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PUBLIC VERSION

October 31, 2011

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

RE: Reply to the Division of Ratepayer Advocates' Protest of Pacific Gas and Electric Company's Advice Letters 3917-E and 3917-E-A (Amendment to Pacific Oroville Power, Inc., Contract)

Dear Mr. Gatchalian:

Pacific Gas and Electric Company ("PG&E") hereby responds to the Division of Ratepayer Advocates' ("DRA") protest of PG&E's Advice Letter 3917-E and Supplemental Advice Letter 3917-E-A (collectively, the "Advice Letter").

On October 3, 2011, PG&E filed Advice Letter 3917-E requesting approval from the California Public Utilities Commission ("Commission") of an amendment and letter agreement (collectively the "Amendment") to a Qualifying Facility ("QF") Standard Offer Power Purchase Agreement ("PPA") with Pacific Oroville Power, Inc. ("POPI"). The Amendment would enable POPI to continue deliveries of Renewables Portfolio Standard ("RPS")-eligible energy to PG&E at a reasonable price from its facility located in Oroville, California ("Facility"). PG&E filed Supplemental Advice Letter 3917-E-A on October 14, 2011, to provide an update to Confidential Appendix B and to provide slightly revised Independent Evaluator ("IE") reports.¹ On October 24, 2011, DRA filed a protest to the Advice Letter ("Protest"). These reply comments address the concerns raised by DRA in its Protest.

¹ While DRA states that the IE changed his ranking of contract price and market valuation as a result of the updated methodology PG&E used to assess its future compliance with the 33% RPS program (*see* Protest at 1-2), the IE's changes were in fact separate from and unrelated to the updated methodology.

DRA raises two issues in its Protest. First, DRA claims that PG&E failed the “reasonable manager standard” in its negotiation of the Amendment. Second, DRA claims that PG&E does not need the power from this biomass contract beyond the first term of the Amendment, which ends August 31, 2014. DRA recommends denial of the Advice Letter, or, in the alternative, approval conditioned on an executed letter agreement that removes the options to extend the Amendment and reduces the energy price.²

Because the Amendment is reasonable and provides customer benefits, the Commission should reject DRA’s Protest and approve the Amendment.

The Amendment is Reasonable and Provides Customer Benefits

The Commission’s standards for reviewing QF contract amendments and modifications are not “entirely clear.”³ In general, however, the Commission examines a QF contract amendment or modification to determine if there are customer benefits that result from the amendment or modification.⁴ As PG&E explained in the Advice Letter, the Amendment provides substantial customer benefits in exchange for a reasonable increase in price and thus should be approved by the Commission.

The Amendment provides for stricter performance obligations, [REDACTED]

[REDACTED] These provisions provide substantially improved customer protections over the original PPA. As the IE recognized, the Amendment “ [REDACTED]

[REDACTED]”⁵ In addition, the Amendment’s increased price will enable the POPI Facility to continue deliveries of RPS-eligible energy to PG&E’s customers.⁶ This price is supported by financial information and analysis provided by POPI and PG&E, and is reasonable as compared to PG&E’s other executed biomass transactions and alternatives for procurement of RPS-eligible resources. Finally, the Amendment will help preserve local jobs and provide the additional benefits relating to resource adequacy and local

² Protest at 2.

³ See D.99-02-085, 85 CPUC2d 158, 167 (1999).

⁴ In earlier decisions, the Commission referred to “commensurate” benefits. In other decisions, the Commission referred to customer indifference. *Id.* at 166-167 (describing Commission decisions and different descriptions of customer benefit standards).

⁵ Confidential Appendix C, *Confidential Appendix to the Advice Letter Report of the Independent Evaluator on an Amended Contract with Pacific Oroville Power, Inc.* (“Confidential IE Report”), at C-8 – C-9.

⁶ [REDACTED]. See Confidential Appendix D, *Confidential Declaration of Christopher Baker Relating to Pacific Oroville Power, Inc., PG&E Log No. 12P001*.

reliability described in the Advice Letter. For these reasons, the Amendment should be approved.

DRA claims that PG&E acted as an unreasonable manager in its negotiation of the Amendment.⁷ DRA effectively appears to recommend rejection of the Advice Letter based on speculation that PG&E could have obtained a more favorable deal. The appropriate question is, however, whether the executed contract is reasonable, not whether some hypothetical deal might have been better. As explained above and in the Advice Letter, the Amendment provides for additional customer protections not found in the original PPA in exchange for a reasonable increase in price, and should therefore be approved.

