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VIA EMAIL
June 8, 2011

Joel Perlstein, Legal Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: PG&E's Comments on Draft Resolution L-411A (Bonus Depreciation)

Dear Mr. Perlstein:

PG&E hereby submits formal comments on Draft Resolution L-411A. As indicated in my letter to the Commissioners dated May 26, 2011, PG&E strongly opposes Legal Division's issuance of L-411A, which threatens to upset the careful balancing of interests reflected in Resolution L-411. A copy of my May 26 letter is appended hereto as Attachment A and incorporated by reference. In these comments, PG&E provides further detail for its opposition to L-411A.

I. The Draft Resolution Makes Substantive Changes in the Guise of "Clarifications"

Through Resolution L-411, the Commission sent a strong message to PG&E to pursue capital investments to the benefit of customers, jobs, and the California economy. Because the Tax Relief Act's benefits expire in part at the end of 2011 and in whole at the end of 2012, time is of the essence.

PG&E has already started to plan its 2011-2012 additional spending based on the clear guidelines set forth in Resolution L-411, which was issued nearly two months ago and which is now final and unappealable. PG&E is prepared to file its implementing Advice Letter by June 14, in compliance with the Commission's directive.

L-411A seriously threatens PG&E's spending plans by changing the guidelines set forth in Resolution L-411 and limiting spending eligible for inclusion in the memorandum account to specific enumerated items, rather than encouraging spending based on specific guidelines and illustrative examples. (A redline of L-411A's proposed changes to Resolution L-411 is appended hereto as Attachment B.) Such a result is inconsistent with the expressed intent of the Commission and contrary to the interests of California and PG&E's customers.

A. PG&E Has Already Planned Its 2011-2012 Additional Spending Based On The Clear Guidelines Set Forth In Resolution L-411

Resolution L-411 set forth clear guidelines about the types of utility infrastructure projects that could be recorded as offsets to the memorandum account:

“Allowable types of infrastructure replacement projects would include typical types of projects included in general rate case type applications. For example, for the electric utilities, projects would include [certain examples]... The spending must not provide generation capacity at a new plant. For gas utilities, projects would include [certain examples]....

The property that the investment is made must be Commission-jurisdictional. For all utilities, at least 90% of the incremental investment amount must be attributable to the tax benefits associated with that particular service function. The property that the investment is made in must itself be eligible for bonus depreciation. At least 90% of the investment must have a tax depreciable life of at least 15 years, and any remaining investments must be ancillary to such investments.”¹

These guidelines impose meaningful limitations on the types of projects that PG&E can include in the memorandum account. PG&E cannot include projects that would not typically be included in a GRC-type application. PG&E cannot include projects that provide generation capacity at a new plant, even though such investments may qualify for bonus depreciation and benefit customers. For the most part, PG&E cannot include projects that have a tax life shorter than 15 years, such as software or vehicles. And PG&E must ensure that its additional gas and electric projects are in proportion to the tax benefits associated with those functions.

When Resolution L-411 was adopted on April 14, PG&E’s business and operational personnel began working in earnest to plan additional spending in 2011-2012 to maximize the benefits for PG&E’s customers and California’s economy. During this planning process, PG&E used Resolution L-411 as the touchstone for the types of projects that the Commission would allow for inclusion in the memorandum account. Now that that planning process is near its end, the Legal Division proposes to change the rules.

B. L-411’s “Clarifications” Would Limit PG&E’s Spending Flexibility And Undermine Its Ability To Implement Its 2011-2012 Spending Plans

Notwithstanding the clear language quoted above, L-411A would “clarify” the guidelines set forth in Resolution L-411 as follows:

“Allowable types of infrastructure replacement projects would include the following typical types of projects included in general rate case type applications. For ~~example,~~ ~~for~~ the electric utilities, projects ~~would~~ include [certain examples]. The spending must not provide generation capacity at a new plant. For gas utilities, projects ~~would~~ include [certain examples]....

The property that the investment is made must be Commission-jurisdictional. ~~For all utilities, at least 90% of the incremental investment amount must be attributable to the tax benefits associated with that particular service function.~~ The property that the investment is made in must itself be eligible for bonus depreciation. At least 90% of

¹ Res. L-411, p. 6.

the investment must have a tax depreciable life of at least 15 years, and any remaining investments must be ancillary to such investments.”²

In other words, while Resolution L-411 would allow typical types of projects included in GRC-type applications, including the illustrative examples provided, L-411A would limit the allowed spending to only the specific examples provided.

This significant change to the text of Resolution L-411 is also reflected in L-411A’s proposed changes to the ordering paragraphs.³ New Ordering Paragraph 5, which sets forth the “guidelines” for the types of projects allowable in the memorandum account, allows only the examples provided above and completely omits the sentence indicating that “Allowable types of infrastructure replacement projects would include typical types of projects included in general rate case type applications.”

L-411A’s changes to Resolution L-411 would substantially affect PG&E’s spending plans for 2011-2012. For example:

- L-411A’s “exclusive” list of allowable projects would not allow for any spending on generation projects. With this new limitation, PG&E would be unable to implement more than \$100 million of contemplated spending within the time frame allowed by the Tax Relief Act.
- L-411A’s “exclusive” list of allowable projects fails to itemize many worthwhile and necessary electric and gas distribution and gas transmission projects that would normally be included in a GRC-type application, such as gas remote pressure recorders or most electric switch replacements. While each of these projects is relatively small in scale, they collectively total upwards of \$100 million.

