

Decision **PROPOSED DECISION OF ALJ LONG** (Mailed 1/30/2007)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company  
for Recovery of Generation Feasibility Study  
Costs Associated With The Evaluation Of Wind-  
Generated and Other Renewable Electric Power  
In British Columbia.

(U 39 E)

Application 06-08-011  
(Filed August 9, 2006)

**FINAL OPINION AUTHORIZING PACIFIC GAS AND ELECTRIC COMPANY  
TO PERFORM A FEASIBILITY STUDY OF WIND-GENERATED AND OTHER  
RENEWABLE ELECTRIC POWER IN BRITISH COLUMBIA****I. Summary**

This decision grants Pacific Gas and Electric Company (PG&E) authority to record up to \$14 million in costs for external consultants to prepare a study to evaluate the feasibility of obtaining wind-generated and other renewable electric power from various regions in British Columbia, Canada (BC Renewable Study). The decision modifies and then approves the general scope of the study while deferring to PG&E the responsibility to prudently manage and direct the detailed feasibility analysis. PG&E will record the study costs in a new BC Renewable Study Balancing Account and may seek recovery of the costs in this account when it also recovers its Utility Generation Balancing Account as a part of the Annual Electric True-Up. Finally, this decision rejects the counter-proposals of interested parties to specifically require PG&E to award a portion of the study

funding to Pacific Power Partnership (P3), or to deny or limit PG&E's authority to study renewable resource options beyond California and contiguous states.

## **II. Request**

PG&E requests authority to recover its potential external costs for the BC Renewable Study. PG&E requests authority to recover up to \$14 million for external consultants. According to PG&E, the utility needs third party sources to perform the BC Renewable Study because PG&E lacks the internal expertise to address the legal, regulatory, and technical issues associated with a project of this scope and location. (Opening Brief, p. 12.) PG&E states that this request is necessary as a part of its overall effort to fulfill its Renewable Portfolio Standards (RPS) requirements. PG&E proposes to record up to \$14 million in its Utility Generation Balancing Account recovered in rates each year as a part of PG&E's supplemental Annual Electric True-Up advice letter.

## **III. Procedural History**

Notice of the application appeared in the Commission's Daily Calendar on August 14, 2006. The Commission preliminarily categorized it as ratesetting in Resolution ALJ 176-3177, dated August 24, 2006 and also determined that hearings were not necessary. The November 13, 2006 scoping memo confirmed the categorization as ratesetting, and that hearings were not required.

The Division of Ratepayer Advocates (DRA), P3, and Californians for Renewable Energy (CARE), filed timely protests on October 6, 2006. PG&E replied timely on October 16, 2006. PG&E included in the reply an extensive study by Energy & Environmental Economics, Inc., dated August 8, 2006. These protests, and this new material provided by PG&E, raised several significant questions, which warranted a prehearing conference prior to the assigned Commissioner issuing a scoping memo pursuant to Rule 7.3. The prehearing

conference was held on October 31, 2006. PG&E, DRA, P3, CARE, and Sea Breeze Pacific Regional Transmission System, Inc., (Sea Breeze) served timely prehearing conference statements.

On December 8, 2006, PG&E, Center for Energy Efficiency and Renewable Technologies (CEERT), DRA, P3, and The Utility Reform Network (TURN) filed timely opening briefs. DRA also filed a timely Request for Official Notice of various publications on December 6, 2006, as allowed by the assigned Administrative Law Judge (ALJ). (Rule 13.9.) No party objected; therefore, we will take official notice of those portions of the publications cited by DRA in its briefs. On December 22, 2006, PG&E, CEERT, DRA, Katabatic Power Corporation (Katabatic), P3, and TURN filed timely reply briefs.

