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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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).

Application 09-10-022
(Filed October 16, 2009)

And Related Matter.

Application 09-10-034
(Filed October 30, 2009)

ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO

This ruling and scoping memo (Scoping Memo) sets forth the scope, schedule, category, and the need for evidentiary hearings in this proceeding pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure. This Scoping Memo also designates a presiding officer, requires Pacific Gas and Electric Company to submit specified information, and addresses certain other matters as set forth below.

Background

In Application (A.) 09-10-022, Pacific Gas and Electric Company (PG&E) requests Commission approval of five contracts with GWF Energy LLC (GWF). These contracts have two main purposes. First, the contracts novate to PG&E an existing power purchase agreement (PPA) between the California Department of Water Resources (DWR) and GWF. Under the novated PPA, PG&E will replace DWR as the buyer of 340 megawatts (MW) of capacity provided by combustion

turbines located at two GWF facilities in Kings County and one GWF facility near Tracy in San Joaquin County. The novated PPA expires October 31, 2012.

The second purpose is to execute a new long-term PPA between PG&E and GWF under which PG&E will buy 299 MW of capacity from GWF for a 10-year period beginning no later than June 1, 2013. GWF will provide the capacity from its Tracy Facility in San Joaquin County. GWF plans to expand its Tracy Facility from 154 MW to 299 MW by converting the simple-cycle combustion turbine facility into a combined-cycle facility.

In A.09-10-034, PG&E requests Commission approval of five contracts with Calpine Corporation (Calpine). These contracts have four main purposes. First, the contracts novate to PG&E an existing PPA between DWR and Calpine known as the Calpine 2 Contract. Under the novated Calpine 2 Contract, PG&E will replace DWR as buyer of 180 MW of capacity provided by combustion turbines at Calpine's Los Esteros Critical Energy Facility (LECEF) in Santa Clara County. The Calpine 2 Contract expires December 31, 2012.

The second purpose is to execute a new long-term PPA between PG&E and Calpine under which PG&E will buy 289 MW of capacity from LECEF for a 10-year period. Calpine plans to expand LECEF from 180 MW to 289 MW by converting the combustion turbine facility into a combined-cycle facility.

The third purpose is to novate to PG&E an existing PPA between DWR and Calpine known as the Calpine 3 Contract. Under the novated Calpine 3 Contract, PG&E will replace DWR as the buyer of 495 MW of capacity provided by 11 combustion turbines located at ten Calpine facilities in several counties. The Calpine 3 Contract expires July 31, 2011.

The final purpose is to extend the term of Calpine 3 Contract. Under the extended contract, PG&E will buy 495 MW of capacity from Calpine through

December 31, 2017, and 322 MW through December 31, 2021. The extended contract also provides PG&E with more flexibility in how Calpine's combustion turbines are operated and dispatched.

A prehearing conference (PHC) for A.09-10-022 and A.09-10-034 was held on December 16, 2009. The two applications were consolidated into one proceeding pursuant to a ruling issued on December 21, 2009.

The following parties filed protests and PHC statements opposing A.09-10-022 and A.09-10-034: the Alliance for Retail Energy Markets together with the California Large Energy Consumers Association; Californians for Renewable Energy; the Commission's Division of Ratepayer Advocates; and The Utility Reform Network. The following parties filed PHC statements that either support PG&E's applications or do not oppose the applications: California Unions for Reliable Energy, Calpine, GWF, and the Independent Energy Producers Association.¹

Scope of the Proceeding

The scope of this proceeding consists of three main issues. The first is whether to approve the novation to PG&E of DWR's PPAs with GWF and Calpine. The second issue is whether to approve PG&E's proposed long-term PPAs with GWF and Calpine. The long-term PPAs will provide PG&E with 1,083 MW of gas-fired generation capacity, including 254 MW of new capacity. The final issue is whether to authorize PG&E to recover the costs it incurs under the aforementioned PPAs. In deciding these issues, the Commission may consider the following matters:

¹ Ratepayers for Affordable and Clean Energy (RACE) distributed a written PHC statement at the PHC, but RACE did not file and serve its PHC statement.

