

**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)

**PANOCHÉ ENERGY CENTER, LLC'S REPLY
COMMENTS ON PROPOSED DECISION OF ALJ ALLEN ON
SYSTEM TRACK I AND RULES TRACK III OF THE
LONG-TERM PROCUREMENT PLAN PROCEEDING
AND APPROVING SETTLEMENT**

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Dated: March 19, 2012

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I. INTRODUCTION

Pursuant to California Public Utilities Commission (“CPUC” or “Commission”) Rules of Practice and Procedure Rule 14.3, Panoche Energy Center, LLC (“PEC”) provides the following reply comments on the Proposed Decision of Administrative Law Judge (“ALJ”) Peter V. Allen on System Track I and Rules Track III of the Long-Term Procurement Plan Proceeding and Approving Settlement (“Proposed Decision”).¹ PEC provides comments related to the issue of power purchase agreements (“PPAs”) executed prior to the passage of A.B. 32 and the cost of compliance with Cap and Trade regulations, as an independent power producer (“IPP”) who is party to a pre-A.B. 32 contract that does not allocate responsibility for such costs.

¹ On January 31, 2012, PEC filed a Motion to Become a Party to Rulemaking 10-05-006. PEC files these reply comments with the understanding that they will be held by the Commission until PEC’s motion for party status has been ruled on.

II. THE COMMISSION SHOULD CONSIDER PROPOSALS TO EXPEDITIOUSLY RESOLVE ISSUES RELATED TO PRE-A.B. 32 CONTRACTS.

PEC supports several of the specific recommendations provided in parties' opening comments to expeditiously and fairly resolve the issue of pre-A.B. 32 contracts that do not address the allocation of greenhouse gas ("GHG") compliance costs. First, PEC agrees with the Western Power Trading Forum that the Final Decision Order should reflect the Commission's direction to the utilities to renegotiate pre-A.B. 32 contracts that do not account for GHG compliance costs, so that they reasonably address the allocation of such costs.² The Proposed Decision notes that the affected parties "should be able to renegotiate any contracts that currently do not address the allocation of AB 32 compliance costs, so that the contracts are modified to be consistent with Commission policy."³ While this should be case, it has not been the result to date for several IPPs. Therefore, the direction provided in the Proposed Decision should take the form of a specific directive.

Second, the Independent Energy Producers Association ("IEP") recommends that the Proposed Decision be revised to provide that if contract renegotiation efforts do not lead to resolution within 60 days, the Commission will (1) act to set aside Cap and Trade GHG allowances from the pool of allowances freely allocated to the utilities to compensate them for these costs, and (2) develop a means to transfer these allowances to affected IPPs who are unable to operate without such allowances.⁴ Alternatively, IEP suggests that the Proposed Decision be

² Comments of the Western Power Trading Forum on the Proposed Decision of Administrative Law Judge Allen (March 12, 2012), p. 13.

³ Proposed Decision, p. 57-58.

⁴ Comments of the Independent Energy Producers Association on the Proposed Decision on Tracks I and II of the Long-Term Procurement Plan Proceeding (March 12, 2012), p. 14.

revised to state that the utilities will be required to reserve some of their revenues received from the auction of allowances to compensate affected generators. Either of these options would lead to a fair resolution of this issue within a reasonable, finite timeframe. Such a prompt resolution is in the interest of both affected IPPs and the utilities, given the start of Cap and Trade allowance auctions in mid-2012.

Third, Wellhead Electric Company, Inc. recommends that the Commission position itself to act quickly on this issue, in the event that contract renegotiation efforts are not fruitful.⁵ If the Commission does not adopt IEP's proposal for a definitive resolution of cost allocation in this Decision, having the Commission set a Prehearing Conference now on this issue would be preferable to scheduling the next steps several months from now.

These recommendations are particularly apt, given Pacific Gas and Electric Company's ("PG&E") opening comments on the Proposed Decision concerning its pre-A.B. 32 contracts with IPPs, such as PEC. PG&E's comments highlight the significant likelihood that PG&E and PEC will *not* be able to reach consensus on a reasonable renegotiation of their pre-A.B. 32 contract, even with the CPUC's renewed direction to the utilities in the Proposed Decision. PG&E bluntly states that IEP's motion does not apply to its PPAs and that its pre-A.B. 32 PPAs do not require renegotiation for the purpose of determining how to treat GHG compliance costs.⁶ While PG&E argues that IPPs with whom it executed PPAs four to six months before A.B. 32 was signed were aware of the potential for GHG compliance costs, this does not necessitate the

⁵ Opening Comments of Wellhead Electric Company, Inc. on Proposed Decision on System Track I and Rules Track III of the Long-Term Procurement Plan Proceeding and Approving Settlement (March 12, 2012), p. 2.

⁶ Opening Comments of Pacific Gas and Electric Company (U 39 E) on Proposed Decision on System Track I and Rules Track II of the Long-Term Procurement Plan Proceeding (March 12, 2012), p. 10.

conclusion that these contracts clearly or adequately allocate responsibility for specific costs associated with the Cap and Trade Program or for the procurement of GHG compliance instruments. Based on PG&E's stance, PEC asks the Commission to consider the recommendations above to proactively address the issue of pre-A.B. 32 contracts.

III. CONCLUSION.

For the reasons set forth above, PEC respectfully requests that the Proposed Decision be revised to resolve the issue of GHG compliance costs related to pre-A.B. 32 contracts in a timely manner.

DATED: March 19, 2012

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VERIFICATION

I am the attorney for Panoche Energy Center, LLC (“PEC”), and am authorized to make this verification on PEC’s behalf. PEC is unable to verify the foregoing document in person as PEC is located outside of the County of San Francisco, where my office is located. I have read the foregoing **PANOCHÉ ENERGY CENTER, LLC’S REPLY COMMENTS ON PROPOSED DECISION OF ALJ ALLEN ON SYSTEM TRACK I AND RULES TRACK III OF THE LONG-TERM PROCUREMENT PLAN PROCEEDING AND APPROVING SETTLEMENT** and am informed and believe, and on that ground allege, that the matters stated are true and correct to the best of my knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 19th day of March, 2012, at San Francisco, California.

/s/ Seth D. Hilton _____

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