

**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 FOR RECONSIDERATION OF  
ADMINISTRATIVE LAW JUDGE'S RULING ON MOTION OF PANOCHÉ ENERGY  
CENTER, LLC TO BECOME A PARTY**

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**I. INTRODUCTION**

Pursuant to Rule 11.1 of the Commission’s Rules of Practice and Procedure, Panoche Energy Center, LLC (“PEC”) hereby moves for reconsideration of the Administrative Law Judge’s (“ALJ”) Ruling, denying PEC’s Motion to Become a Party.

**II. THE COMMISSION SHOULD RECONSIDER THE ALJ’S DENIAL OF PARTY STATUS TO PEC.**

**A. PEC Has a Direct Interest in R.10-05-006.**

PEC filed a Motion to Become a Party to Rulemaking 10-05-006 (“R.10-05-006”) on January 31, 2012, as the owner of Panoche Energy Center, a 400 megawatt natural-gas fired electrical generating facility located in western Fresno County. PEC sells energy to Pacific Gas and Electric Company (“PG&E”) under a 20-year power purchase agreement, entered into on March 28, 2006, several months before the enactment of the California Global Warming Solutions Act of 2006<sup>1</sup> (“A.B. 32”). The contract between PEC and PG&E for power from Panoche Energy Center does not allocate responsibility for costs associated with compliance with the California Cap on Greenhouse Gas Emissions and Market-Based Compliance

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<sup>1</sup> Cal. Health & Safety Code §§ 38500 et seq.

Mechanisms<sup>2</sup> (“Cap and Trade”). PEC is at risk of incurring millions of dollars in compliance costs under Cap and Trade absent a mechanism to recover for these compliance costs.

The *Joint Ruling Clarifying Venue for Consideration of Costs related to Procurement of Greenhouse Gas Allowances* in R.10-05-006 and R.11-03-012, issued August 4, 2011, made it clear that issues related to greenhouse gas (“GHG”) compliance product procurement, including the recovery of costs associated with Cap and Trade, would be addressed in R-10-05-006. Accordingly, on September 23, 2011, the Independent Energy Producers Association (“IEP”) filed a motion in R.10-05-006 requesting that it set a schedule for an expedited determination of the treatment of GHG compliance costs associated with pre-A.B. 32 contracts. Though PEC attempted to address the issue of its GHG compliance costs directly with PG&E,<sup>3</sup> when it was unable to reach a resolution with PG&E, PEC filed a Motion to Become a Party in R.10-05-006, in order to participate in the proceeding on to this issue. PEC’s Motion to Become a Party was filed approximately 50 days before the Commission issued a proposed decision in R.10-05-006, including a ruling on IEP’s motion, in the Proposed Decision on System Track I and Rules Track III of the Long-Term Procurement Proceeding (“Proposed Decision”). Not having received notice of any ruling on its Motion to Become a Party, PEC timely filed opening and reply

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<sup>2</sup> 17 Cal. Code Regs. §§ 95800 et seq.

<sup>3</sup> The California Air Resources Board urged the utilities and IPPs with pre-A.B. 32 contracts lacking a mechanism to allocate responsibility for GHG compliance costs to independently renegotiate these contracts to allow for cost recovery. (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).) PEC has thus far been unsuccessful in its attempts to engage PG&E in bilateral negotiations to amend the PEC PPA to allocate the costs that Cap and Trade will impose on PEC.

comments on the Proposed Decision. PEC was informed by the CPUC Docket Office that these comments would be held until the Commission ruled on PEC's Motion to Become a Party.

With the issuance of the Proposed Decision, it is abundantly clear that PEC will be directly impacted by the Proposed Decision and should have its comments on the Proposed Decision considered by the Commission. The Proposed Decision rules on IEP's motion and directs the utilities to renegotiate the pre-A.B. 32 contracts at issue so that they reasonably address the allocation of GHG compliance costs.<sup>4</sup> If the contracts have not been renegotiated and submitted to the Commission for approval 60 days from the effective date of the Decision, the Commission will address and resolve this issue in R.11-03-012 or another proceeding.<sup>5</sup> PEC's contract with PG&E is thus directly implicated in the Proposed Decision.

In addition, PEC is being directly prejudiced by its inability to participate in the proceeding. PG&E stated in its comments on the Proposed Decision that IEP's motion does not apply to its power purchase agreements and that its pre-A.B. 32 contracts do not require renegotiation for purposes of determining how to treat GHG compliance costs.<sup>6</sup> As a non-party, PEC has no recourse to address or respond to these comments or to present its own interpretation of the need for renegotiation of its contract with PG&E.

**B. PEC's Interests Cannot Be Represented by Another Party.**

PEC filed a motion for party status because its individual, corporate interests cannot be represented by any other party in R.10-05-006. Other IPPs that are parties to the proceeding may

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<sup>4</sup> Proposed Decision, p. 58.

<sup>5</sup> *Id.*

<sup>6</sup> Opening Comments of Pacific Gas and Electric Company (U 39 E) on System Track I and Rules Track III of the Long-Term Procurement Proceeding, p. 10.

have interests that are akin to PEC's, as IPPs who entered into pre-A.B. 32 contracts that do not allocate responsibility for GHG compliance costs. However, the terms of each IPP's contract are unique; only an individual IPP can represent to the Commission its interests under each contract or its renegotiation efforts with the utility. Therefore, while other IPPs may be similarly situated to PEC, and IEP has advanced arguments related to IPPs with pre-A.B. 32 contracts, only PEC can advocate on its own behalf before the Commission for relief related to its individual contract with PG&E.

**C. PEC did not Receive Notice of the ALJ's Ruling.**

PEC was informed on March 22, 2012 that its Motion to Become a Party to R.10-05-006 was denied, a month and a half after ALJ Allen reportedly denied the Motion. A distinct Ruling was not filed denying the Motion, rather ALJ Allen informed the Docket Office of his decision. Inconsistent with this communication by the ALJ to the Docket Office, PEC was informed by the CPUC Docket Office that its comments on the Proposed Decision were being held until PEC's Motion to Become a Party was ruled upon. When PEC received a notification on March 21, 2012 that its reply comments on the Proposed Decision were rejected by the Docket Office, PEC inquired with the Office. On March 22, 2012, PEC was informed by the Docket Office that ALJ Allen had denied PEC's motion to become a party on February 9, 2012 and that the Docket Office had been informed of the Ruling via email.

PEC did not receive notice of this Ruling, through the representatives it designated for service of documents and communications within the proceeding, nor otherwise. This Ruling was not served on the parties to the proceeding, nor was it provided on the public webpage for the proceeding, even as a notation associated with the link to PEC's filed Motion to Become a Party.

In the absence of such notice, PEC invested resources in preparing comments and reply comments on the Proposed Decision and rsvp-ed to participate in the All-Party Meeting on the Proposed Decision, scheduled for March 26, 2012. Only upon filing its reply comments was PEC informed of the Ruling denying its Motion to Become a Party.

### **III. CONCLUSION.**

For the reasons set forth above, PEC respectfully requests that the Commission reconsider the ALJ's Ruling and grant PEC's Motion to Become a Party.

DATED this 23rd day of March, 2012, at Sacramento, California.

Respectfully submitted,

*/s/ Allison C. Smith*

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