BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	R.11-05-005

RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) TO SUSTAINABLE CONSERVATION'S PETITION FOR MODIFICATION OF D.07-07-027

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I. FACTUAL AND PROCEDURAL BACKGROUND

In 2006, the California Legislature enacted Assembly Bill ("AB") 1969 that required electric corporations to make tariffs and/or form contracts available for small renewable generating facilities operated by public water and wastewater agencies. AB 1969 included specific statutory provisions concerning pricing, generator eligibility, and a statewide cap for the AB 1969 Program. In Decision ("D.") 07-07-027, the Commission implemented AB 1969 and expanded the program for PG&E and Southern California Edison Company ("SCE") to include not only public water and wastewater agency facilities, but any renewable generating facility that is 1.5 MW or less in size. Sustainable Conservation actively participated in the proceeding leading up to D.07-07-027.

One of the issues addressed by the Commission in D.07-07-027 concerned the interconnection of AB 1969 facilities. In particular, the Commission indicated that AB 1969 facilities could be interconnected under the Small Generator Interconnection Process ("SGIP") approved by the Federal Energy Regulatory Commission ("FERC") or under the Commission's Rule 21 process.[1] No party, including Sustainable Conservation, filed an application for rehearing regarding this aspect of D.07-07-027.

[1] D.07-07-027 at p. 41 and Attachment A at p. 3, Item #10.

In August 2007, PG&E filed Advice Letters 3098-E and 3100-E, which included tariffs and pro forma contracts as directed by the Commission in D.07-07-027. PG&E's tariffs are referred to as "E-PWF" for public water and wastewater agencies and "E-SRG" for small renewable generators. The E-PWF and E-SRG tariffs and pro forma contracts specified that eligible sellers were required to go through the California Independent System Operator's ("CAISO") SGIP process, or a similar process under PG&E's Wholesale Distribution Tariff ("WDT"). Both SGIP and WDT involve FERC-jurisdictional interconnection processes and agreements. Sustainable Conservation did not protest the interconnection aspect of PG&E's advice letters. PG&E's advice letters were approved by the Commission in April 2008.

Since April 2008, PG&E has filed several modifications to its E-PWF and E-SRG Tariffs and the related pro forma contracts. Most recently, in April 2011, PG&E filed Advice Letter 3830-E to update the E-PWF and E-SRG Tariffs and related pro forma contracts, including updating references to the SGIP and WDT interconnection processes. Sustainable Conservation protested the interconnection aspects of PG&E's advice letter filing. PG&E responded to this protest and, on June 23, 2011, Energy Division Director Julie Fitch approved PG&E's advice letter, making the new E-PWF and E-SRG tariffs and the related pro forma contracts effective June 24, 2011. With regard to the interconnection issues raised by Sustainable Conservation, the Energy Division determined:

> Regarding the merits of the protest, D.07-07-027 adopted a feed-in tariff program for the California investor-owned utilities and allowed PG&E to choose the interconnection process it deemed appropriate for interconnecting customer generators. Thus, PG&E's tariff, which requires a FERC jurisdiction interconnection process, is consistent with D.07-07-027.[2]

[2] Letter from Julie Fitch to Jane Yura, dated June 23, 2011, at p. 2.

On June 29, 2011, Sustainable Conservation filed its Petition for Modification of D.07-07-027 ("PFM") requesting that D.07-07-027 be modified to mandate that all interconnections under the AB 1969 Program be done under Commission Rule 21, rather than the SGIP or WDT. In its PFM, Sustainable Conservation asserts that: (1) FERC does not have jurisdiction over distribution-level interconnections; (2) the Commission has taken inconsistent positions regarding its jurisdiction over distribution-level interconnections; and (3) the Commission should clearly state in response to the PFM that it has jurisdiction over the interconnection of AB 1969 Program facilities. The PFM includes two declarations that contain generalized assertions of interconnection delays that have occurred in recent years. Below, PG&E responds to the legal arguments raised by Sustainable Conservation, as well as the factual issues raised in the declarations attached to the PFM.

