

May 24, 2012

CPUC Energy Division
Attention: Tariff Unit, 4th Floor
505 Van Ness Avenue
San Francisco, CA, 94102

**RE: PROTEST OF THE ALLIANCE FOR RETAIL ENERGY MARKETS,
DIRECT ACCESS CUSTOMER COALITION, ENERGY USERS FORUM,
AND MARIN ENERGY AUTHORITY TO PG&E ADVICE LETTER 4034-E,
SCE ADVICE LETTER 2730-E, and SDG&E ADVICE LETTER 2354-E FOR
APPROVAL OF RESOURCE ADEQUACY CONTRACTS FOR SUTTER
ENERGY CENTER**

On May 4, 2012, the three investor-owned utilities (“IOUs”) filed advice letters in compliance with Resolution E-4471, which directed the IOUs to engage in negotiations with Calpine Corporation for a contract with its Sutter Energy Center that would keep that facility operating for the remainder of 2012.¹ The Resolution further directed that the costs and benefits of any resulting contract would be “applied” as a non-bypassable charge to all “benefiting customers.”² Each IOU’s advice letter includes a confidential contract for a proportional share of the Net Qualifying Capacity (“NQC”) of the Sutter facility from July 1, 2012 through December 31, 2012. The IOUs request that the Energy Division approve their respective advice letters by no later than May 25, 2012. Only SCE makes clear, however, that the purpose of this decision date is to ensure that each can include the Resource Adequacy (“RA”) capacity associated with the Sutter contract in its monthly RA showing.³ In a separate letter to the Commission on May 21, 2012, SCE further declared that its contract with Calpine would terminate on Friday, May 25, 2012, if the Energy Division does not approve the advice letter by that date.

The Alliance for Retail Energy Markets,⁴ Direct Access Customer Coalition,⁵ Energy Users Forum, Energy Users Forum and Marin Energy Authority (“Protesting Parties”) protest these advice letters on the grounds that, if these contracts are approved as proposed by the IOUs, direct access (“DA”) and community choice aggregation (“CCA”) customers are likely to pay costs of the contracts without receiving associated benefits, an outcome that is non-compliant with Resolution E-4471. Accordingly, the Protesting Parties respectfully request immediate Commission action to remedy this inequitable outcome.

¹ Resolution E-4771, p. 1.

² Resolution E-4771, Finding No. 20, p. 12.

³ SCE, p. 5. SCE further argues that its RA showing is due May 31, 2012, but the July showing is actually due June 1, 2012.

⁴ The Alliance for Retail Energy Markets is a California non-profit mutual benefit corporation formed by electric service providers that are active in the California’s direct access market. This filing represents the position of AREM, but not necessarily that of a particular member or any affiliates of its members with respect to the issues addressed herein

⁵ The Direct Access Customer Coalition is a regulatory alliance of educational, commercial and industrial customers that utilize direct access for all or a portion of their electric load.

I. The “Benefits” Of The Sutter Contracts Are RA Capacity That Must Be Allocated To All Customers Who Pay The Costs.

Each IOU’s advice letter confirms that its contract procures RA capacity.⁶ Further, Resolution E-4471 clearly requires that the IOUs allocate the costs as well as the benefits of the contracts to “all benefiting customers.”⁷ Thus, the IOUs must allocate the associated RA benefits of the Sutter contracts to DA and CCA customers, who are obligated to pay the costs through non-bypassable charges.

PG&E and SCE propose to use the cost adjustment mechanism (“CAM”) approved in D.08-09-012 and their pre-approved accounts for calculating the net capacity costs and the associated RA capacity benefits to DA and CCA customers.⁸ SDG&E, on the other hand, states that it has no such approved account and instead proposes establishing a Sutter Energy Memorandum Account (“SECMA”) to record the “costs.” A significant concern is that SDG&E makes no mention of the associated RA benefits or how it plans to calculate and apply them to DA customers,⁹ as required by the Commission.¹⁰ The Commission must direct SDG&E to modify its proposed SECMA to calculate and apply associated RA capacity benefits to DA customers.

II. Non-Bypassable Charges Should Begin For DA And CCA Customers Only When The RA Benefits Can Be Calculated, Applied And Incorporated Into RA Showings.

The IOUs have set forth a time frame for approval of the contracts (May 25th) that the Commission may find nearly impossible to meet. Further, in a May 18th letter to the Director of the Energy Division, SCE states that its Sutter contract terminates if not approved by May 25th. The Commission should first consider whether these IOU demands properly comply with Resolution E-4471. Nonetheless, if the Commission complies with the IOUs’ requests for a May 25th approval, only the IOUs will benefit from the RA capacity under the Sutter contracts – at least for July.

