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April 14, 2010

Gregory W. Stepanicich
Richards, Watson & Gershon
44 Montgomery Street, Suite 3800
San Francisco, CA 94104-4811

Re: Marketing and Opt-Outs

Dear Greg:

Thank you for your April 7, 2010 letter, to which I am now responding.

Improper Opt-Outs

You state at page one of your letter that Pacific Gas and Electric Company (PG&E) has improperly obtained opt-outs from customers eligible for the Marin Clean Energy Community Choice Aggregation Program ("MEA CCA Program"):

> We know of at least two commercial customers and one residential customer who received notices that they had opted-out of Marin Clean Energy when they in fact never requested an opt-out. The commercial customers were told by a PG&E representative that the two businesses had been automatically opted-out. This conduct is a clear violation of law. There is no reason to believe that this conduct is not pervasive.

Prior to our receipt of your letter, as well as a similar April 1, 2010 inquiry from the California Attorney General's office, we were already aware of two commercial customers who had opted-out and then rescinded their opt-out. We were also aware of one residential customer who opted-out on March 9, 2010, and who, through a different individual with a power of attorney for that customer, subsequently rescinded their opt-out request. The details of these transactions are set forth in my April 9, 2010 letter to the Special Assistant Attorney General, a copy of which you should have received. We have assumed that your letter and the Special Assistant Attorney General's communication refer to the same customers. We are not aware of any case in which a customer was either automatically opted-out or opted-out when they in fact never requested an opt-out.

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Our review of these cases, as well as our continuing oversight of the opt-out process, leads us to conclude that PG&E has been, is now, and should continue to follow its opt-out processes because the processes have demonstrably worked. We do not agree that "[t]here is no reason to believe that this conduct [improperly opting-out customers] is not pervasive." To the contrary, there is every reason to believe that PG&E has been, is now, and will continue to: (a) authenticate customer opt-out requests and other service changes consistent with best industry practices to make sure that the individuals with whom we speak are authorized to make changes to the account; (b) send written confirmations to the customers advising them of their opted-out status after they have requested to opt-out, providing the customers with a reminder of their opt-out decision, and a reminder of their ability to rescind their opt-outs; (c) make ourselves available to the Marin Energy Authority and its data interchange contractor to respond to inquiries about the opt-out process; and (d) rescind and continue to rescind any opt-out if the customer indicates that he or she did not mean to opt-out or wants to change his or her mind.

If you know of any situations where the opt-out process is not working, please bring them to our attention immediately. If the incidents you describe in your letter to me differ from those brought to our attention by the Special Assistant Attorney General, please provide us with enough information so that we can look into them. And, if you continue to believe that we are pervasively opting-out customers improperly, please tell us why you continue to believe such activity is on-going so that we can address your concerns directly and completely.

False and Misleading Statements

You next raise concerns about the types of oral and email communications that PG&E representatives are having with customers. You first state at page one of your letter that "PG&E has communicated directly with customers and solar dealers that they will not be eligible for the CSI solar rebates unless they opt-out of Marin Clean Energy."

Your letter omits a number of facts. The Marin Energy Authority first raised this issue on March 15, 2010 in a pleading filed in Rulemaking 09-11-014. The situation was again raised during the March 18, 2010 prehearing conference in that proceeding. In response to this concern, PG&E reconfirmed that its website describing community choice aggregation has said and continues to say in its Frequently Asked Questions that participants in community choice aggregation programs are eligible for solar programs.[1/] During that prehearing conference, PG&E also confirmed that after receiving MEA's pleading PG&E had sent a reminder to all PG&E Solar Customer Service call center representatives that

1/(http:/www.pge.com/myhome/customerservice/energychoice/communitychoiceaggregation/faq/index.shtml)

customers remain eligible for CSI solar rebates even if they participate in community choice aggregation programs. PG&E also committed to have additional training to reinforce this aspect of the CSI solar rebate program. All of this was done well before PG&E received your April 7 letter, except for the training itself which is scheduled for next week.

