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9/12/2012

Pacific Gas and Electric Company  
San Francisco, CA 94177

Attn: Fong Wan  
Senior Vice President, Energy Procurement

**Re: New information regarding Westlands Solar Farms' Request**

Fong,

Please review the following information in support of Westlands Solar Farms' (WSF) request for a site description change or milestone extension to mitigate a California Farm Bureau Federation (CFBF) Williamson Act lawsuit, based in part on precedent set this spring by PG&E's UOG Program. We strongly encourage PG&E to reconsider its recent decision to deny WSF's request in light of this new information.

**WSF Findings**

- **PG&E UOG Project Preferential Treatment:** PG&E has demonstrated preferential treatment to PV program UOG projects compared to WSF's PPA project. This bias is evidenced by UOG PY3's Site change and associated timing extensions to mitigate CFBF Williamson Act risk for the Gates I, III and Guernsey projects (Appendix 1). This bias may be influenced by PG&E's ~\$40M UOG incentive structure for PY3-5 (Appendix 2) which may also represent a conflict of interest.
- **WSF Project and the CFBF Lawsuit:** PG&E's August 15<sup>th</sup> decision to deny WSF's request to mitigate CFBF Williamson Act lawsuit risk places the WSF project at imminent risk of default. Specifically, the CFBF's lawsuit against the Fresno Board of Supervisors (BoS) will delay WSF's project from achieving its Milestones at its current Williamson Act site. The CFBF has opposed WSF's site through a lengthy lawsuit (Appendix 3) for the same exact reason the CFBF objected to PG&E's UOG projects.
- **Fresno County:** WSF's project is supported by Fresno County's elected officials, local business leaders, government organizations, cities and farmers. (See attached letters of support from Henry Perea, Phil Larson, Fresno EDC, City of Huron, City of Mendota et. al). These groups want to see this project built and strongly believe that local private enterprise deserves the same opportunities PG&E grants its own projects in Fresno County. (Appendix 4)
- **Additional Considerations:** There are many other qualitative reasons why PG&E should reconsider WSF's request (Appendix 5).

**History**

**WSF Request**

- ***Change to site description:*** WSF requested that PG&E allow an edit to the site description in Appendix IV of the PPA (i.e. not a Term or Condition of the PPA).
  - The site proposed (24862 Jayne Ave) is located 5 miles west of WSF's original site description (19536 Jayne Ave). The new non-Williamson Act site is located along the same road (Jayne Ave), the same point of interconnection (Gates-Coalinga 70kv) in the same zone (ZP-26) as the original

site. CPUC, CAISO and PG&E GIS have all commented that this change is allowable and feasible. PG&E has confirmed that changes to PPA Appendices are within its discretion and that these changes do not require advice letters to the CPUC.

- *Extension:* A milestone extension to mitigate timing risk associated with the CFBF lawsuit.

#### PG&E Responses

- *July 27, 2012:* Chad Curran of the Contracts stated that PG&E's contract, legal and management department's position was that a change of Site was not allowable based on PG&E's legal team's opinion that property, or "Site", is a material provision of the PV Program.
- *August 15, 2012:* PG&E stated in a letter (Attachment: *PG&E Denies WSF Request 8\_15\_2012*) that: *"With regards to Westlands' request to allow an alternate Site for the project, the PPA does not give Westlands a right to change the Site of the project and PG&E will not permit the Project to be developed at an alternate Site. Regarding Westlands' request for lawsuit-specific extensions, PG&E will not agree to any extensions beyond the 360 days of Permitted Extensions already granted to Seller."*

### **Recommendation**

PG&E allow WSF to change its street address and APN in Appendix IV of the PPA and/or grant additional extensions necessary to relocate to a non-Williamson Act property in the same manner granted to UOG Program Year 3 (PY3).

This will ensure:

- 'Fair and consistent' administration of PV Program projects per annual Independent Evaluator review standards and historical CPUC rulemaking.
- WSF project avoids failure.
- A public relations victory for PG&E in Fresno County.
  - PG&E's role in resolving this contentious and high profile situation will be viewed very favorably by Fresno BoS, CFBF, Department of Conservation (DoC) and WSF. Alternatively, PG&E risks alienating these groups if it does not grant WSF (a local Fresno enterprise) the same opportunity it granted its own UOG projects.
- PG&E receives Resource Adequacy benefits (i.e. ~15MWs of NQC) in a high LCR.
  - This Solar PV project enhances the utilization of Helm's PSP during the partial-peak (i.e. periods of high load when hydro shuts down due to energy limitations) which will be necessary to help PG&E attain 4,700MWs of flexible capacity by 2020. A solar generation solution to increase Helm's utilization was first proposed in 2008's C3ETP (i.e. Alternative #10).
- PG&E avoids further escalation involving 3<sup>rd</sup> parties

### **Next Steps**

Please carefully review the appendices and attachments to this letter and contact me at 917-841-4640 or [jm@westlands-solar.com](mailto:jm@westlands-solar.com) to set up a time to discuss.

