



MARIN ENERGY AUTHORITY  
THURSDAY, JUNE 3, 2010  
7:00 pm

MARIN COUNTY EMPLOYEE RETIREMENT ASSOCIATION  
BOARD ROOM  
1 McInnis Parkway, San Rafael, California

DAWN WEISZ  
*Interim Director*

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TOM CROMWELL  
*City of Belvedere*

LEW TREMAINE  
*Town of Fairfax*

CHARLES MCGLASHAN  
*County of Marin*

SHAWN MARSHALL  
*City of Mill Valley*

BARBARA THORNTON  
*Town of San Anselmo*

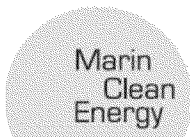
DAMON CONNOLLY  
*City of San Rafael*

JONATHAN LEONE  
*City of Sausalito*

RICHARD COLLINS  
*Town of Tiburon*

1. Public Open Time (Discussion)
2. Interim Director's Report (Discussion)
3. Consent Calendar (Discussion/Action)
  - C-1. Approval of Minutes from Regular Meeting on 5-6-10
  - C-2. Approval of Fourth Addendum to Agreement with Milbank, Tweed, Hadley & McCloy
  - C-3. Approval of BMWL Subcontractor Invoices
4. Net Energy Metering Tariff Cash-Out Policy (Discussion/Action)
5. Communications Update (Discussion)
6. Letter Agreement to Revolving Credit Agreement (Discussion/Action)
7. PG&E Residential Rate Tier Adjustment (Discussion/Action)
8. Contract with Douglass & Liddell for Legal Regulatory Services (Discussion/Action)
9. Transfer of Interim Director to LGS Contract for Management and Administrative Services (Discussion/Action)
10. Board Member & Staff Matters (Discussion)
11. Adjourn

california  
AB 32



Late agenda material can be inspected in the Marin County Sheriff's lobby, located at 3501 Civic Center Drive #329, San Rafael, CA 94903. The meeting facilities are in accessible locations. If you are a person with a disability and require this document in an alternate format (example: Braille, Large Print, Audiotape, CD-ROM), you may request an alternate format by using the contact information below. If you require accommodation (example: ASL Interpreter, reader, note taker) to participate in any MEA program, service or activity, you may request an accommodation by calling (415) 507-2813 (voice) or 711 for the California Relay Service or by e-mail at [disabilityaccess@co.marin.ca.us](mailto:disabilityaccess@co.marin.ca.us) not less than **four work days** in advance of the event.



**FILED**

05-28-10  
04:59 PM

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

Application of Pacific Gas and Electric  
Company for Rehearing of Resolution E-  
4250. (U39E)

Application 10-05-015  
(Filed May 13, 2010)

**RESPONSE OF MARIN ENERGY AUTHORITY TO  
APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY FOR  
REHEARING OF RESOLUTION E-4250**

Elizabeth Rasmussen  
Project Manager  
MARIN ENERGY AUTHORITY  
3501 Civic Center Drive, Room 308  
San Rafael, California 94903

May 28, 2010

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

Application of Pacific Gas and Electric  
Company for Rehearing of Resolution E-  
4250. (U39E)

Application 10-05-015  
(Filed May 13, 2010)

**RESPONSE OF MARIN ENERGY AUTHORITY TO  
APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY FOR  
REHEARING OF RESOLUTION E-4250**

The Marin Energy Authority (“MEA”) respectfully submits this response to the Application of Pacific Gas and Electric Company (“PG&E”) for Rehearing of Resolution E-4250 (“PG&E Application”), which argues that Resolution E-4250 violates PG&E’s rights under the First Amendment of the U.S. Constitution and under the Public Utilities Code. MEA believes PG&E fails to understand that misleading commercial speech is not protected speech. MEA also believes that PG&E misunderstands the regulatory relationship between community choice aggregators (CCAs) and the California Public Utilities Commission (“Commission”).

