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

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

(U 39-E)

Application 09-04-001
(Filed April 1, 2009)

**RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E) TO
SUPPLEMENTAL NOTICE OF INTENT TO CLAIM INTERVENOR
COMPENSATION OF CALIFORNIANS FOR RENEWABLE ENERGY, INC.**

CHARLES R. MIDDLEKAUFF
MARY A. GANDESBERY

Pacific Gas and Electric Company
P.O. Box 7442
San Francisco, CA 94120
Telephone: (415) 973-0675
Facsimile: (415) 973-5520
E-Mail: magq@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

September 6, 2011

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Pursuant to Public Utilities Code § 1804(c), Pacific Gas and Electric Company (“PG&E”) respectfully submits this response to the Supplemental Notice of Intent to Claim Intervenor Compensation (“NOI”) filed by Californians for Renewable Energy, Inc (CARE).^{1/} In its NOI, CARE provides notice that it intends to seek ratepayer-funded compensation for a federal court complaint it recently filed against Southern California Edison Company (“SCE”) and this Commission,^{2/} purportedly as “judicial review” of the Commission’s Decision 10-08-021 in this proceeding.^{3/} The Commission should reject CARE’s Supplemental NOI. As discussed more fully below, the complaint for which CARE intends to seek compensation is not “judicial review” of any Commission decision in this proceeding, and is unrelated to its intervenor compensation in this proceeding, which is what Decision (D.) 10-08-021 addressed.

^{1/} CARE served its Supplemental NOI on parties in the A.09-04-011 docket on Sunday, August 21, 2011 yet the attestation of Michael E. Boyd is dated July 4, 2011.

^{2/} See *Solutions for Utilities, Inc., Californians for Renewable Energy, Inc, Plaintiffs v. California Public Utilities Commission, Southern California Edison, Inc., Defendants*, Complaint CV11-4975-SJO(JCGx), filed in the U.S. District Court, Central District of California, on June 10, 2011.

^{3/} CARE has filed similar NOIs in numerous other proceedings on the same basis as the NOI filed here, including PG&E’s second application relating to winning contracts from the 2008 Long Term Request for Offers Solicitation (A.09-09-021); the Renewables Portfolio Standard proceedings (R.08-08-009 and R.11-05-005); the Long Term Procurement Plan proceeding (R. 10-05-006); AB 920 net energy metering (A.10-03-001); SCE’s Solar Photovoltaic Program proceeding (A.08-03-015) and the CHP Settlement (A.08-11-011).

Accordingly, the Commission should reject CARE's Supplemental NOI and rule that costs incurred by CARE in pursuing its federal court litigation shall not be paid by ratepayers. If CARE seeks to pursue frivolous lawsuits, it must fund those efforts itself rather than on the backs of ratepayers.

I. FACTUAL BACKGROUND

On August 12, 2010, the Commission issued D.10-08-021 denying rehearing of D.10-05-046 (or "rehearing decision"), stating that CARE failed to provide sufficient grounds for granting rehearing of D.10-05-046 and that its allegations of racial discrimination and retaliation lack any factual support. In D.10-05-045, the Commission acknowledged that CARE made a substantial contribution to the Settlement Agreement between PG&E and Mariposa Energy, LLC,^{4/} but the rehearing decision disallowed duplicative billings, and lowered the hourly rates of CARE's counsel and expert.^{5/}

On June 10, 2011, ten months after the Commission closed the A.09-04-001 docket, CARE filed a complaint in the U.S. District Court, Central District of California against the Commission and SCE. The complaint is captioned *Solutions for Utilities, Inc.; Californians for Renewable Energy, Inc. v. California Public Utilities Commission; Southern California Edison*, Case No. CV11-04975-SJO(JCGx) ("Complaint"). CARE's Complaint purportedly is an enforcement action under the Public Utility Regulatory Policies Act (PURPA), 16 U.S.C. § 824 et seq. arising out of SCE's alleged refusal to interconnect a "home office solar system" to SCE's distribution system. The Complaint does not mention PG&E by name, this proceeding, or any particular Commission decision or order. Further, the general topic of interconnection of qualifying facilities under PURPA was not raised in this proceeding.

On July 4, 2011, CARE served a Supplemental Notice of Intent to Claim Intervenor

^{4/} In D.09-10-017, the Commission approved the All-Party Settlement Agreement regarding PG&E's power purchase agreement between Mariposa Energy, LLC on October 16, 2009.