#### **IV. Scope and Issues**

The purpose of this proceeding is to establish whether it is reasonable to authorize funding of the proposed BC Renewable Study and, if so, appropriate ratemaking mechanisms for the recovery of the study's reasonable costs. The assigned Commissioner's scoping memo adopted the following scope:

1. Whether it is reasonable to authorize PG&E to recover BC Renewable Study costs for external consultants, up to \$14 million, to study the feasibility of obtaining electric power from renewable resources from sites in British Columbia and transmitting that power to PG&E's service area.
2. Whether it is reasonable to authorize PG&E to record BC Renewable Study costs in the Utility Generation Balancing Account, and subsequent recovery, as proposed by PG&E.
3. Whether the scope of the BC Renewable Study, as described by PG&E, is sufficient to derive useful and reliable information to inform subsequent requests by PG&E for

authority to enter into cost effective commercial-scale transactions to procure and transmit electric power from renewable resources from sites in British Columbia; whether the study thoroughly examines the impact of recent legislation, including Senate Bill (SB) 107, SB 1368, and [Assembly Bill] AB 32, on the eligibility and cost of British Columbian renewable resources?<sup>1</sup> If not, whether further specific guidance to PG&E is appropriate to expand or clarify the scope of the study.

Specifically excluded from this proceeding is any request for authorization of pilot or test transactions for British Columbian renewable energy, which would be a separate request, subject to “the Commission-approved processes for getting contract approvals.” (PHC transcript, pp. 5 - 6.)

## **V. Standard of Review**

PG&E bears the burden of proof to show that the rates it requests are just and reasonable and the related ratemaking mechanisms are fair.

## **VI. Likely Renewable Resources in British Columbia**

### **A. Position of Parties**

PG&E argues that it has shown there are likely resources in British Columbia that may be feasible and economically viable sources of renewable energy which justify a study. PG&E urges the Commission to find the preliminary study by Energy & Environmental Economics, Inc.<sup>2</sup> to be persuasive: that there is significant resource potential to justify an in-depth feasibility study.

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<sup>1</sup> SB 107 (2006 Legislative Session (Chapter 464)); SB 1368 (2006 Legislative Session (Chapter 598)); AB 32 (2006 Legislative Session, Chapter (Ch.) 488.

<sup>2</sup> Attachment A to PG&E’s October 16, 2006 Reply to Protests.

Katabatic and P3 are both renewable resource developers, and both support a BC Renewable Study.

TURN suggests that it is reasonable to study the possibility of constructing transmission to deliver renewable electricity from British Columbia into California. TURN also believes, however, that PG&E should continue to focus on in-state resources for near-term RPS procurement, even if there are resource options in British Columbia that may eventually be economically favorable when compared to in-state alternatives. TURN notes the potential benefits associated with creating “structural linkages between two electric systems which have complementary seasonal supply and demand profiles.” (Opening Brief, p. 1.) TURN cites to PG&E’s supplemental information that discusses these potential benefits.<sup>3</sup> TURN proposes several conditions or modifications:

- a. No internal PG&E costs should be recovered from this application,
- b. The focus of the studies should be transmission costs and hurdles to the development of alternative routes which allow delivery of energy into California,
- c. Transmission studies should consider the costs and benefits of various ownership alternatives and regulatory arrangements,

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<sup>3</sup> British Columbia – California Partnership for Renewable Energy Development Concept Paper, Prepared by Energy and Environmental Economics, August 8, 2006, page 17. (PG&E’s October 16, 2006 reply to protests.)

- d. The studies should not include or repeat generic resource studies of British Columbian renewable energy potential or possible British Columbia - California transmission paths,
- e. Any pilot project should be focused on developing a standard firming service offered by BC Hydro, and,
- f. The Commission should be separately approve Phase 2.

TURN proposes for Phase 2 “PG&E should demonstrate that renewable resource options in [British Columbia] are competitive with, or superior to, resources likely to be available in [California] (or the [North West]) from renewables during the same timeframe.” (Opening Brief, p. 8.)

