

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  
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

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

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PACIFIC GAS AND ELECTRIC COMPANY (PG&E)  
COMMENTS ON PROPOSED DECISION CLARIFYING COMMISSION POLICY ON  
GREENHOUSE GAS COST RESPONSIBILITY FOR CONTRACTS EXECUTED PRIOR  
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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. <sup>1</sup> Panoche is the only

<sup>1</sup> 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.



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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 <sup>th</sup> Floor San Francisco, CA 94102	Michael Peevey, Commissioner California Public Utilities Commission 505 Van Ness Avenue, 5 <sup>th</sup> 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  
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ELIZABETH DIAMOND