

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA**

Application of Pacific Gas and Electric )  
Company for Expedited Approval Of The ) A.08-09-007  
Amended Power Purchase Agreement For The ) (Filed September 10, 2008)  
Russell City Energy Company Project )

**JOINT PETITION OF PACIFIC GAS AND ELECTRIC COMPANY,  
RUSSELL CITY ENERGY COMPANY, LLC, DIVISION OF  
RATEPAYER ADVOCATES, CALIFORNIA UNIONS FOR RELIABLE  
ENERGY, AND THE UTILITY REFORM NETWORK FOR MODIFICATION OF  
DECISION 09-04-010, AS MODIFIED BY DECISION 10-02-033  
(PUBLIC VERSION)**

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April 15, 2010

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(PUBLIC VERSION)**

Pursuant to Rule 16.4 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, Pacific Gas and Electric Company (“PG&E”), Russell City Energy Company, LLC (“RCEC”), Division of Ratepayer Advocates (“DRA”), California Unions for Reliable Energy (“CURE”) and The Utility Reform Network (“TURN”) (collectively, “Joint Parties”) submit this petition for modification of Decision (“D.”) 09-04-010, as modified by D.10-02-033.<sup>1</sup> Specifically, the Joint Parties request that D.09-04-010 be modified to approve an amendment to the previously approved Second Amended and Restated Power Purchase and Sale Agreement by and between PG&E and RCEC (“1<sup>st</sup> Amendment to 2<sup>nd</sup> APPA”).<sup>2</sup>

As discussed below, the 1<sup>st</sup> Amendment to 2<sup>nd</sup> APPA consists of limited modifications to the Second Amended and Restated Power Purchase and Sale Agreement (“2<sup>nd</sup> APPA”). These limited modifications will continue to ensure the addition of a new, efficient generation resource to PG&E’s portfolio that will help meet an identified resource need at a price to customers that is

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<sup>1</sup> For purposes of this joint petition for modification, references to D.09-04-010 should be understood to mean D.09-04-010, as modified by D.10-02-033. The proposed modifications to D.09-04-010 are attached hereto at Appendix A.

lower than the previously approved 2<sup>nd</sup> APPA. As a result, approval of the 1<sup>st</sup> Amendment to 2<sup>nd</sup> APPA will preserve the benefits already identified by the Commission in D.09-04-010 with substantial customer savings over the term of the contract. In addition, the Joint Parties are requesting that the Commission modify D.09-04-010 to implement the cost recovery mechanism recently adopted by the legislature in Senate Bill (“SB”) 695.

## **I. PROCEDURAL HISTORY**

In D.06-11-048, the Commission approved a power purchase and sale agreement between PG&E and RCEC (“Original PPA”) that was the result of RCEC being a winning bidder in PG&E’s 2004 long-term request for offers (“LT RFO”). Among other things, the Original PPA contemplated that RCEC was to develop, construct and operate a nominal 601 MW (579 MW summer peak rating) combined cycle, gas-fired power plant located in Hayward, California known as the Russell City Energy Center Project (“RCEC Project”) and sell the entire output from the RCEC Project to PG&E for a term of ten years.

Subsequent to Commission approval of the Original PPA, RCEC encountered certain permitting delays and cost increases.<sup>3</sup> These permitting delays were related to RCEC obtaining a Prevention of Significant Deterioration (“PSD”) permit from the Bay Area Air Quality Management District (“BAAQMD”) and an amendment to RCEC’s license from the California Energy Commission. To account for these delays and cost increases, PG&E and RCEC agreed to amend the Original PPA through the execution of an Amended and Restated PPA (“1<sup>st</sup>

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<sup>2</sup> D.09-04-010 was effective as of April 16, 2009 and was “issued” by the Commission on April 20, 2009. Accordingly, this joint petition for modification is being filed within one year of the effective date of the decision. *See* Rule 16.4(d) of the Commission’s Rules of Practice and Procedure.

<sup>3</sup> D.09-04-010, mimeo at 2.

APPA”), dated August 4, 2008. Among the revisions to the Original PPA, the 1<sup>st</sup> APPA set forth new pricing terms and extended the expected initial delivery date to 2012.<sup>4</sup>

TURN and DRA timely filed protests to Commission approval of the 1<sup>st</sup> APPA asserting, among other issues, that the new pricing under the 1<sup>st</sup> APPA was not reasonable. In addition, CALifornians for Renewable Energy, Inc. (“CARE”), Rob Simpson (“Simpson”) and Group Petitioners<sup>5</sup> opposed Commission approval of the 1<sup>st</sup> APPA on various grounds. After a prehearing conference was held, the Joint Parties participated in settlement discussions and reached an agreement on the terms and conditions set forth in the 2<sup>nd</sup> APPA. Relative to the 1<sup>st</sup> APPA, the 2<sup>nd</sup> APPA contained the same 2012 expected initial delivery date but reduced the capacity price to be paid over the term of the agreement.<sup>6</sup>

In D.09-04-010, the Commission approved the 2<sup>nd</sup> APPA. In approving the 2<sup>nd</sup> APPA, the Commission found the change in price from the Original PPA to be justified and reasonable,<sup>7</sup> that the RCEC Project was still needed, and that approval was consistent with Commission policies and decisions:

We agree with Joint Parties that the 2<sup>nd</sup> APPA is substantively consistent with the Commission’s policies and decisions. The Commission has previously determined the need for the project and the 2<sup>nd</sup> APPA will satisfy that new resource need. The facility will be modern and will provide PG&E certain operational and environmental benefits consistent with Commission direction that new generation resources be flexible to accommodate the intermittent nature of renewable resources and lead to the retirement of aging plants.<sup>8</sup>

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<sup>4</sup> *Application of Pacific Gas and Electric Company (U 39 E) For Expedited Approval of the Amended Power Purchase Agreement for the Russell City Energy Company Project*, A. 08-09-007, filed September 10, 2008.

<sup>5</sup> Group Petitioners consist of California Pilots Association, Skywest Townhouse Homeowners and Hayward Area Planning Association. See D.10-02-033, mimeo at 2.

<sup>6</sup> D.09-04-010, mimeo at 7.

<sup>7</sup> D.09-04-010, mimeo at 16-18, 31 (Findings of Fact No. 7).