CEERT strongly opposes the proposed study, and it provided a summary of its recommendations in its opening brief:

- The Commission should find that PG&E has failed to meet its burden of proving, either in fact or law, that the relief it has requested in A.06-08-011, including the expenditure of \$14 million for its proposed [BC] Renewable Study, is justified and reasonable.
- The Commission should summarily deny A.06-08-011.
- The Commission should direct PG&E to include any plans it has for achieving the [Energy Action Plan II] goal of 33% renewables procurement by 2020 in its Long-Term Procurement Plan, as directed and noticed by the Commission in R.06-02-013. (Opening Brief, p. iii.)

CEERT identifies itself as in favor of increased reliance on energy efficiency and renewable generation to meet California’s energy needs and as dedicated “to advocating for implementation strategies that will enhance the procurement process and provide needed transmission infrastructure to access to

known, renewables-rich resource areas in California.” CEERT further describes this application as “piecemeal” and “maverick,” and argues the proposed study is not integrated with existing proceedings. (Opening Brief, pp. 1 - 2.)

DRA also argues that PG&E has not met its burden of proof. (Opening Brief, pp. 1 - 3.) Primarily, DRA is concerned that PG&E presents the BC Renewable Study as a means to meet - in part - the goal to provide 33% of statewide electric power through renewable energy by 2020.

### **1. Discussion**

We find sufficient merit in PG&E’s request to grant, as modified herein, the authority to record up to \$14 million in costs for external consultants to prepare a study to evaluate the feasibility of obtaining wind-generated and other renewable electric power from various regions in BC. PG&E has demonstrated there are potentially viable renewable resources to justify the study. However, we adopt some of the parties’ suggestions, modifying the study, as a part of our approval.

We agree with all but one of TURN’s suggestions. PG&E clarified it does not seek recovery of internal costs, only its consultant costs;<sup>4</sup> therefore, we will adopt as a restriction that PG&E shall not recover any internal costs. We also strongly agree that this study should not be another broad-brush generic study. We therefore, direct PG&E to focus as much as possible on developable resources and practical questions of transmission and ownership.

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<sup>4</sup> “... we are asking to be authorized to recover the costs of external consultants, up to \$14 million, to study the feasibility of obtaining electric power from renewable resources from sites in British Columbia, and transmitting that power to PG&E’s service area ...” (TR. p. 5.)

As discussed elsewhere, we do not pre-approve cost recovery, and therefore PG&E will have both the obligation and discretion to terminate Phase 2 if it believes the Phase 1 results do not warrant the further effort. Terminating the study does not prejudice the reasonableness of Phase 1 costs. PG&E should not move forward with BC renewable resources unless they are competitive with, or superior to, other available resources. We also otherwise adopt these suggestions by TURN:

1. Transmission studies should consider the costs and benefits of various ownership alternatives and regulatory arrangements, and
2. Any pilot project should include the development of a standard firming service.

We do not adopt TURN's final suggestion: we will not bifurcate the study's approval and separately approve Phase 2. We expect PG&E to exercise prudent judgment on whether to proceed with Phase 2, predicated on Phase 1 results. This is consistent with allowing PG&E discretion to manage the detailed study.

Although we give PG&E the discretion to manage the study and respond as necessary to study conditions and findings, we believe that the Commission should receive quarterly program reports. PG&E should not disclose confidential data that may hinder potential contracts or project development. PG&E should also provide an explanation at the conclusion of Phase 1 to explain its decision to either pursue Phase 2 or terminate the study. PG&E shall provide this report to the Commission's Energy Division and DRA.

We note for PG&E that we find the possibility of potential mutual benefits for British Columbia and California to be an interesting and worthwhile question that should be address within the study.

P3 proposes that the Commission direct PG&E to allow P3 to conduct a majority of the Phase 1 study. Katabatic does not support funding P3's participation in the study. (Reply Brief, pp. 3 - 4.) PG&E argues that if we fund P3, it would circumvent PG&E's process to review and propose projects that it believes to be beneficial.<sup>5</sup> Adopting P3's proposal would violate our renewable procurement process by predetermining, or at least providing a unique advantage, to one potential renewable vendor. We expect PG&E to follow best practices in identifying and engaging independent competent consultants at a reasonable cost.<sup>6</sup>

Although CEERT has concerns that this application proposes to study resources not currently included in the scope of either our resource planning or renewable proceedings, we will not summarily deny the application on this basis. PG&E has justified pursuing the study by showing that there are potential resources in British Columbia that may be beneficial.

