

March 4, 2011

**Advice 3811-E**

(Pacific Gas and Electric Company U 39-E)

Public Utilities Commission of the State of California

**Subject: Pacific Gas and Electric Company's Proposed Amendments to Two Existing Qualifying Facility Power Purchase Agreements with Berry Petroleum****Introduction**

Pacific Gas and Electric Company ("PG&E") requests California Public Utilities Commission's ("Commission" or "CPUC") approval of negotiated amendments to two Standard Offer as-available capacity power purchase agreements ("PPAs") under which PG&E currently purchases energy and as-available capacity from two Qualifying Facilities ("QF") operated by Berry Petroleum Company ("Seller").<sup>1</sup> These amendments arose out of the negotiations that led to the Combined Heat and Power ("CHP") Program Settlement Agreement ("CHP Settlement") approved by the Commission in Decision 10-12-035.

**Existing Contractual Relationship**

Seller currently delivers energy and capacity to PG&E from the following two facilities:

- The 37 megawatt ("MW") Berry Petroleum enhanced oil recovery facility near Taft, California (Kern County), which began deliveries pursuant to a QF Standard Offer 2 ("SO 2") PPA in December of 1986 and was terminated effective January 15, 1997. Seller subsequently operated under a Uniform Standard Offer No. 1 ("USO1") PPA from February 4, 1997 to April 2, 2001 and from November 2002 to the present (PG&E Log Number 25C099); and
- The 17 MW Berry Petroleum enhanced oil recovery facility in the Midway-Sunset Oilfield near Taft, California (Kern County), which also began deliveries pursuant to a QF SO2 PPA in December of 1986, and has operated since 2004 based on amendments to the SO2 PPA that have modified the term of agreement and terms for delivery and payment for capacity (PG&E Log No. 25C151).

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<sup>1</sup> Decision (D.) 06-12-009 allows the utility to request approval of QF contract amendments by advice letter if the amendment has a term of less than five years. See D.06-12-009, Ordering Paragraph 3.

PG&E currently pays Berry Petroleum for deliveries under both PPAs for energy based on PG&E's posted short-run avoided cost (SRAC) and for capacity deliveries at the Commission-approved price for as-delivered capacity in compliance with a series of Commission decisions regarding payment and delivery terms for QFs operating under expiring PPAs. In this advice letter, the Seller's currently effective PPAs are referred to as "QF PPAs" and the proposed, amended QF PPAs are referred to as "Amended QF PPAs."

### **Background**

In January 2004, the Commission issued D. 04-01-050 in which it ordered the IOUs to offer five-year SO1 contracts to QFs whose contracts would expire and to pay SRAC energy costs and the posted as-delivered capacity price for deliveries. In compliance with D.04-01-050, PG&E modified each PPA to extend the term of agreement by five years and, in the case of the QF PPA for QF log number 25C151, delete the requirements to deliver firm capacity. In March of 2008, the California Cogeneration Counsel ("CCC"), which represents the Seller, petitioned the Commission for an order to reinstate the non-price terms of expired firm capacity PPAs and to require PG&E to pay the firm capacity prices the Commission approved for firm-capacity QFs in D.07-09-040 to QFs with expiring PPAs whose original PPAs required the delivery of firm capacity and payment of firm capacity prices. The Commission denied CCC's petition in D.09-04-034.<sup>2</sup> On May 18, 2009, the California Association of Cogenerators and the Energy Producers and Users Coalition ("CAC/EPUC") filed an Application for Rehearing of D.09-04-034. ("CAC-EPUC Application"). The CAC/EPUC Application similarly requested that the Commission require PG&E to pay firm capacity prices to certain sellers whose PPAs originally required delivery of firm capacity and payment of prices established for firm capacity deliveries. PG&E opposed the CAC-EPUC Application and the Commission has not yet acted on it.

In the CHP Settlement, PG&E agreed that certain specified QFs who formerly delivered firm capacity pursuant to a firm capacity PPA could sign a new CHP PPA with PG&E (referred to as a Transition PPA) requiring the delivery of firm capacity and the payment of the previously-approved firm capacity price of \$91.97 kW-yr, retroactive beginning January 1, 2010.<sup>3</sup> The Amended PPAs satisfy PG&E's obligations to Berry Petroleum under the CHP Settlement.

