

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



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Application of Pacific Gas and Electric)
Company (U 39-E) for Approval of 2008)
Long-Term Request for Offer Results and for)
Adoption of Cost Recovery and Ratemaking)
Mechanisms.)

Application No. 09-09-021
(Filed September 30, 2009)

**MOTION OF
CONTRA COSTA GENERATING STATION, LLC
TO SET ASIDE SUBMISSION AND REOPEN THE RECORD**

NOSSAMAN LLP

Martin A. Mattes
Mari R. Lane

50 California Street, 34th Floor
San Francisco, CA 94111
Tel: (415) 398-3600
Fax: (415) 398-2438
E-mail: mlane@nossaman.com

Attorneys for CONTRA COSTA
GENERATING STATION LLC

July 20, 2010

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OF THE STATE OF CALIFORNIA**

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TO SET ASIDE SUBMISSION AND REOPEN THE RECORD**

Pursuant to Rules 11.1 and 13.14 of the Commission’s Rules of Practice and Procedure, Contra Costa Generating Station, LLC (“CCGS LLC”) respectfully requests that Administrative Law Judge (“ALJ”) Darwin Farrar set aside submission and reopen the record in the above-captioned proceeding to take further evidence, either by live testimony or written declaration, on issues critical to the future of the Contra Costa Generating Station (the “Oakley Project”).

The proposed decision (“PD”) in this proceeding fails to state an adequate basis for denying approval of the purchase and sale agreement (“PSA”) for the Oakley Project between Pacific Gas and Electric Company (“PG&E”) and CCGS LLC. In particular, the criticisms of the Oakley Project by Californians for Renewable Energy, Inc. (“CARE”) and The Utility Reform Network (“TURN”), on which the PD appears to rely, are false. Having been granted party status in this proceeding by the July 15, 2010 ruling of ALJ Farrar, CCGS LLC is now, for the first time, in a position to prove that these claims are false.

The ability of CCGS LLC to evaluate and respond to the claims made by CARE, in particular, has been hampered by the fact that CARE redacted large portions of its arguments attacking the Oakley Project from the public version of its reply brief, as allegedly based on confidential information. CCGS LLC's lack of access to such confidential information further requires, for reasons of fundamental fairness, a reopening of the record to allow CCGS LLC to disprove the claims of CARE and TURN, based on facts that CCGS LLC knows, is free to present, and can prove.

First, CARE claims that the Oakley Project is not a flexible fast ramping facility.¹ CCGS LLC will prove that the Oakley Project is a flexible fast ramping facility, as PG&E presented in this proceeding.

Second, CARE claims that the Oakley Project is limited to one start per day and thus does not comply with the Commission's directive in Decision ("D.") 07-12-052 that the subject utilities "procure dispatchable ramping resources that can be adjusted for the morning and evening ramps created by the intermittent types of renewable resources."² CCGS LLC will prove that the Oakley Project is not limited to one start per day and, in fact, is being permitted for more starts per year than any of the other projects under consideration by the Commission in this proceeding.

Third, CARE insinuates that there is an "apparent discrepancy" in the heat rate PG&E has claimed for the Oakley Project.³ CCGS LLC will prove that PG&E has

¹ CARE Reply Brief, at 14 (CARE's allegations that might support its claim that "PG&E's confidential evaluation of the [Oakley] project" contradicts PG&E's presentation of the Oakley Project as a flexible fast ramping facility are redacted in their entirety); *see*, PD at 36.

² CARE Reply Brief at 14 (claiming that the Oakley Project is limited to "less than 1 start a day" and "does not comply with [the D.07-12-052] directive" regarding dispatchable ramping resources); *see*, PD at 36-37.

³ CARE Reply Brief at 15 (critical allegations regarding heat rate redacted); *see*, PD at 37.

properly identified the heat rate for the Oakley Project and that the heat rate for the Oakley Project is the lowest of any of the projects under consideration by the Commission in this proceeding.

Finally, CARE claims that the “largest drawback” and “the reason that the Commission should not approve Oakley” is the project’s location.⁴ It is primarily the responsibility of the California Energy Commission (“CEC”), in the course of its ongoing siting and CEQA review of the Oakley Project, to evaluate whether the project location poses significant issues or problems. CCGS LLC will show that the proposed site is an ideal location for the Oakley Project and that any legitimate concerns regarding the location of the Oakley Project are being given appropriate and adequate consideration in the course of the CEC’s CEQA review of the Oakley Project in CEC Docket 09-AFC-4

CCGS LLC is similarly prepared to refute TURN’s nebulous criticism regarding the proper valuation of the Oakley Project.⁵ The fact that CCGS has offered a 30-year commitment to supply base load energy to PG&E should not be grounds for criticism, let alone the PD’s denial of the Oakley Project PSA. If permitted to do so, and if allowed access to sufficient valuation data to offer a meaningful assessment, CCGS LLC will show that PG&E’s valuation of the Oakley Project is sufficiently certain to justify approving the Oakley Power Sales Agreement.

