

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



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Order Instituting Rulemaking to Address  
Utility Cost and Revenue Issues Associated  
with Greenhouse Gas Emissions.

R.11-03-012  
(Filed March 24, 2011)

**MOTION FOR PARTY STATUS OF PANOCHÉ ENERGY CENTER, LLC**

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Dated: July 3, 2012

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**I. INTRODUCTION**

Pursuant to Rule 1.4(a) of the California Public Utilities Commission (“Commission” or “CPUC”) Rules of Practice and Procedure and decision (“D.”)12-04-046, Panoche Energy Center, LLC (“PEC”) respectfully submits this motion for party status in the above-captioned proceeding. PEC seeks party status in this matter to address the allocation of AB 32 compliance costs in contracts executed prior to the adoption and implementation of the California Global Warming Solutions Act of 2006 (“AB 32”).<sup>1</sup>

**II. BACKGROUND**

**A. Procedural History**

On March 30, 2011, the Commission initiated this rulemaking to address, in part, revenues generated from the sale of greenhouse gas (“GHG”) emissions allowance as well as treatment of potential GHG compliance costs associated with electricity procurement. On August 4, 2011 the Administrative Law Judges in R.10-05-006 and R.11-03-013 issued a joint ruling clarifying that issues related to GHG procurement and compliance costs would remain within the scope of R.10-05-006. On April 24, 2012 the Commission issued D.12-04-046 in the Long Term Procurement Plan proceeding, R.10-05-006. In D.12-04-046 the Commission directed “utilities to renegotiate the contracts at issue so that they reasonably address the allocation of AB 32 compliance costs.” D.12-04-046 further provided that “if the contracts have

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<sup>1</sup> Also referred to as “legacy contracts” or “legacy PPAs.”

not been renegotiated and submitted to the Commission for approval 60 days from the effective date of [D.12-04-046]” the Commission would resolve the issue in R.11-03-012, R.12-03-014 or a successor proceeding.<sup>2</sup> On June 15, 2012 Pacific Gas & Electric Company requested a 60-day extension to the time period granted in D.12-04-046 for renegotiating and submitting amended legacy contracts. On June 20, 2012 the CPUC denied PG&E’s extension request and clarified that the legacy contract GHG cost responsibility issue would be addressed within the context of R.11-03-012.<sup>3</sup>

PEC filed motions for party status to address the GHG cost responsibility issue in R.10-05-006 and R.12-03-014 on January 31, 2012 and April 27, 2012, respectively, and in R.01-10-024 on May 1, 2012. The Administrative Law Judges in those proceedings have yet to rule on either motion.

### **III. BASIS FOR SEEKING PARTY STATUS**

Pursuant to Rule 1.4(b)(2) of the Commission’s Rules of Practice and Procedure, parties may participate in a proceeding if they state their factual and legal contentions and their interests are reasonably pertinent to the issues presented. PEC has a strong interest in obtaining a clarification from the CPUC that GHG costs in legacy contracts that do not explicitly address GHG cost responsibility should be passed through to the retail utility. PEC’s concerns are pertinent to the GHG cost issues in R.11-03-014 and should be addressed in this proceeding pursuant to direction in D.12-04-046 and the Executive Director’s June 20, 2012 letter.

#### **A. PEC has a strong interest in obtaining clarification of GHG cost responsibility in legacy contracts.**

PEC owns the Panoche Energy Center, a 400 megawatt natural-gas fired electrical generating facility in western Fresno County. PEC has been selling energy to Pacific Gas & Electric Company (“PG&E”) since 2009 under a 20-year power purchase agreement (“PPA”)

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<sup>2</sup> See D.12-04-046, *Decision on System Track I and Rules Track III of the Long-Term Procurement Plan Proceeding and Approving Settlement*, 2012 Cal. PUC LEXIS 192 (“D.12-04-046, 2012 Cal. PUC LEXIS 192”), \*94, fn. 21.

<sup>3</sup> Letter from Executive Director Paul Clanon, “Re: PG&E request for extension of 60-day time period pursuant to Decision (D.) 12-04-046”, dated June 20, 2012.

that was executed March 28, 2006. The PPA does not address GHG compliance cost responsibility and does not compensate PEC for the costs of obtaining GHG allowances for the purpose of complying with the Cap and Trade Regulation.

Despite the Commission's direction in D.12-04-046, PG&E has failed to make a good faith effort to negotiate a GHG cost responsibility amendment to the PPA and has apparently terminated negotiations. PG&E maintains that the PPA compensates PEC for GHG costs and that, by its express terms, assigns responsibility for GHG costs to PEC. PG&E has failed, however, to support its position. In addition PG&E has refused to respond to PEC data requests for specific support for the PG&E position that PEC agreed to bear GHG costs. PEC seeks party status in R.12-03-014 in order to ensure that the question of AB 32 cost responsibility in legacy contracts is resolved expeditiously.

If the PPA is not amended, PEC will be forced to bear millions of dollars in unrecoverable costs. Depending on the price of GHG allowances, it may become uneconomic for PEC to continue operating. This result would result in significant financial harm to PEC and would undermine reliability. In addition, because the GHG costs would remain stranded with the generator this result would be inconsistent with State policy.<sup>4</sup>

**B. PEC's interest in obtaining resolution of the GHG cost responsibility issue is pertinent to R.11-03-014**

As noted above, D.12-04-046 provided that if the utilities refused or were unable to renegotiate the Commission would resolve the issue in R.11-03-012, R.12-03-014 or a successor proceeding.<sup>5</sup> The Executive Director's June 20, 2012 letter denying PG&E's request for an extension clarified that "this issue would be considered in [R.11-03-012], the GHG Order Instituting Rulemaking, to the degree parties are unable to reach a resolution."<sup>6</sup> In light of the

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<sup>4</sup> CARB Final Statement of Reason, p. 593, available at <http://www.arb.ca.gov/regact/2010/capandtrade10/fsor.pdf>.

<sup>5</sup> See D.12-04-046, 2012 Cal. PUC LEXIS 192, \*94, fn. 21.

<sup>6</sup> Letter from Executive Director Paul Clanon, "Re: PG&E request for extension of 60-day time period pursuant to Decision (D.) 12-04-046", dated June 20, 2012.

direction in D.12-04-046 and the Executive Director's June 20, 2012 letter AB 32 cost responsibility in legacy contracts should be addressed in the instant proceeding.

**IV. COMMUNICATIONS AND CORRESPONDENCE**

All communications and correspondence regarding this matter should be sent to the following individuals:

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**V. CONCLUSION**

For the reasons stated herein, PEC respectfully requests that the Commission grant its Motion for Party Status in the above-captioned proceeding.

Dated: July 3, 2012

Respectfully submitted,

By: /s/ David L. Huard

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