II. THE PETITION FOR MODIFICATION SHOULD BE DENIED.

A. The Petition for Modification Is Untimely.

Under Commission Rule of Practice and Procedure ("Rule") 16.4(d), a petition for modification must be filed and served within one year of the effective date of the decision at issue. "If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition."[3] Here, Sustainable Conservation filed its PFM almost four years after D.07-07-027 was issued by the Commission. Although Sustainable Conservation was an active participant in the proceeding leading up to D.07-07-027, and could have readily sought rehearing or modification of the interconnection issues addressed in the decision, it elected not to do so for

[3] Rule 16.4(d).

almost four years. Since 2007, PG&E has executed a significant number of AB 1969 Power Purchase Agreements ("PPAs") which require FERC-jurisdictional interconnections, and the Sellers under these PPAs have complied with this requirement. Now, four years later, Sustainable Conservation belatedly wants to re-visit the interconnection issue and change PG&E's approved tariffs and pro forma agreement.

To excuse its untimely PFM, Sustainable Conservation claims that "only recently" did interconnection issues become evident as a result of an Administrative Law Judge ("ALJ") ruling in January 2011 and a June 2011 Commission decision on the AB 920 net surplus program.[4] However, the interconnection issues raised in these two contexts are not new, nor are they specific to AB 1969. The ALJ Ruling in January 2011 did not identify any specific interconnection issues related to AB 1969 or Senate Bill ("SB") 32[5] but instead simply identified interconnection as an issue to be addressed in implementing SB 32. Moreover, D.11-06-016, which addresses the AB 920 net metering program, is not applicable here because it concerns interconnection rules for a Qualifying Facility ("QF") program being implemented under the Public Utilities Regulatory Policies Act ("PURPA").[6] Neither the ALJ Ruling nor D.11-01-016 raise any new issues about interconnection, nor does the issuance of either of these documents justify Sustainable Conservation's four year delay in filing its PFM. The interconnection issue was clearly raised and squarely addressed in D.07-07-027 and Sustainable Conservation has failed to provide any reasonable justification for its delay in filing the PFM.

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[4] PFM at p. 5.

[5] *See Administrative Law Judge's Ruling Setting Schedule for Briefs on Implementation of Senate Bill 32*, issued January 27, 2011 in R.08-08-009.

[6] D.11-06-016 at p. 12.

The only other excuse Sustainable Conservation offers for its untimely PFM are recent changes proposed by the utilities to their existing Rule 21.[7] However, the proposed Rule 21 changes do not concern PG&E's E-PWF and E-SRG Tariffs and related pro forma contracts. Indeed, the AB 1969 Program is not even mentioned in PG&E's advice letter. Moreover, if Sustainable Conservation has concerns about the Rule 21 advice letters filed by PG&E, SCE and San Diego Gas & Electric Company ("SDG&E"), the appropriate mechanism for raising these concerns is filing a protest to these advice letter filings. Modifying D.07-07-027 will not address Sustainable Conservation's concerns regarding modifications to Rule 21. More fundamentally, proposed changes to Rule 21 do not justify a four year delay in filing a petition to modify D.07-07-027. Consistent with Rule 16.4(d), because Sustainable Conservation has failed to offer any reasonable justification for its delay, the Commission should summarily deny the PFM.

B. FERC Has Exclusive Jurisdiction Over The Interconnection Of AB 1969 Eligible Facilities.

Sustainable Conservation's PFM is entirely premised on a single assertion – that FERC does not have jurisdiction over distribution lines.[8] Based on this assertion, Sustainable Conservation concludes that since AB 1969 Program facilities will primarily interconnect to distribution lines, that the Commission has interconnection jurisdiction under Rule 21, rather than FERC jurisdiction under the SGIP or WDT. This argument is legally flawed.