RA showings for all load-serving entities (“LSEs”) are due June 1, 2012 to demonstrate 100 percent compliance with the monthly RA requirements for July 2012.¹¹ The IOUs, electric service providers (“ESPs”) and Community Choice Aggregators are all required to meet these monthly RA requirements. RA showings are intended to include all applicable CAM allocations so that the LSE and its customers receive the benefit of the CAM procurement by the IOU. Energy Division calculates the RA capacity credit due each ESP and Community Choice Aggregator based on a load-ratio share within each IOUs’ TAC area. Energy Division then submits the CAM-related RA capacity credits to each ESP and Community Choice Aggregator, who use them to meet part of their overall RA requirements in their monthly RA showings. The 2012 RA Filing Guide specifies that, for the months of July to September, the Energy Division

⁶ See, PG&E, p. 1, SCE, p. 1, and SDG&E, p. 1.

⁷ Resolution E-4771, Finding No. 20, p. 12, and Ordering Paragraph No. 5, p. 13.

⁸ See, PG&E, p. 2, and SCE, p. 3.

⁹ SDG&E has no CCA operating within its service territory.

¹⁰ SDG&E, p. 4 and Attachment 2.

¹¹ *2012 Filing Guide for System and Local Resource Adequacy Compliance Filings* (“2012 RA Filing Guide”), Section 2, p. 2.

will provide the CAM allocation by mid-March.¹² This timing was established to ensure that ESPs and Community Choice Aggregators could cost-effectively incorporate CAM allocations into their RA procurement activities.

Obviously, the mid-March notification period has long passed. However, without an Energy Division CAM allocation for the Sutter contracts, the ESPs and Community Choice Aggregators must meet their monthly RA requirements by procuring other RA capacity and thus would not be “benefiting” in any way from the Sutter procurement. Moreover, if DA and CCA customers were forced to pay for the Sutter contracts without a timely CAM allocation, they would be paying twice for RA capacity.

The Protesting Parties understand that notification from Energy Division of any Sutter-related CAM allocations cannot take place until after the IOUs’ contracts are approved. That said, to fully comply with the provisions of Resolution E-4471, DA and CCA customers should not be required to pay the costs of the Sutter contracts for any month in which the CAM-allocation has not been provided with adequate time to allow their LSEs to incorporate the CAM into their RA procurement. The Protesting Parties recommend that the Sutter CAM allocations be received by no later than ten (10) business days before the date the monthly RA showings are due, in order for the CAM charge to apply to DA and CCA customers for that month. For example, the monthly RA showing for August 2012 is due July 2, 2012 and the Sutter CAM allocation would have to be received by June 18, 2012 in order for the CAM charge to apply to DA and CCA customers for the month of August.

Until the CAM-related benefits are allocated to and usable by ESPs and Community Choice Aggregators, the costs and benefits of the Sutter contract should be applied to the IOUs and their bundled customers, who are the sole beneficiaries of the contracts. In fact, the IOUs negotiated the contractual arrangement and should have been fully able to incorporate the Sutter capacity into their monthly RA procurement activities.

III. Conclusion.

Resolution E-4471 requires that the costs and benefits of the Sutter contracts be applied to “all benefiting customers.” Therefore, the costs and benefits of the contracts must be allocated to the IOUs and their bundled customers, who are the sole initial beneficiaries of these contracts. This allocation to bundled customers must continue until the benefits of the Sutter contracts can be allocated to the LSEs who serve DA and CCA customers in time for incorporation into each LSE’s RA procurement activities and monthly RA showings. The Protesting Parties respectfully request that the Commission determine that the Sutter CAM allocations be received by the ESPs and Community Choice Aggregators no later than ten (10) business days before the date the monthly RA showings are due, in order for the CAM charge to apply to DA and CCA customers for that month. Finally, the Commission should direct SDG&E to modify its proposed SECMA to calculate and apply the associated RA capacity benefits to DA customers.

¹² RA Filing Guide, Subsection “Notification of LSE RA Obligation,” item (5), p. 5.

Respectfully submitted,

/s/ Sue Mara

Sue Mara
RTOADVISORS, L.L.C.
164 Springdale Way
Redwood City, CA 94062
Telephone: (415) 902-4108
E-mail: sue.mara@rtoadvisors.com

Consultant to
ALLIANCE FOR RETAIL ENERGY MARKETS AND
DIRECT ACCESS CUSTOMER COALITION

And on Behalf of
ENERGY USERS FORUM AND
MARIN ENERGY AUTHORITY

cc:
Director, Energy Division
EDTariffUnit@cpuc.ca.gov
Brian Cherry, Vice President, PG&E
Akbar Jazayeri, Vice President, SCE
Carol Schmid-Frazee, Senior Attorney, SCE
Leslie Starck, Senior Vice President, SCE
Megan Caulson, Regulatory Tariff Manager, SDG&E