

Decision 08-05-037

May 29, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Expedited Issuance of a Certificate of Public Convenience and Necessity for the Colusa Power Project.

A.07-11-009
(Filed on November 14, 2007)

ORDER DENYING REHEARING OF
DECISION 08-02-019

I. INTRODUCTION

CALifornians for Renewable Energy (CARE) timely filed an application for rehearing of Decision (D.) 08-02-019. D.08-02-019 is an interim decision granting a Certificate of Public Convenience and Necessity (CPCN) to Pacific Gas and Electric Company (PG&E) to construct a new 657 megawatt (MW) combined cycle generating facility in unincorporated Colusa County, known as the Colusa Power Project (Colusa Project). The authority granted by D.08-02-019 is contingent on its environmental certification by the California Energy Commission (CEC) and thereafter, this Commission's consideration of the CEC's certification.

A need for 2,200 MW of new generation for Northern California by the year 2010 was identified by the Commission in D.04-12-048, which directed PG&E to initiate an all-source solicitation to secure that generation. By D.06-11-048, the Commission approved PG&E's 2004 long-term request for offer (LTRFO) and its resulting projects, including the Colusa Project. As approved by D.06-11-048, the Colusa Project was to be developed and built by E&L Westcoast Holdings, LLC and E&L Westcoast, LLC (collectively E&L) under a purchase and sale agreement (PSA). Further, under D.06-11-048, once the Colusa Project

was completed and performance-tested, it was to be delivered to PG&E for PG&E to own and operate as a utility asset subject to cost of service ratemaking and a cap on recoverable capital costs and other conditions set forth in D.06-11-048.

E&L recently informed PG&E that it no longer intends to proceed with the Colusa Project and will exercise its contractual rights to terminate the PSA. Consequently, PG&E executed an agreement with E&L to acquire the assets and permitting related to the Colusa Project. In filing its application (A.07-11-009), PG&E notified the public that all environmental review and siting issues concerning the Colusa Project were not within the scope of the Commission's jurisdiction and were pending before the CEC.¹ CARE filed a protest to the application raising only siting and environmental issues. (Although CARE was clearly notified that the siting and environmental issues were beyond the scope of the Commission's jurisdiction in this proceeding and that the CEC had an open proceeding addressing those issues, CARE was nonetheless advised at the January 7, 2008 PHC to share its concerns with the Commission's staff. CARE was explicitly informed that the Commission would not be conducting a CEQA review.)

D.08-02-019 determines that as long as the project's rate impact remains identical to the project originally approved in D.06-11-048, the change from E&L as builder to PG&E does not materially change the project. D.08-02-019 grants PG&E a CPCN to construct the Colusa Project.

CARE raises three main issues in its application for rehearing. It believes that the Commission should not approve of PG&E's application because the air quality emissions evaluation did not consider emissions of greenhouse gases, that the air emissions permit is a federal requirement that is in excess of the CEC's jurisdictional authority, and that the Commission should not approve

¹ At the January 7, 2008 pre-hearing conference (PHC) the presiding ALJ stated that the environmental and siting issues were beyond the scope of this proceeding (reporter's transcript at page 15) and the January 9, 2008 AC ruling at pages 2-3 affirms that environmental issues are before the CEC.

PG&E's application in light of two former Commission cases. PG&E filed a response opposing CARE's application for rehearing arguing that CARE is using the rehearing process to reargue issues already addressed in the proceeding and/or that do not constitute legal error, and that are not within the scope of the Commission's jurisdiction.

We have reviewed each and every allegation of error raised by CARE regarding D.08-02-019 and for the reasons set forth herein are of the opinion that good cause for rehearing of the challenged decision has not been established. Therefore, for the reasons set forth herein, we shall deny CARE's application for rehearing of D.08-02-019.

