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Energy Division Tariff Unit
California Public Utilities Commission
505 Van Ness Avenue
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Subject: **Reply to the Protests of Marin Energy Authority *et al.* and Californians for Renewable Energy, Inc. to PG&E's Supplemental Advice Letter for the OLS Energy-Agnews, Inc. Replacement PPA (Advice 4010-E submitted on March 9, 2012)**

I. SUMMARY

Pacific Gas and Electric Company ("PG&E") hereby submits to the Energy Division of the California Public Utilities Commission ("CPUC" or "Commission") its reply to the May 14, 2012 protest of Marin Energy Authority ("MEA"), Alliance for Retail Energy Markets ("AReM"), the Direct Access Customer Coalition ("DACC"), and the Energy Users Forum ("EUF") (collectively, "Protesting Parties") and the protest of CAlifornians for Renewable Energy, Inc. ("CARE") to PG&E's Supplemental Filing to Advice Letter 4010-E ("Supplemental Filing"). The protests should be summarily dismissed in consideration of the many reasons provided below.

PG&E's advice letter seeks approval of a power purchase agreement ("PPA") between PG&E and O.L.S. Energy-Agnews, Inc. that replaces the Interim Standard Offer 4 PPA from the 1980's ("Replacement PPA"). On March 29, 2012, MEA and AReM protested the cost recovery mechanism and the allocation of greenhouse gas ("GHG") emissions reductions that were proposed in Advice Letter 4010-E, submitted to Energy Division as a Tier 3 advice letter on March 9, 2012. On April 5, 2012, PG&E responded by agreeing to revise the advice letter to seek cost recovery under the specified mechanism and to clarify that any GHG reductions associated with the Replacement PPA count toward all of the GHG emissions reduction targets for which PG&E has an obligation to procure under the Qualifying Facility and Combined Heat and Power ("QF/CHP") Settlement Agreement. The contents of the Supplemental Filing were limited to revisions to the advice letter's cost recovery and GHG language.

The Protesting Parties now claim that the Supplemental Filing does not "allocate [Resource Adequacy ("RA")] benefits as required by D.10-12-035" or "allocate the GHG benefits associated with the generating facility". CARE asserts that Advice Letter 4010-E should be denied because the QF/CHP Settlement contracts have been found by the Federal Regulatory Energy Commission ("FERC") to violate the Public Utility Regulatory Policies Act of 1978 ("PURPA"), that the QF/CHP Settlement PPAs have not been determined to comply with

PURPA, and that it would be "premature and irrelevant" to discuss the allocation of RA benefits or GHG benefits in accordance with the QF/CHP Settlement.

Preliminarily, the protests of Protesting Parties and CARE are procedurally improper because they were submitted after the close of the advice letter comment period. CPUC General Order ("GO") 96-B, General Rule 7.5.2 states that the submission of a supplement does not automatically continue or reopen the protest period or delay the effective date of the advice letter.

Assuming that the Commission decides to entertain these protests at all, it should summarily dismiss them because the scope of comments on a supplement to an advice letter is limited to the subject of the supplement. The additional issues raised by the Protesting Parties are a "second bite at the apple," while those raised by CARE are totally unrelated to the subject of the Supplemental Filing. These claims exceed the scope of review and should be dismissed.

Alternatively, if the Commission does consider the substantive allegations of the protests, it should reject them because they are wrong, as explained in more detail, below.

II. DISCUSSION

Responses to supplements to advice letters are governed by CPUC General Order 96-B, Rule 7.5.1 "Supplements," which states:

> The submission of a supplement, or of additional information at the request of the reviewing Industry Division (see General Rule 7.5.2), does not automatically continue or reopen the protest period or delay the effective date of the advice letter. The reviewing Industry Division, on its own motion or at the request of any person, may issue a notice continuing or reopening the protest period. Any new protest shall be limited to the substance of the supplement or additional information.[1]

A. The Protests are Not Properly Before the Commission.

PG&E's Advice Letter 4010-E was filed on March 9, 2012. The protest period expired 20 days thereafter, on March 29, 2012. The only protest filed as of that date was that of MEA and AReM. PG&E submitted its response on April 4, and in that response, PG&E stated that it would submit a supplemental filing to revise the advice letter's request for cost recovery and to clarify its request regarding the counting of GHG emissions associated with the Replacement PPA. The Supplemental Filing was submitted on April 24, 2012. According to G.O. 96-B, Rule 7.5.1, the filing of a supplement to the advice letter did not reopen the protest period. The Energy Division has not issued a notice reopening the protest period. Accordingly, the protests of the Protesting Parties and CARE are ineligible for consideration because they were submitted after the expiration of the protest period, and should be summarily dismissed.

[1] CPUC General Order 96-B, Rule 7.5.1 Supplements.

B. The Protests Improperly Exceed the Scope of the Supplement.

The Supplemental Filing does two things: (1) it replaces the cost recovery mechanism and (2) clarifies that PG&E requests the Commission to determine that any GHG reductions associated with the Replacement PPA count toward **the** GHG Emissions Reduction targets included in the QF/CHP Settlement; the initial filing requested that the GHG reductions count toward **PG&E's** GHG Emissions Reduction Targets in the QF/CHP Settlement.

1. The Protesting Parties' Attempt to Challenge PG&E's RA Benefit Allocation Methodology Goes Beyond the Scope of the Supplemental Filing.

In their May 14 protest, the Protesting Parties assert that the Supplemental Filing "does not address two of the protest issues raised by MEA and AReM, and [Protesting Parties] raise these issues here. Specifically, [the Supplemental Filing] does not allocate (1) RA benefits or (2) the GHG benefits in accordance with the CHP Settlement." This statement is incorrect.