<sup>8</sup> D.09-04-010, mimeo at 23 (citing to D.07-12-052, mimeo at 23, 106).

Group Petitioners and CARE/Simpson filed applications for rehearing of D.09-04-010. In D.10-02-033, the Commission modified D.09-04-010 for purposes of clarification but otherwise denied the applications for rehearing.<sup>9</sup> In denying the applications for rehearing, the Commission reaffirmed the need for the RCEC Project<sup>10</sup> and the reasonableness of the change in price.<sup>11</sup>

## **II. FURTHER PERMITTING DELAYS HAVE NECESSITATED AMENDING THE 2<sup>ND</sup> APPA**

As has already been described in the underlying record, the 2<sup>nd</sup> APPA was necessitated in part by a permitting delay related to obtaining a PSD permit for the RCEC Project. In particular, the delay was related to an appeal to an amended PSD permit that BAAQMD issued for the RCEC Project in November 2007.<sup>12</sup> On July 29, 2008, the Environmental Appeals Board (“EAB”) of the Environmental Protection Agency issued a decision remanding the PSD permit to the BAAQMD to correct a procedural defect on the part of the BAAQMD related to federal “notice” requirements and ordering the BAAQMD to reissue the permit in compliance with such requirements.<sup>13</sup>

At the time the Joint Parties requested approval of the 2<sup>nd</sup> APPA,<sup>14</sup> BAAQMD had already issued a Draft PSD permit for public comment in compliance with the EAB remand decision.<sup>15</sup> As a result, RCEC believed that, based on its experience, a Final PSD permit would

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<sup>9</sup> The modification to D.09-04-010 clarified that the Commission did not rely on evidence not in the record to determine that the RCEC Project complied with the Emissions Performance Standard. D.10-02-033, mimeo at 20-21.

<sup>10</sup> D.10-02-033, mimeo at 4-5.

<sup>11</sup> D.10-02-033, mimeo at 11-12.

<sup>12</sup> PG&E Prepared Testimony (PG&E-1), Chapter 1 at 1-5 - 1-6.

<sup>13</sup> PG&E Prepared Testimony (PG&E-1), Chapter 1 at 1-5; *see also* Declaration of Richard L. Thomas in Support of Joint Petition (“Thomas Declaration”) at ¶ 4. The Thomas Declaration is attached hereto at Appendix B.

<sup>14</sup> The Joint Parties filed a motion requesting Commission approval of the 2<sup>nd</sup> APPA on December 23, 2008.

<sup>15</sup> Thomas Declaration at ¶¶ 5-7.

be issued in time to allow it to meet the expected initial delivery date in the 2<sup>nd</sup> APPA.<sup>16</sup> The Final PSD permit, however, was not issued by BAAQMD until February 3, 2010 – approximately 18 months after the EAB remand decision.<sup>17</sup> Given the unexpected length of time it took for BAAQMD to issue the Final PSD permit and the fact several parties have again appealed BAAQMD’s issuance of the permit, it has become necessary to extend the expected initial delivery date in the 2<sup>nd</sup> APPA by one year.<sup>18</sup>

### **III. SUMMARY OF 1<sup>ST</sup> AMENDMENT TO 2<sup>ND</sup> APPA**

The 1<sup>st</sup> Amendment to 2<sup>nd</sup> APPA would make limited changes to the 2<sup>nd</sup> APPA to account for delays associated with the PSD permit for the RCEC Project. These limited changes do not change the fundamental purpose of the previously approved agreement - PG&E obtaining capacity and energy from the RCEC Project – but include a reduction in the capacity price and a one year extension to the expected initial delivery date. A matrix comparing the terms in the 1<sup>st</sup> Amendment to 2<sup>nd</sup> APPA to the corresponding terms in the 2<sup>nd</sup> APPA is attached hereto at Appendix C. A copy of the 1<sup>st</sup> Amendment to 2<sup>nd</sup> APPA is attached hereto at Appendix D.

### **IV. A PETITION FOR MODIFICATION IS THE APPROPRIATE PROCEDURAL VEHICLE FOR OBTAINING COMMISSION APPROVAL OF CHANGES TO A PREVIOUSLY APPROVED PPA**

Requesting approval of the 1<sup>st</sup> Amendment to the 2<sup>nd</sup> APPA through a petition for modification of D.09-04-010 is consistent with prior Commission practice. Specifically, in D.06-09-021, the Commission approved revisions to a previously approved ten-year PPA through the granting of a petition for modification. The case involved a ten-year PPA between San Diego Gas & Electric Company (“SDG&E”) and Otay Mesa Energy Center, LLC, relating

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<sup>16</sup> Thomas Declaration at ¶ 7

<sup>17</sup> Thomas Declaration at ¶ 13.

<sup>18</sup> Thomas Declaration at ¶¶ 14 and 15-18.

to a new 583 MW combined cycle, gas-fired power plant to be built in southern San Diego county (the “Otay Mesa Plant”).<sup>19</sup>

Subsequent to Commission approval of the Otay Mesa PPA,<sup>20</sup> SDG&E and Calpine agreed to certain changes to the PPA, including a 16-month extension in the on-line date for the Otay Mesa Plant.<sup>21</sup> During the course of the negotiations with Calpine, SDG&E also held discussions with TURN, DRA and the Utility Consumers’ Action Network (“UCAN”), who were also parties in the proceeding.<sup>22</sup> Upon conclusion of these discussions, SDG&E, TURN, DRA and UCAN filed a joint petition for modification requesting approval of the revised PPA.<sup>23</sup>

In D.06-09-021, the Commission granted the petition for modification and approved the revised Otay Mesa PPA, finding that the revised PPA would preserve and, in some cases increase, the benefits of the previously approved agreement:

As discussed further below, the Revised PPA accomplishes the primary objectives of SDG&E which is to preserve and improve upon the terms of the original PPA and get a state-of-the-art generation facility built in its service territory.<sup>24</sup>

Similar to the Otay Mesa proceeding, PG&E and RCEC have agreed to amend the 2<sup>nd</sup> APPA as a means to preserve the benefits to be realized by customers from the RCEC Project and to better ensure the RCEC Project is built. As discussed below, TURN, DRA and CURE have reviewed and analyzed the 1<sup>st</sup> Amendment to 2<sup>nd</sup> APPA and support Commission approval.