### **Amendments of QF PPAs**

The parties agreed to amend each of the existing QF PPAs by an "Amendment to the Power Purchase Agreement Between Berry Petroleum Company and Pacific Gas and Electric Company." The amendments are attached as confidential Appendices A and B to this advice letter. The public terms of the amendments are summarized as follows:

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<sup>2</sup> D.09-04-034 at p. 7.

<sup>3</sup> D.10-12-035, Appendix A, Section 3.4.4.

A. PG&E Log Number 25C099

- (1) The USO1 PPA currently in effect will be terminated as of the effective date of CPUC approval of this advice letter.
- (2) The previously-terminated SO2 PPA will be reinstated and will be in effect during the period of January 1, 2010 through December 31, 2011.
- (3) Seller will receive an additional lump sum payment for prior deliveries of capacity measured by the difference between \$91.97 per kw-year and the as-delivered capacity price paid to Seller for deliveries from January 1, 2010 forward provided that the Seller's deliveries meet the firm capacity delivery requirements in the SO2 PPA during this period.
- (4) Beginning on the first day of the first month following Commission approval and through December 31, 2011, PG&E will pay for firm capacity deliveries from the facility at the price of \$91.97 per kw-year under the terms of the SO2 PPA.
- (5) PG&E will have the right to request Seller to curtail deliveries from the facility as specified in the Amendment; and
- (6) Seller will provide PG&E with scheduling and forecasting information.

B. PG&E Log Number 25C151

- (1) The firm capacity delivery terms of the SO2 PPA will be reinstated for the period beginning January 1, 2010 through December 31, 2011.
- (2) Seller will receive an additional lump sum payment for prior deliveries of capacity measured by the difference between \$91.97 per kw-year and the as-delivered capacity price paid to Seller for deliveries prior to Commission approval of the amendment provided that the Seller's deliveries met the firm capacity delivery requirements in the SO2 PPA during this period.
- (3) Beginning on the first day of the first month following Commission approval and through December 31, 2011, PG&E will pay for firm capacity deliveries from the facility at the price of \$91.97 per kw-year under the terms of the SO2 PPA.
- (4) PG&E will have the right to request Seller to curtail deliveries from the facility as specified in the Amendment.; and
- (5) Seller will provide PG&E with scheduling and forecasting information.

Each of the Amended QF PPAs will comply with the Emissions Performance Standard ("EPS") adopted by the Commission in Decision 07-01-039 because the term of each Amended QF PPA is less than five years.

### **Benefits to PG&E's Customers**

In its approval of the CHP Settlement, the Commission approved payment to these two QFs for prior capacity deliveries at a price of \$91.97 per kw-year in lieu of the as-delivered price it previously required PG&E to pay to these facilities in D.04-01-050.<sup>4</sup> The CHP Settlement allows the Seller to sign firm capacity Transition PPAs and receive firm capacity payments “as if deliveries commenced on January 1, 2010.” In this case, PG&E and Seller have agreed to amend the QF PPAs rather than execute a Transition PPA for the period beginning January 1, 2010. The Amended QF PPAs provide PG&E's customers with an operational benefit as compared to the requirement in Section 3.4.4 of the CHP Settlement due to the Seller's additional agreement, not contained in the CHP Settlement, to provide curtailment hours in 2011. Seller also agreed to waive any claims regarding the amount of PG&E's firm capacity payments for deliveries in 2009. Additional confidential information about the Amended QF PPAs terms and benefits are provided in confidential Appendix C.

### **PRG Participation**

On September 27, 2010, PG&E provided its Procurement Review Group (“PRG”) with a description of the Amended QF PPAs.

### **Conclusion**

The Amended QF PPAs provide for the continued operation of two existing QFs under terms and conditions that will increase the value of deliveries due to the added curtailment hours. Given the benefits of the Amended QF PPAs, and the Commission's prior approval of a retroactive adjustment to the capacity prices as part of its approval of the CHP Settlement, PG&E requests that the Commission:

1. Approve the Amended QF PPAs without modification as just and reasonable;
2. Authorize recovery of the costs associated with the Amended QF PPAs through PG&E's Energy Resource Recovery Account (“ERRA”) and recovery of stranded costs consistent with D.08-09-012; and,
3. Determine that the Amended QF PPAs satisfy PG&E's obligation with respect to Seller under Section 3.4.4 of the Settlement.

