

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Pacific Gas & Electric Company  
Advice Letter 3170-G/3763-E,  
Notification of the Creation of a New  
Affiliate

AL 3170-G/3763-E  
(Filed November 22, 2010)

**PROTEST OF THE CITY AND COUNTY OF SAN FRANCISCO ON PACIFIC  
GAS & ELECTRIC COMPANY'S ADVICE LETTER 3170-G/3763-E**

**I. INTRODUCTION**

Pursuant to Commission General Order 96-B Rule 7.4, the City and County of San Francisco (the "City") submits this protest to Pacific Gas & Electric Company's ("PG&E") Advice Letter 3170-G/3763-E (the "Advice Letter") filed on November 22, 2010. In the Advice Letter, PG&E notifies the Commission of an investment by Pacific Energy Capital III, an investment subsidiary of Pacific Gas & Electric Corporation, in Sequoia Pacific Solar I LLC ("Sequoia Pacific"), a provider of residential rooftop solar energy installations. The City files this protest because the Advice Letter creates a direct conflict of interest for PG&E and violates the Affiliate Transaction Rules.

The City protests the Advice Letter on the grounds that the relief requested in the advice letter (1) violates Commission decisions on affiliate transactions, and Public Utilities Code section 451; (2) is inappropriate for the advice letter process; and (3) is unjust, unreasonable, and will result in anticompetitive effects.

## II. DISCUSSION

### A. **The Relief Requested Violates Commission Decisions on the Affiliate Transaction Rules and Violates Public Utilities Code Section 451.**

As the administrator of the California Solar Initiative (“CSI” or the “Program”), PG&E has an obligation to ensure the fair and impartial administration of the Program. This includes determining the level of rebate by processing the initial incentive Reservation Request package and conducting a field verification once the system is installed. This also includes giving final approval for interconnection, which in turn triggers the right to file for the rebate. The Program is funded with ratepayer moneys and intended to be for the benefit of the ratepayers.<sup>1</sup> The Commission has already approved over \$2.1 billion in ratepayer funds for the Program,<sup>2</sup> and PG&E is responsible for dispersing nearly \$800 million in incentive payments.

On the other hand, the Advice Letter demonstrates that PG&E also has an interest in increasing the profitability of its own affiliates. That is, because PG&E has the warrant rights to approximately a 2% equity interest in Sequoia Pacific, PG&E may be tempted to drive business towards Sequoia Pacific to increase the value of its investment. The Advice Letter states, “as the owner of the installations, Sequoia Pacific will be entitled to the related host customer payments.”<sup>3</sup> In other words, PG&E will administer incentive payments to its own affiliate.

PG&E should not be allowed to benefit either directly or indirectly from the program it administers. If PG&E is administering the program at the same time its affiliate stands to profit from participating in the Program, there is a real and direct conflict of interest. This conflict violates both the letter and spirit of the Affiliate

---

<sup>1</sup> Public Resources Code § 25780(b).

<sup>2</sup> D. 10-09-46, *Decision Modifying Decision 06-12-033 Regarding California Solar Initiative Budget*, at p. 23, Table 6, (September 23, 2010).

<sup>3</sup> Advice Letter at p. 2.

Transaction Rules, and displaces the interests of the ratepayers in favor of corporate profitability.

In addition, this violates PG&E's statutory responsibilities. Public Utilities Code section 451 provides that "[a]ll charges demanded or received by any public utility . . . for any product or commodity furnished . . . shall be just and reasonable." Section 451 further states that "[e]very unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful." Approval of the Advice Letter would violate section 451 because it would allow PG&E to administer the ratepayer funded program to benefit its affiliate, and correspondingly PG&E's corporate shareholders. Administering the CSI in a manner that places corporate interests above those of the ratepayers would constitute an unjust and unreasonable use of ratepayer funds.