II. DISCUSSION

A. Consideration of Greenhouse Gases

1. Must this Commission conduct its own environmental review?

The CEC is the lead agency for consideration of environmental issues concerning the Colusa Project and has an on-going proceeding addressing those issues. (See e.g., January 9, 2008 Assigned Commissioner Ruling at p. 2; D.08-02-019 at p. 10 Finding of Fact No. 12.) CARE argues, as it did in its comments on the proposed decision (PD), that we are mandated by Public Utilities Code section 1002 to consider various factors including greenhouse gas emissions prior to approving PG&E's application in this docket.² We addressed this very issue in D.08-02-019, clarifying that pursuant to section 1002(b), section 1002(a) is not applicable in this proceeding because in this instance CEC certification is required. (D.08-02-019 at p. 8.) Specifically we stated in D.08-02-019 at page 8:

The California Energy Commission ... is the lead agency responsible for conducting environmental review under the California Environmental Quality Act (CEQA) and the Warren-Alquist Energy

² Hereinafter, all statutory references are to the Public Utilities Code unless otherwise indicated.

Resources Conservation Act (Warren-Alquist Act); that review is currently underway. The Commission will exercise its responsibilities and preserve its rights as a responsible agency pursuant to CEQA Guideline § 15096.³ Accordingly, today's interim opinion is contingent on the project's environmental certification by the ...[CEC] and the Commission's consideration of that certification, which shall be addressed in a final decision....

CARE asks the Commission to consider the factors mandated by ... [section] 1002(a) and, in particular, the impact of greenhouse gas emissions associated with the project, in this proceeding. Pursuant to ...[section] 1002(b), [s]ection 1002(a) is not applicable where, as here, CEC certification is required. We will undertake our environmental review of the project, including all required environmental analyses, pursuant to our role as responsible agency, as discussed above....

Further, subdivision (b) of section 1002 provides:

With respect to any thermal powerplant ... for which a certificate is required pursuant to the provisions of Division 15 (commencing with Section 25000) of the Public Resources Code, no certificate of public convenience and necessity shall be granted pursuant to Section 1001 without such other certificate having been obtained first, and the decision granting such other certificate shall be conclusive as to all matters determined thereby and shall take the place of the requirement for consideration by the [C]ommission of the four factors specified in subdivision (a) of this section.

³ Section 15096 of the Guidelines for the Implementation of the California Environmental Quality Act is set forth in Title 14 of the California Code of Regulations, Chapter 3, and concerns the Environmental Impact Report (EIR) process for a responsible agency. (See http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art7.html.) Specifically, subdivision (a) provides in pertinent part: "A Responsible Agency complies with CEQA by considering the EIR or Negative Declaration prepared by the Lead Agency and by reaching its own conclusions on whether and how to approve the project involved...."

We are not persuaded that D.08-02-019 is not correct in determining that under section 1002(b), which is applicable here, section 1002(a) is not applicable in this proceeding. CARE's application for rehearing has not established that D.08-02-019 erred in determining that section 1002(a) is not applicable in this proceeding. CARE's argument is without merit.

2. Costs

CARE raises an issue concerning the costs of the Colusa Project; however, whether it is alleging error concerning this issue is uncertain. CARE admits that the need for 2,200 MW of new generation in Northern California by 2010 (ultimately the Colusa Project) was determined in D.04-12-048 as part of PG&E's long-term procurement plan and that the Colusa Project was approved by D.06-11-048. However, CARE contends that "the costs for a merchant electric generation plant are different than those for a utility owned generating plant because the merchant plant owner considers its profits and risk for building the power plant whereas PG&E is not at risk for loss...." (CARE application for rehearing at p. 5.) CARE provided no citation in support of its assertion or other explanation of why the costs may be different or what the difference allegedly is. CARE further argues that these allegedly different costs need to be considered pursuant to section 1002(a); however, again, CARE ignores the challenged decision's analysis regarding why section 1002(a) is not at issue. CARE is inaccurate that we are required to repay PG&E for its investment. Whether there is or is not a profit from constructing the power plant is or is likely to be a matter of fact and again, CARE's contention is unsupported and not particularly instructive on the question of whether D.08-02-019 errs. CARE's allegation, to the extent it has raised one, on this issue is without merit.

