Decision 08-02-019 February 28, 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. (U39E)	Application 07-11-009 (Filed November 14, 2007)

INTERIM OPINION GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE COLUSA POWER PROJECT

Summary

Today's interim opinion grants a certificate of public convenience and necessity (CPCN) for Pacific Gas and Electric Company (PG&E) to construct the Colusa Power Project (Colusa Project), a new 657 megawatt (MW) combined cycle generating facility to be located in unincorporated Colusa County, contingent on its environmental certification by the California Energy Commission (CEC) and the Commission's consideration of that certification.

In Decision (D.) 04-12-048, the Commission adopted a long-term procurement plan for PG&E, among other utilities, which provided direction on the procurement of resources over a 10-year horizon through 2014. Pursuant to that plan, D.04-12-048 identified a need for 2,200 MW of new generation in northern California by 2010, and directed PG&E to initiate an all-source solicitation to secure these resources. In D.06-11-048, the Commission approved PG&E's conduct of its 2004 long-term request for offer (LTRFO), and approved

its resulting projects, including the Colusa Project, finding them to be needed and cost-effective.

As initially approved, 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) and, once completed and performance-tested, 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. As D.04-12-048 requires for all utility-owned generation (turn-key, utility-built or buy-outs) selected through the RFO process, D.06-11-048 prohibits PG&E from seeking recovery of additional costs in excess of the project bid price (other than additional capital costs that PG&E may incur as a result of operational enhancements to the project), and requires PG&E to share any savings relative to the initial capital cost on a 50/50 basis between ratepayers and shareholders.

E&L has now informed PG&E that it does not intend to proceed with the Colusa Project and will exercise its contractual rights to terminate the PSA. Rather than allow the project to fail, PG&E has executed an agreement with E&L to acquire the assets and permitting related to the Colusa Project. By this application, PG&E requests a CPCN to construct the Colusa Project. PG&E does not seek to change, in any respect, the previously adopted ratemaking.

So long as the project rate impact remains identical to that of the project as originally approved in D.06-11-048, the change in builder from E&L to PG&E does not materially change the project. For all the reasons that we originally approved the Colusa Project, and subject to conditions that we adopt today to ensure that the project rate impact remains the same, we grant PG&E a CPCN to construct it.

Procedural Background

PG&E filed this application on November 14, 2007. After considering the protests and responses, and the discussion at the January 7, 2008 prehearing conference (PHC), the January 9, 2008, scoping memo and ruling of the assigned Commissioner identified the issues for resolution in the proceeding, and established a bifurcated schedule for their consideration. Phase 1 addressed the policy and legal issues regarding whether the CPCN may be approved without reassessment of need and cost-effectiveness, or adjustment to the capital cost cap. If necessary, a second phase would be conducted to reassess project need, cost-effectiveness, and/or adjustment to the capital cost cap.

Opening briefs were filed on January 17, 2008, by PG&E, Californians for Renewable Energy (CARE), Western Power Trading Forum and the Alliance for Retail Energy Markets (jointly, WPTF/AReM), the Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN), and Phase 1 was submitted upon the filing of reply briefs on January 22, 2008, by PG&E and WTPF/AReM.

Discussion

The change in builder from third party to PG&E does not support reassessment of the Commission's prior approval of the Colusa Project. The physical nature of the project is unchanged. The project meets the same need for which it was approved in D.06-11-048. The project was, and continues to be, a utility-owned generation project subject to cost-of-service ratemaking, the capital cost cap established in the RFO process, and 50/50 sharing of any capital cost savings as required by D.04-12-048. PG&E states its intention that the project's rate impact remain the same as it would have been had it been developed by E&L under the original PSA. For all the reasons that we approved it in

D.06-11-048, and subject to conditions that we adopt today to ensure that the project rate impact remains the same, we grant PG&E a CPCN to construct the Colusa Power Project, contingent on CEC certification and our review of that certification.

The maximum cost determined to be reasonable and prudent is $684 million. This figure represents the sum of the project's fixed contract costs, estimated owner's costs, owner's contingency, and maximum potential incentive payments approved in D.06-11-048.[1]

We approve an initial capital cost in the amount of the sum of the project's fixed contract costs, estimated owner's costs and owner's contingency approved in D.06-11-048. Consistent with D.06-11-048, we direct PG&E to adjust the initial capital cost by advice letter filing to reflect any performance incentive payments that would have been paid, or performance incentive penalties that would have been due to it, under the PSA upon equivalent plant performance. Likewise consistent with D.06-11-048, we direct PG&E to true-up the initial capital cost in the next GRC following operation to reflect 50% of any savings relative to the initial capital cost.

