

From: Middlekauff, Charles (Law)
Sent: 10/15/2010 12:07:13 PM
To: Peck, David B. (david.peck@cpuc.ca.gov); Obiora, Noel (noel.obiora@cpuc.ca.gov)
Cc: Jacobson, Erik B (RegRel) (/O=PG&E/OU=Corporate/cn=Recipients/cn=EBJ1);
Como, Joe (joe.como@cpuc.ca.gov) [Redacted]
[Redacted]
Bcc:
Subject: RE: URGENT: A.09-09-021 - DRA Ex Parte Notice

Noel:

Thank you for your response, I appreciate it. I am fine with filing an errata indicating a \$1.5 billion revenue requirement, rather than \$1.5 billion in capital costs. I think that should resolve it and appreciate being able to work through this with you all.

Thanks, and have a good weekend (unless you are a Philadelphia Phillies fan, in which case it may be a long and disappointing weekend :)).

Charles

-----Original Message-----

From: Obiora, Noel [<mailto:noel.obiora@cpuc.ca.gov>]
Sent: Fri 10/15/2010 11:09 AM
To: Middlekauff, Charles (Law); Peck, David B.
Cc: [Redacted]; Jacobson, Erik B (RegRel); Como, Joe
Subject: RE: URGENT: A.09-09-021 - DRA Ex Parte Notice

Charles,

I didn't get back to you yesterday because I was trying to understand how and why we made this mistake. I understand your concerns, and Dave is partially right below. We will send out an errata today to state that:

DRA intended to state that the plant will ultimately cost ratepayers \$1.5 Billion (in revenue requirement), and note that the capital cost for the plant is confidential.

(1) Taking out the \$1.5 billion number and informing the public that the capital cost is confidential without explaining where we got the \$1.5 billion dollar number from might lead the public to believe that the capital cost is in the neighborhood \$1.5 billion

(2) The \$1.5 billion Revenue Requirement is public and that is the ultimate cost that ratepayers will bear. As Dave stated, we have been

saying this for a while and it has always been fine with PG&E.

Please note that Dave was not trying to justify disclosing confidential information based on the fact that he has disclosed it in the past. All he said in the past was that the total cost that ratepayers will ultimately bear is the \$1.5 billion in revenue requirement. He made that statement during the oral arguments; DRA made the statement in the Press Report on Oakley and PG&E has been aware of these statements and the fact that they are true.

I hope this settles the issue for PG&E and I apologize for the misstatement. As you can see, it was not intentional.

Noel A. Obiora

-----Original Message-----

From: Middlekauff, Charles (Law) [<mailto:CRMd@pge.com>]

Sent: Friday, October 15, 2010 8:33 AM

To: Peck, David B.; Obiora, Noel

Cc: [Redacted]; Jacobson, Erik B (RegRel)

Subject: RE: URGENT: A.09-09-021 - DRA Ex Parte Notice

Dave:

Your response does not address our concerns and I am still requesting that DRA correct an obvious misstatement. First, as DRA is aware, capital costs and revenue requirements are not the same thing. The quote below refers only to capital costs. However, the page that you cite to below to justify this inflated number clearly states that the revenue requirements includes both capital costs AND estimated O&M. Second, the settlement is clear as to the capital cost, which DRA has overstated by \$400 million. I will request again that DRA corrects its clear misstatement to the Commission. Obviously, we do not want DRA to publicly state the actual capital costs, which are confidential. Instead, I would expect DRA to issue an errata to its ex parte notice indicating that the capital costs that it included in its statements were incorrect and that the actual capital costs are confidential. This should suffice to correct this misstatement. Please let me know immediately if you intend to correct this misstatement.

Second, you justify disclosing confidential information based on the fact that you have done so in the past. The fact that DRA has publicly disclosed confidential information, in violation of the ALJ's order determining that the capital costs were confidential, does not justify DRA continuing to do so. Again, this is a matter of great concern.

I look forward to your prompt response and DRA correcting the misstatement that it has made to the Commission.

