Pacific Gas and Electric Company

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

Re: **Response to Protests From the City and County of San Francisco and Californians for Renewable Energy on Pacific Gas and Electric Company's Advice 3170-G/3763-E**

Dear Mr. Gatchalian:

Pacific Gas and Electric Company ("PG&E") hereby responds ("Response") to the protest dated December 13, 2010 ("CCSF Protest"), from the City and County of San Francisco ("CCSF") and Californians for Renewable Energy, Inc. ("CARE") to Advice 3170-G/3763-E ("Advice Letter") regarding PG&E's notification of the formation of a new affiliate, Sequoia Pacific Solar I, LLC, a Delaware limited liability company ("Sequoia Pacific") under Rule II.B of the Affiliate Transaction Rules. In the Advice Letter, PG&E notifies the Commission of a tax equity investment by PG&E Corporation's subsidiary, Pacific Energy Capital III, LLC ("PEC III"),[1/] in Sequoia Pacific, a provider of residential rooftop solar energy installations, and demonstrates how PG&E will implement the Affiliate Transaction Rules with respect to the new affiliate.

CCSF's Protest argues 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 anti-competitive effects. As will be discussed in more detail below, CCSF's Protest should be dismissed for the following reasons:

1/ CCSF mistakenly asserts, on page 2 of its Protest, that PG&E has the warrant rights to approximately a 2% equity interest in Sequoia Pacific. As PG&E notes in its Advice Letter at page 4, PG&E Corporation has warrant rights to acquire approximately a 2% equity interest in SolarCity Corporation ("SolarCity"), not Sequoia Pacific. PG&E further notes that PG&E Corporation has no current ownership interest in or control over SolarCity and, even if PG&E Corporation ultimately exercises its warrants rights, SolarCity will still not be an "affiliate" within the meaning of Affiliate Transaction Rule I.A on the basis of a 2% ownership interest.

- CCSF's Protest fails to meet the requirements of G.O. 96-B, Rule 7.4.2 by improperly calling for relitigation of prior decisions of the CPUC regarding the Affiliate Transaction Rules and the CSI Program.

- Contrary to CCSF's claims, PG&E has established robust controls to ensure fair and unbiased treatment of all participants in the CSI Program. These controls are transparent and observable by the Commission.

- CCSF is wrong in claiming that Sequoia Pacific's participation in the CSI program constitutes a transaction with PG&E not authorized by the Affiliate Transaction Rules. Contrary to CCSF's assertion, the transactions between PG&E and Sequoia Pacific under the Commission-approved CSI Program Handbook are precisely the type of standardized, tariffed programs and services authorized by the Affiliate Transaction Rules.

- Contrary to CCSF's claims, PG&E properly sought its requested relief by advice letter filing as authorized under D.06-12-029.

For the reasons set forth in this Response, the CPUC should reject CCSF's Protest.

1. CCSF's PROTEST SEEKS TO RELITIGATE PRIOR CPUC DECISIONS IN VIOLATION OF G.O. 96-B, RULE 7.4.2(6)

CCSF first alleges that "PG&E should not be allowed to benefit either directly or indirectly from the [CSI] program it administers."[2/] This allegation rests on the assumption that the Affiliate Transaction Rules adopted by this Commission to address the very conflict of interest alleged by CCSF represent an inadequate regulatory tool for protecting utility ratepayers and ensuring fair competition in energy markets. In seeking to revisit these rules, CCSF's Protest violates the requirements of G.O. 96-B, Rule 7.4.2(6), that a protest not be made where "it would require relitigating a prior order of the Commission."

In Decision ("D.") 06-12-029, the Commission acknowledged that affiliate transactions inherently involve "the likelihood for preferential treatment, unfair competitive advantage, or the sharing of competitively sensitive confidential information within the partly regulated, mostly unregulated corporate family and the consequences such competitive abuse poses for energy markets and captive ratepayers."[3/] To address such concerns, D.06-12-029 adopted Revised Affiliate Transaction Rules which the Commission concludes "have been designed to close existing loopholes, primarily by ensuring that key utility and holding company officers understand the Rules and their

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2/ CCSF Protest at 2.

3/ 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 10 (December 20, 2006).

obligations under them...."[4/]

CCSF cannot now seek to relitigate these rules under the guise of protesting PG&E's Advice Letter. The sole issue presented in PG&E's Advice Letter is whether it has demonstrated an adequate plan to comply with these rules. It has.

