



FILED

05-19-10

04:42 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of the Manzana Wind Project and Issuance of a Certificate of Public Convenience and Necessity (U39E).

Application 09-12-002
(Filed December 3, 2009)

**ASSIGNED COMMISSIONER'S RULING
GRANTING MOTION TO QUASH SUBPOENA**

Iberdrola Renewables, Inc. (Iberdrola) specially appeared¹ to move to quash the April 5, 2010, subpoena duces tecum (subpoena) served on it by the Division of Ratepayer Advocates (DRA) seeking documents related to the costs of the Manzana Wind Project (Manzana).

DRA and Pacific Gas and Electric Company (PG&E) filed timely responses. With the authorization of the Administrative Law Judge (ALJ), on May 12, 2010, Iberdrola filed a reply to DRA's response.

The motion is granted.

1. The Requested Information is Out of Scope

The issue in this proceeding that is implicated by the subpoena and motion to quash is whether Pacific Gas and Electric Company (PG&E) should be allowed to recover its claimed costs for Manzana, a wind facility that would contribute to

¹ The ALJ granted Iberdrola party status for this purpose by e-mail ruling dated April 23, 2010.

PG&E's renewable energy goals. PG&E requests approval for its costs under the Purchase and Sale Agreement and Project Completion Agreement, under which Iberdrola will construct and operate Manzana, plus PG&E's own additional Administrative & General costs, Project and Construction Management costs and Pre-Commercial Operations Commission costs. The subpoena seeks documentation regarding Iberdrola's costs of constructing and operating the project, and DRA's affidavit justifies the subpoena on the basis that this information relates and is material to the reasonableness of the PSA and PCA costs as well as the additional costs that PG&E seeks to recover in rates.

Iberdrola (and PG&E) assert that the subpoena seeks Iberdrola's cost information for the improper purpose of litigating whether PG&E could have negotiated a better deal with Iberdrola. Iberdrola (and PG&E) assert that analysis is beyond the scope of the proceeding, which they characterize as limited to a determination of whether the costs that PG&E seeks to recover are competitive with other similar projects.

Because DRA's subpoena and Iberdrola's motion concern issues related to the scope of the proceeding, I address this motion based on the scope of the issues that were identified in the Assigned Commissioner's Ruling and Scoping Memorandum issued on March 25, 2010 (Scoping Memo). I find that the requested information is beyond the scope of the proceeding. While certainly an approach to assessing reasonableness could involve looking at Iberdrola's costs and how those relate to the costs PG&E seeks to recover from ratepayers, this is not what was envisioned by my Scoping Memo.

The Scoping Memo specifically states that "The Commission must determine whether Manzana's proposed capital and operating costs are reasonable and competitive with other similar renewable projects, i.e. whether

the projects costs, on both a net present value and levelized cost basis, are reasonable in comparison to other relevant projects such as potential utility-owned renewable energy projects; other wind projects that are already or are expected to come online in the Tehachapi region, California, or the Western Electricity Coordinating Council area; other wind projects developed and built by Iberdrola.” (Scoping Memo, at 6, emphasis added.)

In the Renewable Portfolio Standards program we have substantial information in the form of the many contracts the utilities have entered into with renewable project developers, to derive a benchmark against which to compare the Manzana project and make a reasonableness determination. This type of comparison is what was expressly envisioned in my Scoping Memo. The term “cost” as it is used in the Ruling and Scoping Memo refers to the costs born by ratepayers. Because, if approved, this project would displace other projects that might otherwise be selected to meet PG&E’s renewable energy goals, it is only reasonable to the extent the costs to ratepayers of this project are comparable to the costs they would bear were PG&E to pursue alternatives to this project to realize the same or similar benefits. Thus in making comparisons to “similar renewable projects”, the relevant point of comparison is, again, to the costs to ratepayers of those projects, not the cost to the developer of building those projects. The data DRA seek via the subpoena would be used to make a comparison between the costs PG&E seeks to recover and the developer’s cost, and, as such, is not germane to the issue of cost reasonableness and is beyond the scope of this proceeding.

