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May 18, 2007

DOCKET
06-AFC-7
DATE MAY 18 2007
RECD. MAY 18 2007

Ms. Raquel Rodriguez
California Energy Commission
Docket Unit, MS-4
1516 Ninth Street
Sacramento, CA 95814-5512

Re: **PACIFIC GAS & ELECTRIC COMPANY'S PETITION FOR BIFURCATION AND REVISED SCHEDULING ORDER DOCKET NO. (06-AFC-7)**

Dear Ms. Rodriguez:

Enclosed for filing with the California Energy Commission are one original and 12 (Twelve) copies of the **PACIFIC GAS & ELECTRIC COMPANY'S PETITION FOR BIFURCATION AND REVISED SCHEDULING ORDER**, for the Humboldt Bay Repowering Project (06-AFC-7).

Sincerely,

Marguerite Cosens

Marguerite Cosens
Administrative Assistant

Scott A. Galati
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STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:	**DOCKET NO. 06-AFC-7**
Application for Certification for the Humboldt Bay Repowering Project	**PACIFIC GAS & ELECTRIC COMPANY'S PETITION FOR BIFURCATION AND REVISED SCHEDULING ORDER**

Pacific Gas & Electric Company (PG&E) hereby requests the AFC Siting Committee for the Humboldt Bay Repowering Project (HBRP) to issue an order to bifurcate the proceedings and to issue a revised scheduling order directing CEC Staff to prepare its Preliminary Staff Assessment (PSA) on all matters except for Air Quality, Public Health and Visual Resources as described below.

BACKGROUND

On May 11, 2007 Staff filed its Status Report Number 3 in accordance with the Committee Scheduling Order. In that Status Report, Staff sets forth what it considers to be significant Air Quality and Public Health issues. Staff's status report refers to a letter it sent to PG&E dated the same day. PG&E has reviewed Staff's Status Report Number 3 and its letter and disagrees with both the severity and basis for Staff's opinions.

While PG&E disagrees with Staff's analysis and conclusions, the purpose of this motion is not to litigate these issues, as this is not the proper forum. PG&E believes the issues can be successfully resolved in the normal course of the proceedings after Staff publishes its full analysis in the PSA and the parties engage in full discussion at subsequent workshops. Without the benefit of being able to review Staff's complete analysis, it is difficult if not impossible to engage in meaningful discussion.

Staff correctly points out that it has conducted three rounds of data requests and three workshops involving Air Quality and Public Health. In addition to these workshops, PG&E facilitated meetings with Staff and the representatives of Wartsila, the engine manufacturer to discuss the engine technology as well as a meeting with Staff, representatives of the California Air Resource Control Board (ARB), representatives of the California Independent System Operator (CalISO), and representatives from PG&E's gas transmission department. The majority of the discussion at these workshops and meetings involved providing information regarding the need for the facility to have dual fuel capability, the amount of hours necessary to burn diesel to produce electricity during times when gas is curtailed or unavailable due to an emergency, and the basis for the engine manufacturer's emission estimates. Staff issued Data Requests about the Air Quality modeling presented in the AFC and PG&E provided responses and additional documentation supporting the methodology employed. This is not a case where information is not being provided timely and accurately. This is a case where Staff either does not fully understand the information delivered, or just flat out disagrees with the methodology employed.

Staff states in its Status Report that it has reviewed the Preliminary Engineering Analysis prepared by ARB Staff.[1] ARB Staff has been supporting the North Coast Unified Air Pollution Control District (District) in preparing the Preliminary Determination of Compliance (PDOC). According to Staff's status report, the Preliminary Engineering Analysis supports its assertion that the HBRP ***could result*** in significant public health impacts and ***may not conform*** with the U.S. Environmental Protection Agency's (U.S. EPA) recently lowered PM2.5 standard. Staff then concludes that PG&E should redesign the project to abandon the dual fuel reciprocating engine technology despite the fact that:

- CalISO endorsed the need for dual fuel capability for the HBRP in writing and in a meeting with Staff;
- The reciprocating engine technology and the Engineering Procurement and Construction (EPC) contract with Wartsila was approved by the CPUC pursuant to a Long Term Request For Offers process that took over 3 years to complete;
- Modifying the technology at this date, if possible, could not be approved by the CPUC and resubmitted to the CEC in less than two years;
- Delay in the permitting of the HBRP as configured results in continued operation of the existing boilers and diesel fired Mobile Emergency Power Plants (MEPPs)

[1] The Applicant is at a distinct disadvantage in responding to the Staff's allegations regarding the Preliminary Engineering Analysis, as this analysis has not been shared with the Applicant to date.

with greater emissions[2], lower efficiencies and a consumptive use of once through ocean water of 45,000 gallons per minute;

- Continued operation of the existing power plant delays the efficiency benefit of the HBRP as configured, which will make more natural gas available to PG&E customers, and delays the benefits of reduced gas curtailments associated with the new units; and
- Delay in the permitting of the HBRP as configured negatively affects the schedule for eventual demolition of the Unit 3 nuclear reactor.