2. THERE IS NO SECTION 451 ISSUE

CCSF also claims that approval of the Advice Letter would violate Public Utilities Code section 451 in that "it would allow PG&E to administer the ratepayer funded program to benefit its affiliate, and correspondingly PG&E's corporate shareholders."[5/] If one were to accept CCSF's claim as presented, affiliates of the utility would be prohibited as a matter of law from participating in the CSI program. This result is contrary to Commission decisions adopting the CSI program and making that program available to all participants (subject to compliance with the Affiliate Transaction Rules). CCSF's claim represents another improper request to revise prior commission decisions, contrary to G.O. 96-B, Rule 7.4.2(6).

This Commission and the California Legislature have already approved the CSI program to encourage solar energy development and have determined that the resulting customer charges are just and reasonable.[6/] It would be contrary to the Commission's and Legislature's intent to exclude affiliates from the program. Thus, CCSF presents no valid Section 451 issue in its Protest.

3. PG&E HAS ADEQUATE CONTROLS IN PLACE TO PREVENT PREFERENTIAL TREATMENT

CCSF alleges that because the Commission lacks the means to police PG&E and prevent it from giving preferential treatment to Sequoia Pacific in contravention of Affiliate Transaction Rule III.A, the "only proper remedy" is for the Commission to deny the Advice Letter.[7/] Contrary to CCSF's assertion, PG&E has demonstrated in its Advice Letter sufficient evidence that it has the requisite controls in place to ensure compliance with Rule III.A in administering the CSI program. Appendix A to PG&E's advice filing 3170-G-A/3763-E-A is a detailed explanation of the CSI program administration procedures PG&E has in place to ensure fair and impartial treatment of all participants in the CSI program.

4/ *Id.*

5/ CCSF Protest at 3.

6/ *See e.g.,* D.06-01-024 (issued January 12, 2006 establishing the California Solar Initiative). In subsequent orders, the Commission adopted detailed program requirements. (*See, e.g.,* D.06-07-028, D.06-08-028, D.06-12-033, D.07-01-018, and D.07-05-007.) The CSI Program was codified when the Governor signed Senate Bill 1 in August 2006.

7/ CCSF Protest at 4-5.

4. THE TRANSACTIONS BETWEEN PG&E AND SEQUOIA PACIFIC UNDER THE CSI PROGRAM ARE AUTHORIZED BY THE AFFILIATE TRANSACTION RULES

CCSF argues that Sequoia Pacific's participation in the CSI program constitutes a transaction with PG&E not authorized by the Affiliate Transaction Rules. CCSF is wrong. Contrary to CCSF's assertion, the transactions between PG&E and Sequoia Pacific under the Commission-approved CSI Program Handbook are precisely the type of standardized, tariffed products and services authorized by the Affiliate Transaction Rules.

Rule III.B provides:

> Transactions between a utility and its affiliates shall be limited to tariffed products and services, to 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, to the provision of information made generally available by the utility to all market participants, to Commission-approved resource procurement by the utility, or as provided for in Rules V D (joint purchases), V E (corporate support) and VII (new products and services) below.

Participation in the CSI program is covered by Rule III.B in three different ways: First, contrary to CCSF's assertion, the CSI program is a "tariffed" product/service. While Rule III.B does not define the term "tariffed," Rule VII.B.4 does; "'Tariff' or 'tariffed' refers to rates, terms and conditions of service as approved by this Commission or the Federal Energy Regulatory Commission (FERC), whether by traditional tariff, approved contract or other such approval process as the Commission or the FERC may deem appropriate." The CSI program is a service approved by the Commission and thus a "tariffed" service.[8] While the definition of "tariffed" in Rule VII.B is only expressly made applicable to Rule VII, Rule III.B incorporates Commission-approved activities under Rule VII, and, in any event, in the absence of any other definition, it makes sense to apply it to Rule III.B. This definition is consistent with the intent of the Affiliate Transaction Rules, which is to ensure that each utility treats all market participants equally, affiliate and non-affiliate alike. Here, all market participants have equal access to the CSI program and all must abide by the same Commission-approved terms and conditions. The program is also audited by Commission staff. CCSF's interpretation, on the other hand, would not place affiliates on equal footing with other market participants, but would unfairly exclude them from participating in the CSI program, a result not

8/ There can be little dispute that the policies, rules, programs and procedures underlying the CSI program, including development of the CSI Program Handbook, have been the subject of extensive Commission review and approval. As recent as June 7, 2010, the CPUC's Energy Division approved amendments to CSI Handbook pursuant to PG&E's advice letters 3641-E and 3641-E-A. On July 23, 2010, CPUC staff issued a seventy-eight page report in R.10-05-004, making a number of recommended program modifications. These proposals were the subject of workshops and will be ultimately addressed by the Commission. To the extent that PG&E's new affiliate relationships warrant any modification to those rules, R.10-05-004 is currently pending and is specifically addressing whether and how CSI procedures should be modified to ensure fair administration of the CSI program.

contemplated by SB 1 (adopting the CSI program), the Commission's decisions adopting and implementing the CSI program, or the Affiliate Transaction Rules.

