

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

ORDER DENYING REHEARING OF DECISION (D.) 17-08-025

In this Order, we dispose of the application for rehearing of Decision (D.) 17-08-025 (“Decision”),¹ filed by Pacific Gas and Electric Company (“PG&E”). The issues raised in PG&E’s application for rehearing are time-barred, and thus, we deny the rehearing application for this reason.

I. BACKGROUND

The Renewable Auction Mechanism (“RAM”) program is a means by which investor-owned utilities (“IOUs”) may procure Renewables Portfolio Standard (“RPS”) eligible generation. The IOUs may use RAM to satisfy authorized procurement needs, as well as any need arising from Commission or legislative mandates. RAM streamlines the procurement process for developers, utilities, and regulators in that it allows bidders to set their own price, provides a simple standard contract for each utility, and allows all projects to be submitted to the Commission through an expedited regulatory review process.

In 2010, we adopted the RAM program through D.10-12-048 to create a simplified market based procurement process for smaller RPS generation projects. The RAM program started as a market-based procurement mechanism for renewable

¹ All citations to Commission decisions are to the official pdf versions which are available on the Commission’s website at: <http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx>.

distributed generation (“DG”) projects greater than 3 megawatts (“MW”) and up to 20 MW. (See D.12-05-035.) We initially authorized the utilities to procure 1,000 MW (expanded to 1,299 MW by D.12-02-035 and D.12-02-002) through RAM by holding four auctions over two years. Resolution E-4582 authorized a fifth auction to take place no later than a year after the close of the fourth RAM auction.²

On November 20, 2014, we issued D.14-11-042 and adopted one additional RAM auction, RAM 6, to close by June 30, 2015. D.14-11-042 also addressed Pacific Gas & Electric Company’s (“PG&E”) February 14, 2014 petition for modification of D.10-12-048 in order to transfer the remaining approximately 200 MW capacity in PG&E’s Solar Photovoltaic Program into RAM and two other solicitations. In essence, PG&E sought authority to close the Solar Photovoltaic (“PV”) Program for future solicitations, except for purposes of the administration of all existing contracts and facilities and compliance reporting.

The Commission granted PG&E’s request. We found that PG&E’s request to transfer any remaining capacity in the Solar Photovoltaic Program to RAM was reasonable as it provided a means of offering this remaining capacity to the market while also increasing efficiency by consolidating the Commission’s smaller procurement solicitations. Ordering Paragraph 32 memorialized the granting of PG&E’s petition as follows:

The Petition for Modification filed by Pacific Gas and Electric Company (PG&E) on February 26, 2014 seeking authority to transfer capacity from its Solar Photovoltaics (Solar PV) Program to the Renewable Auction Mechanism (RAM) is granted, with certain restrictions. PG&E shall file a Tier 1 Advice Letter to advise the Commission of the amount of capacity remaining in the Solar PV Program. PG&E shall transfer ½ of the remaining capacity, including failed or terminated capacity, to RAM 6. The remaining ½ shall be transferred equally to two solicitations held in 2016 and 2017.

² All citations to Commission resolution are to the official pdf versions which are available on the Commission’s website: <http://docs.cpuc.ca.gov/ResolutionSearchForm.aspx>.

(D.14-11-042 [Ordering Paragraph 32].) As a result of D.14-11-042, 106 MW was allocated to the 2016 and 2017 solicitations, and there was 31.5 MW of unfulfilled capacity from PG&E's RAM 6 solicitation.

On January 22, 2016, PG&E filed a petition to modify D.14-11-042, seeking to be relieved of the remaining PV procurement mandate. In its petition, PG&E claimed that new facts justify the elimination of the requirement that PG&E conduct solicitations in 2016 and 2017 for the remaining capacity from the Solar Photovoltaic Program resources. PG&E argued that its customers did not need new long-term contracts with RPS-eligible resources since the PG&E Bundled Procurement Plan included forecasts of a "substantial" loss of bundled customer load between 2014 and 2024 as a result of the projected growth of Community Choice Aggregation and DG resources.³ PG&E also noted that the Commission approved PG&E's 2015 RPS Plan which demonstrated that PG&E was positioned to meet its RPS requirements for the second and third compliance periods and, as a result, PG&E claimed it did not have any need for incremental RPS procurement until at least 2022.⁴

PG&E also argued in its petition to modify D.14-11-042 that failure to grant the petition could cause financial harm to its customers. It argued that its customers did not need Solar Photovoltaic resources since most of the Photovoltaic resources that would be procured in 2016 and 2017 would come on-line in 2019-2020. PG&E argued that procuring unneeded resources prematurely would prevent customers from realizing the benefits of any gains in resource efficiency or lower resource costs that may occur in the future since customers would be locked into long-term contracts for current technologies at existing prices.

In D.17-08-025, we determined that PG&E's petition to modify could not be granted because PG&E had not met the standards for granting a petition to modify.

³ D.15-10-031, pp. 63-64 [Ordering Paragraph 1(e)].

⁴ D.15-12-025, pp. 10-11, 34 [Ordering Paragraph 9].

