

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

Application of Pacific Gas and Electric
Company for Expedited Approval Of The
Amended Power Purchase Agreement For The
Russell City Energy Company Project
(U 39 E)

Application No. 08-09-007
(Filed September 10, 2008)

**GROUP PETITIONERS' RESPONSE TO JOINT PETITION OF PG&E, DIVISION OF
RATEPAYER ADVOCATES, CALIFORNIA UNIONS FOR RELIABLE ENERGY, AND
THE UTILITY REFORM NETWORK FOR MODIFICATION OF DECISION 09-094-010
AS MODIFIED BY DECISION 10-02-033**

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California Pilots Association, Skywest
Townhouse Homeowners Association and
Hayward Area Planning Association

In accordance with Rule 16.4 of the Commission’s Rules of Practice and Procedure, Group Petitioners California Pilots Association, Skywest Townhouse Homeowners Association and Hayward Area Planning Association (collectively “GP”) submits this response to the Petition for Modification of Decision (“D.”) 09-04-010 (“Petition”), as modified by Decision (“D”) 10-02- 033 (“Petition”), which was filed jointly on April 15, 2010 by Pacific Gas and Electric Company (“PG&E”), Russell City Energy Company (“RCEC”), LLC, Division of Ratepayer Advocates (“DRA”), California Unions for Reliable Energy (“CURE”), and The Utility Reform Network(“TURN”), referred to herein as Joint Petitioners.

GP’s Petition Must Be Ruled On First – This New Petition By Joint Petitioners Constitutes An Admission Against Interest And Evidence In Support Of Granting GP’s June 22, 2009 Petition.

On June 22, 2009, pursuant to rule 16.4 of the Commission’s Rules of Practice and Procedure, Group Petitioners California Pilots Association, Skywest Townhouse Homeowners Association and Hayward Area Planning Association (collectively “GP”) petitioned the Commission to modify “Decision No. 09-04-010 Approving Settlement Agreement Regarding the Second Amended and Restated Power Purchase Agreement” which was issued on April 16, 2009 in response to a joint motion by Pacific Gas and Electric Company (PG&E), Russell City Energy Company, LLC (RCEC), California Unions for Reliable Energy (CURE), Division of Ratepayers Agency (DRA) and The Utility Reform Network (TURN).

On July 22, 2009, three out of the five joint parties which sought approval of the second amended purchase power agreement (2nd APPA) submitted a response to the petition for modification, namely, PG&E, RCEC and CURE. To date, there has been no ruling on GP’s petition seeking modification to deny the approval of the second amended PPA. Based on this latest attempted amendment by the Joint Parties, GP’s June 22, 2009, petition must be granted and this petition dismissed. Obviously, based on this April 2010 petition by the Joint Parties, the

2nd Amended PPA is over. If PG&E and RCEC wish to enter into a new PPA, they should follow the appropriate procedures.

The Community Choice Aggregate Organizations Are Due Notice Of This Petition’s Illegal Attempt To Apply SB 695 Retroactively

GP object to this petition on the ground that the Community Choice Aggregates (CCAs) are due and have not been provided proper notice. Further, the CCAs are entitled to notice and the opportunity to respond to this attempt to allocate costs towards them by attempting to apply SB 695 retroactively.

Further, GP’s agree with the arguments by Alliance for Retail Energy Markets (“AReM”) submitted on May 17, 2010 that the petition violates D.06-07-029 and is “wholly inconsistent with prior Commission decisions on the cost allocation mechanisms that are available to PG&E, and should be denied on those grounds.”

Lastly, GP’s agree with the arguments by Alliance for Retail Energy Markets (“AReM”) that as a matter of law SB 695 may not be applied retroactively and this attempt to do so, including by contract, is against the law. There is nothing stated in SB 695 allowing for retroactive application as otherwise required in legislation if it is to be applied retroactively.

GP’s further submit that these arguments support its position that these alleged “amendments” constitute a contract novation.

The Joint Petition’s Claims Of “Need” For This Project Are Unsupported.

The petition contends that D.09-04-010 found that the RCEC Project “reaffirmed the need for the RCEC Project” citing in support D. 10-02-033. JP at pp. 4-5. However, there was no “reaffirmation” of need in D. 10-02-033. Instead, the decision denying rehearing expressly found that subject of need was beyond the scope of the proceeding. *See* D. 10-02-033 at p. 4: “In their rehearing application, Group Petitioners allege that D.09-04-010 is inconsistent with D.04-

12-048 and D.06-11-048, with respect to the determinations regarding reliability need and cost-effectiveness.¹ . . . *We found these issues beyond the scope of the proceeding.* (See D.09-04-010, pp. 3-4; see also, Scoping Memo and Ruling of Assigned Commissioner Setting Schedule and Scope of Proceeding and Granting Motion by TURN Directing PG&E to File Supplemental Testimony (“Scoping Memo”), filed November 17, 2008.)” (Italics and emphasis added.)

CONCLUSION

Based on the record before the Commission, this June 2010 petition by GP must be granted and this petition must be denied.

Dated: May 20, 2010

Respectfully submitted,

/s/

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Verification

I am an the attorney for of the Intervening Group Petitioners in this proceeding and am authorized to make this verification on their behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 20th^{day} of May 2010, in Hayward, California.

/S/
Jewell J. Hargleroad

Certificate of copy sent electronically

To reduce the burden of service in this proceeding, the Commission will allow the use of electronic service, to the extent possible using the electronic service protocols provided in this proceeding. All individuals on the service list should provide electronic mail addresses. The Commission and other parties will assume a party consents to electronic service unless the party indicates otherwise.

I hereby certify that I have this day served the document. Group Petitioners' Response To Joint Petition Of PG&E, Division Of Ratepayer Advocates, California Unions For Reliable Energy, And The Utility Reform Network For Modification Of Decision 09-094-010 As Modified By Decision 10-02-033

Each person designated on the official service list, has been provided a copy via e-mail, to all persons on the attached service list on the 20th of May 2010 for the proceedings.

/S/
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