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Energy Division Tariff Unit
California Public Utilities Commission
Energy Division
505 Van Ness Avenue
San Francisco, CA 94102

Subject: Pacific Gas and Electric Company's Reply to Protests to Advice Letter 4034-E Regarding the Resource Adequacy Product Agreement between PG&E and Calpine Energy Services for the Sutter Facility

On May 4, 2012, in compliance with Commission Resolution E-4471 ("Resolution"), Pacific Gas and Electric Company ("PG&E") filed Advice Letter 4034-E seeking Commission approval of a Resource Adequacy product agreement ("RA Agreement") between PG&E and Calpine Energy Services, L.P. ("CES"). The RA Agreement has a term from July 1, 2012 through December 31, 2012 and requires CES to provide PG&E with system RA from the Sutter facility in an amount equal to 45.1% of the Sutter facility monthly Net Qualifying Capacity ("NQC").

In its Advice Letter, PG&E explained that the RA Agreement was consistent with the parameters established by the Commission in the Resolution because: (1) it covered the time period identified in the Resolution; and (2) the total compensation paid by PG&E, Southern California Edison Company ("SCE") and San Diego Gas & Electric Company ("SDG&E") did not exceed the cost cap established in the Resolution.[1] In addition, PG&E explained that the RA Agreement benefitted customers because, but for this agreement, PG&E's customers would likely pay more if the Sutter facility capacity was procured by the California Independent System Operator ("CAISO") under its Capacity Procurement Mechanism ("CPM").[2]

Protests to PG&E's Advice Letter were filed by the Division of Ratepayer

[1] PG&E Advice Letter at p. 4.

[2] *Id.*, *see also* Confidential Appendix B at p. B-7.

Advocates ("DRA"), the Coalition of California Utility Employees ("CUE"), The Utility Reform Network ("TURN"), and the Alliance for Retail Energy Markets, Direct Access Customer Coalition, Energy Users Forum, and Marin Energy Authority (jointly the "DA/CCA Parties"). These protests raise distinct issues which are addressed below.

DRA's Protest

In its protest, DRA raises several concerns. First, DRA raises concerns regarding Calpine's provision of financial information to the Independent Evaluator ("IE") and the utilities.[3] DRA notes that, if a situation like Sutter occurs in the future, the Commission should require the generator to "enter into an open-book process."[4] PG&E agrees that, to the extent a similar situation occurs in the future, it would be helpful to have the generator provide both the IE and the utilities as much financial information as possible regarding the continued operation of a facility. Here, however, DRA does not claim that timely disclosure of more financial information regarding the Sutter facility would have changed the outcome of the negotiations, or that the late disclosure of information by Calpine makes the RA Agreement unreasonable. While the Commission should certainly consider DRA's suggestion in the future, it does not justify rejection of the RA Agreement at issue in this Advice Letter.

DRA also argues that PG&E's customers may not receive all of the benefits associated with the Sutter facility with regard to testing dynamic transfers or guaranteed future operation of the Sutter facility beyond 2013.[5] However, PG&E's customers would not receive these benefits if the CAISO designated the Sutter facility as a CPM unit for the remainder of 2012, as the CAISO proposed at the Federal Energy Regulatory Commission ("FERC"). Moreover, if the Sutter facility was designated as a CPM unit, PG&E's customers would likely pay higher costs than will be incurred under the RA Agreement and would have paid twice for RA if it secured RA alternatives to the Sutter facility and the CPM waivers were approved. Thus, although the RA Agreement does not guarantee all of the benefits DRA identifies, it does reduce customer costs as compared to the CPM alternative and is, on that basis, reasonable.

Finally, DRA argues that PG&E has lower cost 2012 RA alternatives and that the Sutter facility may need similar agreements in 2013 and 2014 in order not to shut down.[6] Whether PG&E has lower cost alternatives does not change the fact that, if the Sutter facility had been designated as a CPM unit, as the

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[3] DRA Protest at p. 3.

[4] *Id.* at p. 4.

[5] *Id.* at pp. 3-4.

[6] *Id.* at p. 4.

CAISO proposed, PG&E's customers will likely pay more than they will under the RA Agreement. With regard to 2013-2014, this issue is outside the scope of PG&E's Advice Letter. The RA Agreement is limited to 2012. If the Commission believes that the Sutter facility is needed in 2013-2014, parties will have another opportunity to review and protest any resolution requiring the utilities to negotiate with CES for continued operation of the Sutter facility in those years. The issue before the Commission in this Advice Letter is whether the RA Agreement for 2012 is reasonable, not the continued operation of the Sutter facility beyond 2012.

CUE's Protest

CUE argues that CES, and its parent Calpine, are financially strong and that CES' threat to shut down the Sutter facility is a bluff.[7] In the Resolution, the Commission found CES has provided proper notice under General Order ("GO") 167 that it intended to retire the Sutter facility for financial reasons, and it was on that basis that the Commission directed the three utilities to negotiate with CES to provide sufficient revenues to keep the Sutter facility from retiring.[8] If CUE believed that CES' threat to shut down the Sutter facility was a "bluff", it should have filed an application for rehearing of the Resolution, rather than seeking to raise the issue now in a protest to PG&E's Advice Letter.

CUE also argues that the Sutter facility will not be able to operate in July based on comments made by Calpine to the FERC in early April.[9] This argument ignores the clear language of the RA Agreement, which requires CES to provide RA from the Sutter facility from July 2012 through December 2012. If CES fails to provide the contractually committed capacity, it is liable for damages. Customers will either receive the RA capacity they are entitled to under the RA Agreement, or will receive damages. Calpine's statements in early April, before the RA Agreement was executed, do not provide a basis for rejecting PG&E's Advice Letter.

