

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA



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Application of Pacific Gas and Electric)
Company for Expedited Approval Of The)
Tesla Generating Station and Issuance of a)
Certificate of Public Convenience and)
Necessity and Request for Interim Order)
Authorizing Early Project Commitment to)
Stabilize Costs)

Application No. 08-07-018

**PROTEST OF THE CITY AND COUNTY OF SAN FRANCISCO OF PACIFIC
GAS AND ELECTRIC COMPANY'S APPLICATION FOR EXPEDITED
APPROVAL OF THE TESLA GENERATING STATION**

In accordance with the Commission's Rules of Practice and Procedures, Rule 2.6, the City and County of San Francisco (City or CCSF) respectfully protests the application filed by Pacific Gas and Electric Company (PG&E) on July 18, 2008, for expedited approval of the Tesla Generating Station and issuance of a certificate of public convenience and necessity and request for interim order authorizing early project commitment to stabilize costs (Tesla application). PG&E's application is inconsistent with the Commission's policies and the requirements for such applications.

- PG&E's application fails to demonstrate how the Tesla application fits into PG&E's greenhouse gas (GHG) reduction strategy.
- PG&E has not demonstrated that the Commission should allow its utility-owned generation (UOG) proposal outside a competitive solicitation process.
- PG&E's reliance on a four-year old decision (D.04-12-048) to avoid a competitive process for the Tesla application is misplaced.
- PG&E should not be able to claim as an emergency justifying expedited treatment, a reliability situation it played a substantial role in creating.

- Approval of the Tesla application would impose substantial costs and risk on ratepayers.
- I. PG&E's application fails to demonstrate how the Tesla application fits into PG&E's greenhouse gas reduction strategy.

In D.07-12-052, the Commission required that "[a]ny application for fossil generation filed in response to this decision, shall demonstrate how the resource fits into the investor owned utility's (IOU)GHG reduction strategy." D. 07-12-052, at 299 (Ordering Paragraph # 3). Neither the application nor the supporting testimony include such a demonstration. The documents include only conclusory statements that the facility's low heat rate will ensure that less GHG are burned, and that because it is flexible, the facility complements renewable resources. The application contains no description of PG&E's broader GHG reduction plans and how the addition of 560 to 1,120 MWs of fossil fueled generation fits into these plans. The application is accordingly inconsistent with D.07-12-052.

Moreover, the statements that are made in the application supporting the plant's environmental advantages and compatibility with renewables require additional investigation. For example, PG&E contends that the proposed plant will have a very low heat rate, around 7,000 Btu/kWh, but claims that the plant will be operationally flexible, with the capability to start up quickly and frequently. Typically, plants operating as combined cycle plants have low heat rates but are not capable of very quick or frequent starts. More likely, the quick start capability is associated with the ability to fire up the combustion turbines to operate as simple cycle plants, a configuration with a substantially higher heat rate than ~7,000 Btu/kWh. Moreover, an efficient base load plant often competes more directly than would a peaker plant with certain renewable resources.

These are simply two points which demonstrate that a much more thorough review of the compatibility of the proposed Tesla plant with PG&E's long-term renewable resources and GHG mitigation plans is warranted.

II. PG&E has not demonstrated that its utility-owned generation (UOG) proposal should be allowed outside a competitive solicitation process.

In D.07-12-052, the Commission stated:

We again express our support for our “competitive market first” approach. By taking these steps we believe we are moving further along in our transition to a robust competitive generation market. We firmly believe that all long-term procurement should occur via competitive procurements, except in truly extraordinary circumstances. While we do not explicitly disallow utility ownership options in the generation market we continue to look unfavorably on this procurement option but realize that in extraordinary times this may be the optimal method for meeting the needs of California’s ratepayers.

D.07-12-052 at 211. The Tesla application fails to meet the high standard established in D.07-12-052.

PG&E was authorized in D.07-12-052 to undertake a competitive solicitation for 800 to 1,200 MW of new capacity by 2015. PG&E's application provides no details of the schedule for such solicitation or why the Tesla proposal cannot be included in that process. Instead, PG&E merely states that an RFO process *can* take up to seven years and that the Tesla project cannot afford such a delay. However, *PG&E* controls the timing of both the Tesla application and the competitive solicitation. Moreover, the RFO process need not take seven years, particularly since, according to PG&E's application, that seven-year period includes the negotiation and approval of individual contracts, which in the case of the Tesla application has already taken place. Thus, PG&E has not demonstrated why the Tesla application could not be tested through a competitive process.

Moreover, other than an urgent reliability need (which PG&E helped to create as is discussed further in this protest), PG&E's justification for an expedited process appears to be the expiration of the California Energy Commission permit. However, such permits can be, and routinely are, extended for good cause. See California Energy Commission Rules of Practice and Procedure, Rule 1720.3. Moreover, while PG&E avers that the proposed plant has a favorable position in the California Independent System Operator (CAISO) interconnection queue, this position is, according to PG&E, dependent on the time when the interconnection request was made. Thus, it does not appear that having the Tesla application undertaken in the context of a competitive process, and with an adequate opportunity for review by the Commission, would change the position of the plant in the CAISO's interconnection queue.

Rather than demonstrating a compelling case for dispensing with a competitive solicitation, it appears that, among other benefits, PG&E seeks to avoid the Commission's determination in D.07-12-052 that utilities would not be able to recover from ratepayers bid development costs for losing bids." See D.07-12-052 at 285, 296. By arguing extraordinary circumstances and circumventing the competitive process, PG&E would shift to ratepayers all risk of project development costs.