WPTF/AReM argue that, if it is not expressly clear that PG&E's shareholders will bear all of the same risks for cost and performance risks as E&L would have borne under the original PSA, the utility-built Colusa Project must be reviewed as a new project. WPTF/AReM contend that the CPCN should be denied unless it is expressly conditioned on project adherence to the same standards with respect to costs and risks as applied to the previously-approved

[1] We take official notice of A.06-04-012, Exhibit 1-C, pages 9C-2 through 9C-4, which identifies these amounts.

project. Similarly, DRA, TURN and PG&E ask the Commission to adopt five proposed conditions intended to ensure that the project will not cost ratepayers any more than was approved in D.06-11-048. Pursuant to D.04-12-048, we condition the grant of the CPCN on the capital cost cap and associated ratemaking adopted in D.06-11-048.

WPTF/AReM object to consideration of the proposed conditions as inconsistent with the letter and spirit of Article 12, which require a settlement conference, 30 days to comment on the proposed settlement, request hearing and, if a non-settling party identifies a material contested fact, conduct discovery. Specifically, PG&E tendered for filing a document entitled "Joint Stipulation Resolving Concerns of California Division of Ratepayers [sic] Advocates and The Utility Reform Network to Pacific Gas and Electric Company's Application for Expedited Issuance of a Certificate of Public Convenience and Necessity for the Colusa Power Plant." As WPTF/AReM correctly point out, the "Joint Stipulation" represents a proposed settlement that, if it is to be given special consideration as such, must comply with the requirements of Article 12 of the Rules of Practice and Procedure. The "Joint Stipulation" did not comply with those requirements and has not been accepted for filing. We consider the merits of the proposed conditions on the weight of the argument in the filed pleadings. We do not give them the weight of, or the special consideration that applies to, settlements under Article 12.

WPTF/AReM contend that the adequacy of the proposed conditions cannot be assessed without first determining what assets PG&E acquired under its agreement with E&L, whether PG&E paid for them or acquired them for free, whether PG&E forfeited or received a termination payment or other consideration, the likelihood that PG&E will be able to complete the project

under the initial cost cap adopted in D.06-11-048, and whether another developer could have competitively bid to complete the remainder of the project for the same or lower cost as PG&E. Alternatively, WTPF/AReM suggest that the utility-built project should be evaluated as a new project if it has different actual costs than were approved for recovery in D.06-11-048.[2] WTPF/AReM miss the point of the conditions, which is to ensure that the project's impact on ratepayers is identical to what it would have been under the PSA. We do not need to assess PG&E's actual project costs in order to make that determination.

WPTF/AReM claims that the utility-built project should be reviewed as a new project because PG&E, as developer, has a stronger incentive to make operational improvements to it than it otherwise did as mere owner. We find no basis for this claim. D.06-11-048 authorized PG&E to seek recovery of the reasonable costs of operational enhancements to the project; PG&E has the same opportunity and incentive to make operational enhancements to the project whether it is the project developer or not.

WPTF/AReM note that PG&E has the burden of showing compliance with Pub. Util. Code § 1000 *et seq.*, including specifically, Section 1003, and General Order 131-D, Appendix B, and alleges that PG&E did not comply with the notice requirement of Rule 3.1(b) of the Commission's Rules of Practice and Procedure. We find that PG&E's application contains all of the information required under the statutes, order and rule.

[2] On a related point, WPTF/AReM suggest that allowing PG&E to exclude the costs of employees and temporary contractors that are already in rates from the approved capital cost for the project may hide the fact that the PG&E-built project costs more than the authorized costs of the original project and is therefore a new project.

WPTF/AReM suggest that there is no need to expedite this application as PG&E requests because, even without the Colusa Project, PG&E's reserve margin will exceed the reserve margin authorized in D.07-12-052. Conversely, we find no need to delay it beyond the schedule adopted in the Assigned Commissioner's Scoping Memo and Ruling.

CARE asserts that the Colusa Project requires review as a new project because it does not have the same costs, and may be more profitable for PG&E, than the project approved in D.06-11-048. As discussed previously, D.06-11-048 approved the project costs (that are recoverable from ratepayers) as reasonable and cost-effective, imposes a capital cost cap, and requires PG&E to share any savings relative to the initial capital cost on a 50/50 basis between ratepayers and shareholders. Because this CPCN is conditioned on the identical ratemaking treatment of actual costs relative to the approved project costs, there is no basis to review the project's reasonableness and cost-effectiveness as a new project.