1. Whether the price, terms, and conditions of the PPAs are just and reasonable under Pub. Util. Code § 451. In making this determination, the Commission may consider the following:
 - A. Whether the novated PPAs and the new long-term PPAs are as least as beneficial as the existing DWR contracts.
 - B. The expected market conditions during the period the PPAs will be in effect, without regard to the historic market conditions applicable to the existing DWR contracts.
 - C. Whether the PPAs are cost effective.²
2. Whether the proposed long-term PPAs are consistent with PG&E's long-term procurement plan approved by the Commission in D.07-12-052 pursuant to Pub. Util. Code § 454.5.³
3. Whether it is reasonable for PG&E to contract for more new capacity than authorized by D.07-12-052 due to the risk of project/contract failure or other factors and, if so, whether it is reasonable for PG&E to ultimately acquire more capacity than authorized by D.07-12-052 if fewer projects/contracts fail than anticipated. This proceeding will not re-litigate the amount of new capacity authorized by D.07-12-052.
4. Whether PG&E is authorized by D.08-11-056 and/or subsequent rulings in R.07-05-025 to execute new long-term PPAs as part of the novation or renegotiation of existing DWR PPAs, without regard to the amount of new capacity authorized by D.07-12-052 or process for acquiring long-term capacity set forth in D.07-12-052.

² See Decision (D.) 08-11-056 at 67 and 75, Conclusions of Law 5, 6, and 7, and Ordering Paragraph 11. See also the *Assigned Commissioner and Administrative Law Judge's Ruling Regarding Implementation Measures for Phase II(A)(2)* issued in Rulemaking (R.) 07-05-025 on February 4, 2009, at 9 - 11; and the *Assigned Commissioner's Ruling on Procedures to Address Senate Bill 695 Issues Relating to Direct Access Transactions* issued in R.07-05-025 on November 18, 2009, at Ruling Para. 4.

³ D.08-11-056, p. 81. See also the *Assigned Commissioner and Administrative Law Judge's Ruling Regarding Implementation Measures for Phase II(A)(2)* issued in R.07-05-025 on February 4, 2009, at 11.

5. Whether the policies that underlie the Commission's decision in D.08-11-056 have been superseded by Senate Bill 695.
6. Whether the novated PPAs can and should be approved if the proposed long-term PPAs are denied.
7. The consequences of denying part or all of PG&E's applications.

This consolidated proceeding will be closely coordinated with A.09-09-021 where the Commission is considering PG&E's request to contract for 1,305 MW of new gas-fired capacity to ensure that the Commission's decisions in this consolidated proceeding and A.09-09-021 are consistent.

Need for Additional Information

To provide an adequate record to decide the issues in this proceeding, PG&E shall serve supplemental written testimony that contains the following:

1. A report from the Independent Evaluator (IE) regarding the IE's assessment of the 254 MW of new capacity requested by PG&E in A.09-10-022 and A.09-10-034.⁴
2. A thorough demonstration that the novated PPAs and the proposed long-term PPAs are:
 - A. At least as beneficial as DWR's existing PPAs with GWF and Calpine (without novation) in terms of (i) cost per MW hour, and (ii) other terms and conditions.
 - B. Reasonable in light of expected market conditions and competitive alternatives during the period the PPAs will be in effect.
 - C. Cost effective.
3. A thorough demonstration that PG&E has a reasonable need to contract for more new capacity than authorized by

⁴ The IE's report should be provided as soon as it is available.

- D.07-12-052 due to the risk of project/contract failure or other factors.
4. An explanation of the following:
 - A. Why the 254 MW of new capacity was not selected as part of PG&E's recent long-term request for offers (LTRFO).
 - B. Why the 254 MW of new capacity is attractive in the context of DWR contract novations but not in the context of the LTRFO.
 - C. Whether Calpine and GWF offered the same prices in the LTRFO as they did in A.09-10-022 and A.09-10-034. If not, PG&E shall identify and explain the differences.
 5. The total costs that PG&E forecasts it will pay for each of the following contracts at issue in A.09-10-022 and A.09-10-034:
 - A. The existing DWR-GWF contract without novation.
 - B. The GWF Replacement Agreement (as modified by the Replacement MRTU Agreement).
 - C. The GWF Transition Agreement.
 - D. The Tracy Upgrade PPA.
 - E. The DWR-Calpine 2 Contract without novation.
 - F. The Calpine 2 Replacement Agreement.
 - G. The LECEF Upgrade PPA.
 - H. The DWR-Calpine 3 Contract without novation.
 - I. The Calpine 3 Replacement Agreement.
 - J. PG&E's responses to (A) - (I) shall include the following elements:
 - i. Total forecast costs for the contract broken down by year.
 - ii. For each year, the total forecast costs for the contract broken down by (a) the all-in cost of gas (including commodity costs and transportation costs), and (b) all other costs (itemized).
 - iii. For each year, the average cost per megawatt hour of power delivered to PG&E.