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<sup>19</sup> OMEC is a wholly-owned indirect subsidiary of Calpine Corporation (“Calpine”). D.06-09-021, mimeo at 1.

<sup>20</sup> The Otay Mesa PPA was approved by the Commission in D.04-06-011 and then again de novo on rehearing in D.06-02-031.

<sup>21</sup> Other changes included “put” and “call” options which provided SDG&E with the opportunity to acquire the Otay Mesa Plant following the expiration of the PPA. D.06-09-021, mimeo at 2, 16 (Findings of Fact Nos. 7 and 8).

<sup>22</sup> D.06-09-021, mimeo at 4.

<sup>23</sup> D.06-09-021, mimeo at 4, 16 (Findings of Fact No. 9).

<sup>24</sup> D.06-09-021, mimeo at 4. The Otay Mesa Plant came on-line in October 2009. *See* [http://www.energy.ca.gov/sitingcases/all\\_projects.html](http://www.energy.ca.gov/sitingcases/all_projects.html)

**V. THE 1<sup>ST</sup> AMENDMENT TO 2<sup>ND</sup> APPA SHOULD BE APPROVED BECAUSE IT WILL PRESERVE THE BENEFITS OF THE 2<sup>ND</sup> APPA AT A SIGNIFICANTLY LOWER COST TO CUSTOMERS**

Approval of the 1<sup>st</sup> Amendment to 2<sup>nd</sup> APPA is in the public interest because it will help ensure the addition of a new, efficient generation resource to PG&E's portfolio of resources at a price to customers that is *less* than the previously approved 2<sup>nd</sup> APPA.

In D.06-11-048, the Commission approved the Original PPA, finding that the 601 MW RCEC Project will help to meet the resource need identified in D.04-12-048.<sup>25</sup> Nevertheless, at several points during the course of the Commission's consideration of changes to the Original PPA, certain parties asserted that the need for the RCEC Project should be re-examined.<sup>26</sup> In D.09-04-010, the Commission found that the 2<sup>nd</sup> APPA should be approved because it was consistent with the essence of the Original PPA and preserved important benefits of the agreement.<sup>27</sup>

In rejecting the applications for rehearing of D.09-04-010, the Commission re-affirmed that the 2<sup>nd</sup> APPA did not change the essence of the Original PPA, "namely, the agreement by RCEC to provide PG&E energy capacity and energy from its 601 MW combined-cycle facility in Hayward for a 10-year term."<sup>28</sup> The 1<sup>st</sup> Amendment to 2<sup>nd</sup> APPA makes limited changes to the 2<sup>nd</sup> APPA that also preserve the fundamental purpose of the Original PPA and helps ensure that the benefits acknowledged by the Commission in D.06-11-048, D.09-04-010, and D.10-02-033 are realized at a lower cost to customers.

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<sup>25</sup> D.06-11-048, mimeo at 38 (Findings of Fact No. 6).

<sup>26</sup> See e.g., Prehearing Conference Statement of Californians for Renewable Energy, Inc. at 2 (Oct. 24, 2008); Motion to Seek Party Status by Group Petitioners at 1-2 (Dec. 11, 2008); Comments Contesting Settlement by Californians for Renewable Energy, Inc. and Rob Simpson at 3 (Jan. 22, 2009) Group Petitioners Contest and Opposition to Joint Motion for Approval of Second Amended and Restated Power and Purchase Agreement at 6 (Jan. 22, 2009); Group Petitioners Comments and Objections to Proposed Decision of ALJ Darling Approving Settlement Agreement Regarding the Second Amended and Restated Power Purchase Agreement at 2-3 (Apr. 6, 2009).

<sup>27</sup> D.09-04-010, mimeo at 24.



In approving the 2<sup>nd</sup> APPA, the Commission found that, based on a comparative analysis that was independently reviewed by the Independent Evaluator, DRA and TURN, the 2<sup>nd</sup> APPA would be competitive with the short-listed bids in the 2008 LTRFO if it were bid into that RFO.<sup>29</sup> As addressed in the attached declarations, PG&E, DRA and TURN have each performed a comparative analysis of the 1<sup>st</sup> Amendment to 2<sup>nd</sup> APPA, and all have concluded that the 1<sup>st</sup> Amendment to 2<sup>nd</sup> APPA will result in reduced customer costs, is in the public interest, and should be approved.<sup>30</sup> Thus, the 1<sup>st</sup> Amendment to 2<sup>nd</sup> APPA will provide customers with the same benefits as the previously approved 2<sup>nd</sup> APPA but at a lower cost.

As was well documented in the underlying proceeding, the development of new generation facilities in California presents significant challenges.<sup>31</sup> Approval of the 1<sup>st</sup> Amendment to 2<sup>nd</sup> APPA represents a reasonable, viable and timely path for the addition of a new generation resource to PG&E's portfolio of resources. The RCEC Project is well-located to serve local area reliability needs and to provide PG&E with an operationally flexible and environmentally beneficial new generation resource. With a summer peak rating of 579 MW, the RCEC Project is a significant contributor to ensuring a reliable future for Californians. As discussed above, the Commission has already determined and reaffirmed on several occasions that the RCEC Project meets an identified resource need, and will provide PG&E with operational and environmental benefits.

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<sup>28</sup> D.10-02-033, mimeo at 5.

<sup>29</sup> D.09-04-010, mimeo at 17-18 ("PG&E submitted both its own side-by-side comparison of the 1<sup>st</sup> APPA and short-listed bids in PG&E's 2008 LTRFO, and a review of that comparison by an independent evaluator. The independent evaluator, Alan Taylor of Sedway Consulting, concluded that the pricing and economic characteristics of the 1<sup>st</sup> APPA were reasonably comparable to the economics of the short-listed offers in PG&E's 2008 LTRFO and compared favorably in overall ranking. DRA and TURN reviewed this comparative information and performed their own comparison of the 2<sup>nd</sup> APPA, taking into account all the evaluation criteria, and concluded RCEC would be competitive with the short-listed bids in the 2008 LTRFO if it were bid into that RFO.")

<sup>30</sup> See Declaration of Charles E. Riedhauser in Support of Joint Petition attached hereto at Appendix E; Declaration of Joseph P. Como in Support of Joint Petition attached hereto at Appendix F; Declaration of Michel Peter Florio in Support of Joint Petition attached hereto at Appendix G.

