

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
(U 39 M) for Authorization to Sell its Kern
Facility Pursuant to Public Utilities Code
Section 851 and Executive Order D-44-01.

Application 03-10-044
(Filed October 22, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING PREHEARING CONFERENCE**

A prehearing conference (PHC) in this proceeding has been set for January 8, 2004, at 1:00 p.m. To ensure efficient use of time at the PHC, parties should be prepared to address the following topics:

1. **Identification of additional issues.** To date, parties have identified the following general issues: (a) whether the sale of the Kern Facility is allowed under Public Utilities Code Section 377; (b) whether the sale of the Kern Facility should be approved by the Commission under Public Utilities Code Section 851; (c) the proper application of (or exemption from) the California Environmental Quality Act (CEQA) to the proposed sale; and (d) whether the price for the proposed sale is appropriate.¹ If parties intend to raise any additional issues not falling within these already-raised issues, they should raise those issues at the PHC.

¹ Pacific Gas & Electric (PG&E) has withdrawn its argument based upon Governor's Executive Order D-44-01. The question remains open whether compliance with the terms of the Executive Order would be relevant to the Commission's analysis and determination under Section 851.

2. **Process for adjudication.** The question whether the sale is permissible under Public Utilities Code Section 377 appears to be an almost purely legal issue, and could be determinative of the proceeding's outcome. Accordingly, the assigned ALJ proposes that the Commission resolve the Section 377 issue first, and separately from the more fact-intensive Section 851, CEQA, and pricing inquiries. If the initial Commission decision is that the sale is permissible under Section 377, the Commission staff would then make the determination of the proper CEQA review, and the parties would proceed to litigate the Section 851 issues. If the Commission determines that the sale is barred by Section 377, that would resolve the proceeding. Parties should be prepared to address whether they wish to provide additional briefing on the Section 377 issue, or whether they are willing to submit the issue to the Commission as currently briefed. If any parties have alternate recommendations for the process for adjudicating this case, those recommendations should be made at the PHC.

Motion of North American Power Group

North American Power Group (NAPG) filed a motion to intervene and for leave to file a Response to the Protest of the City of Bakersfield. The City of Bakersfield does not oppose the motion to intervene, but does oppose the motion to file the Response, on the grounds that it is not specifically authorized and that it is untimely. Given the somewhat unusual history of this proceeding, the centrality of NAPG to this proceeding, and the information contained in NAPG's Response, NAPG's motion to intervene and to file its Response to the Protest is granted.

Anyone who needs assistance with participation in this proceeding should make use of the resources on the Commission's web site, www.cpuc.ca.gov, or should contact our Public Advisor's Office, which is available to help parties understand how to participate in a proceeding, how to file a pleading, and to

answer other questions about Commission procedure. The northern California office can be reached at 415-703-2074 or public.advisor@cpuc.ca.gov. The southern California office can be reached at 213-576-7055 or public.advisor.la@cpuc.ca.gov.

IT IS RULED that:

1. At the Prehearing Conference previously noticed for 1:00 p.m., on January 8, 2004, at the Commission's Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California, parties should be prepared to discuss the issues set forth above.
2. The Motion of North American Power Group (NAPG) to intervene is granted. NAPG has party status in this proceeding.
3. The Motion of NAPG to file a Response to the Protest of the City of Bakersfield is granted.

Dated December 23, 2003, at San Francisco, California.

/s/ PETER V. ALLEN

Peter V. Allen

Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail and e-mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Prehearing Conference on all parties of record in this proceeding or their attorneys of record.

Dated December 23, 2003, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

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 insure 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 TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.