- iv. An Excel spreadsheet that shows all assumptions and calculations used by PG&E in its forecast.

Need for Hearings

In Resolution ALJ 176-3243 issued on October 29, 2009, the Commission preliminarily determined pursuant to Rule 7.1(a) that hearings are needed for A.09-10-022. Similarly, in Resolution ALJ 176-3244 issued on November 20, 2009, the Commission preliminarily determined that hearings are needed for A.09-10-034.

There was general agreement at the PHC that A.09-10-022 and A.09-10-034 can be resolved through written testimony and briefs, and that evidentiary hearings are not necessary. However, several parties want the opportunity to request evidentiary hearings after written testimony is served.

Based on the consensus at the PHC, it appears at this time that evidentiary hearings are not necessary. However, parties will have the opportunity to file motions for evidentiary hearings after written testimony is served. Any motion must list and describe the specific factual issues that need to be heard. The due date for such motions is set forth below.

If evidentiary hearings are held, PG&E shall take the lead in drafting a joint hearing management plan that includes (1) the order of witnesses, (2) the order of cross examination, (3) exhibit numbers, and (4) a procedure for admitting unopposed written testimony, if any. The due date for the hearing management plan is set forth below.

If there evidentiary hearings are not held, PG&E shall take the lead in drafting a joint motion to admit prepared testimony onto evidence pursuant to Rule 13.8. The joint motion shall include an exhibit list that provides the following for each exhibit: (1) exhibit number, (2) title of the exhibit, and (3) the

party and witness sponsoring the exhibit. The joint motion shall also include a request to admit confidential testimony under seal, if appropriate.⁵ The due date for the joint motion is set forth below.

If evidentiary hearings are not held, the changed determination on the need for hearings will be placed on the Commission's consent agenda for approval pursuant to Rule 7.5 or, alternatively, addressed in the final decision.

Presiding Officer

Administrative Law Judge Kenney is designated as the presiding officer for this proceeding pursuant to Rule 13.2(b).

Proceeding Schedule

The parties agreed on the following schedule, which is adopted.

Event	Date
PG&E Supplemental Testimony Served. (Note 1)	January 11, 2010
Intervenor Testimony Served.	January 15, 2010
Reply Testimony Served.	January 22, 2010
Motions for Evidentiary Hearings Due No Later than 10 a.m. on January 25, 2010.	10 a.m. January 25, 2010
If Evidentiary Hearings Held, PG&E Emails Joint Hearing Management Plan to the Service List.	3:00 p.m. January 26, 2010
Evidentiary Hearings, If Needed.	9:30 a.m. January 27, 2010
If No Evidentiary Hearings, PG&E Files & Serves a Joint Motion to Admit Prepared Testimony.	3 p.m. January 27, 2010
Opening Briefs Filed & Served. (Note 2)	January 29, 2010

⁵ The motion shall provide the information required by D.08-04-023 and D.06-10-066, if applicable, for placing energy procurement data under seal.

Event	Date
If Evidentiary Hearings Held, Deadline to File & Serve Motions for an Oral Argument Under Rule 13.13(b).	January 29, 2010
Reply Briefs Filed & Served. (Note 2)	February 5, 2010
Submission Date.	Later of Reply Briefs or Final Oral Argument
Draft Decision Considered at a Commission Meeting.	April 22, 2010
<p>Note 1: The IE's report should be filed and served as soon as it is available.</p>	
<p>Note 2: All briefs and reply briefs must follow a common outline.</p>	

The Assigned Commissioner and the assigned Administrative Law Judge may revise the schedule, as necessary. As shown in the above schedule, it is anticipated that this proceeding will conclude by April 22, 2010. In any event, this proceeding will end no later than 18 months from the date of this Scoping Memo as required by Pub. Util. Code § 1701.5(a).