We find that this study is justified, as modified, because of potential significant future benefits. But we are also unwilling to defer or distract

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<sup>5</sup> In general, developers can be expected to conduct detailed studies for specific projects. However, it is also necessary for PG&E to conduct its own resource assessments that can be used as a basis for determining the desired resource mix, for accurately targeting requests for proposals (RFPs), for independently evaluating developer bids, and as an input to system integration and transmission operation calculations. (PG&E Opening Brief, p. 8.)

<sup>6</sup> TR. pp. 35 - 36.

attention from our current integrated procedures striving to achieve our goals for renewable energy. Therefore, we will direct that no party, including PG&E, should rely on, or cite to this study as a viable resource option, or use it as a justification to defer or distract our pursuit of economic and viable renewable resources in our other forums, until such time as PG&E has a viable British Columbia renewable proposal (in the form of a project or contract) to propose in a timely fashion under the then current regulatory regime for renewable energy and procurement generally. Thus, the adopted BC Renewable Study is entirely supplemental and does not otherwise affect our existing renewable resource procurement processes. This study embodies no specific projects for consideration in resource planning or renewable procurement to vie with existing proposals.

We find that PG&E has made a persuasive showing that there are likely resources in British Columbia that there may be feasible and economically viable sources of renewable energy. Therefore, we find that PG&E met its burden of proof and persuasion for the Commission to authorize the BC Renewable Study, as modified, herein.

## **VII. Cost Recovery**

PG&E proposes to record up to \$14 million in its Utility Generation Balancing Account recovered in rates each year as a part of PG&E's supplemental Annual Electric True-Up advice letter. In effect, this would require the Commission to pre-approve the cost estimate as reasonable and allow for its automatic recovery in retail rates. We must decide whether to pre-approve the proposed costs for the BC Renewable Study as reasonable or only to grant permission to perform the study where the costs are subject to review before recovery. PG&E has not provided a sufficiently detailed study plan or

consultant selection process to allow the Commission to adopt or modify a specific study. PG&E argues it is competent to manage the details.<sup>7</sup>

Cost recovery should therefore be predicated on PG&E prudently managing and conducting the study regardless of study results: a good study may or may not find viable British Columbian renewable resources. Pursuit of Phase 2 should, at PG&E's discretion, be predicated on favorable Phase 1 results.

PG&E should record the study costs in a new BC Renewable Study Balancing Account. We agree, however, that PG&E should be allowed to file for recovery of the BC Renewable Study Balancing Account as a part of its Annual Electric True-Up when it recovers its existing Utility Generation Balancing Account. PG&E correctly noted in its comments that the Annual Electric True-Up may be audited.<sup>8</sup> This result is a reasonable exchange for allowing PG&E broad discretion to exercise its expertise in managing the study.

### **VIII. Legislative Impacts**

The scope of this proceeding includes whether the proposed study thoroughly examines the impact of recent legislation, including SB 107, SB 1368,

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<sup>7</sup> "PG&E respectfully submits that it is competent to carry out this study; that while \$14 million is a real amount of money that we don't treat or expend lightly, ... the better approach would be to begin the feasibility studies and allow PG&E to begin those without further analysis." (TR. pp. 7 - 8.)

