

BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

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

PACIFIC GAS AND ELECTRIC COMPANY (S 39 E)
COMMENTS PROPOSED DECISION CLARIFYING COMMISSION POLICY ON
GREENHOUSE GAS COST RESPONSIBILITY FOR CONTRACTS EXECUTED
PRIOR TO THE PASSAGE OF ASSEMBLY BILL 32

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Dated: March 3, 2014

BEFORE THE
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OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Addressing Utility
Cost and Revenue Issues Associated with
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PACIFIC GAS AND ELECTRIC COMPANY (PG&E)
COMMENTS ON PROPOSED DECISION CLARIFYING COMMISSION POLICY ON
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The Proposed Decision Clarifying Commission Policy on Greenhouse Gas Cost
Responsibility for Contracts Executed Prior to Passage of Assembly Bill ("AB") 32
appropriately addresses a number of contentious issues that have arisen in this proceeding
concerning the Commission's role in resolving disputes between utilities and contracting
parties regarding actual responsibility for greenhouse gas ("GHG") compliance costs. The
PD is well-reasoned and Pacific Gas and Electric Company ("PG&E") generally supports its
adoption by the Commission. However, some modifications are necessary to address the specific
circumstances with regard to dispute resolution efforts between PG&E and Panoche Energy
Center ("Panoche"). These modifications are set forth in more detail below.

PG&E has been able to successfully renegotiate contracts with almost all of its
counterparties to pre-Assembly ("AB") 32 contracts to provide certainty and certainty
with respect to GHG compliance cost responsibility. PG&E has requested and received
Commission approval for a number of these renegotiated agreements. ¹ Panoche is the only

¹ See Decision ("D.") 13-01-003 (approving modifications to Starwood Power-Midway contract); D.13-05-005 (approving modifications to Fresno Cogeneration contract); and D.13-08-009 (approving modifications to Marsh Landing Generating Facility contract).

counterparty that PG&E has been able to negotiate an agreement to further address GHG compliance cost responsibility. PG&E and Panoche engaged in negotiations for well over a year to try to resolve the issue of which party was responsible for compliance costs. After it became evident to the parties that the negotiations were unsuccessful, PG&E initiated dispute resolution under the terms of its existing Power Purchase Agreement (“PPA”) in November 2012. PG&E and Panoche engaged in an arbitration process including discovery, briefs, and five days of hearings. In May 2013, at the end of the arbitration process, the arbitration panel consisting of three arbitrators issued an award granting PG&E’s two requests that Panoche was responsible for GHG compliance costs and Panoche understood, at the time it signed the PPA, that if there was a future change in the law that imposed a GHG cost on facilities, he would have to bear that cost.

Panoche then went to the Superior Court to vacate the arbitration award, and was able to successfully argue that the award should be vacated on procedural grounds. PG&E has appealed the Superior Court’s decision and the matter is currently pending before the California Court of Appeal.

PG&E is concerned that PD’s requirement that utilities negotiate with counterparties to pre-AB 32 contracts will effectively result in returning PG&E and Panoche to square one. The parties spent more than a year in negotiations and were unable to resolve their differences. The parties then utilized the dispute resolution provisions in the PPA to determine GHG compliance cost responsibility. PG&E understands that the PD cannot be a halfway to address each unique contract situation or the current status of discussions on each utility and its counterparties. However, the PD should be modified so that parties that have already engaged in extensive negotiations and dispute resolution are not required to return to square one and re-start the entire process.

To address this situation, PG&E proposes the following modifications to the PD:

Conclusions of Law

3. Utilities subject to State jurisdiction should continue to renegotiate Legacy Contracts in good faith to develop clear terms and conditions addressing GHG cost responsibility, where negotiation efforts have already occurred, utilize a contract dispute resolution provisions to determine GHG cost responsibility.

Ordering Paragraphs

1. Electric utilities contracts executed prior to passage of Assembly Bill 32 (the Global Warming Solutions Act) lack specific terms and conditions assigning greenhouse gas costs responsibility re ordered to continue to renegotiate these contracts to reassign greenhouse gas costs and responsibility for those costs already articulated in contracts or, where negotiation efforts have already utilized contract's dispute resolution provisions to determine GHG cost responsibility. Absent successful renegotiation and forward through dispute resolution, generators party to these contracts may file through the November 8, 2013 Greenhouse Gas Cap-and-Trade proposal amendments currently under consideration by the California Air Resources Board.

These modifications make clear, at least in PG&E's case, PG&E and Panochedo not need to start over with negotiations but can instead continue to dispute resolution through the appeal pending at California Court of Appeals. With these modifications, PG&E fully supports adoption of the PD.

Respectfully submitted,

PACIFIC GAS AND ELECTRIC COMPANY

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By: _____ /s/ Charles Middlekauff
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Dated: March 3, 2014

CERTIFICATE OF SERVICE
BY ELECTRONIC MAIL AND COURIER

I, the undersigned, do hereby certify that I am a citizen of the State of California and am employed in the City and County of San Francisco; that I am over the age of (18) years and am not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, CA 94105.

On the 3rd day of March, 2014, I did cause to be served a true copy of:

PACIFIC GAS AND ELECTRIC COMPANY (S 39 E)
COMMENTS PROPOSED DECISION CLARIFYING COMMISSION POLICY ON
GREENHOUSE GAS COST RESPONSIBILITY FOR CONTRACT EXECUTION PRIOR
TO THE PASSAGE OF ASSEMBLY BILL 32

[XX] By Electronic Mail – serving the above-mail transmission to each of the parties listed on the official service list for R.11-03-012.

[XX] By Courier and electronic mail to the following:

Melissa Semcer Administrative Law Judge California Public Utilities Commission 505 Van Ness Avenue, 5 th Floor San Francisco, CA 94102	Michael Peevey, Commissioner California Public Utilities Commission 505 Van Ness Avenue, 5 th Floor San Francisco, CA 94102
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I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 3rd day of March, 2014, at San Francisco, California.

/s/ Elizabeth Diamond

ELIZABETH DIAMOND