In short, the 1<sup>st</sup> Amendment to 2<sup>nd</sup> APPA should be approved because it:

- makes limited changes to the 2<sup>nd</sup> APPA that are necessary to preserve the fundamental purpose and benefits of the previously approved agreement;
- reduces overall contractual costs for customers as compared to the previously approved 2<sup>nd</sup> APPA, resulting in substantial savings for customers over the term of the contract;
- helps satisfy an identified resource need in PG&E's service territory; and
- provides PG&E with an operationally flexible and environmentally beneficial new generation resource at a time when it is extremely difficult to develop new generation facilities in California.

When considered within the context of the existing record and previous Commission decisions approving the Original PPA and 2<sup>nd</sup> APPA, the 1<sup>st</sup> Amendment to 2<sup>nd</sup> APPA is justified and in the public interest because it reduces the cost to ratepayers, and should be approved.

#### **VI. THE COMMISSION SHOULD MODIFY THE COST RECOVERY CONSISTENT WITH SENATE BILL 695.**

After D.09-04-010 was issued, SB 695 was enacted to allow for the limited re-opening of direct access. SB 695 also addresses the allocation of net capacity costs associated with new generation resources, such as the RCEC Project. In particular, under SB 695, which is now codified in Public Utilities Code section 365.1, the Legislature established a mechanism for the recovery of net capacity costs when the Commission approves:

[A] contract with a third party, or orders, in the situation of utility-owned generation, an electrical corporation to obtain generation resources that the commission determines are needed to meet system or local area reliability needs for the benefit of all customers in the electrical corporation's distribution service territory, the net capacity costs of those generation resources are allocated on a fully nonbypassable basis consistent with departing load provisions as determined by the commission, to all of the following: (i) Bundled service customers of the electrical corporation. (ii) Customers that

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<sup>31</sup> PG&E Testimony (PG&E-1), Chapter 1 at 1-2.

purchase electricity through a direct transaction with other providers.  
(iii) Customers of community choice aggregators.<sup>32</sup>

SB 695 further provides that:

The resource adequacy benefits of generation resources acquired by an electrical corporation pursuant to subparagraph (A) shall be allocated to all customers who pay their net capacity costs. Net capacity costs shall be determined by subtracting the energy and ancillary services value of the resource from the total costs paid by the electrical corporation pursuant to a contract with a third party or the annual revenue requirement for the resource if the electrical corporation directly owns the resource.<sup>33</sup>

The Joint Parties request as a part of this petition that D.09-04-010 be modified to implement SB 695 for the RCEC PPA. Specifically, the Commission should modify D.09-04-010 to provide that the determination of net capacity costs will be accomplished through a methodology approved by the Commission in D.07-09-044,<sup>34</sup> and allocate these costs to bundled, Community Choice Aggregation (“CCA”) and direct access customers, as prescribed by SB 695. Further, “benefitting customers” will not only be allocated the net capacity costs, but they will also be allocated the Resource Adequacy (“RA”) benefits associated with the RCEC Project. Thus, bundled, CCA and direct access customers will receive benefits because they will be allocated some of the valuable Local RA capacity associated with the RCEC Project. Specific language to implement SB 695 is included in Appendix A.

## **VII. THE COMMISSION SHOULD ACT IN AN EXPEDITED MANNER**

The Joint Parties request that the Commission consider this petition on an expedited basis to ensure the RCEC Project is timely put in-service. Given the identified need for the RCEC Project and in light of the existing record and previous Commission decisions approving the

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<sup>32</sup> Pub. Util. Code sec. 365.1(c)(2)(A).

<sup>33</sup> *Id.*, sec 365.1(c)(2)(B).

<sup>34</sup> D.07-09-044, Appendix A, Section IX (approving settlement that included stranded cost allocation methodology under to be used prior to an energy auction).

Original PPA and 2<sup>nd</sup> APPA, the Joint Parties believe expedited Commission action is reasonable, necessary and warranted.

### VIII. CONCLUSION

For the reasons discussed above, the Joint Parties request that D.09-04-010 be modified to approve 1<sup>st</sup> Amendment to 2<sup>nd</sup> APPA.

Respectfully submitted,

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## Appendix A

## **Proposed Modifications to D.09-04-010**

### **Findings of Fact**

4. The 1<sup>st</sup> Amendment to the 2<sup>nd</sup> APPA is a revision of the 2<sup>nd</sup> APPA ~~original Power Purchase Agreement~~ executed by PG&E and RCEC that arose out of the PG&E's 2004 LTRFO process to acquire future capacity and ensure future reliability.
5. The Commission has previously determined the need for the project and ~~that the 1<sup>st</sup> Amendment to the 2<sup>nd</sup> APPA~~ will satisfy that new resource need.
6. PG&E and RCEC renegotiated the PPA because of unforeseen permit delays and unexpected cost increases which have delayed the RCEC project start and on-line dates by three ~~two~~ years.
7. An amendment to price from the original PPA and 2<sup>nd</sup> APPA is justified.
12. The 1<sup>st</sup> Amendment to the 2<sup>nd</sup> APPA provides an opportunity for PG&E's customers to receive 601 MW of power beginning in 2013.~~2012, and PG&E elects to not use the CAM/Energy Auction for this resource.~~

### **Conclusions of Law**

2. The 1<sup>st</sup> Amendment to the 2<sup>nd</sup> APPA should be approved.

#### **Ordering Paragraphs**

2. PG&E is authorized to recover costs associated with the 1<sup>st</sup> Amendment to the 2<sup>nd</sup> APPA through its Energy Resource Recovery Account. The Commission has determined that the RCEC Project is needed to meet system or local area reliability needs for the benefit of all customers in PG&E's distribution service territory, and thus the net capacity costs of the RCEC PPA are allocated on a fully nonbypassable basis to all of the following: (i) bundled service customers of the electrical corporation; (ii) customers that purchase electricity

through a direct transaction with other providers; (iii) customers of community choice aggregators (collectively “Benefitting Customers”). This ordering paragraph implements Public Utilities Code section 365.1(c)(2). The net capacity costs associated with the RCEC PPA will be determined by subtracting the Project Revenues from the Project Costs, where:

“Project Costs” include the following:

- a. All actual unavoidable costs incurred by the utility for the Project (e.g., capacity payments, the cost of posting collateral, if any, and the annual non-fuel revenue requirement for a utility-owned plant).
- b. Imputed avoidable fuel costs calculated as the product of: (i) the quantity of natural gas that would be utilized by the Project, and (ii) the price of natural gas, (i) and (ii) being applicable for periods when the Project would recover its avoidable operating expenses from the day-ahead energy and/or ancillary services markets (i.e., for periods when it would have been “economic” to “run” the Project, based on day-ahead prices).
  - (1) For purposes of this calculation, the price of natural gas for each hour shall be the daily spot index price for the applicable day as reported by an established industry publication (e.g., *Gas Daily* or *NGI*) for the trading point closest to delivery point of the Project plus any applicable Project gas transportation charges and Local Distribution Company (LDC) tariff charges.
  - (2) The CAISO hourly day-ahead nodal price for the Project’s “injection point” shall be utilized for energy.
- c. Imputed avoidable non-fuel Project costs for all assumed dispatched energy from subsection (b) above. For example, if the Project requires a variable O&M charge of \$2.00/MWh for delivered energy, the imputed avoidable non-fuel Project costs for a given hour would be the amount of energy assumed to have been dispatched times the \$2.00/MWh variable O&M charge.

“Project Revenues” include the following:

- a. The imputed day-ahead energy revenues for hours in which the Project is determined to have been economic to dispatch. The imputed energy revenues shall be calculated as the product of the: (i) the calculated energy assumed to be dispatched by the Project, and (ii) the CAISO hourly day-ahead nodal energy price for the Project’s “injection point”.
- b. The imputed day-ahead ancillary services revenues. For hours in which it was determined that the Project would not have been economic to be scheduled in the day ahead energy market, an assessment of whether it would have been economic

to offer non-spinning reserves (assuming the Project provides such services) shall be performed using hourly CAISO day-ahead energy prices and natural gas prices described in the definition of “Project Costs” Item (b)(1) above and the CAISO published day-ahead non-spinning reserves price. The imputed day-ahead ancillary service revenue calculation shall be constrained by the amount of capacity available under the Project to be offered into non-spinning reserves market and any other relevant operating limitation (e.g., minimum load requirements or maximum operating hours). The imputed day-ahead ancillary services revenues shall be calculated net of any calculated operating costs that would have to be incurred to offer ancillary services capacity (e.g., start-up costs). The imputed day-ahead ancillary services revenues calculation will not assume real-time incremental dispatch of energy by the CAISO.

PG&E shall file an advice letter with the Commission implementing the above methodology for the RCEC Project six months prior to the proposed effective date of the Net Capacity Charge.

PG&E shall forecast the annual net capacity costs, which are defined above. This calculation shall be subject to an annual review and balancing account true-up. PG&E shall use the net cost forecast it has developed to establish an annual revenue requirement for all Benefiting Customers to recover the net capacity cost of the RCEC Project. All Benefiting Customers shall be charged monthly for their respective portion of the net capacity costs based on the established revenue requirement. System and local RA benefits associated with the RCEC Project will be allocated quarterly to load serving entities (LSEs) that serve Benefiting Customers based on each LSE’s percentage of peak load. LSEs shall be notified in July of each year of the System and Local RA capacity they will be receiving for each month in the next calendar year.



**Appendix B**

**Thomas Declaration**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA**

Application of Pacific Gas and Electric	)	
Company for Expedited Approval Of The	)	A.08-09-007
Amended Power Purchase Agreement For The	)	(Filed September 10, 2008)
<u>Russell City Energy Company Project</u>	)	

**DECLARATION OF RICHARD L. THOMAS IN SUPPORT OF JOINT PETITION OF  
PACIFIC GAS AND ELECTRIC COMPANY, RUSSELL CITY ENERGY COMPANY,  
LLC, DIVISION OF RATEPAYER ADVOCATES, CALIFORNIA UNIONS FOR  
RELIABLE ENERGY, AND THE UTILITY REFORM NETWORK FOR  
MODIFICATION OF DECISION 09-04-010, AS MODIFIED BY DECISION 10-02-033**

I, Richard L. Thomas, declare:

1. I am a Vice-President for the Russell City Energy Company, LLC (“RCEC”). In this capacity, I am familiar with the process undertaken by RCEC to obtain a Prevention of Significant Deterioration (“PSD”) permit from the Bay Area Air Quality Management District (“BAAQMD”).
2. On November 1, 2007, the BAAQMD issued an amended PSD permit to RCEC under delegated authority from the Environmental Protection Agency (“EPA”).
3. On January 3, 2008, an individual filed an appeal of the PSD permit with the Environmental Appeals Board (“EAB”) of the EPA.
4. On July 29, 2008, the EAB issued a decision remanding the PSD permit to correct a procedural defect on the part of the BAAQMD related to federal “notice” requirements and ordering the BAAQMD to reissue the permit in compliance with such requirements.
5. On December 8, 2008, BAAQMD issued a Draft PSD permit for public comment in compliance with the EAB remand decision.

6. On December 23, 2008, Pacific Gas and Electric Company (“PG&E”), RCEC, Division of Ratepayer Advocates, California Unions for Reliable Energy, and The Utility Reform Network (collectively, “Joint Parties”) filed a joint motion requesting California Public Utility Commission (“Commission”) approval of the Second Amended and Restated Power Purchase and Sale Agreement by and between PG&E and RCEC (“2<sup>nd</sup> APPA”).
7. Thus, at the time the Joint Parties requested Commission approval of the 2<sup>nd</sup> APPA, the Draft PSD permit had already been issued. Based on its experience, RCEC believed a Final PSD permit would be issued in time to allow RCEC to meet the expected initial delivery date in the 2<sup>nd</sup> APPA.
8. On January 21, 2009, BAAQMD held a public hearing on the Draft PSD permit and accepted public comments on the Draft PSD permit until February 6, 2009.
9. By Decision 09-04-010, issued on April 20, 2009, the Commission approved the 2<sup>nd</sup> APPA.
10. On April 24, 2009, EPA granted reconsideration of, and stayed a “grandfathering” provision concerning fine particulate matter, which BAAQMD had relied upon in its issuance of the Draft PSD permit.
11. On August 3, 2009, BAAQMD issued an Additional Statement of Basis and revised Draft PSD permit, addressing issues raised during the prior public comment period and resolving issues related to the EPA’s stay of the grandfathering provision.
12. On September 2, 2009, BAAQMD held another public hearing on the revised Draft PSD permit and accepted public comments on the revised Draft PSD permit until September 16, 2009.

