

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of Pacific Gas and Electric
Company for Approval of a Power
Purchase Agreement with Mariposa
Energy, LLC.

(U39E)

A.09-04-001
(Filed April 1, 2009)

**COMMENTS
OF THE DIVISION OF RATEPAYER ADVOCATES
ON IMPACT OF DECISION 10-12-050 ON
PETITION FOR MODIFICATION FILED BY CALIFORNIANS
FOR RENEWABLE ENERGY**

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January 28, 2011

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I. INTRODUCTION

The Division of Ratepayer Advocates (DRA) submits these comments in response to Administrative Law Judge (ALJ) Angela Minkin's Ruling requesting comments on impact of Decision (D.) 10-12-050 on petition for modification (PFM) filed by Californians for Renewable Energy (CARE). CARE's PFM requests that the Commission reject an all-party settlement that formed the basis of D.09-10-017 and sanction Pacific Gas and Electric Company (PG&E) for violating the settlement. CARE seeks these remedies specifically because PG&E filed a PFM seeking to modify a D.10-12-050 that limited PG&E's procurement to the 1,512 MW that PG&E agreed to in the all-party settlement. D.09-10-017 adopted the all-party settlement without modification. Articles A and B of the settlement agreement required PG&E to file only one application for the remaining resources that comprise the 1,512 MW PG&E agreed to and limited PG&E to procuring only the amount agreed upon. When PG&E filed applications for the approval of GWF Tracy Transaction (A.09-10-022) and the Calpine Los Esteros Critical Energy Facility (LECEF) (A.09-10-034), PG&E violated Article B of the settlement

agreement. Converting the PFM to an application sua sponte resulted in a third PG&E application that compounded the violation of Article.

Consistent with D.09-10-017, D.10-07-045 had previously denied PG&E's request to procure the Oakley power project which would have caused PG&E to exceed the amount of resources agreed upon in the Mariposa settlement agreement. However, the Commission approval of the Oakley power project in D.10-12-050 violated Article A by exceeding the maximum amount of resources PG&E was required to procure under the Mariposa Settlement Agreement.

Therefore DRA recommends the Commission impose severe sanctions against PG&E for violating the Mariposa Settlement Agreement including staying or suspending approval of the Mariposa PPA as CARE recommended in its PFM.

II. SUMMARY OF PROCEEDINGS

On October 9, 2010, CARE filed PFM of D.09-10-017 claiming that PG&E breached Articles A and B of the Mariposa Settlement Agreement. CARE seeks to have the Commission admonish PG&E, and issue sanctions against PG&E for violating the terms of the all-party settlement. CARE contends that PG&E violated Articles A & B by executing the additional agreements to procure more new resources for a total of 1,559 MW in three (3) applications.¹

On November 10, 2010, DRA submitted its response to CARE's PFM in partial support of the remedies requested by CARE. DRA gave only partial support to the PFM at the time, because the approval of Mariposa PPA in D.09-10-017, GWF Tracy and Calpine Los Esteros Critical Energy Facility (LECEF) Upgrades, Marsh Landing PPA and the rejection of the Oakley PSA in D.10-07-045, had not yet exceeded PG&E's authorized need. Thus, PG&E remained in compliance with Article A but violated Article B of the Settlement Agreement with several applications. However, with PG&E's filing of the PFM of D.10-07-045 on August 23, 2010 seeking approval of the Oakley

¹ The three applications are: A.09-10-022 – Tracy Upgrades (145 MW), A.09-10-034 – LECEF Upgrades (109 MW) and A.09-09-021 – Marsh Landing (719 MW) and Oakley (586 MW) projects.

project, DRA expressed its concern that PG&E would violate Article A of the Settlement Agreement if the Commission approved PG&E's PFM, as PG&E would undeniably exceed the LTPP authorized capacity by 231 MW.

