

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED
12-03-10
04:59 PM

Application of Pacific Gas and Electric Company for Authority to Increase Electric Rates and Charges to Recover Costs Relating to California Solar Photovoltaic Manufacturing Development Facility. (U39E)

A.10-11-002
(Filed November 1, 2010)

**PROTEST
OF THE DIVISION OF RATEPAYER ADVOCATES**

I. INTRODUCTION

Pursuant to Rule 2.6 of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) hereby files its protest to Pacific Gas & Electric Company's (PG&E) Application for approval to increase electric rates and charges to collect from ratepayers \$35.6 million over 3 years in matching contributions to a for-profit entity, SVTC Technologies (SVTC).¹ PG&E filed its Application on November 1, 2010, and it was calendared on November 3, 2010. DRA's protest is thus timely.

PG&E claims that ratepayer funding is needed as part of a \$98 million grant SVTC is seeking from the U.S. Department of Energy (DOE) to construct a solar photovoltaic (PV) manufacturing development facility (MDF) in San Jose, California.² SVTC expects to be notified of grant approval or rejection by DOE in January 2011.³ PG&E asks the Commission to authorize recovery of \$35.6 million over three-years and

¹ A.10-11-002 at 1, 9.

² *Id.* at 1. DOE Application and DOE Funding Opportunity Announcement DE-FOA-0000259.

³ *Id.* at 4.

find that the proposed revenue requirement for the electric distribution function is just and reasonable.⁴

The project at issue is essentially an assembly line that allows solar photovoltaic (PV) manufacturers to confidentially test and produce solar cells on a fee for service basis, rather than having to develop their own production lines. The key goal of the project appears to be to help build a solar cell manufacturing base in the U.S., rather than allowing such manufacturing to go offshore to countries such as China and Germany.

While the project in and of itself sounds interesting, DRA is concerned with the request to have ratepayers fund the development of a solar cell manufacturing industry. DRA therefore respectfully protests the application.

II. PROTEST

DRA protests the application on the following grounds:

1. PG&E is requesting ratepayer funds as part of DOE funding given to a for-profit entity that will assist businesses seeking to develop new solar cell components. However, a solar manufacturing line – however valuable to the U.S. economy – is outside the bounds of PG&E's normal business of electricity distribution. PG&E has not made a showing of why it is appropriate or necessary for ratepayers to fund a private venture.
2. Ratepayers are being asked to absorb the risks of a for-profit venture, on behalf of their incumbent utility without any guarantee of benefits. The amount of money PG&E proposes to return to ratepayers is unspecified and the details of that return are unclear. There is also no guarantee, security or bond requirement that ensures ratepayers do not lose their entire investment.
3. Any benefits achieved from the project would seem to be societal benefits, whose value to ratepayers are difficult to define or measure.
4. Granting ratepayer funding to subsidize the U.S.'s attempt to keep manufacturing from going offshore could be a slippery slope to millions or billions of additional similar funding requests. PG&E ratepayers should not bear this expense alone.
5. The Application does not disclose whether PG&E considered having its shareholders fund the project. PG&E likewise does not make any showing

⁴ *Id.* at 16.

of why PG&E's parent company, PG&E Corporation, or PG&E's shareholders cannot, or will not, provide the investment capital.

6. The project is speculative and too uncertain to justify ratepayer funding. There is substantial risk that ratepayers will gain nothing from their investment. While the Application states that if the project is unsuccessful, PG&E's customers "would receive appropriate credit back for the tax benefits accruing from the loss,"⁵ the amount of this credit is not known and is inadequate.
7. PG&E's proposal to book the revenue requirements to its Distribution Revenue Adjustment Mechanism (DRAM) balancing account (Application, p. 9) is unjustified, since manufacturing of solar panels is unrelated to PG&E's activities as an electric distribution utility.
8. PG&E's cost recovery mechanism is unclear.
9. The project does not qualify as Research and Development allowable in PG&E's General Rate Case since SVTC's project may already be a going concern.⁶
10. PG&E has not adequately demonstrated the need for its ratepayers to make the requested investment. The application does not reveal other sources of funding SVTC pursued, such as venture capital (VC) funding, or whether VC funding is available for the project with reasonable diligence.
11. PG&E has not demonstrated that it has adequate experience with a solar manufacturing line to ensure it can adequately protect the ratepayers' investment.
12. PG&E has not adequately described the sources and likelihood of risks that ratepayers bear under the proposal, or changes in assumptions that could result in a failure to generate the revenues required for ratepayers to receive a return of and on their investment within five years.
13. PG&E has not demonstrated that the risks that the ratepayers will bear are proportionate to the benefits they will receive.
14. It is unclear what benefits PG&E shareholders will receive from the project, while bearing none of the risk.

