

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

Application of Pacific Gas and Electric Company  
Proposing a Market Structure and Rules for the  
Northern California Natural Gas Industry for the  
Period Beginning January 1, 2003 as Required by  
Commission Decision 01-09-016. (U 39 G)

Application 01-10-011  
(Filed October 8, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING  
REGARDING PETITION TO INTERVENE AND OTHER MATTERS**

**Summary**

This ruling addresses the December 15, 2003 petition to intervene that was filed by the "Small DG Consortium," and its opening and reply comments to the proposed decision of Administrative Law Judge (ALJ) John S. Wong. The ruling also confirms the e-mail ruling granting the December 11, 2003 motion of The Utility Reform Network (TURN) to late-file its comments on the proposed decision.

**Petition To Intervene**

The Small DG Consortium is an ad hoc group of distributed generation manufacturers and marketers. The members of the group include Capstone Microturbines, Real Energy, Tecogen, Advanced Energy Systems Inc., Occidental Power, ACC Energy Systems, and UTC Power.

On December 8, 2003, the Small DG Consortium, using the name "Joint Parties Interested In Distributed Generation," submitted for filing its opening comments to the ALJ's proposed decision. On December 15, 2003, the Small DG

Consortium filed its petition to intervene. Its reply comments were attached to the petition to intervene.

On December 16, 2003, PG&E filed a response in opposition to the Small DG Consortium's petition to intervene on December 16, 2003. Pacific Gas and Electric Company (PG&E) asserts the petition to intervene should be denied because the Small DG Consortium has not made a showing of good cause to intervene at such a late date, more than eight months since the evidentiary hearings concluded.

Rule 54 of the Commission's Rules of Practice and Procedure (Rules) states in pertinent part that:

"In an . . . application proceeding . . . an appearance may be entered at the hearing without filing a pleading, if no affirmative relief is sought, if there is full disclosure of the persons or entities in whose behalf the appearance is to be entered, if the interest of such persons or entities in the proceeding and the position intended to be taken are stated fairly, and if the contentions will be reasonably pertinent to the issues already presented and any right to broaden them unduly is disclaimed." (Emphasis added.)

Rule 53 provides that in a complaint proceeding, a petition to intervene "shall be in writing, shall set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and whether petitioner's position is in support of or opposition to the relief sought." The petition to intervene "shall be served and filed by petitioner at least five days before the proceeding is called for hearing, except for good cause shown."

(Emphasis added.)

Both Rules 53 and 54 contemplate that a person who wants to intervene shall do so before or at the time of the hearing, unless good cause is shown. The evidentiary hearings in this proceeding concluded in April 2003, and the

proceeding was submitted on June 2, 2003. The petition to intervene was not filed until approximately eight months after evidentiary hearings were held, and six months after the proceeding was submitted.

To allow the Small DG Consortium to intervene at this point in time would not be fair because Rules 53 and 54 contemplate that intervention occur at or prior to the hearings. The reason for this is so that parties can contest the intervenor's position during the hearing process. By filing its petition to intervene long after hearings had concluded, the Small DG Consortium did not provide this opportunity to PG&E or to the other parties. In addition, only a party to a proceeding can apply for rehearing, or petition for a writ of review. It would be unfair to allow someone, at this late date, who did not participate in the hearings at all, to contest the Commission's decision on grounds that should have been raised during the evidentiary hearing.

For the above reasons, the petition to intervene of the Small DG Consortium should be denied, and its opening and reply comments to the ALJ's proposed decision shall not be filed.

#### **TURN's Motion to Late-File Comments**

On December 11, 2003, TURN filed its motion "For Acceptance of Late-Filed Comments On Proposed Decision." Due to the approaching deadline for filing reply comments, TURN requested that an electronic ruling be issued on December 12, 2003.

The undersigned sent an e-mail out on the afternoon of December 11, 2003, soliciting responses to TURN's motion before noon on December 12, 2003. No one opposed TURN's motion. On the afternoon of December 12, 2003, an e-mail was sent to the service list informing the parties that TURN's motion to late-file its opening comments had been granted, and that the Docket Office be directed

to file TURN's opening comments on the proposed decision as of December 11, 2003. The e-mail also stated that a written ruling would be issued confirming the e-mail ruling.

Today's written ruling confirms the action taken by the undersigned in the e-mail ruling of December 12, 2003.

**IT IS RULED** that:

1. The December 15, 2003 petition to intervene, filed by the Small DG Consortium, is denied.
  - a. The opening comments submitted by the "Joint Parties Interested In Distributed Generation" on December 8, 2003, shall not be filed since it was submitted by the Small DG Consortium, which is not a party to this proceeding.
  - b. The reply comments attached to the petition to intervene shall not be filed.
2. The December 12, 2003 e-mail ruling of the assigned administrative law judge regarding The Utility Reform Network's December 11, 2003 motion to late-file its opening comments to the proposed decision is confirmed.

Dated December 29, 2003, at San Francisco, California.

/s/ JOHN S. WONG by LTC  
John S. Wong  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Petition to Intervene and Other Matters on all parties of record in this proceeding or their attorneys of record.

Dated December 29, 2003, at San Francisco, California.

/s/ KE HUANG

Ke Huang

**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 ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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