### **Confidential Supporting Documents**

In support of this advice letter, PG&E encloses the following confidential documentation:

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<sup>4</sup> D.10-12-035, Appendix A, Section 3.4.4. The non-pricing terms of the QF PPAs was subsequently extended as required in the Commission in D.07-09-040, pp. 18, 148, Finding of Fact 46.

- Confidential Attachment A: Berry Petroleum Amendment PG&E Log Number 25C099
- Confidential Attachment B: Berry Petroleum Amendment PG&E Log Number 25C151
- Confidential Attachment C: Summary of the Transactions

### **Protests**

Anyone wishing to protest this filing may do so by sending a letter by March 24, 2011 which is **20** days from the date of this filing. The protest must state the grounds upon which it is based, including such items as financial and service impact, and should be submitted expeditiously.

Protests should be mailed to:

CPUC Energy Division  
Attention: Tariff Unit, 4<sup>th</sup> Floor  
505 Van Ness Avenue  
San Francisco, California 94102  
Facsimile: (415) 703-2200  
E-mail: mas@cpuc.ca.gov and jnj@cpuc.ca.gov

Copies should also be mailed to the attention of the Director, Energy Division, Room 4005 and Honesto Gatchalian, Energy Division, at the address shown above.

The protest also should be sent via U.S. mail (and by facsimile and electronically, if possible) to PG&E at the address shown below on the same date it is mailed or delivered to the Commission:

Pacific Gas and Electric Company  
Attention: Jane K. Yura  
Vice President, Regulation and Rates  
77 Beale Street, Mail Code B10B  
P.O. Box 770000  
San Francisco, California 94177  
Facsimile: (415) 973-6520  
E-Mail: PGETariffs@pge.com

### **Effective Date**

PG&E requests that this advice letter be approved no later than June 1, 2011, with an effective date of June 1, 2011. PG&E submits this request as a Tier 3 advice letter.

**Notice**

In accordance with General Order 96-B, Section IV, a copy of this Advice Letter excluding the confidential appendices is being sent electronically and via U.S. mail to parties shown on the attached list and the service lists for A.08-11-001 (consolidated service list for CHP Settlement). Non-market participants who are members of PG&E's Procurement Review Group and have signed appropriate Non-Disclosure Certificates will also receive the Advice Letter and accompanying confidential attachments by electronic mail. Address changes to the General Order 96-B service list should be directed to PGETariffs@pge.com. For changes to any other service list, please contact the Commission's Process Office at (415) 703-2021 or at Process\_Office@cpuc.ca.gov. Advice letter filings can also be accessed electronically at <http://www.pge.com/tariffs>.



Vice President – Regulation and Rates

Attachments: Appendix 1: Declaration of Richard A. Miram and Matrix  
Confidential Attachment A: Berry Petroleum Amendment (PG&E Log Number 25C099)  
Confidential Attachment B: Berry Petroleum Amendment (PG&E Log Number 25C151)  
Confidential Attachment C: Summary of the Transactions

cc: PG&E's Procurement Review Group  
Michael Colvin, Energy Division, CPUC  
Official Service List A.08-11-001

**Limited Access to Confidential Material:**

The portions of this Advice Letter marked Confidential Protected Material are submitted under the confidentiality protection of Section 583 and 454.5(g) of the Public Utilities Code and General Order 66-C. This material is protected from public disclosure because it consists of, among other items, the contracts themselves, price information, and analysis of the proposed energy procurement contracts, which are protected pursuant to D.06-06-066 and D.08-04-023. A declaration seeking confidential treatment of the following attachments is being submitted with this advice letter in accordance with D.08-04-023:

- Confidential Attachment A: Berry Petroleum Amendment PG&E Log Number 25C099
- Confidential Attachment B: Berry Petroleum Amendment PG&E Log Number 25C151
- Confidential Attachment C: Summary of the Transactions

# CALIFORNIA PUBLIC UTILITIES COMMISSION

## ADVICE LETTER FILING SUMMARY ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No. **Pacific Gas and Electric Company (ID U39 M)**

Utility type:

ELC       GAS  
 PLC       HEAT       WATER

Contact Person: Greg Backens

Phone #: 415.973.4390

E-mail: gab4@pge.com

EXPLANATION OF UTILITY TYPE

ELC = Electric      GAS = Gas        
 PLC = Pipeline      HEAT = Heat      WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: 3811-E