Public Health

PG&E is very concerned that Staff would publish in a public document the results of its preliminary analysis without supporting its conclusions with the methodology employed or a description of its assumptions. This is precisely why Staff prepares a Preliminary Staff Assessment, because it lays out for the parties and the public crucial information necessary to place the results in context.

PG&E has performed a public health impact analysis in the AFC and provided subsequent data to Staff in response to data requests justifying the methodology employed and clearly laying out the reasonableness and conservative nature of its assumptions. PG&E believes the HBRP will not result in significant public health impacts for reasons demonstrated in its AFC and further testimony it will present to the AFC Committee at evidentiary hearing, which is the proper forum.

PG&E will not replace the existing power plant with any facility that will cause significant public health impacts.

Air Quality

Similarly, PG&E is concerned that Staff is basing its need for the HBRP to be reconfigured to employ different technology on the review of another preliminary document that has neither been released to PG&E nor the public. The Preliminary Engineering Analysis prepared by ARB Staff should also set forth the assumptions and methodology employed to evaluate the potential for the HBRP to result in air quality impacts. The HBRP Project Team's experience with air quality analysis is that it sometimes takes an iterative process for the parties to agree to a modeling protocol, which sets forth the assumptions and methodology for analysis to be employed. We have learned that ARB Staff and CEC Staff did not agree with the modeling approach employed by PG&E; however, there appear to be somewhat different opinions between the two agencies on various aspects of the analysis. PG&E has responded to both ARB

[2] Delays in construction and operation of the HBRP lead to continued emissions from the existing plant of 34 tons *per month* of ozone precursor emissions, and 20 tons *per month* of particulate precursor emissions over the emissions associated with the new plant.

and CEC Staffs outlining its reasons for employing the emission factors and modeling techniques used. Apparently, both the ARB and CEC Staffs disagree with PG&E, although not necessarily regarding the same issues.

PG&E was expecting a data request outlining the specific methodology that the CEC Staff recommends along with reasons it rejects PG&E's approach, but was not expecting a letter stating the HBRP has significant impacts, which Staff believes can only be avoided by complete reconfiguration of the project.

PG&E will continue to work with ARB and District Staff to provide additional modeling to demonstrate that operation of the HBRP will comply with the District Rules. PG&E does not believe that it will need to reconfigure the HBRP to achieve that demonstration. It is possible that the stacks may have to be raised, but PG&E believes once it submits modeling in accordance with ARB and District approved modeling protocol, the District will be able to issue its PDOC. PG&E will continue to work with ARB, District and CEC Staff to successfully resolve these issues.

PG&E will not replace the existing power plant with any facility that will cause significant air quality impacts.

REQUEST FOR BIFURCATION

On Monday May 14, 2007 PG&E requested Staff bifurcate the proceeding to allow the continued permitting of this extremely important project. Specifically, PG&E requested that Staff prepare its PSA for all technical areas except Air Quality, Public Health and Visual Resources while continued work through the PDOC process proceed to resolution. Staff denied the request on the grounds that it does not care for bifurcation and because it believed the HBRP would be reconfigured by PG&E thereby rendering any analysis on the current configuration moot. For the reasons discussed above, PG&E will not be reconfiguring the project and strongly believes that reconfiguration is not required to demonstrate the HBRP will comply with air district rules, is not required to demonstrate that the project will not result in significant impacts, and is not in the best interests of its customers or the Humboldt community.

Authority for Bifurcation

Since Staff will not agree to bifurcation, PG&E brings this motion pursuant to 20 CCR, Section 1716.5 requesting an order that Staff prepare its PSA on all subject matters excluding Air Quality, Public Health and Visual Resources (possible raising of stacks) within 20 days. Section 1716.5 specifically authorizes the presiding member to rule on any petition regarding any aspect of the proceeding. Additionally, 20 CCR 1709.7 (c) authorizes the presiding member to change the schedule at any time upon motion by any party.

While not precedential authority, Staff and AFC Committees have agreed to bifurcate proceedings in the past. Bifurcation was employed in the Sunrise and Tesla AFC proceedings as well as others.