It is of particular concern that the PD relies on CARE’s apparently unsubstantiated arguments, presented only in its reply brief and supported only by redacted

⁴ CARE Reply Brief, at 15 (assertions that might support CARE’s claim that the Oakley Project’s location justifies disapproving the project are entirely redacted); *see*, PD at 37.

⁵ TURN Opening Brief, at 14; *see*, PD at 37.

allegations, as the principal basis for denying approval of the Oakley PSA.⁶ The PD's make-weight reference to TURN's speculation about project valuation does not overcome this deficiency. With its valuable and innovative project at immediate risk, CCGS LLC should be granted an opportunity to disprove CARE's and TURN's claims on which the PD's rejection of the Oakley Project.

WHEREFORE, for all the reasons presented above, CCGS LLC respectfully requests that this motion to set aside submission and reopen the record for the taking of additional evidence be granted.

Respectfully submitted,

NOSSAMAN LLP

Martin A. Mattes
Mari R. Lane

By MARTIN A. MATTES
Martin A. Mattes

50 California Street, 34th Floor
San Francisco, CA 94111-4799
Tel: (415) 398-3600
Fax: (415) 398-2438
Email: mmattes@nossaman.com

Attorneys for CONTRA COSTA GENERATING
STATION LLC

July 20, 2010

⁶ It is troubling that the PD readily discounts critical references to the Oakley Project (among others) in the context of the Partial Settlement Agreement among PG&E and certain of the protesting parties, based on its consideration of the settling parties' rebuttal to those arguments, but fails to give weight to such rebuttal arguments supporting the Oakley Project in relation to CARE's claims described above.

CERTIFICATE OF SERVICE

I, Jeannie Wong, hereby certify that on this date I served the foregoing MOTION OF CONTRA COSTA GENERATING STATION, LLC TO SET ASIDE SUBMISSION AND REOPEN THE RECORD by electronic mail or hand delivery on the service list for Application 09-09-021:

By Electronic Mail:

douglass@energyattorney.com; JPacheco@SempraUtilities.com; mdjoseph@adamsbroadwell.com; nao@cpuc.ca.gov; mflorio@turn.org; dbehles@ggu.edu; magq@pge.com; bcragg@goodinmacbride.com; mmattes@nossaman.com; crmd@pge.com; I_brown369@yahoo.com; slazerow@cbeval.org; ed.mainland@sierraclub.org; martinhomec@gmail.com; blaising@braunlegal.com; mrw@mrwassoc.com; julien.dumoulin-smith@ubs.com; anne.cleary@mirant.com; klatt@energyattorney.com; liddell@energyattorney.com; WKeilani@SempraUtilities.com; eklebaner@adamsbroadwell.com; AGL9@pge.com; filings@a-klaw.com; Kcj5@pge.com; mpa@a-klaw.com; nes@a-klaw.com; will.mitchell@cpv.com; sscb@pge.com; taj8@pge.com; lcottle@winston.com; vidhyaprabhakaran@dwt.com; william.kissinger@bingham.com; todd.edmister@bingham.com; jeffgray@dwt.com; cem@newsdata.com; CPUCCases@pge.com; RegRelCPUCCases@pge.com; john.chillemi@mirant.com; sean.beatty@mirant.com; barmackm@calpine.com; dmarcus2@sbcglobal.net; michaelboyd@sbcglobal.net; sarveybob@aol.com; brbarkovich@earthlink.net; wynne@braunlegal.com; kdw@woodruff-expert-services.com; steven@iepa.com; abb@eslawfirm.com; wmc@a-klaw.com; MWT@cpuc.ca.gov; agc@cpuc.ca.gov; edf@cpuc.ca.gov; dbp@cpuc.ca.gov; kkm@cpuc.ca.gov; shi@cpuc.ca.gov; ys2@cpuc.ca.gov;

By Hand Delivery:

Hon. Darwin Farrar
Administrative Law Judge
California Public Utilities
Commission
505 Van Ness Avenue, Room 5041
San Francisco, CA 94102

President Michael Peevey
California Public Utilities
Commission
505 Van Ness Avenue, 5th Floor
San Francisco, CA 94102

Executed this 20th day of July, 2010, in San Francisco, California.