III. APPROVAL OF THE MARIPOSA ENERGY LLC PROJECT

The Commission approved the 184 MW Mariposa Energy project resulting from PG&E's 2008 LTRFO in D. 09-10-017 based on an all-party settlement agreement. D.09-10-017 adopted the all-party settlement agreement without modification and concluded that the settlement agreement was reasonable in light of the whole record, consistent with the law and in the public interest. Ordering Paragraphs 1 of D.09-10-017 incorporated the following provisions which are the subject of CARE's PFM:

- A. The total need to be procured from the 2008 Long-Term Request for Offers will be limited to 1,512 megawatts under peak July conditions, inclusive of the 184 megawatts included in the Mariposa Power Purchase Agreement.
- B. The balance of Pacific Gas and Electric Company's need authorization (1,328 megawatts) will be met, but not exceeded, by one application for approval of additional agreements resulting from Pacific Gas and Electric Company's 2008 Long-Term Request for Offers.

Based on the aforementioned terms of the Mariposa settlement agreement, the remaining additional authorized capacity for P&E to procure from its 2008 LTRFO after the approval of the Mariposa Energy LLC Project was 1,328 MW and required one application for subsequent approval of additional agreements to be in compliance with the settlement agreement.

IV. THE APPROVAL OF MARSH LANDING PPA AND THE REJECTION OF THE OAKLEY PSA

In September 2009, PG&E filed A.09-09-021 requesting approval of four agreements from its 2008 LTRFO results.² On July 29, 2010, the Commission issued

² The four agreements under A.09-09-021 are Mirant Marsh Landing PPA (new gas-fired CT facility), Oakley PSA (new natural gas-fired CC facility), Contra Costa Units 6 & 7 (existing facilities), Midway Sunset Cogeneration QF (existing facility).

Decision 10-07-045 approving the Marsh Landing PPA, Contra Costa 6 & 7 Units PPA and Midway Sunset PPA. The approval of the three PPAs resulted in 719 MW of new capacity. D.10-07-045 also denied the Oakley PSA but directed that PG&E may resubmit the project prior to its next LTRFO under the following conditions if: (D10-07-045, pages 40-41)

1. Another, approved project or projects fail, creating an open need such that the total capacity of all projects approved in this decision, other decisions approving capacity determines should be counted towards PG&E authorized procurement, and the total net capacity difference do not sum to greater than the midpoint of the total range, currently 1,128 MW,
2. If PG&E is able to retire an OTC plant (other than the Contra Costa 6 & 7) of comparable size, at least 3 years ahead of schedule, or
3. If the final results from the CAISO Renewable Integration Study demonstrates that even with the projects approved by the Commission, there are significant negative reliability risks from integrating a 33% Renewable Portfolio Standard.

V. THE GWF TRACY AND THE CALPINE LOS ESTEROS CRITICAL ENERGY FACILITY TRANSACTIONS (LECEF)

In October 2009, PG&E filed A.09-10-022 and A.09-10-034 requesting approval of the Tracy Transaction with GWF Energy II LLC and the Calpine LECEF Transaction respectively. On July 29, 2010, the Commission issued D.10-07-042 granting conditional authority for PG&E to proceed with the Tracy and LECEF transactions. D.10-17-042 directed PG&E to proceed with the development of these new fuel resources if the Commission rejects the Marsh Landing and/or Oakley Project under A.09-09-021. Ordering Paragraph 2 of D.10-07-042, page 69, states:

If the Commission rejects the proposed Marsh Landing Project and/or the Oakley Project in A.09-09-021, Pacific Gas and Electric Company should proceed immediately with the Tracy Transaction described in A.09-10-022 and the LECEF Transaction described in A.09-10-034. Pacific Gas and Electric Company shall file a Tier 1 advice letter containing execute copies of the contracts that comprise the Tracy Transaction and the Los Esteros Critical Energy Facility Transaction 30 days after the later of (i) today's decision, or

(ii) the issuance of a Commission decision in A.09-09-021 that rejects the proposed Marsh Landing Project and/or Oakley Project.

DRA notes that this decision found that if the GWF Tracy Upgrade and the LECEF Upgrade transactions were approved, in addition to the Mariposa, Marsh Landing and Oakley projects, PG&E would violate the Mariposa Settlement Agreement.