In addition, we examined our records to see if we could find the communications of concern to you. We found four customer inquiries during March in which both the CSI solar rebate program and the MEA CCA Program were mentioned. Three of the four customers already were participating in the CSI program. One customer stated that they were thinking of installing solar panels and wanted to know whether they would be eligible for CSI solar rebates if they were to participate in the MEA CCA Program. The PG&E representative said initially that he did not think so but told the customer he wasn't sure and wanted to double-check. The representative put the customer on hold and consulted with another service representative, who was also unsure. The PG&E representative then told the customer that he didn't think it would be through PG&E, but CSI was a statewide program and the customer would still be entitled to something but the representative didn't know who would process it. The representative said that he would send an inquiry to the CSI solar rebate program manager to clarify the situation and that someone would get back to the customer. PG&E has done so and confirmed the customer's continued eligibility for the CSI program. We have no other records of any inquiries from Marin regarding the relationship between the two programs. Again, if you believe that there are situations other than the communication I have described of which we may not be aware, please let us know promptly so that we can directly and completely address this concern.

Second, you state at pages one and two of your letter that you understand "PG&E has communicated to lower income customers that they will not have the benefit of the CARE program rate if they become a Marin Clean Energy customer, despite the fact in the public record that the MEA Board has adopted the CARE program rate as part of its customer rates." Without any more specific facts, I simply cannot respond to your statement. We do not know when it was made, to whom it was made, the manner in which it was made or anything else about it. If you have anything further, please tell us so that we can follow-up. We do know that there is nothing on our website or customer service representative scripts that say customers are ineligible for the CARE program if they become a CCA or Marin Energy Authority customer.

Third, you state at page two of your letter that "Our call center operated by Sempra Energy Solutions received three calls from customers who explained that they contacted PG&E complaining about an increased bill and were told by a PG&E representative that this was due to the Marin Clean Energy Program." Your letter is the only information we have about this claim, but this is not enough information for us to follow-up. Calls to PG&E Customer Service Representatives are recorded, unless a customer specifically requests otherwise. We

maintain these records for six months. If you provide more specific information about the communications you describe, we will follow-up and let you know the results of our inquiry.

Fourth, you state on page two of your letter that on April 6 your wife was falsely told by a PG&E marketing representative that in the event of an outage, "Marin Clean Energy would need to be contacted for assistance...." We agree that, if your wife was provided this information, it is not correct. Accordingly, I immediately brought this matter to the attention of our customer care organization. Our records confirm: (1) your wife was in fact called during the period you identified; (2) neither the marketing script nor any other information provided to those making the marketing calls includes a statement as to whom customers are to call in the event of an outage; (3) if the recipient of a marketing call has questions that go beyond the marketing script and information provided, the marketers have been and continue to be instructed to send the customer to PGE.com or to transfer them to a PG&E customer representative, which transfer we have confirmed did not take place; and (4) the marketing individual speaking with your wife has no specific recollection of the call or of her question. We do not record these communications and we assume that you did not either. Therefore, neither of us can recreate exactly what was said. We will simply take your statement at face value.

As I emphasized to both you and to Dawn Weisz during our negotiations, it is not in PG&E's interest or in the interest of the Marin Energy Authority for there to be any confusion about who a customer is to call in the event of an outage. Although a customer may be buying generation services from the Marin Energy Authority, they continue to buy transmission, distribution and other services from PG&E. We will continue to look at ways to improve our mutual customer communications after the Marin Energy Authority commences service in order to continue to make sure that customers understand the division of responsibility between us. We trust that the Marin Energy Authority will work with us to make sure that electricity users purchasing generation services from the Marin Energy Authority know that they are to continue to call PG&E in the event of an outage.