**A. PG&E’s Misleading Marketing Is Not Protected Speech**

It is first essential to note that the First Amendment does not protect misleading commercial speech. According to PG&E’s own cited case, “there can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about lawful activity.” (Central Hudson Gas & Elec. C. Public Svc. Comm’n, 447 U.S. 563, emphasis added) A number of the misleading statements of

PG&E have already been submitted to the record in Rulemaking 03-10-003 and need not be repeated here. The Resolution does not ban PG&E or any other utility from engaging in truthful advertising. The Commission has also further clarified in Decision 10-05-050 that it will “not grant CCSF and MEA’s requests to completely ban IOU marketing against CCA service.”

**B. PG&E Misunderstands the Regulatory Relationship between CCAs and the Commission**

Furthermore, PG&E well knows that the Business & Professions Code provisions that ban deceptive commercial speech are equally applicable to CCAs as to utilities. The utility’s suggestion that there is an unequal status and that PG&E’s speech is curtailed while that of CCAs is not is simply inaccurate. Neither party may engage in misleading commercial speech. PG&E also well knows it is regulated by the Commission, while CCAs are not. This distinction is critical because utility communications are clearly within the province of the Commission.

The Commission understands that “the truth rarely catches up with a lie.” This Resolution would not have been issued but for the misleading and deceptive communications that PG&E has repeatedly distributed. The utility has brought this Resolution on its own head by its own actions that contravened the statutory requirement that it “cooperate” with CCA activities. Had PG&E in fact cooperated with MEA, there would have been no need for the Resolution. If PG&E has been hoisted with its own petard, it should have considered the ramifications of its misleading activities in advance of undertaking them. MEA believes the Commission is well within its authority to take a proactive stance against misleading tactics by a regulated utility.

The PG&E Application identifies no legal error and the utility's request for rehearing should therefore be denied. MEA expresses its appreciation to the Commission for its consideration of the matters discussed herein.

Respectfully submitted,

ELIZABETH RASMUSSEN  
Project Manager

By:                   /s/ Elizabeth Rasmussen                    
                  ELIZABETH RASMUSSEN

For:

MARIN ENERGY AUTHORITY  
3501 Civic Center Drive, Room 308  
San Rafael, California 94903  
Telephone:(415) 473-4352  
Facsimile: (415) 499-7880  
E-Mail: erasmussen@co.marin.ca.us

Dated: May 28, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing *Response of Marin Energy Authority to Application of Pacific Gas and Electric Company for Rehearing of Resolution E-4250* on all parties of record in *A.10-05-015*, *R.03-10-003*, and *A.07-12-032* by serving an electronic copy on their email addresses of record and, for those parties without an email address of record, by mailing a properly addressed copy by first-class mail with postage prepaid to each party on the Commission's official service list for this proceeding.

This Certificate of Service is executed on May 28, 2010, at San Rafael, California.

\_\_\_\_\_  
/s/ Jordis Weaver  
Jordis Weaver

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

Application of Pacific Gas and Electric Company  
To Revise Its Electric Marginal Costs, Revenue  
Allocation, and Rate Design.

(U39M)

Application 06-03-005  
(Filed March 2, 2006, Petition  
for Modification filed  
December 17, 2009)

**REPLY OF THE MARIN ENERGY AUTHORITY TO  
COMMENTS OF THE CITY AND COUNTY OF SAN FRANCISCO  
ON THE PROPOSED DECISION OF ALJ FUKUTOME**

Daniel W. Douglass  
DOUGLASS & LIDDELL  
21700 Oxnard Street, Suite 1030  
Woodland Hills, CA 91367  
Telephone: (818) 961-3001  
Facsimile: (818) 961-3004  
Email: [douglass@energyattorney.com](mailto:douglass@energyattorney.com)

Attorneys for  
**MARIN ENERGY AUTHORITY**

June 1, 2010

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

Application of Pacific Gas and Electric Company  
To Revise Its Electric Marginal Costs, Revenue  
Allocation, and Rate Design.  
(U39M)

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**REPLY OF THE MARIN ENERGY AUTHORITY TO  
COMMENTS OF THE CITY AND COUNTY OF SAN FRANCISCO  
ON THE PROPOSED DECISION OF ALJ FUKUTOME**

Pursuant to Rule 14.3(d) of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the Marin Energy Authority (“MEA”) respectfully offers the following reply to the May 24, 2010, Comments of the City and County of San Francisco (“CCSF Comments”) on the Proposed Decision of ALJ Fukutome in this proceeding (“PD”). MEA concurs with the City and County of San Francisco (“CCSF”) that (i) the conservation incentive adjustment (“CIA”) shift requested by Pacific Gas and Electric Company (“PG&E”) negatively impacts community choice aggregation (“CCA”) from a competitive perspective, and (ii) the wide-ranging rate changes proposed by PG&E are confusing to customers and do not allow CCAs adequate time for rate analysis and revisions and communication to customers.

