

Decision 11-07-012 July 14, 2011

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company for Approval of Agreements Related to the Novation of the California Department of Water Resources Agreement with GWF Energy LLC, Power Purchase Agreement with GWF Energy II LLC, and Associated Cost Recovery (U39E).

Application 09-10-022  
(Filed October 16, 2009)

And Related Matter.

Application 09-10-034

**DECISION DENYING PETITION TO MODIFY DECISION 10-07-042**

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**DECISION DENYING PETITION TO MODIFY DECISION 10-07-042****1. Summary**

This decision denies the petition to modify Decision 10-07-042 wherein CALifornians for Renewable Energy seeks to rescind Pacific Gas and Electric Company's authority to procure 254 megawatts of new generation capacity from the Tracy Project and the Los Esteros Critical Energy Facility Project.

**2. Regulatory and Procedural Background**

Pacific Gas and Electric Company (PG&E) was authorized by Decision (D.) 07-12-052 to procure 800 to 1,200 megawatts (MW) of new generation capacity by 2015. This was later increased to 1,112-1,512 MW to adjust for projects that failed after D.07-12-052 was issued.<sup>1</sup> To obtain the new capacity by 2015, PG&E held a competitive solicitation and signed five contracts for 1,743 MW of new capacity from gas-fired combustion turbines. These five contracts are summarized below:

<b>Application</b>	<b>Project Name</b>	<b>New Capacity (MW)</b>	<b>Project Ranking</b>	<b>Decision</b>
A.09-10-017	Mariposa	184	First Rank	D.09-10-017
A.09-09-021	March Landing	719	First Rank	D.10-07-045
A.09-09-021	Oakley	586	First Rank	D.10-07-045 D.10-12-050
A.09-10-022	Tracy	145	Second Rank	D.10-07-042
A.09-10-034	Los Esteros Critical Energy Facility (LECEF)	109	Second Rank	D.10-07-042
<b>Total (MW)</b>		<b>1,743</b>		

<sup>1</sup> D.07-12-052 at 300, Ordering Paragraph 4, and D.10-07-042 at 17.

As shown in the above table, there were three contracts in the first rank with a total of 1,489 MW of new capacity (i.e., the Mariposa, Marsh Landing, and Oakley Projects), and two contracts in the second rank with a total of 254 MW of new capacity (i.e., the Tracy and LECEF Projects).

In D.10-07-042, the Commission determined that PG&E sought approval of more new capacity through 2015 than authorized by D.07-12-052. Therefore, D.10-07-042 granted PG&E permission to proceed with the second-ranked Tracy Project and LECEF Project only if future circumstances created an unfilled need for the new capacity authorized by D.07-12-052. Of relevance to today's decision, D.10-07-042 directed PG&E to proceed immediately with both the Tracy Project and the LECEF Project by filing a Tier 1 compliance advice letter if the first-ranked Oakley Project were rejected by the Commission.<sup>2</sup>

The Commission rejected the Oakley Project in D.10-07-045.<sup>3</sup> Therefore, as required by D.10-07-042, PG&E filed Advice Letter 3711-E on August 4, 2010, to proceed immediately with the Tracy Project and the LECEF Project. The Tier 1 advice letter was approved by the Energy Division on September 1, 2010.

Meanwhile, on August 23, 2010, PG&E filed a petition to modify D.10-07-045 in which PG&E requested approval of the Oakley Project with a new

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<sup>2</sup> D.10-07-042, Ordering Paragraph (OP) 2.

<sup>3</sup> D.10-07-045 at 55, OP 3. D.10-07-045 also approved the March Landing Project and lowered PG&E's authorized new capacity from 800-1,200 MW to 950-1,000 MW, plus 312 MW to replace failed projects (D.10-07-045 at 4-5, 33, 40-41, 42, 52 (Finding of Fact 12), 53 (Conclusion of Law 3), and 55 (OP 5)).

online date of 2016. The original on-line date was 2014. The Commission approved the Oakley Project in D.10-12-050, for the period 2016 and beyond.<sup>4</sup>

On January 17, 2011, CALifornians for Renewable Energy (CARE) filed a petition to modify D.10-07-042 pursuant to Rule 16.4 of the Commission's Rules of Practice and Procedures. On February 17, 2011, a joint response to the petition was filed by PG&E, Calpine Corporation, and GWF Energy LLC (GWF)<sup>5</sup> (collectively, "the Joint Parties").

### **3. Summary of CARE's Petition to Modify D.10-07-042**

CARE notes that D.10-07-042 authorized PG&E to file a compliance advice letter for approval of the Tracy Project and the LECEF Project if the Commission rejected the Oakley Project. Although the Commission initially rejected the Oakley Project in D.10-07-045, the Commission later approved the Oakley Project in D.10-12-050, but changed the online date from 2014 to 2016. CARE reasons that because the Oakley Project has been approved, PG&E does not have authority under D.10-07-042 to file a compliance advice letter. Nevertheless, prior to D.10-12-050, PG&E did file Advice Letter 3711-E for approval of the Tracy and LECEF Projects, and the Advice Letter was accepted by the Energy Division. CARE asks the Commission to rescind its approval of the Tracy and LECEF Projects.

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<sup>4</sup> D.10-12-050 denied PG&E's petition to modify D.10-07-045, but treated, sua sponte, the petition as an application and approved the Oakley Project for the period of 2016 and beyond. In D.11-05-049, the Commission modified D.10-12-050 and denied rehearing of D.10-12-050, as modified. Several typographical and clerical errors in D.11-05-049 were corrected by D.11-06-003.

