

HSY/ms6 6/28/2012



FILED
06-28-12
10:18 AM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U39E) for Approval of Amended Purchase and Sale Agreement between Pacific Gas and Electric Company and Contra Costa Generating Station LLC and for Adoption of Cost Recovery and Ratemaking Mechanisms.

Application 12-03-026
(Filed March 30, 2012)

**ADMINISTRATIVE LAW JUDGE'S RULING
ON MOTION TO SEAL THE EVIDENTIARY RECORD**

By motion filed May 29, 2012, Pacific Gas and Electric Company (PG&E) moves to seal the evidentiary record with respect to certain information contained in its prepared testimony that was served on May 21, 2012. PG&E asserts that the information which it redacts from the "public version" of the document is confidential under Decision (D.) 06-06-066 and/or General Order (GO) 66-C, and that it is similar to information that the assigned Administrative Law Judge (ALJ) designated as confidential in Application (A.) 09-09-021.¹ The motion is granted to the limited extent that the information is deemed to be entitled to confidential treatment pursuant to D.06-06-066, as described more fully below.

¹ By e-mail dated June 11, 2012, PG&E withdrew its motion with respect to any information on pages 2-11 and 2-13. In its reply filed June 25, 2012, PG&E withdrew its motion with respect to any information on page 3-9.

The Independent Energy Producers Association (IEP) opposes the motion specifically on the basis that PG&E has not met its burden of proving that the information is not already public or that it cannot be aggregated, redacted, or summarized, and generally on the basis that the Commission's procedures for enforcing its confidentiality policies are inconsistent and ineffective. With respect to IEP's specific objection, I have reviewed the information at issue and am satisfied that, with respect to the information that will be sealed pursuant to this ruling, it is not public information and it cannot be aggregated, redacted or summarized. With respect to IEP's general objections to the Commission's confidentiality procedures, to the extent that IEP seeks to have the Commission reexamine them, this is not the proper forum.

Chapter 2:

The following information shall be sealed because it is deemed to be entitled to confidential treatment pursuant to D.06-06-066:

- Page 2-5, line 28
- Page 2-8, lines 2, 26 and 30
- Page 2-9, lines 12 and 18-19

Californians for Renewable Energy, Inc. opposes confidential treatment of the redacted information on pages 2-5 and 2-8 on the basis that it is accessible from public information to which it cites in its response. PG&E's reply demonstrates that is not the case.

Chapter 4:

The following information shall be sealed because it is deemed to be entitled to confidential treatment pursuant to D.06-06-066:

- Pages 4-3 to 4-9 (Table)
- Pages 4-9 to 4-13

The motion is denied with respect to page 4-1, lines 27-28. PG&E claims confidentiality for this information on the basis that (1) it is information provided in confidence to PG&E by a non-regulated entity and is therefore confidential pursuant to GO 66-C, Section 2.8; and (2) it was previously determined to be confidential by ALJ Darwin Farrar's September 8, 2010, ruling in A.09-09-021. GO 66-C governs public disclosure of information outside of Commission proceedings, i.e., pursuant to Public Record Act requests; while GO 66-C may be instructive as to what might merit confidential treatment in the course of a formal proceeding, it does not provide an independent basis for sealing the record of a formal Commission proceeding. Furthermore, ALJ Farrar's ruling determined the information to be confidential pursuant to D.06-06-066, not pursuant to GO 66-C; as, in this proceeding, PG&E does not claim confidentiality pursuant to D.06-06-066, I conclude that either ALJ Farrar's ruling that the information is confidential pursuant to D.06-06-066 was inadvertent, or that PG&E made a showing in that proceeding (that it has not presented here) that the information is confidential pursuant to D.06-06-066. PG&E is directed to provide an unredacted version of page 4-1 or, in the alternative, it may choose to withdraw the testimony altogether.²

Chapter 6:

Attachment 1 shall be sealed because the substantive information is deemed to be entitled to confidential treatment pursuant to D.06-06-066, except that PG&E is directed to replace the page in the public version to show the

² Without prejudging the final state of the evidentiary record or the parties' arguments that will be presented in closing briefs, I note that it is not apparent to me at this time that this information is particularly material to the issues in the proceeding.

subject matter of the information, limiting the redactions to the specific data or description that is confidential.

Appendix A (Amended Purchase and Sale Agreement):

Appendix A shall be sealed because the substantive information is deemed to be entitled to confidential treatment pursuant to D.06-06-066. I deny IEP's request that PG&E be directed to provide a partially redacted Amended Purchase and Sale Agreement revealing the title of the document, headings, section numbers, parties' names, and other information that is not market sensitive. As PG&E has disclosed a summary of contract terms elsewhere in its prepared testimony, undertaking this exercise would not add any additional value to the public record.

IT IS SO RULED.

Dated June 28, 2012, at San Francisco, California.

 /s/ HALLIE YACKNIN
Hallie Yacknin
Administrative Law Judge