(D.17-08-025, pp. 9-11.) We were not convinced by PG&E's arguments regarding changed circumstances as a justification for terminating PG&E's final remaining RAM solicitation, as required by D.14-11-042. (D.17-08-025, pp. 9-11, 17 [Finding of Fact 5].) As such, PG&E's petition to modify D.14-11-042 was denied. (D.17-08-025, p. 18 [Ordering Paragraph 1].)

On September 27, 2017, PG&E filed an application for rehearing of D.17-08-025, as well as a motion to hold the 2017 solicitation in abeyance pending the outcome of its rehearing application. In its rehearing application, PG&E challenges D.17-08-025 on the following grounds: (1) the Decision conflicts with, and is therefore preempted by, statute; (2) the Decision lacks findings supported by substantial evidence that the additional PV volumes are needed; (3) the Decision is an abuse of discretion and is contrary to law because it conflicts with prior Commission findings, conclusions and orders; and (4) the Commission did not afford PG&E reasonable due process in issuing the Decision.

On October 12, 2017, Clean Coalition and the Office of Ratepayer Advocates ("ORA") filed responses to PG&E's rehearing application and motion to hold the 2017 PV solicitation in abeyance. On October 20, 2017, Sonoma Clean Power Authority filed a response to PG&E's rehearing application.

II. DISCUSSION

We have carefully considered the application for rehearing of D.17-08-025 and have determined that the application for rehearing constitutes an untimely legal challenge to D.14-11-042. Such a challenge is time-barred because PG&E failed to file an application for rehearing of D.14-11-042 in a timely manner. For this reason, we are of the opinion that good cause has not been established to grant rehearing. Having determined that rehearing should be denied, PG&E's motion to hold D.17-08-025 in abeyance is denied as moot.

PG&E's application for rehearing of D.17-08-025 is, at its core, a challenge to D.14-11-042. PG&E is precluded from seeking review of D.17-08-025 because it failed to seek rehearing of D.14-11-042, which is the operative Commission decision that

directed PG&E to complete its final RAM solicitations in 2016 and 2017. (See D.14-11-042, pp. 104-105.) The 2017 RAM solicitation is due to be completed by May 31, 2018.⁵

Section 1731(b)(1) provides that no action shall accrue to challenge a Commission decision unless a rehearing application has been filed within 30 days of the issuance of the Commission decision. (Pub. Util. Code, § 1731, subd. (b)(1).) Instead of seeking rehearing of D.14-11-042, PG&E filed a petition to modify D.14-11-042, which was denied in D.17-08-025. However, a petition to modify is not a substitute for the statutory requirement of filing an application for rehearing, and does not operate to preserve PG&E's right to challenge D.14-11-042 in court. (*Northern California Assn. to Preserve Bodega Head & Harbor, Inc. v. Public Utilities Commission* ("Bodega Head") (1964) 61 Cal.2d 126, 134-35; see also *Young v. Industrial Acc. Com.* (1944) 63 Cal.App.2d 286, 291-292; *Anchor Lighting v. Southern California Edison Co.* (2006) 142 Cal.App.4th 541, 552.)

In *Bodega Head*, petitioner claimed that it was seeking review of two specific Commission decisions issued in 1965. (*Bodega Head, supra*, 61 Cal.2d at p. 133-34.) However, the Court determined that in reality petitioner was seeking review of a 1962 Commission decision without having sought rehearing of that decision within the time allotted under section 1731. (*Bodega Head, supra*, 61 Cal.2d at p. 134; see also Pub. Util. Code, § 1731.) As such, the Court determined that the petition was untimely. The Court stated that, having failed to properly seek review of the operative 1962 Commission decision, "[i]t cannot now cure its failure to seek judicial review of the certificate decision by the device of a series of late-filed petitions, basing its right to review on the latest among them, when, in fact, it is seeking review of the basic

⁵ On February 22, 2018, PG&E submitted a letter to the Commission's Executive Director, which asked for an extension to comply with D.17-08-025 for 90 days. In a letter, dated March 2, 2018, and under her authority set forth in Rule 16.6 of the Commission Rules of Practice and Procedure, the Executive Director granted a 35-day extension of PG&E's deadline to complete its final RAM solicitation..

decision.” (*Bodega Head, supra*, 61 Cal.2d at p. 135.) Similarly, in the present instance, PG&E is mounting a collateral attack on D.14-11-042, which is the operative decision that requires PG&E to complete its final RAM solicitation. PG&E cannot utilize a petition to modify D.14-11-042, and a rehearing request on the Commission’s denial of that petition to modify, as a substitute for its failure to properly and timely seek rehearing of D.14-11-042.

III. CONCLUSION

For the reasons stated above, we have determined that good cause has not been demonstrated to grant rehearing of D.17-08-025 because the claims raised in PG&E’s application for rehearing of D.17-08-025 are time-barred. Since we have determined that rehearing should be denied, PG&E’s motion to hold D.17-08-025 in abeyance is denied as moot.

THEREFORE, IT IS ORDERED that:

1. Rehearing of D.17-08-025 is hereby denied.
2. PG&E’s motion to hold the 2017 PV solicitation in abeyance pending the disposition of its application for rehearing of D.17-08-025 is denied as moot.
3. This proceeding remains open.

This order is effective today.

Dated March 22, 2018 at San Francisco, California.

MICHAEL PICKER
President
CARLA J. PETERMAN
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
Commissioners