



FILED

10-09-09
01:26 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company to Revise its Gas Rates and Tariffs to be Effective July 1, 2010. (U39G)

Application 09-05-026
(Filed May 29, 2009)

**ADMINISTRATIVE LAW JUDGE'S RULING
ON MOTION TO COMPEL AND MOTION TO INTERVENE**

1. Summary

On September 21, 2009, Clean Energy Fuels Corp. (Clean Energy) filed a motion to compel discovery from Pacific Gas and Electric Company (PG&E). The motion to compel requests that PG&E be ordered to provide responses to three questions. PG&E filed a response to the motion on October 2, 2009, and a reply by Clean Energy was filed on October 7, 2009.

Bridge Housing, Inc. (Bridge Housing) filed a motion to intervene on September 23, 2009.

Today's ruling grants Bridge Housing's motion to intervene as a party in this proceeding. The ruling also grants Clean Energy's motion to compel PG&E to provide responses to two questions as modified by Clean Energy, and denies the motion to compel PG&E to respond to question number four of Clean Energy's first data request.

2. Motion to Intervene

Bridge Housing's motion to intervene requests that it be allowed to participate in this proceeding as a party. No response to Bridge Housing's motion was filed.

Bridge Housing states in its motion that it is a non-profit corporation that develops, owns and manages high-quality affordable housing for low to moderate income families and seniors. Bridge Housing seeks to participate in this proceeding as a party so that it can address the rate design of natural gas rates that affect the common areas of multi-family housing facilities. Bridge Housing states that it has a number of common area gas accounts, and contends these gas accounts are unfairly penalized under the rates proposed by PG&E.

In accordance with Rule 1.4 of the Commission's Rules of Practice and Procedure, and for good cause shown, Bridge Housing's motion to intervene as a party in this proceeding should be granted.

3. Motion to Compel

3.1. Background

PG&E filed the above-captioned application on May 29, 2009. Among the issues identified in the August 11, 2009 scoping memo are whether PG&E's proposals concerning the natural gas vehicle (NGV) compression cost study and the effect on the compression cost of the NGV rate, and the cost to transport that gas, should be adopted.

PG&E and Clean Energy own and operate a number of NGV refueling stations in the bay area. Clean Energy supplies compressed natural gas (CNG) at its NGV refueling stations to the public. At 25 of PG&E's 37 refueling stations, PG&E provides CNG to its own NGV fleet and to the public.

Originally, Clean Energy sought to compel PG&E to provide responses to four questions that were set forth in Clean Energy's first and third data requests. Clean Energy states in the motion that it is now withdrawing question number five in the first data request, and only seeks responses to three questions. The remaining three questions were modified in the motion by Clean Energy as a result of the meet and confer discussions it had with PG&E.

In its motion, Clean Energy characterizes the three questions that it seeks responses to as follows. In question number two of Clean Energy's first data request, it asked PG&E to provide station-specific throughput data for each of PG&E's 20 public access stations. At page 14 of its motion, Clean Energy is now requesting PG&E to provide the aggregated recorded and forecast throughput data for the remaining 20 public access refueling stations not addressed in its compression cost study, and that this information report the volumes provided to the third party customers, and the volumes provided to PG&E's NGV fleet.

Question number four of Clean Energy's first data request asked PG&E for station-specific cost of service information for each of the 20 refueling stations that PG&E did not consider in its compression cost study. At page 14 of its motion, Clean Energy states that it now seeks to have PG&E provide aggregate cost of service data (i.e., annual operating expense, taxes, depreciation and return, etc.) for PG&E's 20 public access refueling stations that were not included in the compression cost study.

Question number two of Clean Energy's third data request asked PG&E to disaggregate the volumes at each of the five public access stations that it addressed in PG&E's testimony related to the compression cost study between the deliveries to third party customers and deliveries to PG&E's NGV fleet. Clean Energy states that it now seeks the aggregate throughput data for all five

stations, rather than for each station, and that such data report the volumes provided to the third party customers, and the volumes provided to PG&E's NGV fleet, for each of the recorded and forecast years as shown in Table 4-13 of PG&E's prepared testimony.

As evidenced by the declarations and the attachments to the motion and response, the parties met and conferred in an unsuccessful effort to resolve the discovery disputes.