**I. PG&E’S RATE REVISION HAS ANTICOMPETITIVE CONSEQUENCES**

CCSF notes that “PG&E’s apparent motivation for seeking the proposed rate changes is to make it more difficult for CCAs to compete against PG&E.” (CCSF Comments at 2.) CCSF also estimates that San Francisco’s total generation revenues from residential customers under the proposed CIA structure will decline by approximately 7%. (CCSF Comments at 2.) MEA



agrees that the consequences of this rate structure change are highly anticompetitive in nature. These rate changes are argued by PG&E to be neutral to the customer; however, the impacts are only arguably neutral for bundled customers. For CCA customers, the investor owned utility (“IOU”) becomes more competitive at the expense of the CCA, skewing the playing field between IOUs and CCAs and potentially denying customers the choice CCA is intended to bring. These anticompetitive tactics are pervasive in PG&E’s “classic monopoly strategy.” (CCSF Comments at 2.)

## **II. PG&E’S AD HOC RATE CHANGES NEGATIVELY IMPACT CCA CUSTOMERS AND CCA BUSINESS PLANNING**

### **A. PG&E’s Rate Changes Deny CCAs and Customers Crucial Information.**

CCSF makes clear that “frequent changes to PG&E’s generation rates and rate structure make it extremely difficult, if not impossible, for CCAs to plan their rates and to provide clear comparative rate information to consumers, particularly when generation rate changes go into effect without ample notice.” (CCSF Comments at 3.) MEA has already faced this uncertainty with the Commission’s recent Decision 10-05-051. As noted by CCSF:

“[I]n a glaring omission, the decision only states the changes to bundled rates; it does not identify the new generation rates or even specify a methodology for translating bundled rate changes into generation rate changes. As a result, CCAs do not now know whether or when PG&E’s generation rates may change as a result of this decision.” (CCSF Comments at 4.)

MEA has rates in place which mirror PG&E’s rates. When these utility rate changes occur on a short time horizon, MEA does not have the ability to effectively communicate these changes to its customers so that they may make well-informed decisions. CCAs, in addition, face regulatory uncertainty. The myriad rate changes in quick succession fail to allow a well-developed policy on rates, but force CCAs to be reactive rather than proactive in their rate-

making decisions. In some cases, as noted above, MEA does not have sufficient information to make *any* rate-making decision much less inform its customers. CCSF is accurate in its assertion that “None of this upheaval is likely to bother PG&E, but it is harmful to CCAs and their customers.” (CCSF Comments at 3.)

**B. MEA Agrees that Long Planning Horizons for Rate Changes are Preferable.**

MEA wholly agrees with CCSF that “consumers and CCAs would be better served by allowing a long planning horizon for any rate changes and consolidating the changes as much as possible to limit the number of rate change events.” (CCSF Comments at 4.) The Commission itself also benefits from a long planning horizon. By utilizing the rigorous General Rate Case structure, which allows for extensive stakeholder and public input, the Commission may make determinations that reflect the big picture, not just a sliver of rate changes with uncertain consequences.

MEA concurs that the General Rate Case, as the “traditional forum for considering the factual and policy issues associated with such a significant change in rate structure,” is an appropriate venue for the matters discussed in this PD. (CCSF Comments at 4-5.) However, even if the Commission chooses to approve PG&E’s application, in this case, time is not of the essence for implementation, particularly given the anticompetitive consequences of the CIA to CCAs.

MEA expresses its appreciation to the Commission and ALJ Fukutome for their consideration of the matters discussed herein. We believe that the facts provided in the MEA and CCSF opening comments demonstrate convincingly to fair-minded interested parties that deferral of the implementation of the requested rate change is in the best interest of ratepayers and helps the Commission fulfill its obligation to facilitate community choice aggregation. In

that regard, MEA is informed that DRA and TURN will not join PG&E in reply comments to the proposed decision. The Commission will have to draw its own conclusions as to the significance of this fact.