13. On February 3, 2010 - approximately 18 months after the EAB remand decision - BAAQMD issued a Final PSD permit for the RCEC project, along with a 235-page Responses to Public Comments. BAAQMD set the date for appeals to be filed with the EAB as March 22, 2010.
14. Between March 22, 2010 and March 24, 2010, the EAB received seven petitions appealing BAAQMD's issuance of the Final PSD permit.
15. On March 25, 2010, the EAB wrote to BAAQMD, requesting that BAAQMD file a response seeking summary disposition of any petition by April 8, 2010 and/or provide a response on the merits by April 23, 2010.
16. On April 8, 2010, BAAQMD sought summary disposition of four of the seven petitions.
17. On April 8, 2010, the EAB wrote to BAAQMD, informing BAAQMD that three additional petitions had been filed between April 1 and April 6, 2010 and requesting a response seeking summary disposition of these three petitions by April 23, 2010 and/or a response on the merits by May 10, 2010.
18. On April 14, 2010, the EAB ordered two petitioners to show cause for why their petitions should not be dismissed and, with respect to two other petitioners, denied BAAQMD's and RCEC's requests for summary dismissal, requesting responses on the merits to those two petitions, as well as to the orders to show cause, by April 23, 2010.
19. Given the unexpected length of time it took for BAAQMD to issue the Final PSD permit and the fact several parties have again appealed BAAQMD's issuance of the permit, it has become necessary to extend the expected initial delivery date in the 2<sup>nd</sup> APPA by one year.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 14th day of April, 2010, at Dublin, CA.

/s/

---

Richard L. Thomas

Appendix C

Comparison Matrix

Summary of Amended Terms and Conditions

Reference	Second Amended and Restated PPA	First Amendment to the Second Amended and Restated PPA	Explanation of Amendment Change
3.8(b)	Phrase “at the Electrical Delivery Point”	Replaced with “within the boundaries of the Site, adjusted to reflect actual physical delivery of Energy at the Electrical Delivery Point,”	Change made to reflect updated and actual plant configuration and design.
4.3(a)(i)	(i) Capacity Payment Rate (“CPR”) shall equal [REDACTED];	(i) Capacity Payment Rate (“CPR”) shall equal [REDACTED];	Reduction negotiated as part of the exchange for allowing certain extensions and other modifications requested by RCEC to the terms in the Second Amended and Restated PPA.
5.1(a)(vi)	[REDACTED]	[REDACTED]	[REDACTED]
5.1(a)(ix)	[REDACTED]	[REDACTED]	[REDACTED]
5.1(a)(xiv)	[REDACTED]	[REDACTED]	[REDACTED]

Reference	Second Amended and Restated PPA	First Amendment to the Second Amended and Restated PPA	Explanation of Amendment Change
		<p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
5.2	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>



Reference	Second Amended and Restated PPA	First Amendment to the Second Amended and Restated PPA	Explanation of Amendment Change
	[Redacted]	[Redacted]	
11.1(a)(iv)	[Redacted]	[Redacted]	[Redacted]

Reference	Second Amended and Restated PPA	First Amendment to the Second Amended and Restated PPA	Explanation of Amendment Change
	[Redacted]	[Redacted]	
11.1(a)(v)	[Redacted]	(v) [intentionally omitted]	[Redacted]
11.1(a)(vi)	(vi) [intentionally left blank]	[Redacted]	[Redacted]

Reference	Second Amended and Restated PPA	First Amendment to the Second Amended and Restated PPA	Explanation of Amendment Change
11.1(a)(vii)	[REDACTED]	[REDACTED]	[REDACTED]
11.2(b)	[REDACTED]	[REDACTED]	[REDACTED]

Reference	Second Amended and Restated PPA	First Amendment to the Second Amended and Restated PPA	Explanation of Amendment Change
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>		
11.2(c)	<p>Critical Milestones. The Seller shall use commercially reasonable efforts to cause the development and construction of the Facility to meet each of the following milestones ("Critical Milestones") by the date set forth below (subject to Sections 11.2(d) and 11.5):</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Critical Milestones. The Seller shall use commercially reasonable efforts to cause the development and construction of the Facility to meet each of the following milestones ("Critical Milestones") by the date set forth below (subject to Sections 11.2(d), 11.2(f) and 11.5):</p> <ul style="list-style-type: none"> <li>(i) [intentionally omitted];</li> <li>(ii) [intentionally omitted];</li> <li>(iii) [intentionally omitted];</li> <li>(iv) [intentionally omitted];</li> <li>(v) [intentionally omitted];</li> </ul> <p>[REDACTED]</p>	<p>The Critical Milestones were updated to reflect RCEC's current financing structure and the new development stages, including the new Expected Initial Delivery Date of June 1, 2013.</p>

Reference	Second Amended and Restated PPA	First Amendment to the Second Amended and Restated PPA	Explanation of Amendment Change
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>(xi) Expected Initial Delivery Date is June 1, 2012.</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>(xi) Expected Initial Delivery Date is June 1, 2013.</p>	
11.2(f)		<p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p>

Reference	Second Amended and Restated PPA	First Amendment to the Second Amended and Restated PPA	Explanation of Amendment Change
		<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
11.2(g)		<p>[REDACTED]</p>	<p>[REDACTED]</p>
11.3(a)	<p>The Initial Delivery Date shall occur upon the date designated by Seller which shall be the first day of a month and shall not occur more than 30 days prior to the Expected Initial Delivery Date nor prior to the day on which each of the following conditions precedent have been satisfied or waived by written agreement of the Parties.</p>	<p>The Initial Delivery Date shall occur upon the date designated by Seller which shall not occur prior to May 1, 2013 nor prior to the day on which each of the following conditions precedent have been satisfied or waived by written agreement of the Parties.</p>	<p>The section was amended to reflect a one month limit on the date for an early Initial Delivery Date and to allow such date to be on a day other than the first day of the month.</p>

Reference	Second Amended and Restated PPA	First Amendment to the Second Amended and Restated PPA	Explanation of Amendment Change
11.4	[REDACTED]	[REDACTED]	[REDACTED]
11.5	[REDACTED]	[REDACTED]	[REDACTED]
14.2(d)(ii)	[REDACTED]	[REDACTED]	[REDACTED]

