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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company and Topaz Solar Farms, LLC for an Expedited Order (1) Authorizing the Conveyance of Certain Property Pursuant to Public Utilities Code Section 851 and (2) Modifying Decision 03-12-035. (U39E).

Application 11-04-016
(Filed April 15, 2011)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

1. Summary

Pursuant to Rule 7.3(a) of the Commission's Rules of Practice and Procedure, this ruling follows a prehearing conference held on May 23, 2011, addresses both scope and schedule, and rules on a pending motion for party status.

2. Background

2.1. Parties

Pacific Gas and Electric Company (PG&E) and Topaz Solar Farms, LLC (Topaz) have filed this application jointly. Topaz, a Delaware limited liability corporation, is a wholly owned subsidiary of First Solar, Inc. No protests were filed. California Unions for Reliable Energy (CURE) filed a motion for party status on May 25, 2011; that motion is addressed below.

2.2. Project

Topaz is actively planning development of the 550 megawatt photovoltaic power plant and wishes to build it on property that PG&E owns in San Luis Obispo County, known as the Carrizo Plain property. The Topaz project, which

is expected to be placed into commercial operation in three phases between December 31, 2012 and June 30, 2014, should generate annually, when complete, approximately 1% of PG&E's retail load. The Commission has approved a power purchase agreement (PPA) and an amended PPA, under which PG&E will purchase the output of the Topaz project.¹

Topaz is seeking funding for the project through loans backed by the United States Department of Energy as part of the Federal Institution Partnership Program in the American Recovery and Reinvestment Act. A condition of the funding is that construction must begin by September 30, 2011.

2.3. Authority Sought

This unopposed application is before us now because PG&E's Carrizo Plain property currently is part of some 140,000 acres in California often collectively referred to as the watershed lands. PG&E agreed to permanently conserve these lands as part of the 2003 settlement of its electricity crisis bankruptcy filing. Decision (D.) 03-12-035 adopted that settlement, which consists of the Settlement Agreement between PG&E, PG&E Corporation and the Commission, including the Land Conservation Commitment (LCC) attached to the Settlement Agreement as Appendix E, and also the Stipulation Resolving Issues Regarding the Land Conservation Commitment, dated September 25, 2003 (Stipulation), which supplements the Settlement Agreement.² The Pacific Forest

¹ See respectively, Resolution E-4221, dated January 29, 2009, and Resolution E-4313, dated April 19, 2010.

² The specific terms of the conservation effort are set out in Paragraph 17 of the Approved Settlement Agreement, entitled "Preservation and Environmental Enhancement of PG&E Land" (D.03-12-035, Appendix C), in the Statement of Purpose and in the Commitments found in the LCC (D.03-12-035, Appendix E to Appendix C),

Footnote continued on next page

and Watershed Lands Stewardship Council (Stewardship Council), a private foundation established under Internal Revenue Code § 501(c)(3) pursuant to the bankruptcy settlement, oversees implementation of the LCC.

In return for PG&E's Carrizo Plain property, Topaz commits to transfer to the United States Bureau of Land Management (BLM), or to a conservation organization as an interim measure until BLM can take title, two parcels of private, unimproved land, totaling 1,200 acres. These two tracts, referred to as the Exchange Properties, are located within the boundaries of the Carrizo Plain National Monument, in Kern and San Luis Obispo counties.

PG&E also seeks the following, related authority: approval of certain ratemaking adjustments, findings that the environmental review conducted by the County of San Luis Obispo, as Lead Agency, is sufficient for the Commission's purposes and that no further environmental review is necessary, and direction to Commission staff to make the filings necessary to obtain the bankruptcy court's modification of the 2003 bankruptcy settlement, including the LCC, so that the land transfer may occur.

3. Scope

The ultimate issue before the Commission is whether the Commission should approve the application under Public Utilities Code Section 851. To do so, the Commission must determine that the land transfer is "not adverse to the

and in the more detailed provisions of the Stipulation (I.02-04-026, Exhibit 181), including Paragraph 12, which elaborates upon the Land Conservation Plan.

public interest.”³ Under § 851, the Commission may “take such action, as a condition to the transfer, as the public interest may require.”⁴

As support for the authority sought, the application includes a number of documents that have been filed as attachments to the application. In making its assessment, the Commission will review these documents, including:

- Support from Stewardship Council in the form of two resolutions which place conditions on the land transfer;
- The various transfer agreements, including a letter agreement from BLM;
- The Final Environmental Impact prepared by the County of San Luis Obispo.
- Support for the ratemaking treatment requested.