Fifth, you state that PG&E's written materials previously distributed to customers include false and misleading information, citing as an example one recent PG&E mailer concerning the Marin Energy Authority's lack of "open" rate-setting. Your letter at page two states, "I have focused on [this statement] for the reason that there can be no dispute about its inaccuracy." We respectfully disagree.

The mailer states: "Opting out means your rates remain independently regulated by the California Public Utilities Commission. Marin Energy Authority [MEA] has no open rate-setting process and Marin County's own 'independent energy assessment' forecasts that prices could easily rise by 12 - 15% [source: MRW & Associates]."

Our point is not to state in isolation that the Marin Energy Authority has closed meetings. We understand that the Brown Act requires "all actions by the MEA Board, including rate-setting, to be made at a noticed meeting open to the public." Our point is to compare the rate-setting process at the California Public Utilities Commission (multiple notice provisions through a variety of sources; an opportunity for evidentiary proceedings in front of an administrative law judge; publicly funded consumer representatives automatically entitled to full party status in the proceeding; extensive proceedings requiring the approval of significant power purchase agreements) with the initial rate-setting process followed by the Marin Energy Authority (an open meeting, with as little as 3 days notice in some cases, during which ratepayers can ask questions and provide comments but no direct notice or opportunity for evidentiary hearings).

The facts bear out the truthfulness of our statement. Marin Energy Authority's Implementation Plan at pages forty-eight and forty-nine expressly exempts itself from setting its initial rates through a direct customer notice, comment and hearing process comparable to that used by PG&E and the CPUC; on January 7, 2010, the Marin Energy Authority approved a rate discount for a particular subset of its customers for its "Deep Green" product with minimal notice and no public input; on February 4, 2010, Marin Energy Authority set its initial electric rates with minimal public notice, no direct notice or hearing process for its customers, and virtually no public input; on March 18, 2010, Marin Energy Authority's Chair and Interim Executive Director approved the prices in the sole power sales agreement on which it will rely to provide generation services with no public notice of the actual prices in that agreement and no opportunity for public comment or hearings on those prices, thereby limiting customer and public participation to non-pricing terms and conditions; and on April 1, 2010, the Marin Energy Authority met with no direct notice to customers or opportunity for hearings to consider revisions to its initial electric rates, adoption of a net metering tariff, and adoption of specific rates for its Deep Green product. In short, we stand by the accuracy of our statement.

You then go on to ask, "What good will it do to file the PG&E marketing materials with the CPUC and Attorney General when these materials will have already achieved their intended effect of misleading customers?" The answer to your question is that the materials have not misled customers. Moreover, whenever PG&E learns of facts indicating the possibility of an erroneous or potentially confusing customer communication, it promptly acts to address the matter. There simply is no basis for concluding that PG&E has misled customers as you assert in your letter.

The Opt-Out Process

You then turn your attention back to the opt-out process. First, you state at page two of your letter that PG&E's development of additional "methods including the use of PG&E prepared opt-out forms that are mailed in by customers and PG&E initiated telephone calls to customers soliciting opt-outs…are improper."

With respect to the use of opt-out forms, you believe that the only means by which a customer may opt-out of the MEA CCA Program are those means identified in Marin Energy Authority's opt-out notice. There is no such limitation in any tariff, CPUC order or statute. In fact, our tariffs contemplate multiple ways in which a customer may opt-out. Electric Rule No. 23 I. states that "The CCA shall use PG&E's opt-out process." Electric Rule No. 23 I.1. then states that the utility "shall provide an opt-out process to be used by all CCAs" and that the utility "shall offer *at least* two (2) of the following options *as part* of its opt-out process: (a) Reply letter or postcard (postage paid) enclosed in CCA Customer Notifications. (b) Automated phone service. (c) Internet service. (d) Customer Call Center contact." (Emphasis added.) It is important to our customers that we provide them with multiple ways to interact with us and we do not believe it is appropriate to narrow their choice of communication. We therefore intend to continue to comply with these provisions and CPUC Resolution E- 4250 by soliciting and processing opt-out notices, even if some of these procedures are not included in the Marin Energy Authority opt-out notices.