3.2. Discussion

Clean Energy contends it is a competitor of PG&E that provides CNG to NGV customers. Clean Energy is interested in ensuring that the transportation rate that PG&E charges for providing CNG to the public, under rate schedule GNGV-2, fully recovers PG&E's fixed and variable costs of providing the service. In PG&E's testimony in support of its application, PG&E only included the cost and throughput information for five of its 25 refueling stations. Clean Energy believes that this sample is not representative of the costs and throughput at all of PG&E's public access refueling stations. Clean Energy contends that PG&E's GNGV-2 rate fails to recover its full cost of service, and that PG&E's proposed compression cost component of \$0.744 per therm should be much higher. By keeping the compression cost component low, Clean Energy believes that this provides PG&E with a price advantage over competing non-utility owned refueling stations. If PG&E is allowed to establish a compression cost component that fails to fully recover its annual cost of service at its 25 refueling stations, Clean Energy contends that PG&E's cost of providing CNG service to third party customers will be subsidized by PG&E's customers.

PG&E contends that information should not be produced for two reasons. The first reason is because of confidentiality concerns. PG&E contends that

Clean Energy has expressed an interest in buying some or all of PG&E's refueling stations. If PG&E were to sell the stations, it would have to file a transfer application with the Commission, and issue a request for proposal (RFP) for potential buyers to bid on the stations. If station-specific throughput information and station-specific cost information is provided to Clean Energy at this point, PG&E contends this would give Clean Energy an unfair advantage in any RFP process and could reduce the value received by ratepayers from such a sale.

PG&E's second reason for not providing certain information is because the operating revenue and expense information for the other 20 refueling stations currently does not exist or it would take much time and effort to assemble and would be extremely burdensome to produce.

The motion and PG&E's response to the motion focused a lot on what Clean Energy intends to show or argue about the NGV rates. Today's ruling does not address the merit of the methodologies and arguments that Clean Energy and PG&E plan to make at the evidentiary hearings. Instead, this ruling focuses on whether PG&E should be compelled to provide responses to the three questions propounded by Clean Energy. In doing so, the ruling must balance the objections that have been raised in connection with the questions, and whether the questions will lead to the discovery of relevant evidence.

In its reply to PG&E's response, Clean Energy emphasizes that the three questions it seeks responses to no longer seeks access to station-specific information. As summarized in section 3.1 above, the three questions as modified by Clean Energy seek aggregate information for either the 20 refueling stations not included in the cost study, or aggregate information for the five refueling stations that were included in the cost study.

The motion, response, and reply to PG&E's response have been considered. The aggregate information, broken down by CNG volumes provided to third party customers and to PG&E's fleet, that Clean Energy seeks will allow it to obtain the information it needs to advance its theories and arguments as to why PG&E's methodology and proposals for the NGV-related issues should not be adopted. Providing this information on an aggregate basis will avoid the problem of Clean Energy having station-specific data.

However, with respect to question number four of Clean Energy's first data request, I agree with PG&E's objection that it would be too burdensome for PG&E to assemble and provide this information.

Accordingly, Clean Energy's motion to compel PG&E to answer should be granted for question number two in Clean Energy's first data request, and question number two in Clean Energy's third data request, as modified and characterized in section 3.1 above. Clean Energy's motion to compel PG&E to answer question number four of Clean Energy's first data request should be denied. PG&E should have seven days from the date of this ruling to provide the answers to modified question number two in Clean Energy's first data request, and modified question number two in Clean Energy's third data request.

Therefore, **IT IS RULED** that:

1. The September 23, 2009 "Motion to Intervene of Bridge Housing, Inc." is granted.
2. The September 21, 2009 motion to compel discovery, filed by Clean Energy Fuels Corp. (Clean Energy), is granted with respect to question number two in Clean Energy's first data request, and question number two in Clean Energy's third data request, as modified by Clean Energy in its motion. Clean Energy's

motion to compel is denied with respect to question number four of Clean Energy's first data request.

3. Pacific Gas and Electric Company shall respond to modified question number two in Clean Energy's first data request, and modified question number two in Clean Energy's third data request, within seven days of today's ruling.

Dated October 9, 2009, at San Francisco, California.

 /s/ JOHN S. WONG
John S. Wong
Administrative Law Judge

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 October 9, 2009, at San Francisco, California.

/s/ GLADYS M. DINGLASAN
Gladys M. Dinglasan