III. PG&E's reliance on a four year old decision to justify an exemption from a competitive process is misplaced.

PG&E purports to submit the application pursuant to D.04-12-048 as a "replacement" for projects selected through the competitive process authorized in that decision. The Commission more recently examined PG&E's need for generation in D.07-12-052, including the status of generation purchases approved in the prior decision. Accordingly, PG&E's proposal should be evaluated against the requirements of the more

recent decision, D.07-12-052. Moreover, PG&E advances the novel theory that a UOG project which a utility claims is a "replacement" for a project selected in a prior competitive process, should per se be excused from demonstrating that it qualifies for the limited exemption from participating in a competitive process. PG&E application at 13. There is no support for this suggestion in either D.07-12-052 or D.04-12-048.

Moreover, the total capacity from defunct projects that were awarded in the 2004 competitive process, is 212 MWs, whereas just phase I of the Tesla project would be 560 MWs of generation, more than twice the amount of generation to be "replaced". If both phases go forward, the Tesla project would be 1,120 MWs, more than four times the capacity of the defunct projects. Although PG&E avers that the Tesla project will replace 913 MWs of generation, in fact 601 MWs of this figure correspond to the Russell City project, which PG&E explains could be on line by 2012. Thus, even if PG&E's argument that "replacement" projects are held to a lower standard had any validity (which it does not), this argument would not justify the Tesla application.

IV. PG&E should not be able to claim as an emergency justifying expedited treatment, a reliability situation it played a substantial role in creating.

The Tesla application and supporting PG&E testimony portrays the reliability situation in PG&E's service area as approaching a crisis with impending catastrophic generation shortages beginning in 2012. PG&E actually includes as a factor supporting this outcome, the fact that two small power plants under development by the City are currently pending before, but have not yet been acted upon, by the San Francisco Board of Supervisors.

These representations are startling considering that PG&E undertook a concerted campaign to oppose development of two small City power plants, the San Francisco

Electric Reliability Project, a 145 MW plant and a 48 MW plant at the San Francisco International Airport. Several of the almost weekly fliers distributed by PG&E at the time the City Board of Supervisors was actively considering the proposed City power plants are attached to this protest. They aver that additional fossil generation is not needed and that reliability needs can be met with energy efficiency and renewable resources. The City projects were slated for commercial operation by 2010, well before the 2012 deadline by which PG&E claims a critical reliability need for more generation will materialize. PG&E should not be allowed to actively and aggressively seek to defeat necessary projects proposed by other parties, and then use the resulting generation shortfalls to justify extraordinary procedures for approval of PG&E owned projects.

V. Approval of the Tesla application would impose substantial costs and risk on ratepayers.

PG&E avers that the Tesla project is a cost-effective choice for ratepayers as compared other power purchase agreements (PPA), including a PPA proposed by FLP Energy, LLC to PG&E, and PPAs approved by the Commission in the 2004 procurement process. The City has no way of verifying this statement or examining PG&E's analysis as all relevant information is redacted from the public version of the Tesla application. However, there are several observations that can be made even from a review of the public information.

First, PG&E seeks to make ratepayers entirely responsible for all development costs regardless of whether the Tesla plant is ultimately built. Thus, ratepayers shoulder the entire development risk. This result is inconsistent with the determination in D.07-12-052 that ratepayers should not be at risk for utility bid development costs for projects that are not selected. The Tesla application explicitly requests that PG&E be guaranteed

recovery of all its development costs, regardless of how high, even if the Tesla project does not go forward. Such a result places PG&E in a more favorable competitive situation than independent power producers seeking to develop generation in California who do not recover any development costs unless and until they are selected in the context of a competitive bidding process.

Second, it appears from the public versions of the application and testimony that PG&E attempts to show that in all cases, utility ownership of a generating unit will always be cost-effective as compared to a power purchase agreement with an independent power producer. Without access to the numbers or the underlying workpapers, the City cannot examine PG&E's analysis, but this conclusion is inconsistent with the Commission's policy determination to promote a competitive generation market and allow for utility development of generation outside such process only in extremely limited circumstances.

VI. Conclusion.

The Tesla application is inconsistent with the Commission's policies for protecting ratepayers, reducing greenhouse gases and promoting a fair competitive generation market. The Commission should hold the utilities to the high standard set forth in D.07-12-052 for side-stepping a competitive process for their own projects, and should require PG&E to vet the Tesla proposal through a competitive process.

Respectfully submitted,

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ATTORNEYS FOR THE CITY AND COUNTY
OF SAN FRANCISCO

August 18, 2008

CERTIFICATE OF SERVICE

I, **PAULA FERNANDEZ**, declare that:

I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen years and not a party to the within action. My business address is City Attorney's Office, City Hall, Room 234, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102; telephone (415) 554-4623.

On August 18, 2008, I served **PROTEST OF THE CITY AND COUNTY OF SAN FRANCISCO OF PACIFIC GAS AND ELECTRIC COMPANY'S APPLICATION FOR EXPEDITED APPROVAL OF THE TESLA GENERATING STATION** by electronic mail on Service List No. A0807018.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on August 18, 2008, at San Francisco, California.

/s/
PAULA FERNANDEZ