You also state on page two of your letter that PG&E may not solicit opt-outs and that PG&E can do no more than wait passively for opt-outs "initiated by the customer." In Resolution E-4250, the CPUC specifically reconfirmed the right of PG&E to solicit opt-outs, including soliciting such opt-outs through telephone or other means to its customers. In addition, we have a constitutional right to talk directly with our customers about a government-run program. We intend on continuing to solicit customer opt-outs following the procedures clarified in Resolution E-4250 and to communicate with our customers about the advantages and disadvantages of buying generation services from PG&E and from the Marin Energy Authority.

Finally, you note at page three of your letter that opt-outs are being collected from Phase 2 customers who have not yet been provided the legally required opt-out notice and because the noticing period for Phase 2 customers has not yet commenced, these opt-outs are not valid. The Commission addressed this issue in Finding and Conclusion No. 6 of Resolution E-4250 when it found that, "so long as PG&E does not know which customers are in MEA's phase one, PG&E is not prohibited from soliciting customers throughout MEA's service territory." That was precisely the situation at the time PG&E solicited these opt-outs. Now that we have received the list of Phase I customers, PG&E will cease providing opt-out opportunities to non-Phase I customers, in compliance with Resolution E-4250. We will

continue to adhere to the principle that so long as the Marin Energy Authority continues to provide us with all customer names of those in particular phases of its implementation, we will solicit opt-outs only from those customers. To the extent the Marin Energy Authority refuses in the future to provide us with this information as it continues its phase-in, or adds customers to its program without providing PG&E with notice consistent with Resolution E-4250, we will solicit opt-outs from any customer not already identified as falling into an early phase.

Follow-Up Steps

You asked at page three of your letter that I address four matters immediately. PG&E responds to each as follows.

First, you asked for an investigation and determination of "the magnitude of the number of customers that have been unlawfully opted-out of Marin Clean Energy automatically by PG&E without the request of the customer." Our conclusion that no customers have been improperly opted-out is set forth above.

Second, you requested the establishment of a review process in the PG&E Law Department for reviewing the accuracy of written materials provided to customers. PG&E recognizes its responsibility for disseminating accurate customer information. It already takes and will continue to take the steps necessary and prudent to meet this responsibility.

Third, you asked that "[PG&E] discontinue all use of opt-out procedures that are not specified in the tariffs including marketing calls and other opt-outs that are not customer initiated." We disagree with your conclusion that PG&E is prohibited from soliciting opt-outs or from engaging in any marketing calls or other activities other than merely accepting for processing opt-out notifications from customers. We will comply with our tariffs and all applicable statutory and regulatory requirements.

Fourth, you ask for "[t]he delivery to the Marin Energy Authority within the next forty-eight hours of an updated list of customers that have opted-out of Marin Clean Energy." In fact, on April 6 – before you sent us your letter – we and the Marin Energy Authority agreed to a schedule for us providing it with a list of customers opting-out of Phase I. We could do so because the Marin Energy Authority provided us with a list of its Phase I customers. With respect to non-Phase I customers, we agreed voluntarily to provide aggregate load data on non-Phase I customers' requests to opt-out of the MEA CCA Program. We thought (until we received your letter) that the issue was resolved and will treat it that way unless you inform us of any new issues related to this information.

PG&E is and will continue to comply fully with all applicable orders, decisions and tariffs. We will continue to solicit opt-outs from Phase I customers. We will also continue to communicate with our customers. And, we will continue to work with you to promptly address and resolve any customer confusion or concerns regarding the Marin Energy Authority and to resolve any concerns or questions the Marin Energy Authority may have regarding its implementation of the MEA CCA Program.

Sincerely,

Sanford L. Hartman

SLH/gj

cc: Clifford Rechtschaffen
Paul Clanon
Frank Lindh
Dawn Weisz