In Decision ("D.") 06-12-029, the Commission stated that the Affiliate Transaction Rules are intended to be applied broadly in order to protect ratepayers and ensure fair competition,<sup>4</sup> and that utilities have a "public service obligation to provide services in a safe, reliable, and environmentally sustainable manner at the lowest reasonable cost. *Preferential treatment to affiliates is prohibited.*"<sup>5</sup> These rules are intended to prevent unfair competition, and should be applied prophylactically.

Rule III.A provides that the utility may not provide preferential treatment to an affiliate. In the Advice Letter, PG&E asserts that it has policies and procedures in place to ensure compliance with this rule. Specifically, PG&E claims that it has sent its employees communication reminding them to comply with the Affiliate Transaction Rules with an

---

<sup>4</sup> D.06-12-29, *Opinion Adopting Revisions to (1) the Affiliate Transaction Rules and (2) General Order 77-L, as Applicable to California's Major Energy Utilities and Their Holding Companies*, at p. 17, (December 20, 2006). (The "narrow interpretation of the Affiliate Transaction Rules creates a significant loophole and undermines their use as an adequate regulatory tool for protecting utility ratepayers and ensuring fair competition in energy market.")

<sup>5</sup> *Id.* at p. 25 (emphasis added).

emphasis on not providing preferential treatment. PG&E required all employees involved in the CSI program to complete an online training course, and for certain key employees additional one-on-one compliance counseling was required.

The assertion of self-policing, however genuine, is not enough to overcome the direct conflict of interest. When the Commission implemented the new non-discrimination requirements for utility procurement of natural gas from affiliates in D. 06-12-029, the Commission noted that without a “way to determine if the utility is providing preferential treatment to its affiliate or to assess the reasonableness of the affiliate’s after-market sales to the utility ...[that] open[s] the door to the appearance of favoritism and possibly, to actual market abuse.”<sup>6</sup> Here, the incentive levels are adjusted based on the on-site field verifications. It is not hard to imagine a situation where the level of scrutiny applied during the verification differs according to the identity of the installer. Not only does this conflict of interest risk discriminatory effects on San Francisco ratepayers seeking to install solar power under the CSI but it also compromises the credibility of the City’s own GoSolarSF solar incentive program, whose administration is tied to the CSI.

Where it is difficult to regulate the interactions between the utility and an affiliate the Commission has favored adopting “rules that generally require more separation between a utility and its affiliate ... [t]he fewer the transactions between the utility and its affiliate, the greater confidence we have that the affiliate lacks market power.”<sup>7</sup> Here, the field verifications play in an important role in the CSI Program and directly affect the level of incentive paid. Because the verifications are site specific, it is likewise difficult to regulate this aspect of the Program. Given the nature of the conflict of interest, and without a means to police PG&E from giving preferential treatment to Sequoia Pacific, the

---

<sup>6</sup> D.06-12-29, at p. 19.

<sup>7</sup> D. 97-12-088 *Opinion Adopting Standards Of Conduct Governing Relationships Between Utilities And Their Affiliates*, (December 16, 1997), as amended by D.98-08-035 (August 6, 1998) and D.98-12-075 (December 17, 1998).

only proper remedy is for the Commission to disallow the proposed relationship and deny the advice letter.

Finally, approval of the Advice Letter would undermine the purpose and policy of the Affiliate Transaction Rules. This is because there is the potential for Sequoia Pacific to leverage its status as a PG&E affiliate to its own competitive advantage. Although Rule III.E prohibits PG&E from assisting the affiliate to develop business, the Rule does not apply to affiliates. As an unregulated affiliate, Sequoia Pacific's employees will be able to promote its relationship with the utility and make representations that it is acting on behalf of PG&E in an effort to generate business. Approval of the Advice Letter would condone this anti-competitive conduct.

