

August 27, 2010

Mr. Honesto Gatchalian
California Public Utilities Commission
Energy Division
Tariff Files, Room 4005
DMS Branch
505 Van Ness Avenue
San Francisco, CA 94102

Subject: PG&E's Protest Response to Advice 3711-E

Dear Mr. Gatchalian:

In Decision (D.) 10-07-042, the California Public Utilities Commission (Commission) ordered PG&E to file a Tier 1 compliance advice letter attaching executed copies of the contracts that comprise the GWF Tracy and Los Esteros Critical Energy Facility (LECEF) Transactions if the Commission rejected either the Marsh Landing or Oakley Projects pending in Application (A.) 09-09-021.¹ The Commission indicated that PG&E should proceed with the GWF Tracy and LECEF Transactions "immediately" if this circumstance occurred.²

On the same day that the Commission issued D.10-07-042, it also issued D.10-07-045, rejecting the Oakley Project. Consistent with the Commission's direction, PG&E filed Advice 3711-E on August 4, 2010, attaching executed copies of the contracts that comprise the GWF Tracy and LECEF Transactions. PG&E's Tier 1 advice letter filing was intended to allow the GWF Tracy and LECEF Transactions to proceed immediately. The only party that has protested Advice 3711-E is the Division of Ratepayer Advocates (DRA).

DRA has not raised any substantive or procedural concerns regarding PG&E's advice letter filing. Instead, DRA's protest addresses a petition to modify (PTM) filed by PG&E on August 23, 2010, regarding the decision rejecting the Oakley Project. In particular, DRA asserts that Advice 3711-E should either be denied without prejudice or held in abeyance until the Commission acts on PG&E's PTM. DRA's protest is baseless and should be rejected.

¹ D.10-07-042, Ordering Paragraph 2.

² *Id.*

Under the Commission's Rules, the filing of a petition to modify does not stay a Commission decision and "[t]he decision remains in effect until the effective date of any decision modifying the decision."³ The Commission's decision rejecting the Oakley Project is, and remains, in effect. Thus, PG&E's advice letter filing concerning the GWF Tracy and LECEF Transactions was appropriate and consistent with D.10-07-042, and there is no basis for denying or holding the advice letter in abeyance. The conditions specified in Ordering Paragraph 2 of D.10-07-042 have been fully met. More importantly, the developers of the GWF Tracy and LECEF upgrades are ready to proceed expeditiously with their projects and there is no reason to delay the Tier 1 advice letter, especially given the Commission's direction that these projects should proceed "immediately."

When the Commission acts on the PTM, it will do so being fully aware that Advice 3711-E was filed and that the GWF Tracy and LECEF projects are proceeding. PG&E strongly believes that, based on the new facts described in the PTM, the Commission should reconsider its decision and approve the Oakley Project. However, that is not an issue that needs to be resolved in this Advice 3711-E. Instead, the issue here is simply whether the conditions specified in Ordering Paragraph 2 of D.10-07-042 have been met. Because these conditions have been satisfied, DRA's protest should be rejected.

Respectfully submitted,



Vice President
Regulation and Rates

cc: Maria Salinas, Energy Division
Julie Fitch, Energy Division
Cynthia Walker, DRA
Service List for A.09-10-022, A.09-10-034 and A.09-09-021

³ Commission Rule 16.4(h).