CARE cites to D.91-12-076 (*Re Southern California Edison Company*, 42 CPUC2d 645) for the proposition that unidentified projects may not substitute for previously-approved projects. D.91-12-076 does not inform our analysis here.

CARE cites to D.03-04-038, wherein the Commission approved an amendment of an existing CPCN based on a "let the market decide policy" and placed the utility at risk for all unused project capacity, as precedent for denying PG&E recovery of any Colusa Project costs absent a showing of the actual cost of service of the project. D.03-04-038 does not apply to this application.

CEQA Compliance

The California Energy Commission (CEC) is the lead agency responsible for conducting environmental review under the California Environmental Quality Act (CEQA) and the Warren-Alquist Energy 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. Accordingly, today's interim opinion is contingent on the project's environmental certification by the California Energy Commission (CEC) and the Commission's consideration of that certification, which shall be addressed in a final decision. We anticipate basing that final decision on the current record and the CEC certification document. We direct PG&E to file the CEC certification document in this proceeding within three days of its issuance.

CARE asks the Commission to consider the factors mandated by Pub. Util. Code § 1002(a) and, in particular, the impact of greenhouse gas emissions associated with the project, in this proceeding. Pursuant to Pub. Util. Code § 1002(b), Section 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.

Comments on Proposed Decision

The proposed decision in this matter was mailed to parties in accordance with § 311 of the Pub. Util. Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on February 25, 2008, by PG&E, DRA, TURN and WPTF/AReM, and reply comments were filed on February 25, 2008 by PG&E. We have considered the comments and, to the extent that they identified factual, legal or technical error in the proposed decision, we have made appropriate changes.

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Hallie Yacknin is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. D.06-11-048 approved the Purchase and Sale Agreement (PSA) for the Colusa Power Project after its selection pursuant to a competitive Request for Offer (RFO) process.

2. D.06-11-048 found that the PSA was cost-effective.

3. D.06-11-048 found that the megawatts (MW) represented by the PSA are needed.

4. D.06-11-048 adopted, and approved as reasonable, an initial capital cost for the project equal to the sum of its fixed contract costs (excluding incentive payments or penalties) plus PG&E's estimated owner's costs, including PG&E's proposed owner's contingency.

5. D.06-11-048 authorized PG&E to adjust the initial capital cost by advice letter filing to reflect any performance incentive payments paid under the PSA.

6. D.06-11-048 directed PG&E to adjust the initial capital cost by advice letter filing to reflect any performance incentive penalties due to it under the PSA.

7. D.06-11-048 authorized PG&E to apply for approval, and recover the reasonable costs, of operational enhancements to the project.

8. D.06-11-048 directed PG&E to true-up the project's initial capital cost in the next general rate case following operation to reflect 50% of any other savings relative to the initial capital cost.

9. D.06-11-048 provided for the initial revenue requirement for the project to begin to accrue in the Utility Generation Balancing Account (UGBA) as of the

date of closing of the PSA, and to be included in rates on January 1 of the following year.

10. D.06-11-048 authorized PG&E to recover costs associated with the bridge tolling agreement for the project through the Energy Resources Recovery Account (ERRA) proceeding.

11. PG&E seeks a CPCN to construct the project as owner-builder, without modification to project description or cost impact on ratepayers.

12. Environmental review of the project under CEQA and the Warren-Alquist Act, is now pending before the CEC as lead agency; the Commission will exercise its responsibilities and preserve its rights as a responsible agency pursuant to CEQA Guideline § 15096.

Conclusions of Law

1. The Colusa Power Project for which PG&E seeks a CPCN is, for all material purposes relevant to the Commission's review of project need and cost-effectiveness, the same project as was approved in D.06-11-048 (issued in A.06-04-012).

2. The maximum reasonable and prudent cost for purposes of Pub. Util. Code § 1005.5 should be set at $684 million. This figure represents the sum of the project's fixed contract costs, estimated owner's costs, owner's contingency, and maximum potential incentive payments approved in D.06-11-048.

3. The initial capital cost for the project should be set equal to the sum of the fixed costs of the PSA (excluding incentive payments or penalties) plus PG&E's estimated owner's costs, including PG&E's proposed owner's contingency, as reflected in the record of A.06-04-012 and approved in D.06-11-048.