Specifically the Commission states:

PG&E has signed contracts to procure a total of 1,743 MW of new capacity from the 2008 LTRFO (254 MW from the Upgrade PPAs 1,305 MW from the Marsh Landing and Oakley projects, and 184 MW from the Mariposa project). Consequently we conclude the Upgrade PPAs do not comply with the Mariposa Settlement Agreement and D.09-10-017. (Decision 10-07-042, page 55)

With the rejection of the Oakley Project in D.10-07-045, PG&E proceeded to comply with the above order by submitting AL 3177-E on August 4, 2010 and received Commission approval of the Upgrade transactions on September 1, 2010.

As authorized in D.10-07-045, with the approval of the Mariposa, Marsh Landing and Tracy and LECEF Upgrade transactions, PG&E remains in compliance with Article A of the Mariposa Settlement Agreement but breached Article B for failing to comply with the requirement to meet the balance of the authorized need for approval in one application.

VI. IMPACT OF THE APPROVAL OF THE OAKLEY PROJECT IN D.10-12-050

The Commission issued D.10-12-050 on December 16, 2010 rejecting PG&E's PFM but sua sponte approving an application authorizing PG&E to enter into a Purchase and Sale Agreement with Contra Costa Generation Station LLC (Oakley Project). D.10-12-050 finds that the PFM was an improper procedural vehicle for resubmitting the Oakley project but claimed that the Oakley Project presented a unique opportunity that should be submitted as an application. Thus, the Commission found that what PG&E intended to file and did file as a PFM was yet another application for approval of the

Oakley Project, another new resource from the 2008 LTRFO. This new application compounded the violation of Article B of the Mariposa Settlement Agreement.

If the settlement agreements are to mean anything in Commission proceedings at all and be binding on the parties to the agreements, there has to be severe sanctions when these agreements are violated. The impact of PG&E's violation of this settlement agreement far exceeds what can be fully assessed at this time. At a minimum these impacts include the waste of Commission resources in conducting numerous proceedings, A.09-10-022, A.09-10-034, A.09-09-021 and PG&E's PFM; the waste of parties' time and resources in responding to these proceedings after they have been led by PG&E to believe that a settlement had resolved the issues and the cost to ratepayers in intervenor compensations and potential procurement of unnecessary resources.

PG&E knows that resources arising from the same LTRFO are commonly brought to the Commission for approval with one application so that they can be considered in a holistic way that looks at how the projects address need, the fairness of the solicitation, the competitiveness of the offers and doing so in the most efficient manner. For instance in A.06-04-012, PG&E filed one application for the procurement of about 2,500 MW of resources from its 2004 LTRFO. Therefore, PG&E must have known the complications and confusion that would arise to the detriment of ratepayers in presenting these applications piecemeal to the Commission. When PG&E submitted the Mariposa project for approval before the remaining projects from the 2008 LTRFO were ready for the Commission, the parties to the proceeding insisted that PG&E give assurance that the balance of PG&E's need authorization (1,328 MW) will not be exceeded and will be submitted in one application for approval. PG&E agreed to both of these conditions then blatantly violated them.

VII. CONCLUSION

The action of converting PG&E's PFM of D.10-07-045 to an application and approving it sua sponte violated both the Articles A and B of the Mariposa Settlement Agreement adopted in D.09-10-017. This action is in contradiction of the Commission's decisions D.10-09-042 and D.10-09-045 and in contravention of the D.09-10-017 which

adopted the Mariposa Settlement Agreement. As such PG&E should be severely sanctioned and the Commission should suspend or stay the Mariposa project.

Respectfully submitted,

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January 28, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON IMPACT OF DECISION 10-12-050 ON PETITION FOR MODIFICATION FILED BY CALIFORNIANS FOR RENEWABLE ENERGY** to the official service list in **A.09-04-001** by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **January 28, 2011** at San Francisco, California.

/s/ ALBERT HILL

ALBERT HILL

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