In its protest, DRA raises the potential claim that PG&E’s own additional costs such as Project and Construction Management costs, Pre-Commercial Operations Commissioning costs, and contingencies, including contingency on

PSA and PCA costs might be redundant of costs for work or services that should be provided under the PSA or PCA. As noted above, the relevant point of comparison in order to make a reasonableness determination is to the costs ratepayers face, or are likely to face, for similar renewable projects. This assessment can be done in the absence of access to the specific underlying cost elements DRA is seeking to compel Iberdrola to provide. Thus, while the information DRA seeks is arguably necessary to determine if PG&E's costs are duplicative of costs incurred by Iberdrola, this assessment appears irrelevant to the ultimate determination of whether the project costs are reasonable. Given the tangential nature of this particular line of inquiry to the question of reasonableness, I grant Iberdrola's Motion.

DRA is reminded that absent this information they have ample opportunity to raise concerns about PG&E's proposed Project and Construction Management costs, Pre-Commercial Operations Commissioning costs, and contingencies by comparing the costs proposed by PG&E in this proceeding to similar cost elements in the context of other UOG projects.

2. Iberdrola's Party Status

Per the ALJ's informal ruling dated April 23, 2010, allowing Iberdrola to specially appear to make this motion, Iberdrola is not a party to this proceeding for any other purpose.

3. Protective Order

Because this ruling grants Iberdrola's motion, we need not address the process that would otherwise be required to safeguard the confidentiality of this information.

IT IS RULED that Iberdrola's motion to quash the subpoena duces tecum is granted.

Dated May 19 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 May 19 2010, at San Francisco, California.

/s/ CRISTINE FERNANDEZ
Cristine Fernandez

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.

***** SERVICE LIST *****
Last Updated on 18-MAY-2010 by: RC4
A0912002 LIST

***** PARTIES *****

Marc D. Joseph
Attorney At Law
ADAMS BROADWELL JOSEPH & CARDOZO
601 GATEWAY BLVD. STE 1000
SOUTH SAN FRANCISCO CA 94080
(650) 589-1660
mdjoseph@adamsbroadwell.com
For: Coalition of California Utility Employees

D. Adam Lazar
CENTER FOR BIOLOGICAL DIVERSITY
351 CALIFORNIA ST., SUITE 600
SAN FRANCISCO CA 94104
(415) 670-0797
alazar@endangeredeearth.org
For: Center For Biological Diversity

Brian Cragg
Attorney At Law
GOODIN, MACBRIDE, SQUERI, DAY & LAMPREY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900
bcragg@goodinmacbride.com
For: Independent Energy Producers Association.

Lorelei H. Oviatt
Division Chief
KERN COUNTY PLANNING DEPARTMENT
2700 M STREET
BAKERSFIELD CA 93301
(661) 862-8866
loreleio@co.kern.ca.us
For: Kern County Planning Department

Sara Steck Myers
Attorney At Law
122 28TH AVE.
SAN FRANCISCO CA 94121
(415) 387-1904
ssmyers@att.net
For: Center for Energy Efficiency and Renewable
Technologies (CEERT)

Candace Morey
Legal Division
RM. 5119
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-3211
cjm@cpuc.ca.gov
For: DRA

Cory M. Mason
DAVID T. KRASKA
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B30A
SAN FRANCISCO CA 94105-1814
(415) 973-2320
cmmw@pge.com
For: Pacific Gas & Electric Company

Stephanie C. Chen
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVENUE, 2ND FLOOR
BERKELEY CA 94704
(510) 989-0506
stephaniec@greenlining.org
For: The Greenling Institute

Matthew Freedman
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, NO. 350
SAN FRANCISCO CA 94102
(415) 929-8876 X304
matthew@turn.org
For: The Utility Reform Network

***** STATE EMPLOYEE *****

Amy C. Baker
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1691
ab1@cpuc.ca.gov

John Boccio
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2641
jbx@cpuc.ca.gov

***** SERVICE LIST *****
Last Updated on 18-MAY-2010 by: RC4
A0912002 LIST

Traci Bone
Legal Division
RM. 5031
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2048
tbo@cpuc.ca.gov

Clare L. Gallardo
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS 46
SACRAMENTO CA 95814
(916) 654-4859
claufenb@energy.state.ca.us

Maryam Ebke
Administrative Law Judge Division
RM. 5101
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2271
meb@cpuc.ca.gov

David Peck
Division of Ratepayer Advocates
RM. 4103
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1213
dbp@cpuc.ca.gov

Marcelo Poirier
Legal Division
RM. 5025
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2913
mpo@cpuc.ca.gov