In any event, PG&E's negotiation of the Amendment was reasonable and prudent. DRA claims that PG&E acted unreasonably by [REDACTED]

[REDACTED] ⁸ Notably, DRA does not argue that such pricing terms are unreasonable, nor did DRA raise any issues regarding the pricing terms in the Mt. Lassen amendment in its protest to Advice Letter 3875-E, which sought Commission approval of that amendment. Rather, DRA now, only a little over two months after submitting that protest, suggests that it was unreasonable for PG&E [REDACTED]

PG&E accepted the revised pricing for the POPI Facility because it was reasonable in light of the financial information provided by POPI and [REDACTED]. The pricing accepted by PG&E does not unduly enrich POPI but provides the opportunity for continued operation. To illustrate, as stated in Confidential Appendix B and according to Seller's Forecast [REDACTED], the Facility would yield [REDACTED].

DRA also claims that PG&E acted as an unreasonable manager by failing to offer a lower counteroffer with respect to the amount PG&E would pay for any curtailed hours.⁹ Again, as with its claims regarding the Amendment price, DRA fails to offer any explanation for why agreeing [REDACTED] was unreasonable.

PG&E accepted POPI's proposal for [REDACTED] because it offered significant value over the current Interim Standard Offer 4 ("ISO4") PPA terms. Under the ISO4, [REDACTED] PG&E

⁷ Protest at 4.

⁸ *Id.* Covanta owns both the Mt. Lassen and POPI facilities. PG&E recently negotiated an amendment for Covanta's Mt. Lassen facility, which was filed for Commission approval on July 14, 2011 in Advice Letter 3875-E. On August 10, 2011, DRA protested Advice Letter 3875-E.

⁹ Protest at 4.

determined that the ability [REDACTED] represented a reasonable value for ratepayers. PG&E determined that this price was reasonable [REDACTED].

Finally, DRA incorrectly asserts that “[REDACTED]”¹⁰ In fact, as the IE specifically stated in his report, this [REDACTED]

[REDACTED]”¹¹ [REDACTED]. DRA’s claim that PG&E acted unreasonably by failing to include this provision in the Amendment ignores the fact that the prior amendment and the current Amendment contain different provisions. The Amendment has many components that differ from the previous price relief amendment, including but not limited to [REDACTED]

[REDACTED] DRA cannot credibly claim that it was unreasonable for PG&E to fail to include a specific provision in the Amendment, as it has not considered the entire package of terms and conditions that comprise the final executed agreement.

DRA’s Request to Remove PG&E’s Options to Extend the Amendment Should Be Rejected

The Amendment includes two options for PG&E to extend the Amendment beyond 2014. The first option enables PG&E to extend the Amendment until the end of August 2015, and the second option enables PG&E to extend the Amendment until April 7, 2016. [REDACTED]

[REDACTED] therefore the options to extend the Amendment past 2014 are unnecessary.

PG&E has already addressed a similar concern that DRA raised in its protest of PG&E’s Advice Letter 3875-E (Mt. Lassen).¹³ PG&E explained in its reply to DRA’s protest of Advice Letter 3875-E that it is not required to exercise the options to extend the Mt. Lassen amendment, but has the flexibility to do so should it need deliveries from the facility to meet its RPS targets. The options to extend the Amendment provide PG&E with the same flexibility should PG&E need deliveries from the POPI Facility in the second compliance period (2014-2016). [REDACTED]

[REDACTED] DRA’s proposal to remove the options for PG&E

¹⁰ *Id.*

¹¹ Confidential IE Report at C-17.

¹² Protest at 5. While DRA states that PG&E did not meet the goal of 20 percent RPS energy during 2010 (*see* Protest at 4), PG&E did in fact project that it would comply with its 2010 RPS requirements under the 20% RPS Program through the use of the RPS flexible compliance mechanisms (*see* PG&E’s Renewable Portfolio Standard August 2011 Semi-Annual Compliance Report, Public Version, at 3-4).

¹³ PG&E’s reply to DRA Protest of Advice Letter 3875-E, dated August 10, 2011.

to extend the Amendment beyond 2014 would limit PG&E's procurement flexibility and ability to respond to unexpected changes in forecast deliveries without providing commensurate benefits. Therefore, the Commission should reject DRA's proposal.

Conclusion

DRA has not raised any substantive reason to reject or modify the Advice Letter. The Commission should therefore reject DRA's Protest and expeditiously approve the Advice Letter.