The above schedule also shows that briefs and reply briefs must follow a common outline. To this end, PG&E shall (1) arrange a teleconference where parties shall agree on the common outline, (2) email a notice of the teleconference to the service list that includes a call-in telephone number, and (3) email the agreed-upon common outline to the service list.

Each party's briefs shall provide a comprehensive summary of the party's positions. Parties should assume that if a particular fact, argument, recommendation, etc., does not appear in their briefs, it may not appear in the proposed decision.

Final Oral Argument

Rule 13.13 provides that in a ratesetting proceeding in which a hearing is held, parties have the right to make a final an oral argument (FOA) before a quorum of Commissioners if the FOA is requested within the time and manner

specified in the Scoping Memo or later ruling. This Scoping Memo determines that there is no need for hearings at this time. However, if hearings are held, any party seeking a FOA shall file and serve a motion no later than January 29, 2010. The motion shall state the request, the subject(s) to be addressed at the FOA, the amount of time requested, recommended procedure, order of presentations, and anything else relevant to the FOA. Parties may file responses on February 5, 2010. If hearings are not held as anticipated by this Scoping Memo, Rule 13.13 shall cease to apply and a FOA will not be held.

Proceeding Category

In Resolution ALJ 176-3243, the Commission preliminarily determined pursuant to Rule 7.1(a) that A.09-10-022 should be categorized as ratesetting. Similarly, in Resolution ALJ 176-3244, the Commission preliminarily determined that A.09-10-034 should be categorized as ratesetting. This Scoping Memo affirms that the category for this consolidated proceeding is ratesetting.

Ex Parte Communications

The category for this proceeding is ratesetting. Therefore, parties must restrict their ex parte communications with decision makers to those allowed by Rules 8.2(c) and 8.5, and parties must report their ex parte communications in accordance with Rule 8.3.

Notices of Intent to Claim Intervenor Compensation

Publ. Util. Code § 1804(a)(1) requires notices of intent (NOIs) to seek intervenor compensation to be filed no later than 30 days after the prehearing conference (PHC). The PHC was held on December 16, 2009. Therefore, the deadline for submitting NOIs is January 15, 2010.

Service List for This Proceeding

The official service list is available on the Commission's website at http://docs.cpuc.ca.gov/published/service_lists/A0910022_78642.htm. Parties should confirm that their information on the service list is correct and notify the Commission's Process Office (process_office@cpuc.ca.gov) of any errors.

Providing Electronic Copies of Documents to the Assigned ALJ

Parties serving documents, including written testimony and briefs, shall provide the assigned ALJ with both a hard copy and an electronic copy of the documents. The electronic copy shall be in Microsoft Word and/or Excel formats to the extent practical.

IT IS RULED that:

1. The scope and schedule for this proceeding are set forth in the body of this ruling. The schedule may be revised, as necessary, by the assigned Commissioner and the assigned Administrative Law Judge.
2. Pacific Gas and Electric Company shall serve supplemental written testimony that contains the information specified in the body of this ruling. The supplemental testimony is due on January 11, 2010.
3. Evidentiary hearings are not needed at this time.
4. The presiding officer is Administrative Law Judge Kenney.
5. The category for this proceeding is ratesetting.
6. If evidentiary hearings are held, parties may request a final oral argument (FOA) in accordance with the procedures set forth in the body of this ruling. If evidentiary hearings are not held, then a FOA will not be held.
7. Ex parte communications are permitted in this proceeding to the extent allowed by Rules 8.2(c) and 8.5. Parties must report their ex parte communications in accordance with Rule 8.3.

8. Notices of intent to seek intervenor compensation must be filed and served no later than January 15, 2010.

9. Parties serving documents shall provide the assigned Administrative Law Judge with both (i) a hard copy, and (ii) an electronic copy in Microsoft Word and/or Excel format, to the extent practicable.

Dated January 5, 2010, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated January 5, 2010, at San Francisco, California.

/s/ GLADYS M. DINGLASAN
Gladys M. Dinglasan

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.