

From: Jacobson, Erik B (RegRel)
Sent: 9/8/2010 5:00:32 PM
To: 'Fulcher, Jack' (jack.fulcher@cpuc.ca.gov)
Cc:
Bcc:
Subject: RE: Affiliate Advice Letter Filings

That is kind of spooky.....so thanks for getting these questions to us. We will get started on them right away and with any luck, I should have you a response late next week.

From: Fulcher, Jack [mailto:jack.fulcher@cpuc.ca.gov]
Sent: Wednesday, September 08, 2010 4:20 PM
To: Jacobson, Erik B (RegRel); Fitch, Julie A.; Kahlon, Gurbux; Clinton, Jeanne; Roscow, Steve; Sterkel, Merideth "Molly"
Subject: RE: Affiliate Advice Letter Filings

This is amazing, Erik. I was going to send you these questions as soon as I got back from my meeting, and I came face-to-face with your email when I sat down! Spooky, huh?

Anyway, here's the list of questions we promised you. Please forward to the other Erik (you know, Eric).

As for the application of Rule I.A, defining what an "affiliate" is, Mitchell Shapson and I have had missynchronized vacations and schedules (and he's been swamped in some other proceeding this week - he promises tomorrow but things are fairly protean around here), but I've asked around and, you know lawyers, I've gotten various answers. However, they all seem to agree on two things: 1) we need financial information (P&L, IS, Balance) regarding the companies you're investing in, and 2) that the "substantial financial interests in the company exercised through means other than ownership" is a pretty wide target. In any event, all seem to be adamant that we need the appropriate information, and enough of it, in order to assess compliance with the Commission's rules, whatever they are. In the present case, we have almost no information except for the names of the companies. Remember that Section 583 can apply to whatever you send us regarding any of these companies.

So here are the questions we have regarding your investments in the solar energy companies. (As you see, I cut and pasted):

1. The Commission's Affiliate Transactions Rule 1.A gives several thresholds by which a company might be defined as an affiliate under the holding company structure. In addition to more direct and measurable control over the voting stock of the company, one threshold is "*and/or indirectly have substantial financial interests in the company exercised through means other than ownership.*" Do any of the companies in which you or the parent have made or will make investments fall under any of the several thresholds of this Rule?

2. You indicated in our August 6, 2010 meeting that PG&E "tries to make sure that all sizes of solar companies are successful." Specifically, how does PG&E attempt to achieve this goal? What discretionary decisions and actions are available to PG&E to achieve this goal? Have you taken any of these available actions in the past? What were they?

3. While there are no "CSI tariffs" under which the actions of PG&E, as a Program Administrator for the CSI Program, are constrained (see Advice 3141-G/3708-E, p. 4), you indicated at this meeting that the utility is bound by the CSI Handbook, which is reviewed by the Commission staff and can be found on the "gosolarcalifornia" website. This document, however, places few constraints or time limits on the actions of the Program Administrator (PA), and grants wide latitude in its decisions regarding continued participation and ultimate success in the CSI Program by companies seeking to enter this market. Further, decisions made by the PAs cannot be appealed by applicants or contractors except to the PAs themselves; the only recourse open is through the Commission's formal complaint process. (See Sec. 4.10.4 of the CSI Handbook) The companies affected by these decisions include installers, sellers, and contractors, and specifically competitors to the companies in which your affiliates have made investments. Ultimate resolution of disputes may take months, resulting in delays, cancellations, and could threaten the survival of the small companies seeking entry into the solar energy markets.

a. What internal controls, both transparent and observable by the Commission, have the utility imposed to ensure that this sort of discretionary power is not abused in favor of the companies in which PG&E has financial interest? Note that we do not refer to the further dissemination of the utility's affiliate transactions compliance manual or similar communication to employees; we are seeking procedures that ensure that applications are processed evenly, in order received, and without delay; that deadlines for milestones are established and met; that decisions regarding failures and infractions are consistent across applicants and contractors; and that interconnection and maintenance tasks are made without reference to different contractors or installers.

b. Should the Commission impose rules and constraints on PG&E and other PAs to help ameliorate the potential for abuse as described in this question? What should they be?

c. Can you propose a dispute resolution system, perhaps using an independent third-party, that would speed the attainment of reasonable resolutions, is transparent, and obviates the need for formal Commission involvement?

4. Have you considered investing in solar companies that operate entirely outside of your service and PA area? Wouldn't it be simpler, just as effective, and possibly just as profitable

for your holding company to invest in companies outside of your area?

5. Alternatively, you could release your role as PA to an independent organization, such as what has happened in the San Diego area. Would this be a better solution to prevent conflicts of interest? Would you consider this change if a reasonable structure could be designed by both you and the Commission staff?

6. What has been the role of PG&E and its employees in the research, planning, and management of this project?

7. You say in your filings that the utility will perform services for the affiliate(s) under Affiliate Transactions Rule V.E, which allows certain corporate shared services. What are these activities? How will the pricing of such services to the affiliate(s) be handled?

8. How will the utility prevent marketing abuses by the solar companies? Won't they attempt to trade on their association with PG&E? To the extent that such marketing is successful, won't this benefit your affiliate (through use of the utility's market power)?