Yuliya Shmidt
Division of Ratepayer Advocates
RM. 4104
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2719
ys2@cpuc.ca.gov

Sean A. Simon
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-3791

***** INFORMATION ONLY *****

Elizabeth Klebaner
Attorney At Law
ADAMS BROADWELL JOSEPH & CARDOZO
601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO CA 94080
(650) 589-1660
eklebaner@adamsbroadwell.com

CALIFORNIA ENERGY MARKETS
425 DIVISADERO STREET, SUITE 303
SAN FRANCISCO CA 94117
(415) 552-1764
cem@newsdata.com

Elizabeth Douglass
1042 N. EL CAMINO REAL, SUITE B-242
ENCINITAS CA 92024
mmac11@yahoo.com

Greggory L. Wheatland
ELLISON SCHNEIDER & HARRIS L.L.P.
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO CA 95816-5905
(916) 447-2166
glw@eslawfirm.com

Christopher T. Ellison
ELLISON, SCHNEIDER & HARRIS, L.L.P.
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO CA 95816-5905
(916) 447-2166
cte@eslawfirm.com
For: Iberdrola Resources Inc.

Steven Kelly
Policy Director
INDEPENDENT ENERGY PRODUCERS
1215 K STREET, SUITE 900
SACRAMENTO CA 95814
(916) 448-9499
steven@iepa.com

David Marcus
PO BOX 1287
BERKELEY CA 94701
(510) 528-0728
dmarcus2@sbcglobal.net

***** SERVICE LIST *****
Last Updated on 18-MAY-2010 by: RC4
A0912002 LIST

svn@cpuc.ca.gov

MRW & ASSOCIATES, LLC
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 834-1999
mrw@mrwassoc.com

Joe Ahn
NORTHROP GRUMMAN
ONE SPACE PARK
REDONDO BEACH CA 90278
(310) 201-3211
joseph.ahn@ngc.com

Diane I. Fellman
NRG WEST
73 DOWNEY STREET
SAN FRANCISCO CA 94117
(415) 665-3824
Diane.Fellman@nrgenergy.com

Case Coordination
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000; MC B9A
SAN FRANCISCO CA 94177
(415) 973-4744
regrelcpuccases@pge.com

Dave Kraska
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B30A
SAN FRANCISCO CA 94105
dtk5@pge.com

George Zahariudakis
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, RM. 904, MC B9A
SAN FRANCISCO CA 94105
(415) 973-2079
GxZ5@pge.com

Lauren Rohde
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO CA 94105
(415) 973-8340
LDRi@pge.com

Lisa K. Lieu
Senior Regulatory Case Manager
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A

Mark W. Zimmermann
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO CA 94105
(415) 973-6515
MWZ1@pge.com

William V. Manheim
Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
POST OFFICE BOX 7442
SAN FRANCISCO CA 94120
(415) 973-6628
wvm3@pge.com
For: Pacific Gas & Electric Company

Hannon Rasool
SAN DIEGO GAS & ELECTRIC
8330 CENTURY PARK CT.
SAN DIEGO CA 92123
(858) 654-1590
HRasool@SempraUtilities.com

Jennifer Wright
SAN DIEGO GAS & ELECTRIC CO.
8330 CENTURY PARK CT
SAN DIEGO CA 92123
(858) 654-1891
JWright@SempraUtilities.com

Despina Niehaus
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32D
SAN DIEGO CA 92123-1530
(858) 654-1714
DNiehaus@SempraUtilities.com

Enrique Gallardo
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVE., 2ND FLOOR
BERKELEY CA 94704
(510) 926-4018
enriqueg@greenlining.org

Samuel S. Kang
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVENUE, 2ND FLR.
BERKELEY CA 94704
(510) 898-0506
samuelk@greenlining.org

***** SERVICE LIST *****
Last Updated on 18-MAY-2010 by: RC4
A0912002 LIST

SAN FRANCISCO CA 94105
(415) 973-4376
LKL1@pge.com

Kevin Woodruff
WOODRUFF EXPERT SERVICES
1100 K STREET, SUITE 204
SACRAMENTO CA 95814
(916) 442-4877
kdw@woodruff-expert-services.com

Andrew Yim
ZIMMER LUCAS PARTNERS
535 MADISON AVE., 6TH FLOOR
NEW YORK NY 10022
(212) 440-0761
Yim@ZimmerLucas.com