Respectfully submitted,



Daniel W. Douglass  
DOUGLASS & LIDDELL  
21700 Oxnard Street, Suite 1030  
Woodland Hills, CA 91367  
Telephone: (818) 961-3001  
Facsimile: (818) 961-3004  
Email: [douglass@energyattorney.com](mailto:douglass@energyattorney.com)


Attorneys for  
**MARIN ENERGY AUTHORITY**

June 1, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the *Reply of the Marin Energy Authority to Comments of the City and County of San Francisco on the Proposed Decision of ALJ Fukutome* on all parties of record in *Application 06-03-005*, by serving an electronic copy on their email addresses of record and by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is not available.

Executed on June 1, 2010, at Woodland Hills, California.

  
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Michelle Dangott

## MEA Community Outreach Update, June 3, 2010

### Past:

Marin Earth Day, College of Marin, Kentfield, April 24 (Austin/Jordis)  
Saint Mark's Eco Fest, Terra Linda, April 28 (Austin/Jordis)  
Marin Home Show, Marin Center, May 22/23 (Austin)  
Rodef Sholom Synagogue, San Rafael, May 23, (Kiki La Porta)  
Redwood High School Sustainability Fair/Workshop, Larkspur, May 27 (Austin/Jordis)  
Caledonia Street Spring Faire, Sausalito, May 30 (Austin)

### Future:

Fairfax Festival & Ecofest, Downtown Fairfax, June 12/13  
Marin Art Festival, Lagoon Park, Marin Civic Center, June 19/20,  
Marin County Fair, Marin County Fair Grounds, July 1-5  
San Anselmo Art & Wine Festival, Downtown San Anselmo, July 17/18  
Mill Valley Farmers Markets  
San Rafael Farmers Markets

Volunteers For Event Staffing Needed! Especially for the Marin County Fair.



June 3, 2010

TO: MEA Board

FROM: John Dalessi, Staff Consultant

RE: PG&E Residential Rate Tier Adjustment (Agenda Item#7)

Dear Board Members:

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On May 20, 2010, PG&E filed Advice Letter 3669-E setting forth revisions to its electric tariffs in compliance with Commission Decision D.10-05-051. The filing consolidates five different rate changes into a single rate change that went into effect on June 1, 2010. Among the rate changes made by PG&E is a shifting of costs among residential customers from high energy users to low energy users, including customers participating in the low income CARE program. These rate shifts were motivated in large part by high bill complaints from customers in the Central Valley who tend to have high summer usage as a result of heavy air conditioning electric demand. The shift of generation costs among residential customers is revenue neutral to PG&E, meaning that the company's overall generation revenues do not change relative to previously authorized rates. This tier adjustment is an interim rate change, subject to the outcome of PG&E's rate design proposals in its 2011 General Rate Case.

Consistent with the Marin Clean Energy Community Choice Aggregation Implementation Plan (Implementation Plan), MEA's rates and tier design were established based on the equivalent PG&E generation rate in effect at the inception of MCE service. In order to put this policy into practice, MEA initially adopted rates and a tier design based on the PG&E rates in effect as of February 4, 2010. MEA made a slight adjustment to its rates on April 1, 2010 to true-up to a PG&E rate change that went into effect on March 1, 2010 and these rates have been in place since commencement of service to MEA customers on May 7, 2010. The Implementation Plan describes an annual ratesetting process where subsequent changes to program rates would be considered as part of the MEA's annual budgeting process.

### **Details of the PG&E Tier Shifting**

The PG&E tier adjustment increases residential rates for usage which falls within Tiers 1, 2 and 3 and reduces rates for usage falling within Tiers 4 and 5. There has been no change to PG&E's non-residential generation rates.

Tier 1 rates apply to energy consumed up to the "baseline" allowance which ranges from 270 kWh per month to 370 kWh per month for most MEA customers; Tier 2 rates apply to consumption between the baseline allowance and 130% of the baseline allowance; Tier 3 rates apply to consumption between 131% of the baseline allowance up to 200% of the baseline allowance; Tier 4 rates apply to consumption between 201% of the baseline allowance and 300% of the baseline allowance; and Tier 5 rates apply to consumption in excess of 300% of the baseline allowance.