Finally, CUE makes several proposals that are outside the scope of the Advice Letter. For example, CUE proposes that Calpine be required to repay the above-market portion of the payments that it receives or that it be required to offer to sell the Sutter facility.[10] These arguments should have been made when the Commission was considering the Resolution. PG&E's Advice Letter simply seeks approval of the RA Agreement because, based on the criteria established in the Resolution, the agreement is reasonable. To be clear, PG&E is not

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[7] CUE Protest at pp. 3-6.

[8] Resolution at pp. 6-7 and Findings 1-2.

[9] CUE Protest at p. 7.

[10] *Id*. at pp. 7-8.

objecting to CUE's arguments on substantive grounds. Instead, CUE's arguments are simply not within the scope of issues being addressed in the Advice Letter and thus should not be considered for purposes of this Advice Letter.

TURN's Protest

TURN raises issues that are similar to those raised by DRA and CUE. For example, TURN argues that the resolution gave CES undue leverage in the negotiating process, that the resulting agreements do not guarantee the Sutter facility will be on-line in 2013-2014, and Calpine should be required to return any above-market payments if it wants a "cost-based" contract.[11] Whether CES was placed in a superior negotiating position by the Resolution or should guarantee continued operation of the Sutter facility after 2012 or return any above-market payments are outside of the scope of issues addressed in PG&E's Advice Letter. Within the requirements of the Resolution, and given the short time PG&E had to negotiate, the RA Agreement is reasonable and should be approved. TURN's arguments on issues outside of the scope of PG&E's Advice Letter do not justify rejecting the agreement at issue here.

The DA/CCA Parties' Protest

The DA/CCA Parties assert that, to the extent they are allocated costs associated with the RA Agreement, they should also be allocated benefits.[12] In its Advice Letter, PG&E proposed allocating the costs and benefits to bundled, Direct Access ("DA") and Community Choice Aggregation ("CCA") customers. With regard to the RA benefits associated with the RA Agreement, PG&E agrees that these benefits should be appropriately allocated to Energy Service Providers ("ESPs") that represent DA customers and to CCAs and requests that the Energy Division do so as a part of its administration of the Commission's RA Program, including issuing an update to the July 2012 CAMS allocations by May 30, 2012 so that all ESPs can include their allocation of Sutter capacity in their July 2012 RA compliance filing. The Energy Division currently performs a similar RA benefit allocation for contracts in PG&E's New System Generation Balancing Account ("NSGBA") and thus should be able to do so for the RA Agreement as well.

The DA/CCA Parties also assert that, as a result of the timing associated with the approval of the three utilities' respective advice letters, they will not be able to use the RA benefits associated with the RA Agreement for their monthly July 2012 RA requirements showing.[13] Thus, the DA/CCA parties maintain that

[11] TURN Protest at pp. 3-4.

[12] DA/CCA Parties Protest at p. 2.

[13] *Id.*

they should not bear any of the RA Agreement costs until they are able to use the RA benefits.[14] This argument should be rejected. The DA/CCA Parties are in the same position as the utilities with regards to being able to utilize Sutter facility RA in that: (1) all parties had equal knowledge of the possibility that a contract with Sutter would be executed as a result of the Resolution; and (2) all parties have equal uncertainty whether the Energy Division would approve a contract with Sutter. Thus, all parties are on equal footing with regards to their RA procurement efforts in light of the Resolution and as long as an allocation of RA is made by the Energy Division for inclusion in an RA filing, all customers should bear the costs of the RA Agreement.

The Energy Division Disposition Letter Should Include The Findings Requested By PG&E

In its Advice Letter, PG&E requested specific findings in the Energy Division's disposition letter. No party opposed PG&E's request. Thus, PG&E requests that the Energy Division include in its disposition letter the following findings:

1) With the authority delegated to it by the Commission, the Energy Division approve the RA Agreement as reasonable;

2) The Energy Division expressly state in its disposition letter that all payments to be made by PG&E under the RA Agreement are just and reasonable and fully recoverable in rates;

3) The Energy Division expressly state in its disposition letter that the RA Agreement is not subject to further reasonableness reviews other than a review of PG&E's administration of the RA Agreement; and,

4) In approving the Advice Letter, the Energy Division explicitly approve the recovery of costs associated with the RA Agreement in ERRA and through the CAM, recorded in the NSGBA, as described in this advice letter.

Sincerely,

Vice President - Regulation and Rates

cc: President Michael R. Peevey
Commissioner Mark J. Ferron
Commissioner Catherine J.K. Sandoval

[14] *Id*. at p. 3.

Commissioner Mike Florio
Commissioner Timothy Alan Simon
Frank Lindh, General Counsel
Chief ALJ Karen Clopton
Edward Randolph, Director, Energy Division
Service List for R.10-05-006
Service List for R.11-10-023
Service List for R.12-03-014
Claire Eustace – DRA
Cynthia Walker – DRA
Roscella Gonzalez – DRA
Legal Support – DRA
Sue Mara – AReM/DACC/EUF/MEA
Valerie A. Stevenson – Adams Broadwell Joseph & Cardozo for CCU
Mark D. Joseph - Adams Broadwell Joseph & Cardozo for CCU
Richard Perez – TURN
Matthew Freedman - TURN