Further, even if the definition of "tariffed" in Rule VII.B were assumed not to apply directly to Rule III.B, Rule III.B allows PG&E to provide to affiliates services authorized by Rule VII. Rule VII, in turn, authorizes the CSI program as a Commission-approved "new product or service."

Finally, the CSI program is "made generally available by the utility or affiliate to all market participants through an open, competitive bidding process." Anyone can purchase or build an approved photovoltaic solar facility and apply to PG&E, as CSI program administrator, for CSI program benefits, and all participants are required to follow the same rules and procedures and receive benefits on the same terms. Participants compete with each other through an open process by applying for CSI benefits on a first-come/first served basis. Affiliates are thus expressly authorized to transact with the Utility pursuant to the CSI program.

Thus, contrary to CCSF's assertion, the CSI program is exactly the type of service permitted under the letter and spirit of the Affiliate Transaction Rules.

6. PG&E'S REQUEST FOR RELIEF BY ADVICE LETTER IS AUTHORIZED BY D.06-12-029

In challenging PG&E's use of the Advice Letter process here, CCSF ignores the clear mandate under D.06-12-029, Appendix A-3, Rule VI.B, that PG&E file an advice letter, within 60 days after creation of a new affiliate, demonstrating how the utility will implement the Affiliate Transaction Rules with respect to the new affiliate. PG&E's Advice Letter does just what Rule VI.B requires by providing a detailed explanation of how PG&E will comply with the Affiliate Transaction Rules with respect to Sequoia Pacific. CCSF's claim therefore has no merit.

7. CCSF'S OTHER CLAIMS ARE WITHOUT MERIT

None of CCSF's remaining claims have any merit. For example, CCSF alleges that there is the "potential" for Sequoia Pacific to gain a competitive advantage by virtue of its affiliate status.[9/] Not only is this claim pure speculation and unsupported by any evidence, Affiliate Rule V.F prohibits such activity and PG&E has demonstrated in its Advice Letter how it will implement this Affiliate Transaction Rule with respect to Sequoia.[10/]

Finally, CCSF makes a general, unsubstantiated claim that approval of the Advice Letter will create a "real risk of anti-competitive" behavior on the part of PG&E and Sequoia Pacific.[11/] CCSF does not identify any such behavior – just the "risk" of such behavior.

9/ CCSF Protest at 5.
10/ Advice Letter at 7.
11/ CCSF Protest at 6.

As PG&E has explained above, adoption by this Commission of the Affiliate Transaction Rules were designed to address and prevent anti-competitive behavior in energy markets. PG&E's plan to comply with these rules, as detailed in the Advice Letter, along with the Commission's enforcement tools, are adequate to safeguard the public interest.

8. CARE'S CLAIMS OF A NEXUS BETWEEN PG&E'S AFFILIATES AND ORGANIZED CRIME ARE ABSURD, AS ARE ITS OTHER UNFOUNDED ASSERTIONS

All of CARE's claims are without merit and should be summarily dismissed. In particular, its allegations of an "Enron type shell game" and a "culture of corruption which is ripe for manipulation including international organized crime" are ridiculous and lack evidentiary support. CARE's concerns about a conflict of interest with PG&E's role as a Commission approved CSI Project Administrator are also similarly misplaced. As explained elsewhere in this reply and in PG&E's advice letter, PG&E has adequate controls in place to ensure it treats all solar installers equitably and in a non-discriminatory manner.

9. CONCLUSION

In its various decisions establishing and adopting detailed program requirements for the California Solar Initiative program, the Commission has underscored its commitment to solar energy resources in ensuring the reliability of the state's electricity system. Tax equity investments such as PEC III's investment in Sequoia Pacific can play a significant role in promoting the development of these solar energy resources and such investments should be encouraged by the Commission. In its Advice Letter, PG&E has demonstrated that, with respect to PG&E's role as Program Administrator for the CSI program and in its dealings with Sequoia Pacific, PG&E will implement the Affiliate Transaction Rules in a way that ensures fair and impartial treatment of all participants in the CSI program. As PG&E has demonstrated above, the issues raised in CCSF's and CARE's Protests are without merit. PG&E has subsequently filed Advice 3170-G-A/3763-E, which supersedes Advice 3170-G/3763-E, and respectfully requests that the Commission approve Advice 3170-G-A/3763-E-A as filed.

Sincerely,

Jane Yura/lmt

Vice President – Regulation and Rates

cc: Julie Fitch, Energy Division
Maria Salinas, Energy Division
Austin Yang, CCSF
Michael Boyd, CARE