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

Order Instituting Rulemaking to Address  
Utility Cost and Revenue Issues Associated  
with Greenhouse Gas Emissions.

Rulemaking 11-03-012  
(Filed March 24, 2011)

**ADMINISTRATIVE LAW JUDGES' RULING SETTING FORTH NEXT STEPS IN  
TRACK 1 PHASE 2 OF THIS PROCEEDING**

**1. Summary**

Pursuant to the amended Scoping Memo and Ruling issued in this proceeding on August 2, 2012, this ruling sets forth the preliminary set of issues to be decided in Track 1 Phase 2, the phase of Rulemaking 11-03-012, which will address issues concerning contracts executed prior to the passage of Assembly Bill 32 that lack terms and conditions assigning greenhouse gas cost responsibility. Parties may file opening comments as directed in the body of this ruling by August 22, 2012. Reply comments shall be due on September 5, 2012.

**2. Background**

On July 3, 2012, Panoche Energy Center, LLC (Panoche) filed a motion requesting that the scope of this proceeding be expanded to address contracts executed prior to the passage of Assembly Bill (AB) 32<sup>1</sup> that lack terms and conditions specifically designating responsibility for greenhouse gas (GHG)

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<sup>1</sup> Statutes of 2006, Chapter 488.

costs. This issue was previously considered in Rulemaking (R.) 10-05-006 (the Long Term Procurement Planning Rulemaking). Decision (D.) 12-04-046 in R.10-05-006 ordered the utilities to “renegotiate the contracts at issue so that they reasonably address the allocation of AB 32 compliance costs.”<sup>2</sup> Absent a timely resolution (within 60 days of the effective date of that decision), D.12-04-046 provided that this issue could be considered in the instant proceeding.

Panoche’s motion sought relief specific to a contract executed between Panoche and Pacific Gas and Electric Company (PG&E); however, Independent Energy Producers, in response to Panoche’s motion, requested that the scope be expanded to include all such contracts that are similarly situated. Wellhead Electric Company, Inc. (Wellhead) and Western Power Trading Forum also tendered responses in support of this expanded scope. PG&E filed a response requesting that the Commission deny Panoche’s motion, stating that Panoche’s contract contained specific terms and conditions designating GHG cost responsibility, and that Panoche and PG&E have not exhausted the dispute resolution process set forth in the contract. Panoche tendered a reply on July 23, 2012. In the amended Scoping Memo and Ruling, we granted Panoche’s motion to the extent that we expanded the scope of this proceeding to consider issues concerning all similarly situated contracts. In this ruling, we set forth next steps to build the record on this limited issue.

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<sup>2</sup> D.12-04-046 at 62.

### 3. Issues for Consideration

#### 3.1. Issues

1. Should generators that executed bilateral contracts with utilities prior to the passage of AB 32 that lack specific terms and conditions assigning GHG cost responsibility receive some form of relief for GHG costs?
2. If the answer to question number 1 above is 'yes,' how should generators be compensated?
  - a. On what general basis should compensation be determined (e.g. based upon the generator's own GHG costs or the average GHG costs of the utility's system, etc.)?
  - b. How should compensation be dispersed to generators? What mechanism would need to be adopted (e.g. a new contract term or condition, the allocation of GHG allowances) to ensure compensation?
3. What public policy interest is served through the compensation of eligible (*See* Section 3.2 below) generators?

#### 3.2. Eligibility Guidelines

In order to adequately address the above issues, we must also adopt eligibility criteria, which a contract must meet in order to receive compensation, if compensation is awarded in this proceeding. In its response to Panoche's motion, Wellhead offered a list of possible criteria to set boundaries on the world of contracts that may be eligible for compensation. We propose for comment that a contract between a generator and a utility must meet the following criteria in order to be eligible to receive relief, should the Commission decide relief is warranted, in this proceeding:

1. The contract must have been executed prior to the effective date of AB 32 (January 1, 2007);
2. The contract must not have been subsequently amended;

3. The contract does not provide for recovery of GHG costs, either explicitly or by virtue of a payment mechanism, such as the Commission determined Short Run Avoided Cost, or market based pricing; and,
4. The contract does not expire before the start of the first cap-and-trade compliance period (i.e. January 1, 2013).

### **3.3. Request for Comments**

Interested parties may file and serve comments addressing the issues set forth above, including the appropriateness of the proposed eligibility criteria, according to the schedule in Section 4, below. Parties may also propose additional eligibility criteria. In addition, parties must list and summarize all relevant guidance contained in previous Commission decisions or rulings in which this or a related issue have been addressed. Summaries should include all relevant citations as well as a discussion of how similar issues have been resolved. Guidance will include, but may not be limited to, D.12-04-046. Parties will have an opportunity to reply to opening comments.

### **4. Schedule and Next Steps**

The following deadlines are adopted for filing and serving comments on the matters described above. Subsequent steps in this proceeding will be determined based upon the information received. Should further procedural steps be necessary (e.g. hearings, legal briefs), the assigned administrative law judges will issue a subsequent ruling setting forth the appropriate steps and adopting a schedule. If additional steps are not needed, a proposed decision may issue upon receipt of comments and replies.

<b>Item</b>	<b>Date</b>
Opening comments filed and served	August 22, 2012
Reply comments filed and served	September 5, 2012

### **5. Continuing Negotiations Strongly Encouraged**

As noted in the amended Scoping Memo and Ruling, as well as D.12-04-046, the Commission firmly believes that contract disputes are best resolved by the parties to the contract. Furthermore, it is not the intention of this Commission to become involved in the negotiation of individual contracts between parties; rather, our consideration of this matter rests on a broader legal and public policy basis. Therefore, if a solution were to be adopted, it is highly likely that such solution would be applied equally to all contracts, an outcome that may be less than ideal in particular cases, depending on the terms and conditions of each specific contract. As such, we strongly encourage parties to continue to engage in negotiations to find a workable (and likely preferable) solution for each individual generator and utility.

**IT IS RULED** that:

1. Interested parties may file and serve opening comments addressing the issues, eligibility criteria, and Commission guidance and precedent as set forth in Section 3 of this ruling. Opening comments are due on August 22, 2012.
2. Reply comments are due on September 5, 2012.

Dated August 7, 2012, at San Francisco, California.

/s/ JESSICA T. HECHT  
Jessica T. Hecht  
Administrative Law Judge

/s/ MELISSA K. SEMCER  
Melissa K. Semcer  
Administrative Law Judge