3. Proposal that California adopt Oregon's carbon emission review.

CARE contends that the Governor of Oregon recommends a full life-cycle comparison of carbon emissions and costs before approving a new

energy facility and that California should adopt the same policy. This contention does not constitute an allegation of error but rather a policy argument. The purpose of an application for rehearing is to bring the Commission's attention to a legal or factual error. (§ 1732; Commission Rules of Practice and Procedure, rule 16.1(c).) CARE's contention is entirely without merit.

B. Authority of the California Energy Commission

CARE presents a one sentence argument: "... the ... [CEC] environmental review does not have the authority to issue an air emissions permit because that is a federal requirement. (CARE application for rehearing at p. 2.) CARE provides no legal support for its argument. Section 1732 specifically provides: "The application for rehearing shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful...." (Accord Commission Rules of Practice and Procedure, rule 16.1(c).) Further, rule 16.1(c) also provides: "... The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously." (Commission Rules of Practice and Procedure, rule 16.1(c).) CARE's one sentence declaration is obscure and fails to adequately notify us of what it is alleging or why the allegation establishes D.08-02-019 is erroneous. CARE's contention is entirely without merit.

C. Substitution and market deference arguments

CARE uses its application for rehearing to reargue that pursuant to a 1992 general rate case (GRC) for the Southern California Edison Company (SCE), it is unreasonable to substitute one project for another. CARE contends that PG&E is substituting the Colusa Project for "the Colusa Generating Station."⁴ However, the term employed by CARE appears to be its own creation. D.08-02-019 discusses the historical background of the Colusa Project at length; the term

⁴ PG&E's application is entitled "Application of Pacific Gas and Electric Company for Expedited Issuance of a Certificate of Public Convenience and Necessity for the Colusa Power Project."

“Colusa Generating Station” is nowhere found in the challenged decision. The Colusa Project is the same project approved by D.06-11-048. In fact, at page 2, D.08-02-019 provides:

... PG&E requests a CPCN to construct the Colusa Project. PG&E does not seek to change, in any respect, the previously adopted ratemaking [for the Colusa Project in D.06-11-048].

CARE has not established that D.08-02-019 erred in determining that *In re Southern California Edison Company* (1992) 42 Cal.P.U.C.2d 645 is not applicable under the circumstances presented in A.07-11-009. In addition, CARE argues, as it did in its comments, that the Commission’s previous decision, *The Wild Goose Storage, Inc.* (2003) ___ Cal.P.U.C.2d ___, slip. op. D.03-04-038, undermines D.08-02-019. According to CARE, the Colusa Project “was determined with a ‘let the market decide policy,’ and thus “PG&E should assume all the risk of this project.” (CARE application for rehearing at p. 4.) CARE further argues that no costs of this project should be put into ratebase absent a showing by PG&E of the actual cost of service of the project. CARE appears to ignore the explicit conditions that D.08-02-019 places on PG&E “to ensure that the project’s impact on ratepayers is identical to what it would have been under the PSA.” (D.08-02-019 at p. 6.) Further, pursuant to D.06-11-048, PG&E is authorized “to seek recovery of the reasonable costs of operational enhancements to the project; [under D.08-02-019] PG&E has the same opportunity and incentive to make operational enhancements to the project whether it is the project developer or not.” (See also, e.g., D.08-02-019 at pp. 9-10 Findings of Fact Nos. 1-10.) CARE has not established that *The Wild Goose Storage, Inc.*, *supra*, is relevant to this proceeding, nor has it established error in the challenged decision’s determination that the change in builder from third party to PG&E necessitates a reassessment of the Commission’s prior approval of the Colusa Project or that the

maximum cost of \$684 million approved in D.06-11-048 is no longer reasonable and prudent. CARE's allegation is without merit.

III. CONCLUSION

For the reasons set forth above, CALifornians for Renewable Energy has failed to demonstrate grounds for rehearing of D.08-02-019.

THEREFORE IT IS ORDERED that:

1. The application for rehearing of Decision 08-02-019 filed by CALifornians for Renewable Energy is denied.

This order is effective today.

Dated May 29, 2008, at San Francisco, California

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners