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STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION AND  
 DEVELOPMENT COMMISSION

In the Matter of the	)	Docket No. 01-AFC-21C
	)	
Tesla Power Plant Extension	)	Robert Sarvey's Response to PG&E'S
	)	Comments on the Siting Committees
	)	Proposed Order on its Request
	)	for Extension of the Construction
	)	Deadline.

I The Petition Is Not Properly Before the Commission, Because It Is  
 for a Project Different from the Project That Was Originally Certified

PG&E's Comments on the Siting Committees Proposed Order states that PG&E is not proposing a project that is different than the 1169 MW Tesla Project that the Commission certified in 2004. PG&E opines that the Committee's determination that the project is undefined is based on two factors. One is the applicants attorney's comments at the June 3, 2009 Commission Business Meeting.

*We always anticipate that we would likely be coming forward with a project that is smaller than 1120 megawatts. I can't tell you how small. I can't tell you how much; therefore, I cannot tell you how much water or [air pollution offsets would be needed]" Scott Galati (6/3/09 RT 27.)*

The other factor according to the applicant is the fact that PG&E sought to construct only one train of the Tesla Project at the CPUC. While that is enough evidence for the Commission to conclude that the Tesla Project is undefined other evidence exists in the record that PG&E is not proposing an 1169 MW Power Plant. The applicant's testimony by Andrea Grenier and Jerry Salamy states on page 5:

*"At this time, it is difficult to predict what, if any, modifications might be. However it is that either PG&E or a third party could construct a portion of the plant rather than the full 1100 MW."*

CEC staffs testimony provides further evidence that the applicant has no idea what project he is requesting an amendment for. When questioned about discussions with Mr. Galati and a PG&E representative Jack Caswell indicated PG&E was considering building only a 650 megawatt plant not the 1169 megawatt plant the commission certified in 2004.

16 Q Thank you. In your testimony you stated  
17 that you had some informal discussions with PG&E.  
18 And based on those discussions, and this may be  
19 not a question you can answer, in your opinion do  
20 you believe that the project description will  
21 change when PG&E comes back with this amendment?  
22 A Discussions at the end of 2008 with  
23 Mr. Galati and a representative from PG&E as well  
24 as Florida Power and Light that I think were  
25 present at a meeting indicated that there would be  
1 a reduction in the project size to 650 megawatts.  
RT 7-20-09 page 60,61

There is ample evidence in the record that PG&E has no direction on this project and has no idea what they intend to build. PG&E has no basis to argue that the Commission is being arbitrary and capricious<sup>1</sup> in denying this extension based on an inadequate project description.

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<sup>1</sup> "PG&E requests that the proposed order reflect that PG&E was not seeking an extension for a different project and that the rationale for denying the extension request on that ground be deleted. Anything less would reflect the arbitrary and capricious nature of this decision and show a clear abuse of discretion as there is no evidence in the record to support such a finding."

## II Even if the Petition Were Properly Before the Commission, It Should be Denied Because There Is No Good Cause for an Extension of the Start-of-Construction Deadline

PG&E continues to insist that PRC Section 25534 is the only standard that should be considered in considering good cause for a construction extension. The committee was quite clear in its direction about what constitutes good cause beginning with the suggestion that the parties look to the good cause deliberations in the Beacon Solar Project. In the July 20, 2009 Notice of Evidentiary Hearing Order the Committee laid out a list of question for the parties to answer which demonstrated the Committees thinking on what constitutes good cause. The applicant's attorney inexplicably chose to ignore those factors and stubbornly insist that only Section 25534 and previous siting cases could be used to determine good cause factors

### Diligence in Starting Construction

PG&E insists that they exercised due diligence because they pursued the project at the CPUC. The CPUC dismissed their application because they failed to pursue their due diligence in conducting a request for offers.

*“More specifically, the Commission finds that facts that PG&E has alleged in its application do not adequately establish that conducting a request for offer is infeasible; a central requirement to proposing utility owned generation outside of a competitive process, as required by Decision 07-12-052.”<sup>2</sup>*

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<sup>2</sup> DECISION GRANTING MOTION TO DISMISS OF WESTERN POWER TRADING FORUM/THE ALLIANCE FOR RETAIL ENERGY MARKETS AND THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION Application 08-07-018 (Filed July 18, 2008)

Additionally according to Staff's testimony in their answer to the Committee's question 3 (d), PG&E and FPLE have done nothing to meet the preconstruction requirements contained in the Conditions of Certification.<sup>3</sup>

The applicant also states in his response to the proposed decision that the Commission is creating a double standard by accepting East Altamont's stated intent of bidding into the RFO as good cause and not finding PG&E's intent to proceed through the CPUC's LTPP as establishing good cause. Perhaps the Commission has discovered that Calpine failed to enter a bid in the 2006 LTPP as they promised when they received their extension.

### Factors Beyond PG&E's Control

PG&E disagrees with the assertion that the rejection of PG&E's application at the CPUC was within PG&E's control. In fact PG&E's application failed because they did not conduct a request for offers nor did they bid the project into the 2006 LTPP. PG&E had been in negotiations with FPL for many months before the final due date for request for offers for the 2006 LTPP which was July 21, 2008. They could have easily entered their bid into the RFO but instead elected to try to gain CPUC approval through a unique circumstances exception and a reliability concern.

### Conclusion

The Committee's proposed decision denying the construction extension for PG&E is not arbitrary and capricious and reflects the evidence in the record contrary to what the applicant has opined.

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<sup>3</sup> Staff's Testimony page 1

d) What efforts were made by the previous and current Project Owner to meet pre- construction requirements contained in the Conditions of Certification?

**Answer:** None that Staff is aware of.