Sincerely,

Handwritten signature of Brian Cherry in cursive script.

Vice President – Regulation and Rates

cc: Julie Fitch – Director, Energy Division
Cynthia Walker – DRA
Joseph Abhulimen – DRA
Cem Turhal – Energy Division
Maria Salinas – Energy Division
Andrew Schwartz – Energy Division
Service Lists R.11-05-005 and R.10-05-006

Attachments

**DECLARATION OF HUGH M. MERRIAM
SEEKING CONFIDENTIAL TREATMENT
FOR CERTAIN DATA AND INFORMATION
CONTAINED IN REPLY TO DRA'S PROTEST OF
PG&E'S ADVICE LETTERS 3917-E AND 3917-E-A
(PACIFIC GAS AND ELECTRIC COMPANY - U 39 E)**

I, Hugh M. Merriam, declare:

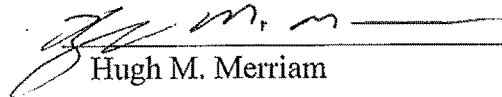
1. I am presently employed by Pacific Gas and Electric Company ("PG&E"), and have been an employee at PG&E since 1983. My current title is Manager within PG&E's Energy Procurement organization. In this position, my responsibilities include negotiating new and amended Power Purchase Agreements. In carrying out these responsibilities, I have acquired knowledge of PG&E's contracts with numerous counterparties and have also gained knowledge of the operations of electricity sellers in general. Through this experience, I have become familiar with the type of information that would affect the negotiating positions of electricity sellers with respect to price and other terms, as well as with the type of information that such sellers consider confidential and proprietary.

2. Based on my knowledge and experience, and in accordance with Decision ("D.") 08-04-023 and the August 22, 2006 "Administrative Law Judge's Ruling Clarifying Interim Procedures for Complying with Decision 06-06-066," I make this declaration seeking confidential treatment of PG&E's reply to the Division of Ratepayer Advocates' protest of PG&E's Advice Letters 3917-E and 3917-E-A.

3. Attached to this declaration is a matrix identifying 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 Appendix 1 of D.06-06-066 and Appendix C of D.08-04-023 (the "IOU Matrix"), and/or constitutes information

that should be protected under General Order 66-C. The matrix also specifies the category or categories in the IOU Matrix to which the data and information corresponds, if applicable, 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, if applicable; (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 that is pertinent to this filing.

I declare under penalty of perjury, under the laws of the State of California, that to the best of my knowledge the foregoing is true and correct. Executed on October 31, 2011 at San Francisco, California.



Hugh M. Merriam

PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E)
Reply to the DRA's Protest of PG&E's Advice Letters 3917-E and 3917-E-A
October 31, 2011

IDENTIFICATION OF CONFIDENTIAL INFORMATION

Redaction 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
Document: Reply to the DRA's Protest of PG&E's Advice Letters 3917-E and 3917-E-A							
Confidential Information in PG&E's Reply (redacted in the public version of the Reply, and shown in gray in the confidential version of the Reply)	Y	Item VII B) Contracts and power purchase agreements between utilities and non-affiliated third parties; Item VII (un-numbered category following VII G)) Score sheets, analyses, evaluations of proposed RPS projects; General Order 66-C	Y	Y	Y	The redacted information discusses pricing and other terms of the Amendment, the effect of the Amendment on the existing Power Purchase Agreement ("PPA"), the parties' negotiations, the Amendment's contribution toward PG&E's compliance with California's Renewables Portfolio Standard ("RPS") program, Pacific Oroville Power, Inc.'s ("POPI") financial condition, and facility operations. Individual contract information, such as price, other key terms, and descriptive information for the PPA and Amendment is protected from disclosure by Item VII B) in the IOU Matrix, and RPS compliance analysis is protected by Item VII (un-numbered category following VII G)). Information about the counterparty's financial condition and business plans and about the parties' negotiations is protected by General Order 66-C, paragraph 2.8. It constitutes "[i]nformation obtained in confidence from other than a business regulated by the Commission where the disclosure would be against the public interest." Disclosure would inhibit generators from providing PG&E with the information the Commission needs for its reasonableness review and hamper negotiations between PG&E and the seller. Information regarding the parties' negotiations is also covered by a confidentiality agreement between PG&E and POPI, which prohibits either party from making an unauthorized disclosure of such information.	For information covered under item VII B) and item VII (un-numbered category following VII G)), remain confidential for three years For information covered by General Order 66-C, remain confidential indefinitely