Reference	Second Amended and Restated PPA	First Amendment to the Second Amended and Restated PPA	Explanation of Amendment Change
	<p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	
Appendix I - Definitions		<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>



Reference	Second Amended and Restated PPA	First Amendment to the Second Amended and Restated PPA	Explanation of Amendment Change
		<p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>	<p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>
Appendix XI –		<p>[Redacted]</p>	<p>[Redacted]</p>

<b>Reference</b>	<b>Second Amended and Restated PPA</b>	<b>First Amendment to the Second Amended and Restated PPA</b>	<b>Explanation of Amendment Change</b>
Material Government Approvals		[REDACTED]	[REDACTED]

**Appendix D**

**Confidential**

**First Amendment to Second Amended & Restated PPA**

## Appendix E

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA**

Application of Pacific Gas and Electric )	
Company for Expedited Approval Of The )	A.08-09-007
Amended Power Purchase Agreement For The )	(Filed September 10, 2008)
<u>Russell City Energy Company Project )</u>	

**DECLARATION OF CHARLES E. RIEDHAUSER IN SUPPORT OF JOINT PETITION OF  
PACIFIC GAS AND ELECTRIC COMPANY,  
RUSSELL CITY ENERGY COMPANY, LLC, DIVISION OF  
RATEPAYER ADVOCATES, CALIFORNIA UNIONS FOR RELIABLE  
ENERGY, AND THE UTILITY REFORM NETWORK FOR MODIFICATION OF DECISION  
09-04-010, AS MODIFIED BY DECISION 10-02-033**

I, Charles E. Riedhauser, declare:

20. I am Director of Quantitative Analysis. I support energy procurement activities by leading contract valuation and portfolio analysis.
21. This declaration examines and illustrates the cost-effectiveness of the First Amendment to the Second Amended and Restated PPA (First Amendment) between Pacific Gas and Electric Company (PG&E or the Company) and Russell City Energy Company, LLC (RCEC). The First Amendment's market value is analyzed and compared to the Second Amended and Restated PPA (2d APPA). This comparison shows that the First Amendment is more cost-effective and provides ratepayer benefits.
22. The valuation of the First Amendment was developed using an approach similar to the approach that PG&E used in its 2008 LTRFO. The analysis calculates the benefits and costs of a resource from a market perspective. Benefits include energy, capacity, and ancillary services. Costs encompass fixed costs and variable costs. An option-based model is used to estimate the energy gross margin. The energy gross margin is the value of the energy produced minus costs for fuel and variable operation and maintenance (O&M). Market value is estimated as the mean of all benefits minus all costs, that is, energy gross margin plus capacity benefit plus ancillary service benefit minus fixed costs. Market value is reported in levelized dollars per kilowatt-year (kW-year) and in dollars of net present value. The higher the estimated market value for a resource, the more attractive the resource is from the perspective of customers, all else being equal. More details on the valuation approach

may be found in Section C.1 of Chapter 3 of the testimony supporting PG&E's 2008 LTRFO application (i.e., A.09-09-021).

23. Inputs to the option-based model include price information and the particulars of the First Amendment. Forward price curves for power and natural gas are based on market information available August 4, 2009. August 2009 forward price curves are used for consistency with the 2d APPA's prepared testimony. Forward curves have been adjusted to reflect the inclusion of a greenhouse gas (GHG) adder.
24. The representations of the First Amendment and the 2d APPA that were used for modeling purposes in the analysis provided below are identical except for the following:
- a. The 2d APPA is assumed to start in June 1, 2012 and run for 10 years while the First Amendment is assumed to start one year later and run for 10 years;
  - b. [REDACTED]

The heat rates and capacities of the two PPAs are assumed to be identical but for the start date.

25. Market value and its components are reported in Table 1. The market value of the First Amendment is [REDACTED]. Table 1 below shows a comparison of the two PPAs in terms of levelized dollars per kW-year. The First Amendment entails significantly lower fixed annual payments than the 2d APPA, and also yields a higher capacity benefit. This result is due primarily to the fact that the capacity price of the First Amendment has decreased and the amendment requires the PPA to start one year later than the 2d APPA. (The benefit values in Table 1 and 2 provided below exclude the value of local Resource Adequacy.)

**TABLE 1**  
**PACIFIC GAS AND ELECTRIC COMPANY**  
**VALUATION RESULTS FOR RCEC FIRST AMENDMENT AND 2D APPA**  
**(DOLLARS PER KW-YEAR, LEVELIZED)**

Line No.	Item	2D APPA	First Amendment
1	<u>Benefits</u>		
2	Energy Gross Margins	■	■
3	Capacity Benefit (System RA)	■	■
4	Total Benefits	■	■
5	<u>Costs</u>		
6	Contract Capacity Payments	■	■
7	Fixed O&M	■	■
8	Total Costs	■	■
9	Market Value	■	■

Table 2 below compares the values of the two PPAs in present value terms discounted to August 4, 2009. This was the same date used for the 2008 LTRFO application. Based on the present values, the First Amendment provides a [REDACTED] reduction in net customer costs.

**TABLE 2**  
**PACIFIC GAS AND ELECTRIC COMPANY**  
**VALUATION RESULTS FOR RCEC FIRST AMENDMENT AND 2D APPA**  
**(\$ MILLIONS, DISCOUNTED TO JANUARY 1, 2009)**

Line No.	Item	2D APPA	First Amendment
1	<u>Benefits</u>		
2	Energy Gross Margins	■	■
3	Capacity Benefit (System RA)	■	■
4	Total Benefits	■	■
5	<u>Costs</u>		
6	Contract Capacity Payments	■	■
7	Fixed O&M	■	■
8	Total Costs	■	■
9	Market Value (Without Local RA)	■	■

█ In conclusion, the First Amendment entails lower net customer costs than the 2d APPA and so represents improved value for PG&E's customers. █  
█

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this \_\_\_\_\_ day of April, 2010, at \_\_\_\_\_

\_\_\_\_\_  
/s/  
**CHARLES E. RIEDHAUSER**



## Appendix F

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA**

Application of Pacific Gas and Electric )	
Company for Expedited Approval Of The )	A.08-09-007
Amended Power Purchase Agreement For The )	(Filed September 10, 2008)
<u>Russell City Energy Company Project )</u>	