The impact of the tier adjustment is to increase electric bills for small residential customers and to decrease electric bills for large residential customers. As a consequence of the increases to the Tier 1 and 2 rates, low income customers that participate in the California Alternate Rates for Energy (CARE) program will see the generation component of their bills increase by approximately 6%.

#### ***PG&E June Rate Change: Residential Rate Schedule E-1***

<b>Usage Tier</b>	<b>May 2010 Generation Rate</b>	<b>June 2010 Generation Rate</b>	<b>Percentage Change</b>
Tier 1	0.04315	0.04587	6.3%
Tier 2	0.05206	0.05491	5.5%
Tier 3	0.13472	0.14149	5.0%
Tier 4	0.21112	0.20251	(4.1%)
Tier 5	0.25117	0.20251	(19.4%)

#### ***PG&E June Rate Change: Residential Rate Schedule EL-1 (Low Income CARE)***

<b>Usage Tier</b>	<b>May 2010 Generation Rate</b>	<b>June 2010 Generation Rate</b>	<b>Percentage Change</b>
Baseline	0.05104	0.05480	7.4%
Above Baseline	0.06351	0.06727	5.9%

### **MEA Rate Competitiveness**

Under PG&E's new four-tiered rate structure, MEA's tier structure would no longer be identical to PG&E's, absent a corresponding MEA tier adjustment. Through this recent filing, PG&E will have increased overall rates for smaller residential customers and reduced overall rates for larger electric customers relative to MEA's rate and tier structure. For larger residential customers in

particular, some increased level of customer opt outs is likely. The overall rate differentials are likely to be short-lived considering the \$571 million generation rate increase being proposed by PG&E in its 2011 General Rate Case. However, if MEA customers opt out of the program after the 60-day free opt-out period ending in August, customers would be obligated to remain with PG&E for a period of three years. Proactive customer communication will be essential to assist customers in understanding the impacts of the current PG&E tier adjustment as well as the various PG&E rate changes that are being proposed. MEA now has early visibility to customer opt-out requests due to the recent CPUC decision that allows MEA to process customer opt-out requests instead of PG&E. This will help MEA staff to monitor customer reactions to the rate differences and quickly bring customer concerns to the attention of the Board.

### **Revenue Impacts**

If MEA were to align its rates with the new PG&E rate structure, there would be a net reduction in revenue due to the composition of the Phase 1 customer base. The estimated revenue impact is a reduction of approximately \$1.3 million for the current fiscal year ending on March 31, 2011 relative to revenues projected at current rates.

### **Impacts on Conservation and Energy Efficiency**

The reduction in the Tier 4 and Tier 5 rates will tend to provide less incentive for customers to conserve energy because the price applicable to incremental consumption will be lower for customers with significant usage falling within the upper usage tiers. Similarly, the flatter rate structure will tend to make energy efficiency investments less cost effective for these customers. The net effect will likely be an increase in electric consumption throughout the PG&E service territory due to the more muted price signals provided by the tiered rate structure.

### **Impacts on Net Energy Metered Customers**

The reduction in the Tier 4 and Tier 5 rates could have a significant detrimental impact on demand for residential solar installations. The residential solar industry has been successful of late in selling or leasing PV systems designed to cut the most expensive Tier 4 and Tier 5 consumption. In many cases, PV systems designed to eliminate Tier 4 and Tier 5 consumption provide immediate cost savings to customers. The shifting of costs from Tiers 4 and 5 into the lower tiers will tend to lengthen the payback for these types of PV installations and would be expected to reduce demand for PV systems in the PG&E service territory.

### **MEA Independence**

One of the valuable attributes of the Marin Clean Energy program is the stability that it brings to electric generation rates. Under current projections, no MEA rate increases are anticipated during the next five year planning period. By contrast, PG&E's generation rates have increased by an average of nearly 6% annually in the past several years, and PG&E has changed its rates



multiple times each year. To illustrate this point, PG&E has changed its electric rates three times in the past five months alone. Frequent rate changes by PG&E are expected to remain the norm, and it will be important for your Board to consider the precedent that would be set in matching PG&E rate changes, particularly for rate changes that are designed to benefit a specific geographic region outside of Marin County. Over time, MEA may wish to have a very different rate structure than employed by PG&E, which could better align with the objectives of the community as well as the usage characteristics of MEA's customers.