<sup>8</sup> "Under PG&E's proposal there remains the opportunity for the Commission to review the recorded costs associated with this study. There is an audit associated with the [Annual Energy True-Up], through which the Commission will be able to ensure that all of the costs recorded in the [Utility Generation Balancing Account] associated with the study are indeed costs authorized by the Commission for recovery. Therefore, under PG&E's proposal coupled with the [Annual Energy True-Up] audit the Commission will be able to ensure, to its own satisfaction, that only costs authorized for recovery are actually recovered from ratepayers." (Comments, p. 3.)

and AB 32, on the eligibility and cost of British Columbian renewable resources. PG&E asserts that there are no adverse impacts. PG&E argues that SB 107 expressly contemplates the consumption in California of power generated from renewable sources located outside of the United States. PG&E expects any transactions will meet the RPS. PG&E also believes that any transactions will be beneficial in reducing greenhouse gases, thus satisfying SB 1368, and AB 32. (PG&E Opening Brief, pp. 17 - 18.)

Nothing in SB 107, SB 1368, or AB 32 prevents us from authorizing the BC Renewable Study, as modified herein. If any transactions or project investments result from the study, PG&E must meet the then-applicable RPS eligibility criteria<sup>9</sup> and conform to existing law.

#### **IX. California Environmental Quality Act**

Under the California Environmental Quality Act (CEQA), Pub. Resources Code § 21000 *et seq.* (2006), and Rule 2.4,<sup>10</sup> we must consider the environmental consequences of projects that are subject to our discretionary approval.<sup>11</sup> Thus, in deciding whether to approve this application, we must consider if doing so will alter an approved project, result in new projects, change operations, etc., in ways that have an environmental impact.

PG&E did not request construction authority in this application for specific capital expenditures. In fact, by seeking expeditious *ex parte* authority for

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<sup>9</sup> The current criteria: CEC-300-2006-007-F (April 2006).  
<http://www.energy.ca.gov/2006publications/CEC-300-2006-007/CEC-300-2006-007-F.PDF>

<sup>10</sup> Formerly Rule 17.1.

<sup>11</sup> Pub. Resources Code Section 21080.

approval, there is neither time nor notice for a request of regulatory authority on specific projects. There is a specific CEQA guidelines exemption for studies that only address feasibility and planning: CEQA Guideline 15262. (Feasibility and Planning Studies)<sup>12</sup>:

A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or Negative Declaration but does require consideration of environmental factors. This section does not apply to the adoption of a plan that will have a legally binding effect on later activities.

This CEQA guideline includes a discussion that clarifies “[t]hese studies must still include consideration of environmental factors.” Therefore, we will direct PG&E to expand the scope of the study to encompass relevant environmental factors. The discussion of CEQA Guideline 15262 further cautions that any authority granted herein to conduct the BC Renewable Study would invoke CEQA if it would “have a legally binding effect on later activities.” We specifically find that the authority granted herein to PG&E excludes any presumption of a commitment to future actions or further authority absent a new application for a discretionary decision that is fully compliant with CEQA.

We conclude that it is premature to conduct a CEQA review on a feasibility study where projects may not materialize that requires discretionary

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<sup>12</sup> [http://ceres.ca.gov/topic/env\\_law/ceqa/guidelines/art18.html](http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art18.html). Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21102 and 21150, Public Resources Code.

permitting authority.<sup>13</sup> If PG&E pursues any project based on the results of the authorized study it must comply with the state and federal environmental laws of the United States and Canada, including the previously noted Pub. Resources Code § 25741.

## **X. Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and Rule 14.2(a) of the Commission's Rules of Practice and Procedure (Rules). Comments were filed by CARE, CEERT, P3, and PG&E. Replies were filed by CARE and PG&E. Changes were made to the proposed decision so that PG&E may now recover its reasonable costs of the British Columbia Renewable Study as part of its Annual Electric True-up, instead of through a separate reasonableness review as proposed in the proposed decision. Changes were also made to the proposed decision to improve the flow of discussion and correct typographical errors.

## **XI. Assignment of the Proceedings**

Michael R. Peevey is the assigned Commissioner and Douglas M. Long is the assigned ALJ.

## **Findings of Fact**

1. There are potentially viable British Columbia renewable resources that may be available for PG&E to develop or acquire.