Charles

-----Original Message-----

From: Peck, David B. [mailto:david.peck@cpuc.ca.gov]
Sent: Thu 10/14/2010 5:54 PM
To: Middlekauff, Charles (Law); Obiora, Noel
Cc: [Redacted] Jacobson, Erik B (RegRel)
Subject: RE: URGENT: A.09-09-021 - DRA Ex Parte Notice

Hi Charles,

We have been publicly referring to the Oakley plant as a \$1.5 Billion power plant for quite a while during the LTRFO proceeding with no issues raised by PG&E.

Also, attached is the Public version of the settlement agreement. In the public Attachment A, there is a revenue requirement on page 4 of Attachment A. If you add the numbers for years 1-8 you get roughly \$1.5 Billion. That is what we are using as a basis of the cost.

From: Middlekauff, Charles (Law) [mailto:CRMd@pge.com]
Sent: Thursday, October 14, 2010 4:43 PM
To: Obiora, Noel; Peck, David B.
Cc: [Redacted] Jacobson, Erik B (RegRel)
Subject: URGENT: A.09-09-021 - DRA Ex Parte Notice
Importance: High

Noel and Dave:

I am very concerned about the following statement in DRA's ex parte notice:

"PG&E's primary concern is to rate base the \$1.5 Billion capital cost of Oakley for the benefit of shareholders, not insuring system reliability for ratepayers."

I raised the same issue in my voice mail to both of you yesterday. First, the capital costs of the Oakley Project are confidential information, so DRA should not be making any statements regarding the capital costs. The fact that this was included in a public filing is a violation of the ALJ's confidentiality order and raises serious concerns. Second, and more importantly, the capital costs cited by DRA are wrong. The Initial Capital Costs per the Partial Settlement Agreement, that DRA signed on to, are \$1.14 billion, not the \$1.5 billion cited by DRA. See Partial Settlement, Appendix A, Item #2.

Given the seriousness of these two issues (i.e., disclosure of confidential information and misstatements in Commission filings), we need to remedy this situation immediately. Please call me as soon as possible so that we can discuss this situation. We probably cannot remedy the disclosure of confidential information. However, at a minimum, DRA needs to file a supplemental ex parte indicating the clear error in its statements.

I look forward to your prompt response.

Charles Middlekauff

From: Gonzalez, Roscella [<mailto:roscella.gonzalez@cpuc.ca.gov>] On Behalf Of legal_support
Sent: Thursday, October 14, 2010 4:09 PM
To: Lee, Anthea; CPUCCases@pge.com; JPacheco@SempraUtilities.com; Jones, Kimberly; Gandesbery, Mary (Law); Tisdale, Matthew; RegReICPUCCases; WKeilani@SempraUtilities.com; abb@eslawfirm.com; Campbell, Andrew; anne.cleary@mirant.com; barmackm@calpine.com; bcragg@goodinmacbride.com; blaising@braunlegal.com; brbarkovich@earthlink.net; cem@newsdata.com; Middlekauff, Charles (Law); dbehles@ggu.edu; Peck, David B.; dmarcus2@sbcglobal.net; douglass@energyattorney.com; ed.mainland@sierraclub.org; Farrar, Darwin; eklebaner@adamsbroadwell.com; filings@a-klaw.com; gohara@calplg.com; jeffgray@dwt.com; john.chillemi@mirant.com; jpacheco@water.ca.gov; julien.dumoulin-smith@ubs.com; kdw@woodruff-expert-services.com; Meeusen, Karl; klatt@energyattorney.com; l_brown369@yahoo.com; lcottle@winston.com; liddell@energyattorney.com; martinhomec@gmail.com; mcox@calplg.com; mdjoseph@adamsbroadwell.com; mflorio@turn.org; michaelboyd@sbcglobal.net; mmattes@nossaman.com; mpa@a-klaw.com; mrw@mrwassoc.com; Obiora, Noel; nes@a-klaw.com; sarveybob@aol.com;

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Shmidt, Yuliya
Cc: Cox, Cheryl; WebDra; Obiora, Noel
Subject: A.09-09-021 - DRA Ex Parte Notice

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Serving Party: DRA

In case of problems with the e-mail or the attached document, contact
the following person:

Name: Roscella V. Gonzalez

Phone #: (415) 703-3543

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Email: legal_support@cpuc.ca.gov

Note: to update your e-mail address, please follow the procedure in Rule
1.9(e) of the Commission's Rules of Practice and Procedure.