

**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.

R.12-03-014
(Filed March 22, 2012)

MOTION FOR PARTY STATUS OF PANOCHÉ ENERGY CENTER, LLC

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Dated: April 27, 2012

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I. INTRODUCTION

Pursuant to Rule 1.4(a) of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, the Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans (“Long Term Procurement Proceeding” or “LTPP”),¹ and D.12-04-046, Panoche Energy Center, LLC (“PEC”) respectfully submits this motion for party status in the above-captioned proceeding. PEC seeks party status in this matter to address the allocation of AB 32 compliance costs in contracts executed prior to the adoption of the California Global Warming Solutions Act of 2006 (“AB 32”).²

II. BACKGROUND

A. Procedural History

On March 27, 2012, the Commission initiated this rulemaking proceeding to continue its efforts in prior LTPP proceedings to, among other things, integrate and refine a comprehensive set of procurement policies. R.12-03-014 is the successor proceeding to previous LTPP dockets, including R.10-05-006, R.08-02-007, R.06-02-13, R.04-04-003, and R.01-10-024.³ On April 24, 2012 the Commission issued D.12-04-046 in which it resolved a number of issues raised in R.10-05-006. Rather than resolve the question of who should be responsible for AB 32 compliance

¹ See *Order Instituting Rulemaking*, filed March 22, 2012 (“OIR”), p. 15.

² Also referred to as “legacy contracts” or “legacy PPAs.”

³ OIR, p. 2.

costs in contracts executed prior to the adoption of AB 32, D.12-04-046 directed “utilities to renegotiate the contracts at issue so that they reasonably address the allocation of AB 32 compliance costs.” D.12-04-046 further provided that “if the contracts have not been renegotiated and submitted to the Commission for approval 60 days from the effective date of [D.12-04-046]” the Commission would resolve the issue in R.11-03-012, R.12-03-014 or a successor proceeding.⁴

III. BASIS FOR SEEKING PARTY STATUS

A. PEC Has A Direct and Relevant Interest In The Issues Raised In The Petition

Pursuant to Rule 1.4(b)(2) of the Commission’s Rules of Practice and Procedure, parties may participate in a proceeding if they state their factual and legal contentions and their interests are reasonably pertinent to the issues presented. PEC owns the Panoche Energy Center, a 400 megawatt natural-gas fired electrical generating facility in western Fresno County. PEC sells energy to Pacific Gas & Electric Company (“PG&E”) under a 20-year power purchase agreement (“PPA”) executed March 28, 2006, before the enactment of AB 32, and before the California Air Resources Board (“CARB”) adopted regulations to implement a cap-and-trade program. The PPA between PEC and PG&E does not address the cost responsibility for compliance with the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (“Cap and Trade”).⁵ PEC has tried to negotiate an amendment to the PPA with PG&E, consistent with the Commission’s direction in D.12-04-046, but PG&E has refused to do so. PEC seeks party status in R.12-03-014 in order to further develop the record on this issue and to ensure that the question of AB 32 cost responsibility in legacy contracts is resolved in a timely manner. Accordingly, PEC has a strong interest in R.12-03-014.

D.12-04-046 contemplated that the issue of AB 32 cost responsibility in legacy contracts

⁴ See D.12-04-046, *Decision on System Track I and Rules Track III of the Long-Term Procurement Plan Proceeding and Approving Settlement*, filed April 19, 2012 (“D.12-04-046”), p. 62, fn. 21.

⁵ 17 Cal. Code Regs §§ 95800 *et seq.*

would be addressed in the instant proceeding. As noted above, D.12-04-046 provided that if the utilities refused to renegotiate the Commission would resolve the issue in R.11-03-012, R.12-03-014 or a successor proceeding.⁶ In his comments in support of D.12-04-046 at the April 19, 2012 business meeting, Commissioner Simon expressed concern regarding the treatment of GHG cost responsibility in legacy contracts and stated support for addressing the issue in R.12-03-014:

On the issue that was brought by the independent power producers: that it is unfair that generators who signed contracts after the passage of AB-32 can recover their greenhouse gas compliance costs, while generators who sign contracts a little prior to AB-32 cannot recover those costs, I would have serious concerns going forward. This decision would bias for and against certain sellers and I encourage Commissioner Florio to take this into consideration as he moves forward in this proceeding.⁷

PEC has the same concerns and interest in these issues. In accordance with D.12-04-046 and Commissioner Simon's remarks on April 19, 2012, PEC respectfully requests party status in the instant proceeding.

IV. CORRESPONDENCE

All communications and correspondence regarding this matter should be sent to the following individuals:

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⁶ See D.12-04-046, p. 62, fn. 21.

⁷ Commissioner Simon's remarks in support of Item 60, CPUC Commission Business Voting Meeting - April 19, 2012, Archive Video Part 1, 1:00:14 to 1:01:05, available at <http://www.californiaadmin.com/cpuc.shtml> (as of April 26, 2012).

V. **CONCLUSION**

For the reasons stated herein, PEC respectfully requests that the Commission grant its Motion for Party Status in the above-captioned proceeding.

Dated: April 27, 2012

Respectfully submitted,

By: /s/ Jack Stoddard

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