**B. The Relief Requested is Inappropriate for the Advice Letter Process.**

Generally, the advice letter process provides a quick and simplified review of requests that are expected to be uncontroversial and not raise important policy questions. Here, the approval of the Advice Letter would both create controversy over the propriety of PG&E as the administrator of the Program, and raise important questions as to what types of transactions should be permitted between an affiliate and the utility. The transaction identified in the Advice Letter requires more than "notice;" the issue before the Commission is not simply the creation of a new affiliate.

Rule III.B limits the types of transactions to: (1) tariffed products and services; (2) the sale of goods, property, products or services made generally available by the utility or affiliate to all market participants through an open, competitive bidding process; (3) the provision of information made generally available to all market participants; (4) Commission approved resource procurement by the utility; and (5) joint purchases, corporate support and new products and services, as provided by the Affiliate Rules.

The transaction between Sequoia Pacific and PG&E fits none of these categories. The Advice letter claims that it does not violate Rule III.B because “any transactions between Sequoia Pacific and PG&E will be pursuant to the Commission-approved CSI Program Handbook available to all market participants.” This assertion misses the mark. The relevant inquiry is not whether the transaction is pursuant to a handbook readily available to the public. Instead, the inquiry must focus on the transaction between Sequoia Pacific as a residential rooftop solar installer and PG&E as the Program administrator. Clearly, that interaction is not provided for by the Affiliate Rules. Therefore, the relief requested in the Advice Letter is beyond the scope of what is permitted by the Affiliate Transaction Rules, and is inappropriate for resolution through the advice letter process.

**C. The Relief Requested is Unjust, Unreasonable, and Risks Creating Anti-Competitive Results.**

As demonstrated, the approval of the Advice Letter would create a direct conflict of interest that could result in unjust and anti-competitive behavior. In addition to policing the utilities for impropriety with regards to preferential treatment of its affiliates, the Commission “bears an independent obligation to look at anti-trust matters in its endeavors.”<sup>8</sup> Approval of the Advice Letter will create a real risk of anti-competitive behavior by both the utility, PG&E, and by the unregulated affiliate, Sequoia Pacific. The Commission must act to prevent this type of anticompetitive behavior, and deny the Advice Letter.

---

<sup>8</sup> At 14.

**III. CONCLUSION**

Based on the foregoing, the City requests that the Commission deny the Advice Letter.

Dated: December 13, 2010

Respectfully submitted,

DENNIS J. HERRERA  
City Attorney  
THERESA L. MUELLER  
Chief Energy and Telecommunications Deputy  
AUSTIN M. YANG  
Deputy City Attorney

By: \_\_\_\_\_ /S/  
AUSTIN M. YANG

Attorneys for  
CITY AND COUNTY OF SAN FRANCISCO  
City Hall Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682  
Telephone: (415) 554-6761  
Facsimile: (415) 554-4757  
E-Mail: austin.yang@sfgov.org

**PROOF OF SERVICE**

I, **PAULA FERNANDEZ**, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at the City Attorney's Office of San Francisco, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 234, San Francisco, California, 94102.

On December 13, 2010, I served the attached **PROTEST OF THE CITY AND COUNTY OF SAN FRANCISCO ON PACIFIC GAS & ELECTRIC COMPANY'S ADVICE LETTER 3170-G/3763-E** by electronic mail on the following addressee:

**Jane K. Yura  
Vice President, Regulation and Rates  
Pacific Gas and Electric Company  
77 Beale Street, Mail Code B10B  
P.O. Box 770000  
San Francisco, CA 94177**

and also served the above named document in the manner indicated below:

- BY MAIL:** I caused true and correct copies of the above documents, by following ordinary business practices, to be placed and sealed in envelope(s) addressed to the addressee(s), at the City Attorney's Office of San Francisco, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 234, San Francisco, California, 94102, for collection and mailing with the United States Postal Service, and in the ordinary course of business, correspondence placed for collection the same day.

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

Executed December 13, 2010 at Francisco, California.

/s/

---

**PAULA FERNANDEZ**