/S/ JEANNIE WONG

Jeannie Wong

CALIFORNIA PUBLIC UTILITIES COMMISSION
Service Lists

PROCEEDING: A0909021 - PG&E - FOR APPROVAL
FILER: PACIFIC GAS AND ELECTRIC COMPANY
LAST CHANGED: JULY 19, 2010

DANIEL DOUGLASS
ATTORNEY
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS, CA 91367
FOR: ALLIANCE FOR RETAIL ENERGY MARKET

MARC D. JOSEPH
ATTORNEY AT LAW
ADAMS, BROADWELL, JOSEPH & CARDOZO
601 GATEWAY BLVD., STE. 1000
SOUTH SAN FRANCISCO, CA 94080
FOR: COALITION OF CALIFORNIA UTILITY
EMPLOYEES. CALIFORNIA UNION FOR
RELIABLE ENERGY

MICHEL PETER FLORIO
THE UTILITY REFORM NETWORK
115 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94104
FOR: THE UTILITY REFORM NETWORK

MARY GANDESBERY
ATTORNEY
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO, CA 94106
FOR: PACIFIC GAS AND ELECTRIC COMPANY

MARTIN A. MATTES
NOSSAMAN LLP
50 CALIFORNIA STREET, 34TH FLOOR
SAN FRANCISCO, CA 94111-4799
FOR: CONTRA COSTA GENERATING STATION,
LLC

LYNNE BROWN
VICE PRESIDENT
CALIFORNIANS FOR RENEWABLE ENERGY, INC.
24 HARBOR ROAD
SAN FRANCISCO, CA 94124
FOR: CALIFORNIANS FOR RENEWABLE ENERGY,
INC.

EDWARD A. MAINLAND
CNRCC SIERRA CLUB CALIFORNIA
1017 BEL MARIN KEYS BLVD.
NOVATO, CA 94949
FOR: SIERRA CLUB

JOHN A. PACHECO
SAN DIEGO GAS & ELECTRIC COMPANY
101 ASH STREET, HQ12B
SAN DIEGO, CA 92101-3017
FOR: SAN DIEGO GAS & ELECTRIC

NOEL OBIORA
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 4107
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
FOR: DRA

DEBORAH BEHLES
ENVIRONMENTAL LAW AND JUSTICE CLINIC
GOLDEN GATE UNIVERSITY SCHOOL OF LAW
536 MISSION STREET
SAN FRANCISCO, CA 94105-2968
FOR: PACIFIC ENVIRONMENT

BRIAN T. CRAGG
GOODIN, MACBRIDE, SQUERI, DAY & LAMPREY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111
FOR: THE INDEPENDENT ENERGY PRODUCERS
ASSOCIATION

CHARLES R. MIDDLEKAUFF
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO, CA 94120
FOR: PACIFIC GAS & ELECTRIC

SHANA LAZEROW
COMMUNITIES FOR BETTER ENVIRONMENT
1440 BROADWAY, SUITE 701
OAKLAND, CA 94612
FOR: COMMUNITIES FOR BETTER ENVIRONMENT

MARTIN HOMECA
CALIFORNIANS FOR RENEWABLE ENERGY, INC.
PO BOX 4471
DAVIS, CA 95617
FOR: CALIFORNIANS FOR RENEWABLE ENERGY,
INC.

SCOTT BLAISING
BRAUN BLAISING MCLAUGHLIN, P.C.
915 L STREET, SUITE 1270
SACRAMENTO, CA 95814
FOR: CALIFORNIA MUNICIPAL UTILITIES
ASSOCIATION

Information Only

MRW & ASSOCIATES, LLC
EMAIL ONLY
EMAIL ONLY, CA 00000

ANNE CLEARY
MIRANT
1155 PERIMETER CENTER WEST
ATLANTA, GA 30338

DONALD C. LIDDELL
DOUGLASS & LIDDELL
2928 2ND AVENUE
SAN DIEGO, CA 92103

ELIZABETH KLEBANER
ATTORNEY AT LAW
ADAMS BROADWELL JOSEPH & CARDOZO
601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080

KAREN TERRANOVA
ALCANTAR & KAHL, LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO, CA 94105

MICHAEL ALCANTAR
ATTORNEY AT LAW
ALCANTAR & KAHL LLP
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO, CA 94105
FOR: MIDWAY SUNSET COGENERATION COMPANY