**DECLARATION OF JOSEPH P. COMO IN SUPPORT OF JOINT PETITION OF PACIFIC  
GAS AND ELECTRIC COMPANY,  
RUSSELL CITY ENERGY COMPANY, LLC, DIVISION OF  
RATEPAYER ADVOCATES, CALIFORNIA UNIONS FOR RELIABLE  
ENERGY, AND THE UTILITY REFORM NETWORK FOR MODIFICATION OF DECISION  
09-04-010, AS MODIFIED BY DECISION 10-02-033**

I, Joseph P. Como, declare:

- 27. I am an attorney for the Division of Ratepayer Advocates].
- 28. In A.08-09-007, Pacific Gas and Electric Company (“PG&E”) provided testimony comparing the Amended and Restated Power Purchase and Sale Agreement by and between PG&E and the Russell City Energy Company, LLC (“RCEC”) (“1<sup>st</sup> APPA”) to other bids received in PG&E’s 2008 long-term request for offers (“LT RFO”) and had an independent consultant verify RCEC’s stated cost increases.<sup>35</sup>
- 29. As stated in Decision (“D.”) 09-04-010, the Division of Ratepayer Advocates (“DRA”) reviewed the comparative information between the 1<sup>st</sup> APPA and the short-listed bids in PG&E’s 2008 LTRFO with the 2<sup>nd</sup> APPA, taking into account all the evaluation criteria, and concluded that RCEC would be competitive with the short-listed bids in the 2008 LTRFO if it were bid into that RFO.
- 30. DRA has reviewed the First Amendment to the 2<sup>nd</sup> APPA (“1<sup>st</sup> Amendment to 2<sup>nd</sup> APPA”), including in particular the adjustments to the capacity price and expected initial delivery date.
- 31. The 1<sup>st</sup> Amendment to 2<sup>nd</sup> APPA will reduce the capacity price relative to the 2<sup>nd</sup> APPA, resulting in significant savings for customers over the term of the contract.

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<sup>35</sup> PG&E-2, Attachment 1-1 and Attachment 1-2.

32. Based on DRA's knowledge of the existing record in this proceeding, and its review and analysis of the 1<sup>st</sup> Amendment to 2<sup>nd</sup> APPA, DRA has concluded that the 1<sup>st</sup> Amendment to 2<sup>nd</sup> APPA is in the public interest and should be approved.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 14<sup>th</sup> day of April, 2010, at San Francisco, CA.

\_\_\_\_\_  
/s/  
Joseph P. Como

## **Appendix G**

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric  
Company for Expedited Approval Of The  
Amended Power Purchase Agreement For The  
Russell City Energy Company Project

A.08-09-007  
(Filed September 10, 2008)

**DECLARATION OF MICHEL PETER FLORIO IN SUPPORT OF JOINT PETITION  
OF PACIFIC GAS AND ELECTRIC COMPANY,  
RUSSELL CITY ENERGY COMPANY, LLC, DIVISION OF  
RATEPAYER ADVOCATES, CALIFORNIA UNIONS FOR RELIABLE  
ENERGY, AND THE UTILITY REFORM NETWORK FOR MODIFICATION OF  
DECISION 09-04-010, AS MODIFIED BY DECISION 10-02-033**

I, Michel Peter Florio, declare:

1. I am Senior Attorney for The Utility Reform Network and have served as TURN's primary representative throughout this proceeding.
2. In A.08-09-007, Pacific Gas and Electric Company ("PG&E") provided testimony comparing the Amended and Restated Power Purchase and Sale Agreement by and between PG&E and the Russell City Energy Company, LLC ("RCEC") ("1st APPA") to other bids received in PG&E's 2008 long-term request for offers ("LTRFO") and had an independent consultant verify RCEC's stated cost increases.<sup>36/</sup>
3. As stated in Decision ("D.") 09-04-010, The Utility Reform Network ("TURN") reviewed the comparative information between the 1st APPA and the short-listed bids in PG&E's 2008 LTRFO with the Second Amended and Restated Power Purchase and Sale Agreement ("2nd APPA"), taking into account all the evaluation criteria, and concluded that the 2nd APPA would be competitive with the short-listed bids in PG&E's 2008 LT RFO if it were bid into that RFO.<sup>37/</sup>
4. TURN has reviewed the First Amendment to the 2nd APPA ("1st Amendment to 2nd APPA"), including in particular the adjustments to the capacity price and expected initial delivery date.
5. The 1st Amendment to 2nd APPA will reduce the capacity price relative to the 2nd APPA, resulting in significant savings for customers over the term of the contract.

<sup>36/</sup> PG&E-2, Attachment 1-1 and Attachment 1-2.

<sup>37/</sup> D.09-04-010, mimeo at 18.

6. Based on TURN's knowledge of the existing record in this proceeding, and its review and analysis of the 1st Amendment to 2nd APPA, TURN has concluded that the 1st Amendment to 2nd APPA is in the public interest and should be approved.

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

Executed this 14th day of April, 2010, at San Francisco, California.

\_\_\_\_\_  
/s/  
Michel Peter Florio

CERTIFICATE OF SERVICE  
BY ELECTRONIC MAIL, U.S. MAIL, OR HAND DELIVERY

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and 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.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On the 20th day of April, 2010, I caused to be served a true copy of:

**JOINT PETITION OF PACIFIC GAS AND ELECTRIC COMPANY,  
RUSSELL CITY ENERGY COMPANY, LLC, DIVISION OF  
RATEPAYER ADVOCATES, CALIFORNIA UNIONS FOR RELIABLE  
ENERGY, AND THE UTILITY REFORM NETWORK FOR MODIFICATION OF DECISION  
09-04-010, AS MODIFIED BY DECISION 10-02-033  
(PUBLIC VERSION)**

By Electronic Mail – by electronic mail on the official service lists for A08-09-007, who have provided an e-mail address.

By U.S. Mail – by U.S. mail on the official service lists for A08-09-007, who have not provided an e-mail address.

By hand delivery to the following:

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 the 20th day of April, 2010.

\_\_\_\_\_  
/s/  
Sharon E. Mortz

**THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
EMAIL SERVICE LIST**

Last updated: April 15, 2010

**CPUC DOCKET NO. A0809007**

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