4. Schedule

4.1. Protest Period

At the prehearing conference (PHC), the assigned Administrative Law Judge (ALJ) ruled that filing of the amendment to the application did not require extension of the protest period. The ALJ reasoned that the amendment merely served as a vehicle to file additional attachments to the application and that the nature of the attachments had been adequately disclosed in the application, itself, and in the concurrently filed and served notice of availability. The same is true of the second amendment to application. Therefore, the last day to timely file protests was May 25, 2011, two days after the PHC. No protests were filed.

³ *Universal Marine Corporation*, 14 CPUC 2d 644, 646 (1984).

⁴ D.3320, 10 CRRC 56, 63.

4.2. Motion for Party Status

CURE filed a motion for party status on May 25, 2011. Rule 1.4(a)(4) of the Commission's Rules of Practice and Procedure permits such motions. However, Rule 1.4(b) also specifies that anyone who files such a motion must:

- (1) fully disclose the persons or entities in whose behalf the filing, appearance or motion is made, and the interest of such persons or entities in the proceeding; and
- (2) state the factual and legal contentions that the person intends to make and show that the contentions will be reasonably pertinent to the issues already presented.

CURE's motion partially complies with the first part of Rule 1.4(b) by explaining that "CURE is a coalition of unions whose members help solve California's energy problems by building, maintaining, and operating conventional and renewable energy power plants. CURE has an interest in seeing that viable projects are selected to meet California's reliability needs." (Motion at 1.) However, CURE does not explain why it is interested in this proceeding. Nor, as the second part of Rules 1.4(b) requires, does CURE explain what factual or legal contentions it would make if granted party status.

Rather, CURE's motion simply states: "CURE does not protest the application at this time. Instead, CURE requests party status in order to preserve its opportunity to comment on a proposed decision in this proceeding." (*Id.*)

The comment stage is too late a phase to begin to litigate party contentions. Rule 14.3(c), in relevant part, provides:

- (c) Comments shall focus on factual, legal or technical errors in the proposed or alternate decision and in citing such errors shall make specific references to the record or applicable law. Comments which fail to do so will be accorded no weight.

....

CURE was present at the PHC and, at that time, could have explained its concerns, if any, to the ALJ and to the parties at that time. CURE could have filed a timely protest. CURE did neither. CURE’s motion does not comply with Commission rules and should be denied.

4.3. Expedited Schedule

The following schedule will apply, unless revised by a subsequent scoping memo or procedural ruling of the assigned ALJ. In any event, this proceeding should be resolved within 18 months of this scoping memo, as required by §1701.5(a).

Date	Event
May 23, 2011	Prehearing Conference
May 25, 2011	Last day to file Protests
June 28, 2011	Proposed Decision filed
July 18, 2011	Comments filed
July 25, 2011	Reply Comments filed
July 28, 2011	First Commission meeting at least 30 days after mailing of Proposed Decision – Commission may act then or may hold matter to a subsequent meeting.

5. Assignment of Presiding Officer

ALJ Jean Vieth will be the Presiding Officer.

6. Categorization

Resolution ALJ 176-3273 categorizes this proceeding as ratesetting and preliminarily determines that no hearings will be necessary. Both preliminary determinations should be affirmed.

IT IS RULED that:

1. The scope of the proceeding is as set forth herein.

2. The protest period closed on May 25, 2011.
3. The schedule for this proceeding is set forth herein.
4. The Presiding Officer is Administrative Law Judge Jean Vieth.
5. Preliminary determinations, that the category of this application is ratesetting and that no hearings are necessary, are affirmed.
6. *The Motion of California Unions for Reliable Energy for Party Status*, filed May 25, 2011, is denied.

Dated June 21, 2011 at San Francisco, California.

/s/ MARK J. FERRON

Mark J. Ferron
Assigned Commissioner