Tier: 3

Subject of AL: **Pacific Gas and Electric Company's Proposed Amendments to Two Existing Qualifying Facility Power Purchase Agreements with Berry Petroleum**

AL filing type:  Monthly  Quarterly  Annual  One-Time  Other \_\_\_\_\_

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #: D.10-12-035

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: No

Summarize differences between the AL and the prior withdrawn or rejected AL: N/A

Is AL requesting confidential treatment? If so, what information is the utility seeking confidential treatment for:

Confidential Attachment A: Berry Petroleum Amendment PG&E Log Number 25C099

Confidential Attachment B: Berry Petroleum Amendment 25C151

Confidential Attachment C: Summary of the Transactions

Confidential information will be made available to those who have executed a nondisclosure agreement:  Yes  No

Name(s) and contact information of the person(s) who will provide the nondisclosure agreement and access to the confidential information: N/A

Resolution Required?  Yes  No

Requested effective date: June 1, 2011

No. of tariff sheets: N/A

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting). N/A

Tariff schedules affected: N/A

Service affected and changes proposed: N/A

Protests, dispositions, and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:

**CPUC, Energy Division**

**Tariff Files, Room 4005**

**DMS Branch**

**505 Van Ness Ave., San Francisco, CA 94102**

**jn@cpuc.ca.gov and mas@cpuc.ca.gov**

**Pacific Gas and Electric Company**

**Attn: Jane K. Yura, Vice President, Regulation and Rates**

**77 Beale Street, Mail Code B10B**

**P.O. Box 770000**

**San Francisco, CA 94177**

**E-mail: PGETariffs@pge.com**

**PACIFIC GAS AND ELECTRIC COMPANY**

**DECLARATION OF RICHARD A. MIRAM IN SUPPORT OF  
THE CONFIDENTIAL TREATMENT OF MARKET-SENSITIVE INFORMATION  
APPEARING IN ADVICE 3811-E (ATTACHMENTS A THROUGH C)  
SEEKING APPROVAL OF PROPOSED AMENDMENTS TO TWO EXISTING  
QUALIFYING FACILITY POWER PURCHASE AGREEMENTS  
WITH BERRY PETROLEUM COMPANY**

I, Richard A. Miram, declare:

1. I am currently employed by Pacific Gas & Electric Company (“PG&E”) as a Principal in Energy Procurement. I have been employed by PG&E for 37 years, and during that time I have had a number of responsibilities, including responsibility for negotiating renewable, conventional and Qualifying Facility (“QF”) contracts.

2. Based on my knowledge and experience, and in accordance with the *Decision Adopting Model Protective Order and Non-Disclosure Agreement, Resolving Petition For Modification and Ratifying Administrative Law Judge Ruling*, D. 08-04-023 (April 18, 2008), I make this declaration seeking confidential treatment for certain data and information contained in PG&E’s Advice 3811-E, Attachments A through C, which has been submitted to the Energy Division on March 4, 2011.

3. Attached to this declaration is a matrix that identifies the data and information for which PG&E is seeking confidential treatment. The matrix specifies that the material PG&E is seeking to protect constitutes the particular type of data and information listed in the “IOU Matrix” attached as Appendix 1 of Decision 06-06-066. The matrix also specifies the category or categories in the IOU Matrix to which the data and information corresponds, and why confidential protection is justified. Finally, the matrix specifies that: (1) PG&E is complying with the limitations specified in the IOU Matrix for that type of data or information; (2) the information is not already public; and (3) the data cannot be aggregated, redacted, summarized or otherwise protected in a way that allows partial disclosure. By this reference I am incorporating into this declaration all of the explanatory text in the attached matrix.



I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on March 4, 2011, at San Francisco, California.

