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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority to Increase Electric Rates and Charges to Recover Smart Grid Costs Relating to Compressed Air Energy Storage Demonstration Project under American Recovery and Reinvestment Act of 2009.

Application 09-09-019
(Filed September 29, 2009)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

1. Summary

Pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure (Rules),¹ this Scoping Memo and Ruling sets forth the procedural schedule, assigns the presiding officer, and addresses the scope of this proceeding and other procedural matters following the prehearing conference (PHC) held on October 27, 2009. This ruling is appealable only as to category of this proceeding under procedures in Rule 7.6.

2. Background

On September 29, 2009, Pacific Gas and Electric Company (PG&E) filed *Application for Authority to Increase Electric Rates and Charges to Recover Smart Grid*

¹ All references to rules are to the Commission's Rules of Practice and Procedure, which are available on the Commission's website at http://docs.cpuc.ca.gov/word_pdf/RULES_PRAC_PROC/70731.pdf.

Costs Relating to Compressed Air Energy Storage Demonstration Project under American Recovery and Reinvestment Act of 2009 (Application), which was docketed as Application (A.) 09-09-019. Attached to the Application were PG&E's application to the Department of Energy (DOE) for the Smart Grid Demonstration Project, "Advanced Underground Compressed Air Energy Storage" and letters of support from various project partners, supporters, and public officials in support of the Application. In Decision (D.) 09-09-029, the Commission established processes for reviewing projects and investments by investor-owned utilities seeking American Recovery and Reinvestment Act of 2009 (Recovery Act) funding. The Application at issue before us is made by an investor-owned utility seeking Recovery Act funding prior to receiving a DOE grant.

On October 14, 2009, a *Chief Administrative Law Judge's Ruling Consolidating Dockets, Shortening Protest Period, Preliminarily Determining Category, Assignment and Setting a Prehearing Conference* (Ruling) mailed. In addition to setting the PHC, the Ruling set the deadlines for protests or comments on the Application, replies, and for the filing of PHC Statements.

On October 15, 2009, Resolution ALJ 176-3242 confirmed the preliminary determination that this proceeding was ratesetting and that hearings would be necessary.

On October 15, 2009, the Independent Energy Producers Association (IEP)² filed a response to the Application. On October 16, 2009, The Utility Reform

² *Response of the Independent Energy Producers Association* (IEP Response), October 15, 2009.

Network (TURN)³ and the Commission's Division of Ratepayer Advocates (DRA)⁴ also filed responses to the Application. On October 16, 2009, the Consumer Federation of California (CFC)⁵ filed a protest to the Application.

On October 22, 2009, PG&E, DRA, and CFC filed PHC Statements. On October 23, 2009, PG&E filed its response to comments and CFC's protest.

On October 27, 2009, a PHC took place in San Francisco to establish the service list for the proceeding, to discuss the scope of the proceeding, and to develop a procedural timetable for the management of the proceeding. At the PHC, the Administrative Law Judge (ALJ) proposed that this proceeding be handled independently of A.09-09-018, which had been consolidated by the Ruling. On October 30, 2009, the ALJ issued a ruling affirming that the proceedings would no longer be consolidated.

3. Proceeding Category, Ex Parte Rules, and Need for Hearing

As noted above, the Commission preliminarily categorized this Application as ratesetting as defined in Rule 1.3(e) and anticipated that this proceeding would require evidentiary hearings. The parties did not oppose the

³ *Response and Protest of The Utility Reform Network (TURN Response)*, October 15, 2009. TURN included its protest of PG&E's A.09-09-018 together with its response to PG&E's A.09-09-019 in the same document. Only TURN's response is relevant to the instant application.

⁴ *Division of Ratepayer Advocates to Pacific Gas and Electric Company's Application for a Compressed Air Energy Storage Project (DRA Response)*, October 16, 2009.

⁵ *Protest to Application of Pacific Gas and Electric Company for Phase 1 of Compressed Air Energy Storage Smart Grid Demonstration Project (A.09-09-019) (CFC Protest)*, October 16, 2009. CFC also filed an *Application for Rehearing of D.09-09-029* in Rulemaking 08-12-009 on October 14, 2009.

Commission's preliminary categorization. This ruling affirms the preliminary categorization of ratesetting.

At the PHC only CFC contended that evidentiary hearings would be necessary, but it has not articulated any disputed issues of material fact. Therefore, as noted in the schedule below and in accordance with Rule 7.3(a), today's scoping memo adopts a procedural schedule that does not include evidentiary hearings. It is anticipated that the record will be composed of all documents filed and served on parties. The change to the preliminary determination on the need for a hearing will be placed before the Commission in accordance with Rule 7.5.

In a ratesetting proceeding, ex parte rules as set forth in Rules 8.2, 8.3, 8.5 and Pub. Util. Code § 1701.3(c)⁶ apply.

Pursuant to Rule 13.2(b), assigned Commissioner Rachelle B. Chong has designated ALJ Katherine Kwan MacDonald as the presiding officer. The provisions of § 1701.3(a) apply.

4. Discovery

At the PHC, PG&E agreed to respond to data requests within seven calendar days rather than following the general rule of ten working days because of the desire to expedite consideration of its Application. This rule will apply to all parties. If a longer response time is required, the party preparing the response shall notify the requesting party and indicate when the response will be sent. Such notice should be provided as soon as possible, but no later than five calendar days after receipt of the request. If parties have discovery disputes they

⁶ All section references are to the Public Utilities Code.

are unable to resolve by meeting and conferring, they should raise these disputes with the Commission pursuant to Rule 11.3.