Establishing a precedent for matching PG&E rate changes on an ongoing basis makes MEA susceptible to potential manipulation as PG&E could initiate further changes to shift costs among customers through rate design changes that would work to the detriment of MEA's operating budgets. PG&E currently has pending before the CPUC two other requests to shift costs among residential rate tiers with the intended effect of shifting recovery of its generation costs from larger consumer onto smaller consumers. In its 2011 General Rate Case, PG&E has requested the establishment of a monthly customer charge and the collapsing of Tiers 3, 4 and 5 into a single tier. PG&E's proposed rate change would generally benefit residential customers living in hot, inland regions of the PG&E service territory at the expense of customers living in the cooler coastal areas. In another rate design request currently pending before the CPUC, PG&E has requested flattening of its residential generation rates and moving the tiered rate differential to a non-bypassable charge known as the Conservation Incentive Adjustment. Neither of these proposed PG&E rate changes will benefit the typical electric customer residing in Marin County. MEA's ratemaking authority allows your Board to establish a rate structure that is independent of PG&E's and that is better suited to the needs and objectives of the community.

### **Recommendation**

The PG&E rate change raises a number of technical as well as policy issues that may warrant further discussion by a committee of the Board. Staff recommends that this issue be referred to either the Technical Committee or an Ad Hoc rates committee for further consideration.



June 3, 2010

TO: Marin Energy Authority Board

FROM: Rufus Jeffris, Staff Consultant

RE: Communications discussion on MEA response to PG&E rate-tier adjustments (Agenda Item #7)

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**Communications discussion re MEA response to PG&E rate-tier adjustments**

PG&E's recent rate-tier adjustment presents a potentially good opportunity for the Marin Energy Authority to demonstrate to its customers, the public and others the value of its independence as a local public power program, which was one of the fundamental reasons for forming a community choice aggregation program in Marin. That independence enables MEA to make decisions regarding its rates and other various programs and services that are best suited and specifically tailored to meet Marin's unique needs. PG&E's rate-tier adjustment, however, was tailored to address energy consumption and cost issues specifically related to customers in the Central Valley, a region whose energy use, climate and other characteristics bear little similarity or relevance to Marin County.

In fact, PG&E's rate-tier adjustments would appear to communicate a number of unwanted messages to customers and the public. The adjustments would shift cost burden from customers who consume large amounts of energy to those who use less energy, potentially reducing the incentive for conservation. At the same time, the adjustments would increase costs for customers who use lower amounts of energy and presumably are lower-income.

Through its actions, the Marin Energy Authority has a unique opportunity to communicate with customers and the public that the decisions it makes regarding rates, among other things, are made specifically to meet the needs and provide the greatest benefit for its Marin County customers. Any process that MEA may establish for reviewing and deciding how MEA will respond to PG&E's rate-tier adjustment also provides MEA with an opportunity to demonstrate the transparency and openness that a local agency can provide the public and customers on issues that directly affect them. This transparency can play an important role in building and reaffirming public confidence and trust in MEA.



June 3, 2010

TO: Marin Energy Authority Board

FROM: Greg Stepanicich, General Counsel

RE: Supplemental Report on Transferring Interim Director to LGS  
(Agenda Item #9)

Dear Board Members:

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This supplemental report describes the financial impact of transferring the Interim Director position held by Dawn Weisz to the LGS contract. The duties of the Interim Director will not be changed by the proposed transfer. Under the LGS contract, the MEA will pay LGS the cost of salary and benefits paid to the LGS employee provided to the MEA plus the LGS administrative fee of \$5.28 per hour for the hours that the employee works.

The total monthly cost to the MEA will be \$14,750. This amount includes a salary of \$10,000 per month, benefits and the LGS administrative fee of \$750 which is premised on 40 hours of work per week. Benefits will consist of dental and vision insurance, long-term and short-term disability insurance, life insurance, a contribution of \$798 per month to a medical insurance plan, and the employer contribution to PERS. The PERS retirement benefit is 2% at 55. The benefits provided by LGS are comparable but not identical to the benefits provided by the County of Marin to its employees.