9. How does the deal relate to likelihood for any potential similar (but different) tax equity deals that you might be considering for investment in RPS projects? (Are these types of deals related or separate universes entirely?)

10. What specific procedures do you have in place to prevent leakage of proprietary information to your affiliate(s)?

That's all I have right now, Erik. Hope that's enough. Let me know about questions you may have about

Thanks. Jack

From: Jacobson, Erik B (RegRel) [mailto:EBJ1@pge.com]
Sent: Wednesday, September 08, 2010 2:08 PM
To: Fulcher, Jack
Subject: RE: Affiliate Advice Letter Filings

Hi Jack,

Just wondering when you think you will be able to send us your revised questions so we can keep this process moving forward. We would still like to work with you on a revised advice letter that addresses your concerns. Any luck in getting some support from the legal division regarding the 5% ownership/control threshold issue (e.g., Michell Shapson)?

Once we get you written responses to your new questions, I think it would make sense to sit down again to continue our dialogue and identify gaps, if any, in the revised advice filing we discussed at our last meeting.

Let me know if there is anything else you need from us.

Best regards,

Erik

From: Fulcher, Jack [mailto:jack.fulcher@cpuc.ca.gov]
Sent: Thursday, August 05, 2010 6:11 PM
To: Jacobson, Erik B; Kahlon, Gurbux; Kahlon, Gurbux; Roscow, Steve
Subject: RE: Affiliate Advice Letter Filings

Hi Erik. We really don't need anything from your corporate folks. Since we only have an hour, this may be a workable agenda for us:

1. One minute for intros.
2. Since you probably want to give a presentation, how about ten minutes?
3. We have some issues that definitely need to be addressed (excuse the horrible formatting for this email):
 - a. We still need a description of how your "CSI administrator" role works. What decisions are made? How are interconnection, repair and maintenance, and other decisions requiring timing and logistics made? What specific procedures do you have in place that prevent bias for or against particular solar companies? (Please don't just say you tell your employees to be good.)
 - b. What has PG&E's (including any of the employees doing such things as analysis, engineering, and management planning) role been in the research and planning for this project?
 - c. You've claimed that there's no incentive to favor one company over another. Doesn't the corporation have a financial interest in the continued health, and growth, of SunRun?
 - d. How big a stake is the \$100 million investment in SunRun? How about the \$61 million in SolarCity? Why aren't they affiliates under the affiliate transaction rules?
 - e. I believe you agree that Banyan is an affiliate of the utility under the rules. Will you file something confirming this?
 - f. You say in your recent AL that the utility won't transact with the affiliate except under the constraints of the CSI tariff. What does this mean?
 - g. You also say the utility will do some stuff for the affiliate under Rule V.E, allowed corporate shared services. What are these activities? How will the transfer pricing be handled?
 - h. How will the utility prevent marketing abuses by the companies? Won't they trade on their association with PG&E? If successful, won't this benefit your affiliate?
 - i. Is the WSJ article right? Will SunRun really charge customers 20 cents per kWh for energy?

j. Given our rejection of the first AL, will you file for this project through an application?

Whew! A long list, I know, Erik; we've been asking you pretty much most of these same questions since the first AL, so I'm sure they're no surprise. Let's say we give you 30 minutes, with the balance for questions. And please, no corporate folks.

Thanks, Erik. See you tomorrow at 11. Jack

Message-----

From: Jacobson, Erik B [<mailto:EBJ1@pge.com>]

Sent: Thu 8/5/2010 5:33 PM

To: Kahlon, Gurbux; Fulcher, Jack; Fulcher, Jack; Kahlon, Gurbux; Roscow, Steve

Subject: RE: Affiliate Advice Letter Filings

Jack, Gurbux and Steve,

Here's a proposed agenda for our 11am meeting tomorrow regarding our affiliate rules compliance advice filings and the Corporation's tax equity investments. We will bring hard copies to the meeting. We have different representatives that will attend the two parts to the meeting --- to keep that separation between Corp and the utility.

We look forward to seeing you.

Erik

Proposed Agenda

Part I: Discussion with PG&E (11:00 - 11:40)

- 1 Background
- 2 Affiliate rule compliance regarding Pacific Energy Capital I; supplemental advice filing proposal
- 3 Pacific Energy Capital II advice filing
- 4 Next steps

Part II: Discussion with PG&E Corporation (11:40-12:00)

- 1 Status of PG&E Corporation's PV tax equity transactions
- 2 Q&A

-----Original Appointment-----

From: Jacobson, Erik B

Sent: Tuesday, July 20, 2010 6:33 PM
To: Jacobson, Erik B; 'Kahlon, Gurbux'; 'Fulcher, Jack';
'jef@cpuc.ca.gov'; 'Gurbux Kahlon'; 'Steve Roscow'
Subject: Affiliate Advice Letter Filings
When: Friday, August 06, 2010 11:00 AM-12:00 PM (GMT-08:00) Pacific Time
(US & Canada).
Where: CPUC Offices rm 4010

Jack, Please feel free to forward to other Energy Division staff you
feel should attend the meeting. Thanks, Erik