FERC has previously considered the issue of interconnection jurisdiction at length, both in Order No. 2003, setting the rules for large generator interconnections, and in Order No. 2006, where it set small generator interconnection rules. In those orders, FERC agreed that the states have jurisdiction over certain limited generator interconnections, such as projects that deliver

[7] *See e.g.* Advice Letter 3864-E, filed June 17, 2011 (PG&E's proposed modifications to Rule 21).

[8] PFM at pp. 6-7.

only on-site load and projects delivering to the grid under retail net metering arrangements not involving the sale of excess power.[9] In addition, the states have jurisdiction over the interconnection of certain QFs selling all their output under PURPA to the interconnected utility.[10] However, except in these limited circumstances, FERC concluded that if transmission or distribution lines belong to utilities that are subject to an Open Access Transmission Tariff ("OATT"), then the FERC interconnection rules govern and FERC has jurisdiction over the generator's interconnection. In this case, AB 1969 Program facilities are not QFs selling their output under PURPA and are not part of a net metering program. Instead, AB 1969 Program facilities are merchant generators selling energy and capacity to PG&E under their PPAs and generally connecting to PG&E's distribution lines, which are subject to PG&E's OATT (i.*e.*, the WDT). The AB 1969 Program facilities do not fall within the narrow exceptions identified by FERC and, based on well-established precedent, are clearly subject to FERC's interconnection jurisdiction.

Whether FERC has jurisdiction over distribution level interconnections has also been considered by the federal courts. In *National Ass'n of Regulatory Utility Commissioners v. FERC*, 475 F.3d 1277, 1282 (D.C. Cir. 2007), the District of Columbia Court of Appeals upheld FERC's determination that FERC has jurisdiction over generator interconnections to a distribution facility when the facility is included in a public utility's Commission-filed OATT

[9] *See* Order 2003, paragraphs 795-809; Order 2003-A at paragraphs 713-744; Order 2003-B at paragraphs 12-14; Order 2003-C at paragraphs 51-53; Order 2006 at paragraphs 466-490, and Order 2006-A at paragraphs 88-99. The FERC's Large Generator Interconnection Decisions (Orders 2003 to 2003-C) can be found at http://www.ferc.gov/industries/electric/indus-act/gi/stnd-gen.asp. FERC's Small Generator Interconnection Decisions (Orders 2006 to 2006-B) can be found at http://www.ferc.gov/industries/electric/indus-act/gi/small-gen.asp.

[10] *See e.g.*, *Consumers Energy Company*, 132 FERC ¶ 61,241 (2010) at P. 24.

and the interconnection's purpose is to facilitate a FERC-jurisdictional wholesale sale of electric energy.

To support the PFM, Sustainable Conservation primarily relies on FERC's *PJM Interconnection* decision regarding the interconnection of a wind generating facility to Commonwealth Edison's distribution system.[11] Sustainable Conservation claims that in the *PJM Interconnection* case, FERC determined that it did not have jurisdiction over distribution lines. However, Sustainable Conservation misunderstands FERC's reasoning in that case. In *PJM Interconnection*, FERC determined, consistent with Order No. 2003, that it did not have jurisdiction over the distribution-level interconnection because Commonwealth Edison's distribution system did not have an existing OATT.[12] Sustainable Conservation ignores the fact that PG&E does have an existing OATT for its distribution system (*i.e.*, the WDT) and thus interconnections to PG&E's distribution system are FERC jurisdictional under Orders 2003 and 2006.[13] Sustainable Conservation quotes a portion of the *PJM Interconnection* decision that addresses PJM's OATT in which FERC concludes that PJM's OATT cannot confer jurisdiction over Commonwealth Edison's distribution facilities.[14] Sustainable Conservation again misses the point. PG&E is not claiming that FERC has jurisdiction over PG&E's distribution interconnection process based on the CAISO's OATT, which would be analogous to claiming that FERC has jurisdiction over Commonwealth Edison's distribution system under the PJM OATT. Instead, FERC's jurisdiction over PG&E's distribution system is based on PG&E's

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[11] PFM at p. 7, citing *PJM Interconnection, LLC*, 114 FERC ¶ 61,191 (2006).