4. PG&E should be authorized to adjust the initial capital cost by advice letter filing to reflect any performance incentive payments that would have been paid

under the PSA, upon equivalent plant performance, consistent with the authority granted in D.06-11-048.

5. PG&E should be directed to adjust the initial capital cost by advice letter filing to reflect any performance incentive penalties that would have been due to it under the PSA, upon equivalent plant performance, consistent with the authority granted in D.06-11-048.

6. PG&E should be authorized to apply for approval, and recover the reasonable costs, of operational enhancements to the project, consistent with the authority granted in D.06-11-048.

7. PG&E should be directed to true-up the project's initial capital cost in the next general rate case following operation to reflect 50% of any other savings relative to the initial capital cost.

8. PG&E should not be permitted to include any costs that are already included in rates, *e.g.,* that were included in PG&E's general rate case forecast, in determining the actual capital cost relative for purposes of the true-up of the project's initial capital cost.

9. The initial revenue requirement for the project should begin to accrue in the UGBA as of the date that it achieves the milestones that would have resulted in the closing of the PSA, and to be included in rates on January 1 of the following year.

10. PG&E should be authorized to recover costs that would have been paid under the bridge tolling agreement for the project through the Energy Resources Recovery Account (ERRA) proceeding.

11. In the event that PG&E ceases development or construction of the project, PG&E should be authorized to file an application for the recovery of reasonable

costs associated with abandoned plant to the extent that PG&E would have been liable for such costs under the PSA.

12. Grant of the CPCN should be contingent on project certification by the California Energy Commission (CEC) and the Commission's consideration of that certification.

13. PG&E should be directed file the CEC certification document in this proceeding within three days of its issuance.

INTERIM ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is granted a Certificate of Public Necessity and Convenience (CPCN) to construct the Colusa Power Project, contingent on certification by the California Energy Commission (CEC) and the Commission's consideration of that certification, as more fully discussed in the decision. For purposes of the interim construction authority granted herein, the Colusa Power Project includes all elements of the Project as defined in the Application for a Certificate to Construct attached as Exhibit A to PG&E's application, including interconnection facilities subject to environmental review by the CEC that also require a permit from this Commission under General Order 131-D.

2. The maximum reasonable and prudent cost for purposes of Pub. Util. Code § 1005.5 is $684 million.

3. PG&E is directed to file the CEC certification document in this proceeding within three days of its issuance.

4. An initial capital cost for the project equal to the sum of the fixed costs of the Purchase and Sale Agreement (PSA) (excluding incentive payments or penalties) plus PG&E's estimated owner's costs, including PG&E's proposed owner's contingency, as reflected in the record of Application 06-04-012 and approved in Decision (D.) 06-11-048, is adopted and approved as reasonable.

5. PG&E is authorized to adjust the initial capital cost by advice letter filing to reflect any performance incentive payments that would have been paid under the PSA, upon equivalent plant performance, consistent with the authority granted in D.06-11-048.

6. PG&E is directed to adjust the initial capital cost by advice letter filing to reflect any performance incentive penalties that would have been due to it under the PSA, upon equivalent plant performance, consistent with the authority granted in D.06-11-048.

7. PG&E is authorized to apply for approval, and recover the reasonable costs, of operational enhancements to the project, consistent with the authority granted in D.06-11-048.

8. PG&E is directed to true-up the project's initial capital cost in the next general rate case following operation to reflect 50% of any other savings relative to the initial capital cost.

9. PG&E may not include any costs that are already included in rates, *e.g.*, that were included in PG&E's general rate case forecast, in determining the actual capital cost for purposes of the true-up of the project's initial capital cost.

10. The initial revenue requirement for the project shall begin to accrue in the Utility Generation Balancing Account as of the date that it achieves the milestones that would have resulted in the closing of the PSA, and be included in rates on January 1 of the following year.

11. PG&E is authorized to recover costs that would have been paid under the bridge tolling agreement for the project through the Energy Resources Recovery Account proceeding.

12. In the event that PG&E ceases development or construction of the project, PG&E is authorized to file an application for the recovery of reasonable costs associated with abandoned plant to the extent that PG&E would have been liable for such costs under the PSA.

13. PG&E is directed to file the CEC certification document in this proceeding within three days of its issuance.

This order is effective today.

Dated February 28, 2008, at San Francisco, California.

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

Commissioner Timothy Alan Simon, being necessarily absent, did not participate.