⁵ *Id.* at 4.

⁶ A March 2010 study from the DOE's National Renewable Energy Laboratory (NREL), lists SVTC as a going concern. See <http://www.nrel.gov/docs/fy10osti/47866.pdf>, at 6 (listing SVTC as an existing for-profit solar manufacturing and testing facilities consortium).

15. PG&E does not demonstrate the due diligence it exercised to ensure that SVTC's project is a good ratepayer investment, including inquiries into:
 - The skills and experience of SVTC principals and staff;
 - Any history of civil or criminal lawsuits, regulatory enforcement, bankruptcy, or other similar action involving SVTC or its principals/staff. To this end, DRA proposes the Commission require SVTC, at a minimum, to provide background information along the lines of that it requests of new entities seeking to do business in California. The Commission's telecommunications registration form, at http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/123009-11.htm#P335_98816 (Attachment A), or its Electric Service Provider form, at ftp://ftp.cpuc.ca.gov/gopher-data/elec_restruct/esp/ESP%20RegApDec2003AB117_322841.doc, are instructive on this issue;
 - SVTC's financial resources and history.
16. The project may pose conflicts of interest issues related to:
 - Service by PG&E employees or directors on SVTC's board or the boards of related companies;
 - Affiliate transactions with PG&E Corporation subsidiaries “formed to own and manage solar photovoltaic projects with host customers in a variety of states.”⁷

III. CATEGORIZATION AND PROPOSED SCHEDULE

DRA agrees with PG&E's proposed categorization of this proceeding as ratesetting. However, DRA believes – in contrast to PG&E – that evidentiary hearings may be necessary to resolve the issues that are raised by the Application. Therefore, DRA requests that a prehearing conference be held to establish a schedule for this proceeding.

DRA also has concerns regarding the highly expedited schedule proposed by PG&E, which contemplates a final decision by March, 2011, just *four months* from the filing of the application. DRA representatives met with PG&E and SVTC representatives on November 19, 2010 to obtain more information about the proposed project, and DRA

⁷ See, e.g., Sequoia Pacific Solar I, LLC and SunRun Pacific Solar, LLC, at <http://www.pge.com/about/rates/affiliate>.

intends to serve discovery forthwith on a number of questions DRA has about the project. DRA is also reviewing SVTC's confidential DOE Application to obtain further information. However, DRA anticipates the need for a period of time to conduct discovery on this unique project.

The investment in a solar incubator is the first of its kind proposed at the Commission and warrants close scrutiny, especially given that PG&E is proposing to invest at ratepayer expense and risk in a for-profit business that is not regulated by the Commission and is entirely unknown to it. Therefore, DRA recommends that the Commission adopt the following 12-month schedule. DRA starts the proceeding after the January 2011 deadline for SVTC to hear from DOE about its application for funding, since it does not make sense for the parties to invest significant resources in the proceeding if DOE rejects the other funding:

Event	Date
Prehearing Conference	February 2010
Discovery	December 2010 – June 2011
Opening intervenor testimony	July 2011
Concurrent rebuttal testimony	September 2011
Evidentiary hearings (if required)	October 2011
Opening Briefs	November 2011
Reply Briefs	December 2011

IV. CONCLUSION

For the reasons stated above, DRA recommends that the Commission further investigate several aspects of PG&E's Application. DRA will conduct discovery to develop its testimony and recommendations. Hearings may be required and a schedule should be established at the prehearing conference that allows for a thorough review of the application. Since DRA has not commenced discovery or filed its report, it reserves the right to assert any issue discovered after this Protest has been filed. Additionally,

DRA recommends that its proposed schedule for this proceeding be adopted by the Commission.

Respectfully submitted,

/s/ SARAH THOMAS

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December 3, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES**” to the official service list in **A.10-11-002** by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **December 3, 2010** at San Francisco, California.

/s/ NELLY SARMIENTO

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