[12] *PJM Interconnection*, 114 FERC ¶ 61,191 at PP. 14-15.

[13] *Pacific Gas and Electric Company*, 135 FERC ¶ 61,094 (2011) at P. 2 ("PG&E currently provides open access distribution level services, including generator interconnection service pursuant to Order No. 2006 under its WDT.")

[14] PFM at p. 7.

FERC-jurisdictional WDT. Commonwealth Edison apparently did not have its own OATT and thus FERC did not have jurisdiction over Commonwealth Edison's distribution system. In short, *PJM Interconnection* is readily distinguishable.

Finally, the Commission itself has recognized that wholesale power sales by generators interconnected at the distribution level are FERC jurisdictional.[15] Consistent with that precedent, under the AB 1969 Program, sellers connected to the distribution system are making wholesale power sales to PG&E and thus these transactions, and the associated interconnection, are FERC jurisdictional.

C. Sustainable Conservation's Concerns About Inconsistent Positions Will Not Be Resolved by The PFM.

The PFM includes a lengthy discussion of "inconsistent positions" that the Commission has taken with regard to interconnection jurisdiction.[16] PG&E agrees that in recent years, the Commission has addressed interconnection issues in a number of proceedings and that, in some cases, the Commission has not made a definitive determination on the issue of jurisdiction. However, the fact that interconnection jurisdiction issues have arisen in a number of proceedings does not justify granting the PFM. Instead, as PG&E explained above, the PFM is inconsistent with well-established FERC and judicial precedent. If anything, the Commission should deny the PFM and determine once and for all that it does not have jurisdiction over distribution level interconnections except in the limited cases of projects that deliver only on-site load and projects delivering to the grid under retail net metering arrangements not involving the sale of excess power and/or interconnection of certain QFs selling all their output under PURPA.

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[15] D.03-02-068 at p. 29.

[16] PFM at pp. 8-15.

D. AB 1969 Program Generators Cannot Interconnect Under The Current Rule 21 Tariff.

In the PFM, Sustainable Conservation proposes that D.07-07-027 be modified to require generators under the AB 1969 Program to interconnect using Rule 21. Not only is this argument legally flawed, it is also impractical. As PG&E explained in Advice Letter 3864-E, filed June 17, 2011, the current version of Rule 21 only covers interconnection for retail net metering, not generators that are exporting power for sale. PG&E has proposed modifications to Rule 21 to facilitate generator interconnections, but until its proposed modifications are adopted, generators simply cannot use Rule 21 to interconnect. If Sustainable Conservation's PFM is adopted, AB 1969 Program generators will be unable to interconnect to PG&E's distribution system until Rule 21 is modified. Even Sustainable Conservation concedes that changes to Rule 21 occur at a glacial pace.[17] Given the delays in modifying Rule 21, granting the PFM would only slow the interconnection process for AB 1969 Program generators.

III. SUSTAINABLE CONSERVATION'S COMMENTS REGARDING PG&E'S INTERCONNECTION PROCESS ARE IRRELEVANT AND UNSUPPORTED.

Sustainable Conservation supports its PFM with two declarations that it claims demonstrate the problems with interconnection procedures under the WDT and justify granting the PFM so that AB 1969 Program interconnections occur under Rule 21.[18] There are several problems with this argument.

First, the declarations offered by Sustainable Conservation are not sufficiently specific or detailed. In his declaration, Allen Dusault refers to general reports from "the field" and then provides two specific examples without identifying the facilities so that PG&E has no opportunity to respond to these specific allegations.[19] By failing to identify the facilities, Mr.

[17] PFM at p. 13.

[18] PFM at p. 4, Attachments B and C.