WILL MITCHELL
COMPETITIVE POWER VENTURES, INC.
55 2ND STREET, SUITE 525
SAN FRANCISCO, CA 94105

TOM JARMAN
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, RM. 909, MC B9A
SAN FRANCISCO, CA 94105-1814

VIDHYA PRABHAKARAN
DAVIS WRIGHT & TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111

JULIEN DUMOULIN-SMITH
ASSOCIATE ANALYST
UBS INVESTMENT RESEARCH
1285 AVENUE OF THE AMERICAS
NEW YORK, NY 10019

GREGORY S.G. KLATT
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
ARCADIA, CA 91007

WENDY KEILANI
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT-CP32D
SAN DIEGO, CA 92123

ANTHEA LEE
REGULATORY CASE COORDINATOR
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A, ROOM 904
SAN FRANCISCO, CA 94105

KIMBERLY C. JONES
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A, ROOM 904
SAN FRANCISCO, CA 94105

NORA SHERIFF
ALCANTAR & KAHL
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO, CA 94105

SEBASTIEN S. CSAPO
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, RM 903, MC B9A
SAN FRANCISCO, CA 94105-1814

LISA A. COTTLE
ATTORNEY AT LAW
WINSTON & STRAWN LLP
101 CALIFORNIA STREET, 39TH FLOOR
SAN FRANCISCO, CA 94111

WILLIAM KISSINGER
BINGHAM MCCUTCHEN LLP
THREE EMBARCADERO CENTER
SAN FRANCISCO, CA 94111

TODD EDMISTER
BINGHAM MCCUTCHEN, LLP
THREE EMBARCADERO CENTER
SAN FRANCISCO, CA 94111-4067

HILARY CORRIGAN
CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST. SUITE 303
SAN FRANCISCO, CA 94117-2242

CASE ADMINISTRATION
PACIFIC GAS & ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO, CA 94177

SEAN P. BEATTY
SR. MGR. EXTERNAL & REGULATORY AFFAIRS
MIRANT CALIFORNIA, LLC
696 WEST 10TH ST., PO BOX 192
PITTSBURG, CA 94565

DAVID MARCUS
PO BOX 1287
BERKELEY, CA 94701

BOB SARVEY
CALIFORNIA RENEWABLE ENERGY
501 W. GRANTLINE RD.
TRACY, CA 95376

JUSTIN C. WYNNE
ATTORNEY AT LAW
BRAUN BLAISING MCLAUGHLIN, P.C.
915 L STREET, SUITE 1270
SACRAMENTO, CA 95814

STEVEN KELLY
POLICY DIRECTOR
INDEPENDENT ENERGY PRODUCERS ASSOCIATION
1215 K STREET, SUITE 900
SACRAMENTO, CA 95814

MIKE CADE
ALCANTAR & KAHL, LLP
1300 SE 5TH AVE., 1750
PORTLAND, OR 97201

JEFFREY P. GRAY
DAVIS WRIGHT TREMAINE, LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533

REGULATORY FILE ROOM
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO, CA 94120

JOHN CHILLEMI
MIRANT CALIFORNIA, LLC
PO BOX 192
PITTSBURG, CA 94565

MATTHEW BARMACK
CALPINE CORPORATION
4160 DUBLIN BLVD., STE. 100
DUBLIN, CA 94568

MICHAEL E. BOYD
(CARE)
CALIFORNIANS FOR RENEWABLE ENERGY, INC.
5439 SOQUEL DRIVE
SOQUEL, CA 95073

BARBARA R. BARKOVICH
BARKOVICH & YAP, INC.
44810 ROSEWOOD TERRACE
MENDOCINO, CA 95460

KEVIN WOODRUFF
WOODRUFF EXPERT SERVICES
1100 K STREET, SUITE 204
SACRAMENTO, CA 95814

ANDREW B. BROWN
ELLISON, SCHNEIDER & HARRIS LLP
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CA 95816-5905

State Service

MATTHEW TISDALE
CALIFORNIA PUBLIC UTILITIES COMMISSION
4104
EMAIL ONLY
EMAIL ONLY, CA 00000

ANDREW CAMPBELL
CALIF PUBLIC UTILITIES COMMISSION
EXECUTIVE DIVISION
ROOM 5203
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

DARWIN FARRAR
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 5041
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

DAVID PECK
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY PLANNING & POLICY BRANCH
ROOM 4103
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

KARL MEEUSEN
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

STEVEN K. HAINE
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

YULIYA SHMIDT
CALIF PUBLIC UTILITIES COMMISSION
ENERGY PRICING AND CUSTOMER PROGRAMS BRA
ROOM 4104
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214