

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



September 1, 2010

Ms. Jane K. Yura
Vice President, Regulation and Rates
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10B
P.O. Box 770000
San Francisco, CA 94177

Subject: Advice Letter 3711-E

Dear Ms. Yura:

On August 4, 2010, Pacific Gas and Electric Company (PG&E) filed a Tier-1 Advice Letter 3711-E to comply with Ordering Paragraph (OP) 2 in Decision (D.) 10-07-042. Contained in the advice letter filing were copies of the executed contracts comprising the Tracy Transaction and the Los Esteros Critical Energy Facility (LECEF) Transaction.

Background:

The following depicts the timeline of events pertinent to this advice letter:

1. On July 29, 2010, the Tracy Transaction described in A.09-10-022 and the LECEF Transaction described in A.09-10-034 were conditionally approved by the Commission in D.10-07-042. OP 2 in the decision states:
 - “2. If the Commission rejects the proposed Marsh Landing Project and/or the Oakley Project in Application (A.) 09-09-021, Pacific Gas and Electric Company shall proceed immediately with both the Tracy Transaction described in A.09-10-022 and the Los Esteros Critical Energy Facility Transaction described in A.09-10-034. Pacific Gas and Electric Company shall file a Tier 1 compliance advice letter containing executed copies of the contracts that comprise the Tracy Transaction and the Los Esteros Critical Energy Facility Transaction 30 days after the later of (i) today’s decision, or (ii) the issuance of a Commission decision in A.09-09-021 that rejects the proposed Marsh Landing Project and/or Oakley Project.”
2. Also on July 29, 2010, the Oakley Project was rejected by the Commission in D.10-07-045. The Marsh Landing Project was also approved in this decision. The rejection of Oakley satisfies the condition for PG&E to file a Tier-1 advice letter to implement the Tracy Transaction and the LECEF Transaction.

3. On August 4, 2010, PG&E filed a Tier-1 Advice Letter 3711-E to comply with Ordering Paragraph (OP) 2 in Decision D.10-07-042 to implement the Tracy Transaction and the LECEF Transaction.
4. On August 23, 2010, PG&E filed a petition to modify (PTM) D.10-07-045, requesting the Commission to reconsider approving the Oakley Project. In the petition, PG&E proposed to amend the guaranteed commercial availability date for the Oakley Project from June 1, 2014 to June 1, 2016.
5. On August 24, 2010, the Division of Ratepayer Advocates (DRA) filed a protest on AL 3711-E, requesting the Commission to either reject the advice letter without prejudice or suspend it and hold it in abeyance until PG&E's PTM filed on August 23 is resolved.

Discussion

In its protest on the advice letter, DRA states:

“In D.10-07-042 the Commission made it very clear that the approval of the GWF and LECEF Transactions were conditioned on the denial of either Oakley or Marsh Landing. If ultimately both Oakley and Marsh Landing are approved by the Commission then GWF and LECEF must be denied.”

“Since GWF and LECEF transactions would only be needed in the event the Marsh Landing or Oakley was denied, AL 3711-E cannot be approved until PG&E's PTM is resolved. If PG&E's PTM of D.10-07-045 successfully gains approval of Oakley, then GWF and LECEF will not be needed as both Oakley and Marsh landing would have been approved by the Commission.”

As provided in Commission General Order (G.O.) 96-B, Section 7.6.1, the Energy Division may approve an advice letter that has been protested, if the protest: 1) is not made on proper grounds as set forth in General Rule 7.4.2 of G.O. 96-B, 2) may be rejected on a technical basis as discussed in G.O. 96-B, or 3) is clearly erroneous. The Energy Division must state the basis for rejecting the protest in its disposition letter.

In this case, Energy Division believes that DRA's protest is not made on proper grounds, since PG&E's advice letter was filed in compliance with ordering paragraph 2 of D.10-07-042, which conditionally approves the Tracy and LECEF transactions under conditions that have already been met by D.10-07-045. Thus, approving PG&E's advice letter is a ministerial action in response to a Commission decision. Rejecting the advice letter would require the Energy Division to treat rejection of the Oakley project in D.10-07-045 as if it was invalid, in contravention of a CPUC decision.

Ms. Jane K. Yura
September 1, 2010
Page 3

When the Commission considers the PG&E PTM on D.10-07-045, DRA will have an opportunity to make a case for why the Oakley project should continue to be rejected, even as modified.

Conclusion

For the reasons stated above, the Energy Division rejects DRA's protest and approves PG&E's AL 3711-E.

Sincerely,



Julie A. Fitch
Director, Energy Division

Cc: Paul Clanon-CPUC, Executive
Frank Lindh-CPUC, Legal
Judith Ikle-CPUC, Energy Division
Robert Strauss-CPUC, Energy Division
Maria Salinas, Honesto Gatchalian-CPUC Energy Division
Joe Como and Cynthia Walker-CPUC Division of Ratepayer Advocates
Service lists for A.09-10-022, A.09-10-034, and A.09-09-021