Specific Reasons For Bifurcation

As discussed above, the delay in the proceeding is specific to the air quality and public health modeling methodology employed only. The delay is not due to lack of available information provided by PG&E to the District, ARB or CEC Staff. The delay is due to a disagreement on the methodology employed and while PG&E is working to resolve the issue, disagreement alone should never be a reason to delay progress on the other technical areas. Staff's argument that the project will be reconfigured is without merit.

PG&E has made incredible progress on all other technical areas and expects no disputes with Staff. The HBRP is air-cooled and will eliminate the use of over 45,000 gallons per minute of ocean water for cooling and therefore furthers the Commission policy on once through cooling. The HBRP will be more efficient and will create permanent wetlands. PG&E has already obtained verification of its wetland delineation from the U.S. Army Corps of Engineers, an accomplishment that usually delays projects at the CEC. There has been no public opposition to the HBRP and the community understands the benefits associated with the replacement of the old plant with new, clean state of the art efficient technology that will increase reliability and due to its efficiencies operate on diesel less than the existing plant.

PG&E believes that if the AFC Committee grants this petition, PG&E and Staff can make substantial progress in all other technical areas while the issues involving issuance of the PDOC are resolved. The HBRP is already behind schedule in its projected permitting timeline and that delay is solely due to delay in issuance of the PDOC. PG&E believes allowing the Air Quality and Public Health issues to proceed in parallel, rather than serially, with the other technical areas will allow the HBRP minimize the negative affect on its construction schedule due to the current delays. PG&E strongly believes that bifurcation will allow the parties to present a cleaner evidentiary record reflecting more agreements than disputes. This in turn will result in less potential for protracted evidentiary hearings and briefing and will allow the Presiding Member's Proposed Decision to be less complex.

PG&E has been planning to begin construction of this much-needed resource in March of 2008. It filed its AFC in September of 2006 to allow for some schedule delay. Without bifurcation, PG&E believes its March 2008 construction date will be in jeopardy.

CONCLUSION

PG&E respectfully requests the AFC Committee for the HBRP grant this petition for bifurcation and order Staff to prepare its PSA on all technical areas except Air Quality, Public Health, and Visual Resources (Part I Topics) within 20 days. PG&E further requests the scheduling order be revised to direct Staff to schedule a public workshop on the Part I Topics within 30 days of issuance of the PSA on the Part I Topics and to direct Staff to prepare its FSA on the Part I Topics within 30 days of completion of the PSA workshop.

PG&E further requests that the existing scheduling order requiring Staff to prepare its PSA within 30 days after receipt of PDOC be revised to reflect the bifurcation and that the order should apply to Part II Topics (Air Quality, Public Health and Visual Resources). Similar modification should be made to the requirement that Staff prepare its FSA within 30 days after receipt of the FDOC.

A revised schedule is attached for consideration by the Committee.

Dated: May 17, 2007

Respectfully Submitted,

Scott A. Galati
Counsel to PG&E

PROPOSED SCHEDULE

EVENT	DATE
Staff Files PSA (Part I Topics)	20 days after Committee Order
PSA Workshop (Part I Topics)	Within 30 days of Issuance of PSA (Part I Topics)
Staff Files FSA (Part I Topics)	Within 30 days after PSA Workshop (Part I Topics)
Local, state and federal agency draft determinations & NCUAQMD PDOC	TBD
Staff Files PSA (Part II Topics)	Within 30 days after Issuance of PDOC
PSA Workshop (Part II Topics)	Within 30 days of Issuance of PSA (Part II Topics)
Local, state and federal agency final determinations & NCUAQMD FDOC	TBD
Staff Files FSA (Part II Topics)	Within 30 days after Issuance of FDOC

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION FOR THE HUMBOLDT BAY REPOWERING PROJECT BY PACIFIC GAS AND ELECTRIC COMPANY

Docket No. 06-AFC-7
PROOF OF SERVICE
(Revised 5/1/07)

INSTRUCTIONS: All parties shall 1) send an original signed document plus 12 copies OR 2) mail one original signed copy AND e-mail the document to the web address below, AND 3) all parties shall also send a printed OR electronic copy of the documents that shall include a proof of service declaration to each of the individuals on the proof of service:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 06-AFC-07
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Declaration of Service

I, Marguerite Cosens, declare that on May 18, 2007, I deposited the required copies of the attached **PACIFIC GAS & ELECTRIC COMPANY'S PETITION FOR BIFURCATION AND REVISED SCHEDULING ORDER** in the United States mail at Sacramento, CA with first-class postage thereon fully prepaid and addressed to those identified on the Proof of Service list above. I declare under penalty of perjury that the foregoing is true and correct.

OR

Transmission via electronic mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210. All electronic copies were sent to all those identified on the Proof of Service list above.

I declare under penalty of perjury that the foregoing is true and correct.

Marguerite Cosens

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