[19] PFM, Attachment B at PP. 3-6.

Dusault gives PG&E no opportunity to address his specific concerns. Moreover, Mr. Dusault fails to indicate whether these facilities were selling energy and capacity under the AB 1969 Program or some other program. The declaration of Jody London is equally lacking in specific details. Ms. London asserts that as a percentage of total renewable power, bioenergy has decreased for all three utilities since 2004.[20] Given the significant amount of wind and solar generation developed in recent years, this result is not unexpected. Moreover, Ms. London fails to provide any specific evidence that this decrease in the overall percentage of bioenergy is a result of interconnection jurisdiction issues. Indeed, Ms. London's declaration supports the opposite conclusion. SCE and SDG&E both use Rule 21 to perform interconnections for their respective AB 1969 Programs. Despite this, both utilities have experienced reductions in the percentage of bioenergy in their portfolios.[21] In fact, of the three utilities, SDG&E has experienced the greatest percentage reduction.[22] Thus, there appears to be no correlation between reductions in the percentage of bioenergy and whether the AB 1969 Program interconnection is under Rule 21 or a FERC-jurisdictional tariff.

Second, the declarations offered by Sustainable Conservation do not consider recent changes to PG&E's WDT interconnection process that should facilitate more expedited considerations. For example, Mr. Dusault describes problems with PG&E's WDT procedures "over the last couple of years."[23] In March 2011, PG&E submitted to FERC a proposal to significantly revise the WDT interconnection process. FERC accepted PG&E's proposal in April 2011.[24] A number of parties asserted that PG&E's WDT revisions should be delayed.

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[20] *Id.* Attachment C at P. 2.

[21] *Id*

[22] *Id.*

[23] *Id.*, Attachment B at P. 3.

[24] *Pacific Gas and Electric Company*, 135 FERC ¶ 61,094 (2011).

FERC rejected these arguments explaining that "further delay in implementing the relaxed fast track process and new independent study process [include in PG&E's WDT as] options for small generators may instead exacerbate the existing backlog of interconnection requests, which PG&E currently projects to be over 170 requests."[25] FERC determined that PG&E's proposed WDT revisions "offers opportunities for generators of all sizes to achieve interconnection faster than would be possible under the current serial process" and that small generators would benefit from PG&E's proposal.[26] The revisions to PG&E's WDT interconnection process, which we approved by FERC less than three months ago, will likely resolve many of the concerns raised by Sustainable Conservation.

IV. CONCLUSION

For the foregoing reasons, PG&E respectfully requests that the Commission deny Sustainable Conservation's PFM.

Respectfully submitted,

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By: */s/ Charles R. Middlekauff*
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Dated: July 22, 2011

[25] *Id.* at P. 30.

[26] *Id.* at PP. 44-45.

VERIFICATION

I am an employee of PACIFIC GAS AND ELECTRIC COMPANY, a corporation, and am authorized to make this verification on its behalf. I have read the foregoing:

**RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)
TO SUSTAINABLE CONSERVATION'S
PETITION FOR MODIFICATION OF D.07-07-027**

The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 22nd day of July, 2011 at San Francisco, California.

/s/ Valerie Winn
Valerie Winn, Manager
Renewable Energy Policy & Planning
Pacific Gas and Electric Company

CERTIFICATE OF SERVICEBY ELECTRONIC MAIL OR U.S. MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, CA 94105.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On the 22nd day of July, 2011, I caused to be served a true copy of:

RESPONSE OF
PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)
TO SUSTAINABLE CONSERVATION'S
PETITION FOR MODIFICATION OF D.07-07-027

[XX] By Electronic Mail – serving the above via e-mail transmission to each of the parties listed on the official service list for R.11-05-005 with an e-mail address.

[XX] By U.S. Mail – by placing the above for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service list for R.11-05-005 without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 22nd day of July, 2011 at San Francisco, California.

/s/ Stephanie Louie
STEPHANIE LOUIE