<sup>5</sup> Calpine Corporation owns the LECEF Project. GWF owns the Tracy Project.

#### **4. Summary of the Joint Parties' Response**

The Joint Parties oppose CARE's petition to modify D.10-07-042. They submit that when the Commission approved the Oakley Project in D.10-12-050, the Commission was fully aware that PG&E had filed a Tier 1 compliance advice letter for approval of the Tracy and LECEF Projects, and that the advice letter had been accepted by the Energy Division. As a result, the Oakley Project was approved by the Commission with the knowledge that the Tracy and LECEF Projects were moving forward.

#### **5. Discussion**

The central issue raised by CARE's petition is whether we should order PG&E to cancel the Tracy and LECEF Projects. This issue can be resolved by reviewing D.10-07-042 and D.10-12-050. In D.10-07-042, the Commission held that PG&E should not contract for more new capacity than authorized by D.07-12-052. As summarized previously, PG&E is authorized by D.07-12-052 to procure 1,112-1,512 MW of new capacity through 2015. To ensure that PG&E did not procure more capacity than authorized by D.07-12-052, the Commission in D.10-07-042 determined that PG&E should not proceed with both (1) the Tracy and LECEF Projects, and (2) the Oakley Project, as proceeding with all of these projects would result in more new capacity than authorized by D.07-12-052.

In D.10-12-050, the Commission approved the Oakley Project. Importantly, the new capacity approved by D.10-12-050 will not come online until 2016, which is after the 2015 timeframe for the new capacity authorized by D.07-12-052. Consequently, the Commission's approval of the Oakley Project, in

addition to the Tracy and LECEF Projects, does not cause PG&E to exceed the new capacity authorized by D.07-12-052.<sup>6</sup>

For the preceding reasons, we conclude that there is no need to order PG&E to cancel the Tracy Project and the LECEF Project. Therefore, we decline to grant CARE's petition to modify D.10-07-042.

In its comments on the proposed decision, CARE asserts that today's decision is flawed in two respects. First, CARE alleges that today's decision is inconsistent with dicta in D.10-12-050 regarding the amount of new capacity authorized by D.07-12-052.<sup>7</sup> However, the dicta cited by CARE was either deleted or modified significantly by D.11-05-049.<sup>8</sup> Today's decision is fully consistent with D.10-12-050, as modified by D.11-05-049.

Second, CARE asserts that today's decision is inconsistent with Finding of Fact 10 in D.10-07-042, which states that the cost of the Tracy and LECEF Projects "would become reasonable if a fossil project authorized by the Commission fails or the Commission rejects the proposed Marsh Landing Project and/or Oakley Project... as PG&E will not have any cheaper alternatives available at that time from a competitive procurement process to fill the need for new capacity authorized by D.07-12-052." CARE states that because none of these events have occurred, the cost of the Tracy and LECEF Projects is not reasonable.<sup>9</sup>

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<sup>6</sup> D.10-07-045 reduced PG&E's authorized new capacity to 1,262 – 1,312 MW through 2015. PG&E's approved projects do not exceed this limit.

<sup>7</sup> CARE's comments on the proposed decision at 4 – 5.

<sup>8</sup> D.11-05-049 at 13 and Ordering Paragraphs 1.a and 1.b.

<sup>9</sup> CARE's comments on the proposed decision at 5.

CARE overlooks the fact that when D.10-07-042 was issued, the Oakley Project proposed by PG&E at that time was supposed to come online by 2015, which was within the 2015 timeframe for new capacity authorized by D.07-12-052. In contrast, the Oakley Project approved by D.10-12-050 will not come online until 2016, which is after the 2015 timeframe for the new capacity authorized by D.07-12-052. Therefore, as contemplated by Finding of Fact 10 of D.10-07-042, the Tracy Project and the LECEF Project are now the least expensive alternatives available to PG&E from a competitive procurement process to fill the need for new capacity authorized by D.07-12-052.

## **6. Comments on the Proposed Decision**

The proposed decision of the assigned Administrative Law Judge for this proceeding was mailed to the parties in accordance with Pub. Util. Code § 311, and comments were allowed in accordance with Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on July 5, 2011, by CARE and the Joint Parties. Reply comments were filed on July 11, 2011, by PG&E. These comments and reply comments have been reflected, as appropriate, in the final decision adopted by the Commission.

## **7. Assignment of the Proceeding**

Catherine J. K. Sandoval is the assigned Commissioner and Timothy Kenney is the assigned Administrative Law Judge in this proceeding.

## **Findings of Fact**

1. The Tracy and LECEF Projects are intended to fill PG&E's need for new capacity through 2015.
2. The Oakley Project approved by D.10-12-050 is intended to fill PG&E's need for new capacity beginning in 2016.

**Conclusions of Law**

1. Approval of the Oakley Project by D.10-12-050, in addition to the Tracy and LECEF Projects, does not result in PG&E procuring more new generation capacity than authorized by D.07-12-052 or D.10-07-045.
2. CARE's petition to modify D.10-07-042 should be denied.
3. The following order should be effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. The petition to modify Decision 07-10-042 filed by Californians for Renewable Energy is denied.
2. Application (A.) 09-10-022 and A.09-10-034 are closed.

This order is effective today.

Dated July 14, 2011, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
TIMOTHY ALAN SIMON  
CATHERINE J.K. SANDOVAL  
MARK J. FERRON  
Commissioners

I abstain.

/s/ MICHEL PETER FLORIO  
Commissioner