BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

FILED
11-19-09
04:59 PM

Application of Pacific Gas and Electric Company for Approval of Agreements Related to the Novation of the California Department of Water Resources Agreement with GWF Energy LLC, Power Purchase Agreement with GWF Energy II LLC, and Associated Cost Recovery (U39E)	A.09-10-022 (Filed October 16, 2009)

PROTEST
OF THE DIVISION OF RATEPAYER ADVOCATES TO PACIFIC GAS AND ELECTRIC COMPANY'S APPLICATION FOR APPROVAL OF AGREEMENTS RELATED TO THE NOVATION OF THE CALIFORNIA DEPARTMENT OF WATER RESOURCES AGREEMENT WITH GWF ENERGY LLC, POWER PURCHASE AGREEMENT WITH GWF ENERGY II LLC, AND ASSOCIATED COST RECOVERY

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Pursuant to Rule 2.6 of the Commission's Rules of Practices and Procedure, the Division of Ratepayers Advocates (DRA) submits its protest to the Application of Pacific Gas and Electric Company (PG&E) for Approval of Agreements Related to the Novation of the California Department of Water Resources Agreement with GWF Energy LLC, Power Purchase Agreements with GWF Energy II LLC and Associated Cost Recovery. Portions of the procurement for which PG&E seeks approval in this Application are unreasonable and unnecessary.

I. BACKGROUND

PG&E's Application seeks California Public Utility Commission (CPUC or Commission) approval of five transactions, including a Novation Agreement, Replacement Agreement, Restated MRTU Agreement, Tracy Upgrade PPA, and a

Transition Agreement. The Novation Agreement assumes an existing agreement between the Department of Water Resources (DWR) and GWF, allowing PG&E to replace DWR as the buyer through the remainder of that agreement (2013). The Replacement Agreement and Restated MRTU Agreement slightly modify the terms of the existing agreement between DWR and GWF. The Tracy Upgrade is a 10 year PPA that would allow GWF to add 145 MW of new resources to its existing Tracy generation plant by converting that facility to a combine cycle facility. The Transition Agreement provides PG&E with power deliveries from other GWF facilities while the Tracy facility undergoes its conversion. Collectively, these agreements are called the GWF Transactions.

PG&E also requests that the Commission approve recovery of the costs of the GWF Transactions through its Energy Resource Recovery Account (ERRA) and that any stranded costs associated with the GWF Transactions be recovered through a non-by passable charge consistent with D.04-12-048 and D.08-09-012.

A. The Procurement Context

In D.07-12-052 the Commission approved PG&E's 2006 Long Term Procurement Plan, including authority to procure between 1,112 MW and 1,512 MW of new capacity in its service territory. In response to this authorization PG&E conducted a Long Term Request for Offer (LTRFO) through which PG&E received a variety of bids for resources to fill its authorized need. From the resources bid into the LTRFO, PG&E selected five projects totaling 1,743 MW of new capacity in its service territory and has filed applications before the Commission for approval of these five projects. D.09-10-017 authorized the first of these projects, PG&E's Mariposa PPA (184 MW).[1]

[1] D. 09-10-017 authorized PG&E's Mariposa PPA (184 MW); A. 09-09-021 requests approval of PG&E's Marsh Landing PPA (719 MW) and Contra Costa Generating Station PSA (586 MW); A. 09-10-022 requests approval of PG&E's Tracy Upgrade PPA (145 MW); A. 09-10-034 requests approval of PG&E's LECEF Upgrade PPA (109 MW). In total, these agreements would add 1,743 MW to PG&E's service territory.

B. The Novation Context

D.08-11-056, the Commission determined that in order to "facilitate the removal of the Department of Water Resources from its role as a supplier of power to retail customers,"[2] utilities should consider novation of the DWR contracts. In directing that utilities consider novation of DWR contracts, the Commission also held that "any replacement agreement that would extend the term of a contract should also be reviewed by the Commission for consistency with the long-term procurement planning criteria, pursuant to Section 454.5."[3]

The proceeding which resulted in D.08-11-056 was primarily opened to consider "whether, or under what conditions, 'Direct Access' may be reinstituted." At the time, the primary obstacle to reinstituting "Direct Access" was the fact that Assembly Bill 1 from the First Extraordinary Sesssion (AB1X) suspended Direct Access until DWR is no longer in the business of supplying power to retail customers. Since, D.08-11-056 was issued, AB1X has been amended to provide that the removal of DWR from its role as a supplier of power to retail customers, would not lift the suspension of Direct Access. New Legislation is now necessary to lift suspension of Direct Access.

II. POTENTIAL ISSUES

In light of the foregoing background and context, DRA presents the following issues:

- Whether the Tracy Upgrade PPA is consistent with the need approved for PG&E in D.07-12-052;
- Whether D.08-11-056 directed utilities to execute long term procurement agreements, as exemplified by the Tracy Upgrade PPA;
- Whether the policies underlying the Commission's decision in D.08-11-056 have been superseded by new legislation;

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[2] D. 08-11-056, p. 1.

[3] D. 08-11-056, p. 81.

- Whether the price of the proposed transactions are cost effective over the life of the contract;
- Whether the ratemaking proposed by PG&E for the proposed transactions is reasonable;

DRA is still reviewing this Application and conducting discovery on these issues. Therefore, DRA reserves the right to raise additional issues and supplement its position as more information becomes available.

III. CATEGORIZATION

DRA agrees that the appropriate categorization for this proceeding is ratesetting.

IV. NEED FOR HEARINGS

Hearings will be necessary for this proceeding as the Application raises a material dispute regarding the utilities authorization for new resources outside of their long-term procurement planning projections.

V. SCHEDULE

PG&E's proposed schedule is unworkable. It is based in part on the assumption that Intervenors will file testimony on the eve of Christmas and that hearings will not be necessary. DRA has moved to consolidate this proceeding with another Application by PG&E for novation of DWR contracts with Calpine Corporation (A.09-10-034). Until the issue of consolidation is resolved, DRA cannot now propose a detailed schedule as PG&E has done. Further, PG&E has not stated the exigency driving its request for an expedited schedule, in light of the fact that none of the resources in this application are necessary to meet PG&E's long-term procurement need.

DRA will be prepared to discuss and recommend a schedule at the prehearing conference.

VI. CONCLUSION

For all the reasons stated above, DRA respectfully requests that the Commission adopt its recommendations.

Respectfully submitted,

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November 19, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES TO PACIFIC GAS AND ELECTRIC COMPANY'S APPLICATION FOR APPROVAL OF AGREEMENTS RELATED TO THE NOVATION OF THE CALIFORNIA DEPARTMENT OF WATER RESOURCES AGREEMENT WITH GWF ENERGY LLC, POWER PURCHASE AGREEMENT WITH GWF ENERGY II LLC, AND ASSOCIATED COST RECOVERY.** in **A.09-10-022** by using the following service:

[X] **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 November 19, 2009 at San Francisco, California.

/s/ ALBERT HILL
Albert Hill

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