^{5/} In D.10-05-046, the Commission reduced CARE's intervenor compensation award from the requested amount of \$19,431 to \$9,320.75 because CARE failed to explain and justify the work of each CARE participant performing the same task in the proceeding.

Compensation pursuant to California Public Utilities Commission (“Commission”) Rule of Practice and Procedure 17.1 asking for an award of ratepayer-funded compensation for costs associated with its Complaint. In so doing, CARE claimed that the Complaint, which was filed nearly two years after the Commission issued D.09-10-017 approving the Mariposa Settlement Agreement, somehow challenges “the basis in law and facts” for the Mariposa rehearing decision, which solely address its claims for intervenor compensation.^{6/}

As discussed in more detail below, CARE’s Supplemental NOI fails to meet the basic requirements of Rule 17.1(f). Even if it did meet those requirements, the Complaint for which CARE seeks compensation is not “judicial review” of the Commission’s decisions in this proceeding or any Commission decision.

II. CARE’S SUPPLEMENTAL NOI FAILS TO MEET THE BASIC REQUIREMENTS OF RULE 17.1(F)

California Public Utilities Code section 1802(a) defines “compensation” as

payment for all or part, as determined by the commission, of reasonable advocates fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a proceeding, and includes the fees and costs of obtaining an award under this article and of obtaining judicial review, if any.

CARE’s Supplemental NOI is brought under Commission Rule of Practice and Procedure 17.1(f), which provides that:

An intervenor who intends to request compensation for costs of judicial review shall file a supplemental notice of intent within 30 days after the date that the intervenor first appears or files a pleading in the judicial review proceeding. The supplemental notice of intent shall identify the issues upon which the intervenor intends to participate in judicial review, and an itemized estimate of the compensation that the intervenor expects to request by reference to those identified issues. If the intervenor intends to support the Commission’s decision on review, the supplemental notice of intent shall include a showing of why the intervenor expects that its participation in judicial review will supplement,

^{6/} NOI at 3.

complement or contribute to the Commission’s defense of its decision.

CARE’s NOI fails to meet these requirements. CARE does not specifically identify any issues for which it intends to seek judicial review, and it does not itemize the compensation it intends to seek by reference to any specific issues. Instead, CARE merely cuts and pastes the introduction of its Complaint as an attempt to show that the Complaint somehow “challenges the basis in law and facts for the Order Decision [sic] 10-08-021.”^{7/} CARE then merely cuts and pastes from D.10-08-021 into its Supplemental NOI. CARE does not identify which factual or legal issues it is purportedly seeking review of, or an estimate of the costs associated with seeking review of any particular issue. The Commission should reject the Supplemental NOI on this basis alone.

III. CARE IS NOT ENTITLED TO SEEK RATEPAYER-FUNDED COMPENSATION TO FUND LITIGATION THAT DOES NOT SEEK “JUDICIAL REVIEW” OF THE COMMISSION’S DECISION IN THIS PROCEEDING

Rule 17.1(f) implements section 1802(a) by authorizing parties to amend their NOIs to seek compensation for the reasonable costs of obtaining judicial review of a Commission decision or the reasonable costs of defending a Commission decision against a judicial challenge brought by another party. There is no statutory, regulatory or decisional authority for obtaining ratepayer-funded compensation for the costs of filing a lawsuit that does not address – or even mention – a Commission decision.

In this case, CARE is not seeking compensation for the costs of obtaining judicial review of a Commission order or decision. Nowhere in its Complaint does CARE mention the order or decision for which CARE is seeking judicial review. Nor is CARE seeking compensation for the costs of defending a CPUC decision against a judicial challenge brought by another party.

^{7/} CARE Amended NOI at 3-8.

IV. CONCLUSION

For the foregoing reasons, PG&E respectfully requests that the Commission reject CARE's Supplemental NOI and rule that costs incurred by CARE in pursuing its federal court litigation shall not be paid by ratepayers.

Respectfully Submitted,

CHARLES R. MIDDLEKAUFF
MARY A. GANDESBERY

By: _____ /s/
MARY A. GANDESBERY

Pacific Gas and Electric Company
77 Beale Street
San Francisco, CA 94105
Telephone: (415) 973-0675
Facsimile: (415) 973-5520
E-Mail: MAGq@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

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