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<sup>13</sup> "Discretionary Action. CEQA applies in situations where a governmental agency can use its judgment in deciding whether and how to carry out or approve a project. A project subject to such judgmental controls is called a "discretionary project." (See: Section 15357.)" CEQA Guideline 15002 General Concepts, (i). [http://ceres.ca.gov/topic/env\\_law/ceqa/guidelines/art1.html](http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art1.html).

2. The cost for a feasibility study on renewable resources from British Columbia is not within PG&E's existing funding to procure renewable resources and is incremental to potential in-state renewable resources currently subject to review and consideration in other proceedings.

3. The adopted BC Renewable Study, as modified, is entirely supplemental and does not otherwise affect the existing renewable resource procurement processes.

4. Many of the modifications proposed by TURN enhance the overall scope of the study.

5. PG&E has the management expertise to direct the detailed work of consultants without pre-approval of a full and complete work plan by the Commission. Cost recovery can be reviewed as a part of PG&E's Annual Energy True-Up.

6. Awarding a portion of the study to P3 would give it an unfair and unnecessary advantage compared to other developers or consultants.

### **Conclusions of Law**

1. PG&E met its burden of proof to proceed with the BC Renewable Study as modified and adopted herein.

2. It is reasonable to authorize PG&E authority to record up to \$14 million for external consultants to prepare a BC Renewable Study, as modified.

3. No party, including PG&E, should rely or cite to this study as a viable resource option, or use it as a justification to defer or distract our pursuit of economic and viable renewable resources in our other forums, until such time as PG&E has a viable British Columbia renewable proposal (in the form of a project or contract) to propose in a timely fashion under the then current regulatory regime for renewable energy and procurement generally.

4. A BC Renewable Study Balancing Account will allow PG&E an opportunity to seek recovery of the BC Renewable Study as a part of its Annual Energy True-Up.

5. The BC Renewable Study is not a project subject to CEQA pursuant to CEQA Guideline 15262, Feasibility and Planning Studies, because the authorization to conduct the study will not have a legally binding effect on later activities.

6. Any transactions or project investments that result from the study meet the then-applicable RPS eligibility criteria and conform to existing law, including Pub. Resources Code § 25741.

7. A.06-08-011 should be closed.

### **FINAL ORDER**

**IT IS ORDERED** that:

1. Pacific Gas and Electric Company (PG&E) is authorized to spend up to \$14 million for external consultants to prepare a renewable study, as modified, to evaluate the feasibility of obtaining wind generated and other renewable electric power from various regions in British Columbia, Canada (BC Renewable Study).

2. PG&E shall ensure that the BC Renewable Study:

- a. addresses transmission costs and hurdles to the development of alternative routes which allow delivery of energy into California,
- b. considers the costs and benefits of various ownership alternatives and regulatory arrangements,

- c. does not include or repeat generic resource studies of British Columbian renewable energy potential or possible British Columbia - California transmission paths,
  - d. develops a standard firming service,
  - e. addresses potential mutual benefits for British Columbia and California, and
  - f. considers environmental factors consistent with California Environmental Quality Act Guideline 15262.
3. PG&E shall record the study costs in a new BC Renewable Study Balancing Account and may seek recovery of the costs in a subsequent Annual Energy True-Up filing.
  4. PG&E shall submit quarterly reports for Phase 1, and upon completion of Phase 1 provide an explanation of the decision to continue with Phase 2 or discontinue the BC Renewable Study. These reports shall be submitted to the Commission's Energy Division and to the Division of Ratepayer Advocates.
  5. PG&E shall continue to vigorously pursue all pending and future resource procurement and renewable resource-related activities without regard to the BC Renewable Study.
  6. PG&E shall file a separate application for authority to pursue any transaction or project derived from the BC Renewable Study, consistent with all then-applicable requirements.
  7. Within 10 days of the effective date of this decision, PG&E shall file a compliance advice letter with the Commission's Energy Division, which shall describe how PG&E will implement the new BC Renewable Study Balancing Account, subject to Energy Division determining that the revised tariffs are in

compliance with this order. The compliance advice letter shall be served on the service list for this proceeding.

8. Application 06-08-011 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.