

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

Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.

Rulemaking 10-05-006
(Filed May 6, 2010)

**MOTION OF PANOCHÉ ENERGY CENTER, LLC
TO BECOME A PARTY**

Seth D. Hilton
Allison C. Smith
Stoel Rives LLP
555 Montgomery Street, Suite 1288
San Francisco, CA 94111
Telephone: (415) 617-8913
Facsimile: (415) 617-8907
Email: sdhilton@stoel.com

January 31, 2012

Attorneys for Panoche Energy Center, LLC

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

Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.

Rulemaking 10-05-006
(Filed May 6, 2010)

**MOTION OF PANOCHÉ ENERGY CENTER, LLC
TO BECOME A PARTY**

I. INTRODUCTION

Pursuant to Rule 1.4(a)(4) of the Commission’s Rules of Practice and Procedure, Panoche Energy Center, LLC (“PEC”) hereby moves to become a party in this proceeding.

II. BASIS FOR PARTY STATUS

A. PEC’s Interest in the Proceeding.

PEC is the owner of Panoche Energy Center, a 400 megawatt natural-gas fired electrical generating facility located in western Fresno County. As an electrical generator, PEC is subject to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms, 17 Cal. Code Regs. §§ 95800 et seq. (“Cap and Trade Program”), recently adopted by the California Air Resources Board (“CARB”).

PEC sells energy to Pacific Gas & Electric (“PG&E”) under a 20-year power purchase agreement (“PPA”), entered into on March 28, 2006, several months before the enactment of the California Global Warming Solutions Act of 2006 (“AB 32”). Because the PPA between PEC and PG&E predates AB 32, it does not explicitly allocate responsibility for costs associated with compliance with AB 32 programs, including the Cap and Trade Program. PEC is therefore faced

with significant uncertainty regarding its responsibility to bear the cost of procuring greenhouse gas allowances. PEC would incur millions of dollars in compliance costs under the Cap and Trade Program absent a recovery mechanism for those compliance costs, whether under a PPA modification or otherwise.

In addition, as a dispatch plant, Panoche Energy Center's level of generation and associated greenhouse gas emissions are under the control of PG&E. If PEC bears the costs of greenhouse gas emissions allowances and offsets, PEC could prove cheaper to dispatch than PG&E's similar generation resources that do bear such costs. Unless PG&E bears greenhouse gas compliance costs, it will not receive, and thus will not respond to, the "carbon price signal" for the plant. PG&E will thus have an incentive to dispatch the Panoche Energy Center in a way that both ignores the Cap and Trade Program's carbon price signal *and* unfairly exposes PEC to additional compliance costs.

In its rulemaking, CARB acknowledged that the Cap and Trade regulation does not address whether the buyer or seller of the energy should bear the costs of complying with the Cap and Trade Program under a pre-AB 32 PPA that lacks a mechanism for allocating those costs. CARB urged utilities and independent power producers with such contracts to independently renegotiate their pre-AB 32 PPAs to allow for cost recovery.¹ However, PEC has

¹ CARB Proposed Regulation to Implement the California Cap-and-Trade Program Staff Report: Initial Statement of Reasons, p. II-32, fn. 22 (Oct. 28, 2010); CARB Notice of Public Availability of Modified Text and Availability of Additional Documents, p. 19 (July 25, 2011).

thus far been unsuccessful in its attempts to engage PG&E in bilateral negotiations to amend the PEC PPA to allocate the costs that the Cap and Trade Program will impose on PEC.

The August 4, 2011 *Joint Ruling Clarifying Venue for Consideration of Costs related to Procurement of Greenhouse Gas Allowances* stated that issues related to greenhouse gas compliance product procurement, including the recovery of costs associated with the Cap and Trade Program, would be addressed in this proceeding (R-10-05-006). On September 23, 2011, the Independent Energy Producers Association (“IEP”) filed a motion with the Commission requesting that it “set a schedule for an expedited determination of the treatment of [greenhouse gas] compliance costs associated with contracts executed between independent generators and utilities prior to the passage of AB 32 that do not include a mechanism for recovery of such costs.” Since PEC operates under a PPA that does not explicitly allocate these costs, it will be directly affected by the outcome of this proceeding. PEC’s participation in this proceeding will not prejudice any other party to this proceeding or expand the scope of the issues to be considered.

B. PEC’s Contentions in the Proceeding

PEC anticipates participating in this proceeding on issues related to greenhouse gas compliance product procurement, particularly the recovery of costs associated with the Cap and Trade Program. PEC supports IEP’s motion calling for an expedited determination of the treatment of Cap and Trade Program costs associated with pre-AB 32 contracts. The first auction of Cap and Trade allowances will be held this year, and PEC will have Cap and Trade compliance obligations starting in 2013. Independent Power Producers like PEC require

certainty on the issue of compliance costs as soon as possible, in order to plan and budget for participation in the 2012 Cap and Trade auctions, if necessary.

III. SERVICE

Correspondence, pleadings, notices, orders and other communications in this proceeding should be addressed to the following:

Don Burkard
Projects General Manager
Power Plant Management Services, LLC
1520 St. Clair Drive
Antioch, CA 94509
Telephone: (925) 759-0457
Email: dburkard@ppmsllc.com

Seth D. Hilton
Stoel Rives LLP
555 Montgomery Street, Suite 1288
San Francisco, CA 94111
Telephone: (415) 617-8913
Facsimile: (415) 617-8907
Email: sdhilton@stoel.com

Attorneys for Panoche Energy Center, LLC

IV. CONCLUSION.

For the reasons set forth above, PEC respectfully requests that the Commission grant this Motion To Become A Party.

DATED this 31st day of January, 2012, at Sacramento, California.

Respectfully submitted,

/s/ Allison C. Smith

Seth D. Hilton
Allison C. Smith
Stoel Rives LLP
555 Montgomery Street, Suite 1288
San Francisco, CA 94111
Telephone: (415) 617-8913
Facsimile: (415) 617-8907
Email: sdhilton@stoel.com
acsmith@stoel.com