The term "RA Benefits" appears only once in the MEA/AReM protest, i.e., in the heading, "1. The Advice Letter Does Not Allocate Costs and RA Benefits as Required by Decision 10-12-035." Below the heading, MEA and AReM asserted that PG&E's request to recover the costs of the Replacement PPA through PG&E's Energy Resource Recovery Account ("ERRA") and to recover stranded costs consistent with D.08-09-012 is inconsistent with the Ordering Paragraph ("OP") 5 of D.10-12-035, the decision approving the QF/CHP Settlement.[2] MEA and AReM stated that "PG&E appears to be attempting to pick and choose its own preferred form of cost recovery, rather than complying with the directives of D.10-12-035."

Clearly, the term "RA Benefits" appeared in the MEA and AReM protest only as the object of the net capacity cost allocation methodology that PG&E should have used. It is disingenuous of the Protesting Parties to now claim that the consistency of PG&E's RA benefit allocation methodology with D.10-12-035 was challenged in the initial protest. There was no need for the Supplemental Filing to address the methodology by which actual RA benefits are to be allocated. The Protesting Parties' attempt to re-write the terms by which the RA benefits of the Replacement PPA should be allocated is clearly beyond the limited scope of the Supplemental Filing and must be rejected.

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[2] D.10-12-035 OP 5 states: "PG&E...shall procure combined heat and power resources on behalf of electric service providers (ESPs) and community choice aggregators (CCAs) and shall allocate the resource adequacy benefits and net capacity costs associated with this procurement to the ESPs and CCAs as described in Section 13.1.2.2 of the Term Sheet attached to the October 8, 2010 "Qualifying Facility and Combined Heat and Power Settlement Agreement."

2. CARE's Assertion that it is Premature to Discuss the Allocation of RA Benefits or GHG Benefits because the QF/CHP Settlement Has Not Been Determined to Comply with PURPA is Not Remotely Relevant to the Supplemental Filing and Must be Rejected.

CARE repeats the Protesting Parties' assertion that the Supplemental Filing does not allocate RA benefits or GHG benefits in accordance with the QF/CHP Settlement. For the reasons explained above, this argument is flawed. CARE also claims that because the QF/CHP Settlement Agreement does not comply with PURPA, "it would be premature and irrelevant to discuss the allocation of (1) RA benefits or (2) the GHG benefits in accordance with the CHP Settlement." The issue of whether the Commission should have allocated the RA and GHG benefits of procurement under the QF/CHP Settlement Agreement is patently beyond the scope of the Supplemental Filing. The Commission should not entertain CARE's arguments and should summarily reject CARE's protest.

C. The Protests Lack Merit

1. The Protesting Parties' Arguments Are Inconsistent With Existing Commission Decisions.

PG&E has revised Advice Letter 4010-E to request that the Commission determine that any GHG emissions reductions associated with the Replacement PPA will count toward **the** GHG Emissions Reduction Targets in the QF/CHP Settlement.[3] This revision eliminates any perception that the advice letter, when approved, might authorize PG&E to allocate the emissions reduction targets only toward the California Air Resources Board ("CARB") GHG Recommended Reduction Measure ("RRM") allocated to PG&E's own load. The Protesting Parties' request for more specific language allocating to ESPs and CCAs the specific benefits is unnecessary and inconsistent with the QF/CHP Settlement that simply establishes a GHG Emissions Reduction target.

2. CARE's Request is Foreclosed by the Commission's Final Approval of the QF/CHP Settlement Agreement.

CARE's assertions that the QF/CHP Settlement Agreement fails to comply with federal law are baseless. The QF/CHP Settlement Agreement was approved by D.10-12-035 ("Decision"). Following the approval of the stipulated modification of the Settlement Agreement (D.11-07-10, as modified by D.11-10-016), the application for rehearing of D.10-12-035 was withdrawn and dismissed by D.11-10-027. No further challenges to the Decision were made, and accordingly, it became final and non-appealable on November 23, 2011. There is no credible argument that the Decision fails to comply with federal law. CARE claims that: "The Federal Regulatory Commission found in 2011 that the CPUC's CHP Settlement contracts violate the Public Utility Regulatory Policies Act of 1978 (PURPA) because such projects are not tiered by size and type of energy resource."[4] There is no such FERC decision. At most, CARE's claim

[3] Supplemental Filing, p.3.

[4] CARE Protest, p. 1.

apparently alludes to the FERC proceeding to determine whether the Commission may establish separate avoided cost prices for Power Purchase Agreements ("PPAs") under Assembly Bill ("AB") 1613.[5] CARE also claims that it would be premature to address the allocation of RA and GHG benefits until the district court hearing *Solutions for Utilities, Inc. v. CPUC* "finds that the QF/CHP Settlement PPAs presented to the court comply with PURPA."[6] This claim makes no sense because the subject in that case is the feed-in-tariff for small renewable generation.[7] The cited cases involve totally different types of contracts – the AB 1613 PPA and the small RPS PPA – and not the QF/CHP Settlement PPA at all, and have no bearing on the merits of the Supplemental Filing.

III. CONCLUSION

For all of the foregoing reasons, the protests of the Protesting Parties and CARE to the Supplemental Filing should be rejected.

Vice President, Regulation and Rates

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[5] In response to separate petitions by the Commission and Southern California Edison Company ("SCE"), seeking FERC's opinion on whether PURPA pre-empts the Commission's authority to require IOUs to offer a separate avoided cost to AB 1613 generators, FERC held that the Commission had such authority under certain circumstances. *See*, FERC Consolidated Docket No. EL 10-64-001; EL 10-66-001.

[6] CARE Protest, p.2.

[7] *Solutions for Utilities, Inc. et al. v. CPUC, et al.,* CV 11-04975 SJO (JCGx), USDC, CA, C.D., Minute Order 3/14/12.