.com
janet.gagnon@solarworld-usa.com
dsaul@pacific-valley.com
jpimentel@worldwasteintl.com
nspieker@spiekerinv.com
renee@gem-corp.com
eklebaner@adamsbroadwell.com
michael.mcdonald@ieee.org
diane.fellman@nexteraenergy.com
jim.howell@recurrentenergy.com
doglesby@hansonbridgett.com
filings@a-klaw.com
LDRi@pge.com
MGML@pge.com
nes@a-klaw.com
S2B9@pge.com
steven@moss.net

david@dwassociates.us
cassandra.sweet@dowjones.com
rhassan@fbr.com
sdhilton@stoel.com
mday@goodinmacbride.com
cem@newsdata.com
CPUCCases@pge.com
wvm3@pge.com
sara@solaralliance.org
RegRelCPUCCases@pge.com
Russell.sherman@kiewit.com
sean.beatty@mirant.com
robert.balletti@ge.com
dfredericks@dgpowers.com
dietrichlaw2@earthlink.net
mrw@mrwassoc.com
cpucdockets@keyesandfox.com
dmarcus2@sbcglobal.net
samuelk@greenlining.org
stephaniec@greenlining.org
tomb@crossborderenergy.com
juliettea7@aol.com
docket@solarpowerpartners.com
jna@speakeasy.org
docket@solarpowerpartners.com
eric.cherniss@gmail.com
wendy@econinsights.com
michaelboyd@sbcglobal.net
rmccann@umich.edu
david@branchcomb.com
bernardo@braunlegal.com
steven@iepa.com
lmh@eslawfirm.com
glw@eslawfirm.com
sas@a-klaw.com
heide.caswell@pacificcorp.com
jordan.white@pacificcorp.com
californiadockets@pacificcorp.com
as2@cpuc.ca.gov
aes@cpuc.ca.gov
df1@cpuc.ca.gov
dbp@cpuc.ca.gov

jm3@cpuc.ca.gov
mjs@cpuc.ca.gov
meb@cpuc.ca.gov

psd@cpuc.ca.gov
smk@cpuc.ca.gov
svn@cpuc.ca.gov