5. Scope of Proceeding

Through the Application, responses to the Application, the protest to the Application, the reply to protests, and the PHC statements, parties conducted an exchange that has helped to refine the scope of the Application.

This proceeding will examine whether the proposed revenue requirement to support the requested ratepayer funding of Phase I of PG&E's Compressed Air Energy Storage (CAES) Smart Grid Demonstration project is just and reasonable, such that the Commission should authorize PG&E to incorporate the adopted revenue requirement in rates. This proceeding will also examine whether PG&E has shown that its requested ratepayer funding for a portion of the costs of Phase I of its CAES Smart Grid Demonstration project is justified in light of the costs and benefits of the project to ratepayers. A critical issue in the review of any project is the determination of its reasonableness.

The reasonableness of a project is most clearly determined when the benefits and costs are compared with as much quantification as possible. Thus, the efforts of DRA and TURN to further clarify the benefits and costs of the CAES project fall squarely within the scope of this proceeding.

In addition, although PG&E states in its federal application that it will use California's competitive Request for Offer (RFO) process, PG&E should clarify whether the RFO process it intends to use will be consistent with the Commission's rules and policies including those laid out in D.07-12-052.

Specifically:

1. Should PG&E hire an independent evaluator to oversee the RFO?

2. Should PG&E review the design and execution of the RFO with its Procurement Review Group?
3. Should PG&E provide RFO documents to the Commission's Energy Division for review prior to issuance?

The issue of how PG&E plans to record the Smart Grid Demonstration project paid for with Recovery Act funds on the company's books and whether these funds would be included in PG&E's determination of rate base is also included in the scope of issues to be considered in this proceeding.

The issues raised by CFC in its Protest, Prehearing Conference Statement and at the PHC are outside the limited scope of this proceeding. Issues related to the propriety of the process established in D.09-09-029 and to the Commission's ability to consider this Application are not within the scope of this proceeding.⁷

Therefore, in their comments and reply comments, parties should address any issues within the scope of this proceeding on which factual, legal, or policy opinion may be helpful to explain or support their positions.

6. Proceeding Schedule

At the PHC, after a discussion the parties determined that the following schedule best accommodates the diverse interests and prior commitments of the parties and their representatives.

⁷ These issues have been raised by CFC in its Application for Rehearing of D.09-09-029 and their appropriateness may be considered in that forum given that CFC is challenging the process established by that decision.

Event	Date
Non-Utility Party Comments	November 13, 2009
PG&E Reply Comments	November 20, 2009
Identification of Outstanding Issues, Additional Joint Decisions, Stipulations to the Record, and Discovery cut-off	November 30, 2009
Proposed Decision	December 22, 2009

Consistent with Pub. Util. Code § 1701.5, the Commission anticipates that this proceeding will be completed within 18 months of the date of this scoping memo, which is May 6, 2011.

7. Intervenor Compensation

The PHC in this matter was held on October 27, 2009. Pursuant to Pub. Util. Code § 1804(a)(1), a customer who intends to seek an award of compensation shall file and serve a notice of intent to claim compensation by November 26, 2009. Because November 26, 2009 is a holiday, any notice of intent must be filed by November 30, 2009.

8. Presiding Officer

Pursuant to Rule 13.2, ALJ Katherine Kwan MacDonald is the Presiding Officer.

9. Filing, Service, and Service List

In this proceeding, there are several different types of documents participants may prepare. Each type of document carries with it different obligations with respect to filing and service.

Parties must file certain documents as required by the Commission Rules or in response to rulings by either the assigned Commissioner or the assigned ALJ. All formally filed documents must be filed with the Commission’s Docket

Office and served on the service list for the proceeding. Article 1 of the Rules contains all of the Commission's filing requirements. Parties must file and serve all pleadings as set forth in Article 1 of the Commission's Rules. Parties are encouraged to file and serve electronically, whenever possible, as it speeds processing of the filings and allows them to be posted on the Commission's website. More information about electronic filing is available at <http://www.cpuc.ca.gov/puc/efiling>.

This proceeding will follow the electronic service protocols adopted by the Commission in Rule 1.10 for all documents, whether formally filed or just served. This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by U.S. mail. In this proceeding, concurrent e-mail service to ALL persons on the service list for whom an e-mail address is available, including those listed under "Information Only," is required. Parties are expected to provide paper copies of served documents upon request.

E-mail communication about this case should include, at a minimum, the following information on the subject line of the e-mail: A.09-09-019 CAES Project. In addition, the party sending the e-mail should briefly describe the attached communication; for example, *Comments*. Electronic copies should be served on the ALJ unless paper copies are specifically requested.

The official service list for this proceeding is available on the Commission's web page. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process Office, the service list, and the ALJ. Prior to serving any document, each party must ensure

that it is using the most up-to-date service list. The list on the Commission's website meets that definition.

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures should contact the Commission's Public Advisor at (866) 849-8390 or (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to public.advisor@cpuc.ca.gov.

IT IS RULED that:

1. The final categorization of this proceeding is ratesetting and hearings are not required for the purpose of Article 7 of the Commission's Rules of Practice and Procedure (Rules). This ruling as to category is appealable under Rule 7.6.
2. Ex parte communications are permitted without restriction and are not subject to reporting requirements as set forth in Rules 8.2(d).
3. The issues and schedule are as set forth in the body of this ruling unless amended by a subsequent ruling or order of the Presiding Officer.
4. Pursuant to Rule 13.2, Administrative Law Judge Katherine Kwan MacDonald is the Presiding Officer.

Dated November 5, 2009, at San Francisco, California.

/s/ RACHELLE B. CHONG

Rachelle B. Chong
Assigned Commissioner