/s/

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RICHARD A. MIRAM

**PACIFIC GAS AND ELECTRIC COMPANY**

**Document: ADVICE 3811-E, CONFIDENTIAL ATTACHMENTS A THROUGH C**

**IDENTIFICATION OF CONFIDENTIAL INFORMATION PURSUANT TO DECISION 06-06-066**

**Date: March 4, 2011**

	Reference	1) The material submitted constitutes a particular type of data listed in the Matrix, appended as Appendix 1 to D.06-06-066 (Y/N)	2) Which category or categories in the Matrix the data correspond to:	3) That it is complying with the limitations on confidentiality specified in the Matrix for that type of data (Y/N)	4) That the information is not already public (Y/N)	5) The data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure (Y/N)	PG&E's Justification for Confidential Treatment	Length of Time
1	Attachment A: Amendment to Berry Petroleum PPA (Log No. 25C099A)	Y	Item VII - Bilateral Contract Terms and Conditions - Electric, Section B (Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS)) and Public Utilities Code sections 454.5(g) and 583	Y	Y	Y	Specific contract between the IOU and counterparty. Information includes the capacity, timing and pricing terms of the contract.	3
2	Attachment B: Amendment to Berry Petroleum PPA (Log No. 25C151A)	Y	Item VII - Bilateral Contract Terms and Conditions - Electric, Section B (Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS)) and Public Utilities Code sections 454.5(g) and 583	Y	Y	Y	Specific contract between the IOU and counterparty. Information includes the capacity, timing and pricing terms of the contract.	3
3	Attachment C: Summary of the Transactions	Y	Item VII - Bilateral Contract Terms and Conditions - Electric, Section B (Contracts and power purchase agreements between utilities and non-affiliated third parties (except RPS)) and Public Utilities Code sections 454.5(g) and 583	Y	Y	Y	Specific contract between the IOU and counterparty. Information includes the capacity, timing and pricing terms of the contract.	3

**PG&E Gas and Electric  
Advice Filing List  
General Order 96-B, Section IV**

Alcantar & Kahl LLP	Division of Business Advisory Services	Occidental Energy Marketing, Inc.
Ameresco	Douglass & Liddell	OnGrid Solar
Anderson & Poole	Downey & Brand	Praxair
Arizona Public Service Company	Duke Energy	R. W. Beck & Associates
BART	Dutcher, John	RCS, Inc.
Barkovich & Yap, Inc.	Economic Sciences Corporation	Recurrent Energy
Bartle Wells Associates	Ellison Schneider & Harris LLP	SCD Energy Solutions
Bloomberg	Foster Farms	SCE
Bloomberg New Energy Finance	G. A. Krause & Assoc.	SMUD
Boston Properties	GLJ Publications	SPURR
	Goodin, MacBride, Squeri, Schlotz & Ritchie	San Francisco Public Utilities Commission
Braun Blaising McLaughlin, P.C.	Green Power Institute	Santa Fe Jets
Brookfield Renewable Power	Hanna & Morton	Seattle City Light
CA Bldg Industry Association	Hitachi	Sempra Utilities
CLECA Law Office	In House Energy	Sierra Pacific Power Company
CSC Energy Services	International Power Technology	Silicon Valley Power
California Cotton Ginners & Growers Assn	Intestate Gas Services, Inc.	Silo Energy LLC
California Energy Commission	Lawrence Berkeley National Lab	Southern California Edison Company
California League of Food Processors	Los Angeles Dept of Water & Power	Spark Energy, L.P.
California Public Utilities Commission	Luce, Forward, Hamilton & Scripps LLP	Sun Light & Power
Calpine	MAC Lighting Consulting	Sunshine Design
Cardinal Cogen	MBMC, Inc.	Sutherland, Asbill & Brennan
Casner, Steve	MRW & Associates	Tabors Caramanis & Associates
Chris, King	Manatt Phelps Phillips	Tecogen, Inc.
City of Palo Alto	McKenzie & Associates	Tiger Natural Gas, Inc.
City of Palo Alto Utilities	Merced Irrigation District	TransCanada
Clean Energy Fuels	Modesto Irrigation District	Turlock Irrigation District
Coast Economic Consulting	Morgan Stanley	United Cogen
Commercial Energy	Morrison & Foerster	Utility Cost Management
Consumer Federation of California	NLine Energy, Inc.	Utility Specialists
Crossborder Energy	NRG West	Verizon
Davis Wright Tremaine LLP	Navigant Consulting	Wellhead Electric Company
Day Carter Murphy	Norris & Wong Associates	Western Manufactured Housing Communities Association (WMA)
		eMeter Corporation
Defense Energy Support Center	North America Power Partners	
Department of Water Resources	North Coast SolarResources	
Dept of General Services	Northern California Power Association	