

## PUBLIC UTILITIES COMMISSION

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May 25, 2012

Advice Letter 4034-E/4034-E-A

Brian K. Cherry  
Vice President, Regulation and Rates  
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**Subject:** Approval of PG&E AL 4034-E and 4034-E-A requesting approval of a power purchase agreement between PG&E and Calpine Energy Services in compliance with Commission Resolution E-4471

Dear Mr. Cherry:

Energy Division approves Advice Letter 4034-E/4034-E-A (Advice Letter), with an effective date of May 25, 2012. Energy Division finds the Advice Letter is in compliance with Commission Resolution E-4471.

**Background:**

On March 22<sup>nd</sup>, 2012 the Commission issued Resolution E-4471 ordering Pacific Gas and Electric ("PG&E") to negotiate a power purchase agreement with Calpine Energy Services L.P. ("Calpine") for the Sutter power plant for a price less than that available under the Capacity Procurement Mechanism (CPM). The California Independent System Operator ("CAISO") had filed with the Federal Energy Regulatory Commission ("FERC") in order to create a contracting mechanism to provide Sutter with a backstop contract that would provide additional revenue to keep it operating. CAISO released a report as part of the backstop contracting process (referred to as Capacity Procurement Mechanism) that demonstrated the potential reliability risks that might occur in future years upon retirement of Sutter.

On May 4<sup>th</sup>, 2012 PG&E filed Advice Letter 4034-E in compliance with Commission Resolution E-4471. The Advice Letter included as an appendix the procurement contract for Resource Adequacy (RA) from the Sutter plant (contract or RA Agreement) for which PG&E is seeking approval. PG&E also requests approval of a subaccount to the New System Generation Balancing Account. On May 7, 2012 PG&E filed a supplemental AL 4034-E-A in which PG&E attached the confidential Independent Evaluator Report.

**Protests:**

DRA filed a protest on May 23<sup>rd</sup> disputing whether this contract and the pricing terms were just and reasonable. DRA discussed the contract price relative to market prices PG&E otherwise pays for resource adequacy (RA) capacity and used this comparison to dispute PG&E's assertion that PG&E followed the dictates of Resolution E-4471. Energy Division dismisses the protest, since Resolution E-4471 set the standard against which PG&E was required to demonstrate reasonableness, i.e. the

contract is less than PG&E's proportionate share of the CPM price of \$17.4 million. PG&E demonstrated that they complied with the requirements of the resolution.

Alliance for Retail Energy Markets, Direct Access Coalition, Energy Users Forum, and Marin Energy Authority filed a joint protest (AReM et al. protest) on May 24<sup>th</sup> arguing that the approval of this Advice Letter would create costs for direct access customers without the accompanying allocation of RA capacity credit, meaning that customers on direct access or customers of community choice aggregators would pay for RA capacity that they would not receive the benefits of. Protestants requested that the Commission order the utilities to allocate RA capacity credit to all benefitting customers as a means of giving them the benefits to go along with the costs of the Sutter contract. Energy Division does not believe this protest merits rejection of the Advice Letter since we plan to implement this request, as specified below. While the ARem et al. protest would have Energy Division implement their request at a later date, we believe we can comply immediately and avoid any further delays.

TURN protested the Advice Letter on May 24<sup>th</sup> on the basis that the mechanics of how Calpine and the utilities negotiated was not leading to best value for ratepayers. In addition, TURN proposed a means to return over market revenues to ratepayers in the form of agreements for future years. These concerns are outside the scope of the Advice Letter, as TURN's suggested process and any future year agreements are not criteria Energy Division was ordered to use in reviewing the Advice Letter. TURN's protest attempts to relitigate Resolution E-4471.

CUE filed a protest on May 24<sup>th</sup> and states that Calpine is bluffing about Sutter's retirement. CUE proposes a detailed mechanism to repay above market 2012 payments for Sutter from future profits from the Sutter plant. As with TURN's protest, CUE's suggestion is outside the scope of the Advice Letter and is an attempt to relitigate Resolution E-4471.

PG&E responded to the protests on May 25, 2012. PG&E argued that DRA, TURN, and CUE filed protests that are outside the scope of the Advice Letter. PG&E argued that the AReM et al. protest can be accommodated if the Energy Division provides the capacity allocations. PG&E states, "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." (p. 5)

#### **Discussion:**

Energy Division does not find any of the four protests meet the grounds for protest established in General Order 96-B (Section 7.4.2). In particular "a protest may not rely on policy objections to an advice letter where the relief requested in the advice letter follows rules or directions established by statute or Commission order applicable to the utility". (Ibid.) With the exception of the AReM et al. protest which the Energy Division addresses via separate action, each of the other protests requests a relitigation of Resolution E-4471 and each requests the Energy Division not apply the approval standard clearly communicated via the Resolution.

In light of the above, PG&E's Advice Letter is in compliance with Commission Resolution E-4471, and we find that PG&E has shown that the Sutter contract is just and reasonable and the costs fully recoverable in rates. PG&E's contract is less than the price that would otherwise have been charged for Sutter at the CPM price. PG&E's Advice Letter requested the following findings: PG&E's entry into the RA agreement with Calpine for Sutter is reasonable, the payments made by PG&E are just and reasonable and fully recoverable in rates, the RA Agreement is not subject to further reasonableness reviews other than a review of PG&E's administration of the RA Agreement; and PG&E's portion of the total IOU compensation to Calpine is not more than its proportional load share.

**Allocation of RA capacity credit:**

As adopted in D.07-09-044 and D.09-06-028, the Energy Division allocates capacity credit to load serving entities (LSEs) for the contracts whose costs are paid for via a non-bypassable charge to all benefitting customers. For purposes of PG&E's Sutter contract, Energy Division will allocate capacity for July and August 2012 (capacity for those months was already allocated April 12th and May 16th respectively), for use in the RA filings due on June 1 and July 2. Via revised letter dated today, Energy Division will send revised capacity allocations to each LSE for these filing months to reflect the Sutter contract. Energy Division will continue to allocate capacity for this contract along the normal schedule for the remaining months of the contract term.

Sincerely,

*Molly Storkel for Ed Randolph*

Edward F. Randolph, Director  
Energy Division

Cc via email:

President Michael R. Peevey  
Commissioner Mark J. Ferron  
Commissioner Catherine J.K. Sandoval  
Commissioner Mike Florio  
Commissioner Timothy Alan Simon  
Frank Lindh, General Counsel  
Chief ALJ Karen Clopton  
Service List for R.10-05-006  
Service List for R.11-10-023  
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Protestors:

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