During the extensive comment process and All-Party meeting leading up to the Commission’s adoption of Resolution L-411, PG&E committed to make hundreds of millions of dollars in additional capital investments to upgrade its gas and electric system. L-411A’s proposed changes to the previously adopted guidelines would significantly undermine PG&E’s ability to fulfill this commitment.

C. L-411’s “Clarifications” Would Undermine The Commission’s Stated Intent In Adopting Resolution L-411

In Resolution L-411, the Commission made clear that its intent was to encourage utilities like PG&E to make the critical infrastructure investments that would benefit customers and the California economy alike:

“Some utilities have expressed concerns regarding the potential complexity of refund mechanisms and the need for prompt resolution so they can initiate desired incremental infrastructure spending. We recognize that attempting to precisely reflect all incremental impacts from the New Tax Law and additional infrastructure spending

² See L-411A Redline (Attach. B hereto), pp. 6-7.

³ *Id.*, pp. 19-20.

may create unwarranted complexity and controversy. We, therefore, reiterate our overall intent that this memorandum account should not impede the additional capital spending that the New Tax Law was intended to encourage.⁴

“The Commission’s overall intent is that this memorandum account should not impede the additional capital spending that the New Tax Law was intended to encourage.”⁵

PG&E has limited capability to immediately ramp up infrastructure spending, and must engage in considerable planning to prudently and efficiently spend so as to maximize tax benefits on behalf of customers. Given the Tax Relief Act’s sunset provisions in 2011 and 2012, time is of the essence. For utilities to fully take advantage of the Tax Relief Act on behalf of customers, plans must be changed, orders must be submitted, contractors must be hired, and work completed by the statutory deadlines. All this takes significant advance commitments and lead time.

While Legal Division or others might argue that PG&E could file an advice letter for approval of projects that do not appear on the “exclusive” list, an approval process at the Commission could easily take up to a year, by which time most of the projects that could have been implemented in a timely fashion will be too late to implement within the statutory deadlines. Seeking advance Commission approval would effectively deny PG&E the opportunity to qualify for 100% “super-bonus,” as the spending must be completed this year, and would jeopardize 50% bonus for many other projects, where the spending must be completed by the end of 2012, especially projects with long lead times.

The Commission has stated a clear intent in Resolution L-411 that the utility initiate spending on infrastructure projects of the types described in the guidelines. It should therefore reject the Legal Division’s post-hoc changes that would make it impracticable for utilities to maximize benefits in a timely and effective manner on behalf of customers.

II. The Commission Must Act Quickly To Withdraw or Reject the Draft Resolution, or As A Lesser Alternative, Adopt Only the Non-Substantive Changes

Legal Division claims that L-411A is intended “to remove the inconsistencies, correct the errors, and clarify the Ordering Paragraphs of the original resolution.” (Res. L-411A, p. 1.) Most of the changes proposed in L-411A are purely typographical and would not normally warrant any action by the Commission.⁶ L-411A includes a few substantive edits – mostly deleting extraneous language – that PG&E would not oppose but also does not believe are necessary.⁷ As indicated above, PG&E

⁴ Res. L-411, p. 13, emphasis added.

⁵ *Id.*, pp. 16-17, FOF 19, emphasis added.

⁶ Examples of such unnecessary typographical changes include: (1) changing “Small Local Exchange Telephone Companies” to “Small Local Exchange Carrier Telephone Corporations”; (2) changing “small LECs” to “Small LECs”; (3) changing “general rates cases” to “general rate cases”; (4) changing “the Utility Reform Network” to “The Utility Reform Network.”

⁷ For example, Draft Resolution L-411A would delete language on page 13 referring to “future increase in rates” as well as language on page 15 stating that “For the reasons explained above...we will be allowing covered utilities to file advice letters for separate memorandum accounts...” PG&E does not oppose these two clarifying changes, although it believes the overall intent of Resolution L-411 is clear even without these changes.

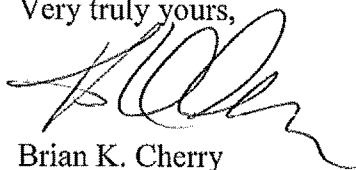
Joel Perlstein
June 8, 2011
Page 5 of 5

strongly opposes L-411A's changes to the guidelines for projects that may be included as offsets to the memorandum account (highlighted in yellow in Attachment B hereto).

PG&E's fundamental concern is that the issuance of L-411A creates significant uncertainty about the projects that should be recorded as offsets to the memorandum account. The procedural history leading up to adoption of Resolution L-411 was long and tortuous, and the Commission simply cannot allow a repeat of those events. If PG&E is to act on its 2011-2012 spending plans, it must do so now, without the continued uncertainty that L-411A creates.

For the reasons set forth above, PG&E respectfully requests that the Commission either (1) reject or withdraw L-411A in its entirety, or (2) adopt L-411A without the proposed changes highlighted in yellow in Attachment B, and to do so as soon as possible so that PG&E can act on its spending plans and maximize the benefits for its customers and California's economy.

Very truly yours,



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cc: w/enclosure
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