

July 5, 2011

Mr. Honesto Gatchalian
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: PG&E's Comments on Draft Resolution E-4413

Dear Mr. Gatchalian:

Pacific Gas and Electric Company ("PG&E") submits the following comments on Draft Resolution E-4413 ("Draft Resolution"), which was issued on June 15, 2011, with a July 5, 2011, comment deadline. The Draft Resolution approves PG&E's Advice 3811-E, which requests California Public Utilities Commission ("Commission") approval of amendments to two existing Qualifying Facilities ("QF") purchase power agreements ("PPAs") with Berry Petroleum. PG&E appreciates the approval of the amendments and requests minor clarifications to the Draft Resolution to clarify a provision in the amendments and the discussion of the Qualifying Facility and Combined Heat and Power Settlement Agreement ("QF/CHP Settlement Agreement") approved by the Commission in Decision ("D.") 10-12-035.

The Draft Resolution Should be Modified

1. The Amendments as Executed are Consistent with QF/CHP Settlement Agreement, Section 3.4.4.

As discussed in the Draft Resolution, PG&E's Advice Letter requested the Commission to "determine the Amended QF PPAs satisfy PG&E's obligations with respect to Seller under Section 3.4.4 of the Settlement." The Draft Resolution provides: "This resolution does not grant PG&E's request that the Commission find the amended contracts fulfill PG&E's obligations to the Seller pursuant to section 3.3.4 of the Settlement," reasoning that there is no obligation under Section 3.4.4 unless Berry Petroleum elects to sign new Transition PPAs. (Draft Resolution, p. 11) However, the PPA amendments, which the Draft Resolution approves, specifically states that "PG&E and Seller have entered into this Amendment pursuant to Section 3.4.4 of the CHP Program Settlement Agreement Term Sheet and to satisfy the requirement set forth therein." (Amendments, Recital H.) Accordingly, since the parties have reached an agreement on this issue in the amendments, PG&E requests that the Draft Resolution be amended to delete the discussion regarding whether the amendments satisfy the requirement in 3.4.4 as this discussion is inconsistent with the amendments themselves.

2. The Discussion of QF/CHP Settlement Agreement in the Draft Resolution Should be Clarified

PG&E requests minor modifications of the Draft Resolution to clarify the discussion of the QF/CHP Settlement Agreement and other issues.

Page 2: The Draft Resolution states that if the QF/CHP Settlement “is approved as final and non-appealable” the projects would have the opportunity to sign new contracts. PG&E notes that the QF/CHP Settlement was approved in D.10-12-035 and the Commission’s decision is now final and non-appealable. However, the contractual opportunities discussed in the Draft Resolution will not become effective until the QF/CHP Settlement becomes “effective”. PG&E requests that the Draft Resolution be modified to clarify this statement.

Page 2: The Draft Resolution indicates that the Berry Petroleum QFs will have the opportunity to “extend their existing contracts”. This statement is inaccurate as the Berry Petroleum QFs will be required to sign new contracts after the expiration of their current contracts (as amended) to continue to sell power to PG&E. The QF/CHP Settlement does not provide to existing QFs operating under expiring PPAs an opportunity to extend their original contracts.

Page 7: The Draft Resolution indicates that the Division of Ratepayer Advocates modified its protest on April 1, 2011, but also in another paragraph states that the date of the modification of the protest is May 9, 2011. The correct date is May 9, 2011.

Page 10 and Finding 7: The Draft Resolution states that the QF/CHP Settlement will not become effective “until it receives non-appealable approval from the Federal Energy Regulatory Commission (“FERC”) which is expected later this year.” This description is inaccurate and should be amended. The QF/CHP Settlement Agreement was not submitted to FERC for approval. The QF/CHP Settlement Agreement is contingent on receiving a final and non-appealable decision from FERC that grants the California Investor-Owned Utilities’ application to terminate their mandatory obligation under the Public Utility Regulatory Policies Act to purchase from QFs exceeding 20 MW. (Settlement Agreement Term Sheet, Section 16.2.1.) Therefore, the Draft Resolution should be amended to provide that the QF/CHP Settlement will become effective after FERC’s Order Granting Application to Terminate Purchase Obligation, issued on June 16, 2011, in Docket No. QM11-2-000, becomes final and non-appealable.

Page 11: A reference to section 3.3.4 of the term sheet is a typographical error that should read 3.4.4. If this discussion is not deleted as requested in Section 1 above, this reference should be corrected. Further, the Draft Resolution states that the Berry Petroleum QFs are electing to sign a “bilaterally negotiated contract.” This statement should be corrected to provide that these QFs are executing contract amendments.

Conclusion

PG&E thanks the Commission for its approval of the two Berry Petroleum amendments in the Draft Resolution and asks the Commission to issue a final resolution with the minor clarifications requested above.

Sincerely,

Handwritten signature of Brian Cherry in cursive script.

Vice President - Regulation and Rates

cc: Commission President Michael R. Peevey
Commissioner Timothy A. Simon
Commissioner Michel P. Florio
Commissioner Catherine J.K. Sandoval
Commissioner Mark Ferron
Frank Lindh, General Counsel, CPUC
Karen Clopton, Chief ALJ, CPUC
Julie Fitch, Director, Energy Division
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Lisa-Marie Salvacion, DRA
Claire Eustace, DRA
Joseph Abhulimen, DRA
PG&E's Procurement Review Group
Service List for A.08-11-001

CERTIFICATE OF SERVICE

I certify that I have by mail, e-mail, or hand delivery this day served a true copy of Pacific Gas and Electric Company's comments on Draft Resolution E-4413, regarding PG&E's Advice Letter 3811-E on:

- 1) Commissioners Michael Peevey, Mark Ferron, Mike Florio, Catherine Sandoval, and Timothy Simon
- 2) Karen Clopton – Chief Administrative Law Judge
- 3) Julie Fitch – Director, Energy Division
- 4) Frank Lindh – General Counsel
- 5) Cem Turhal – Energy Division
- 6) Andrew Schwartz – Energy Division
- 7) Honesto Gatchalian – Energy Division
- 8) Maria Salinas – Energy Division
- 9) Lisa-Marie Salvacion - DRA
- 10) Claire Eustace - DRA
- 11) Joseph Abhulimen - DRA
- 12) Service List A.08-11-001

/S/ LINDA TOM-MARTINEZ

Linda Tom-Martinez

PACIFIC GAS AND ELECTRIC COMPANY

Date: July 5, 2011