I sincerely believe it is best that we resolve this matter amongst ourselves as quickly as possible.

All the best,  
John

John C. Morris  
Chief Operating Officer  
Westlands Solar Farms, LLC

## Appendix 1

### PG&E Utility Owned Generation (UOG) Projects: Preferential Treatment

**Overview:** There is compelling evidence that PG&E has provided preferential treatment to PV program UOG projects as compared to its treatment of WSF's PV program PPA project.

#### Comparison:

	WSF PPA	PG&E UOG
Site change	August 15, 2012, PG&E <u>denied</u> WSF's request <u>18MWs</u> .	PG&E <u>permitted</u> UOG projects to change Site for <u>50MWs</u> .
Extension	August 15, 2012 PG&E <u>denied</u> WSF <u>any additional extensions</u> to mitigate CFBF lawsuit.	PG&E <u>permitted</u> UOG projects > <u>eight (8) months</u> to re-locate 'Sites' after these 'Sites' had been selected in RFP in October 2011.
Incentive_	<u>PG&amp;E receives no direct bonus incentive</u> to assist PPA projects to completion.	<u>PG&amp;E is financially motivated</u> to assist UOG projects to completion. The capital cost saving incentive program will result in <u>~\$40M to PG&amp;E for Years 3-5</u> . This is the equivalent to a \$266k per MW AC bonus for the remaining 150MW of the program. Note: PG&E's administration, operations and maintenance costs for the UOG projects are already accounted for in the General Rate Case (GRC).
Transparenc y	WSF has been <u>transparent and collaborative</u> . WSF has kept PG&E apprised of all discussions with relevant WA groups (e.g. ALCC, DoC, CFBF)	PG&E did not inform WSF of its discussions with relevant WA groups (e.g. ALCC, DoC, CFBF). Additionally, PG&E did not inform WSF of agreements made between PG&E and the CFBF despite knowledge that PG&E's agreement would damage WSF's ability to settle a lawsuit with the CFBF and lead to additional WSF legal fees.

#### UOG Timeline:

DATE		Relevant Information
October 14, 2011	PG&E releases 250MW Utility Owned PV Program Year 3 RFP	<u>Project Sites selected:</u> Section D "Year 3 Project Sites" states: <i>"For Year-Three of the five year Program, PG&amp;E has selected four projects sites which are located in California's San Joaquin Valley. These sites are:...</i> <i>Gates Solar... located at Latitude 36, 08,53 N, Longitude 120, 05, 23W.</i> <i>Guernsey Solar...located at Latitude 36,13,20N, Longitude 119, 40,39W"</i>
October 24, 2011	Assembly Select Committee on Renewable Energy	<u>PG&amp;E abuse of power:</u> The CFBF publically accuses PG&E of abusing its power of condemnation and eminent domain in skirting the Williamson Act in Fresno

	Economy in Rural California	County <a href="http://www.cfbf.com/issues/pdf/REERCtestimony.pdf">http://www.cfbf.com/issues/pdf/REERCtestimony.pdf</a>
October 31, 2011	Fresno Bee article	<u>CFBF sues Fresno BoS</u> : CFBF publically announces that it is suing Fresno County BoS' decision to cancel WSF's WA contract. <a href="http://www.capitalpress.com/print/TH-fresno-lawsuit-w-infobox-111111">http://www.capitalpress.com/print/TH-fresno-lawsuit-w-infobox-111111</a>
November 12, 2011	Fresno Bee article	<u>Public Backlash</u> : The CFBF, Fresno County BoS and Assessors Office criticize PG&E's treatment of WA land. In the article, John Gamper (CFBF) states that PG&E is 'throwing ag (agriculture) under the bus'. Phil Larson, Fresno County BoS Commissioner states 'We don't like what PG&E is doing'. Supervisor Debbie Poochigian, Fresno County Board of Supervisors, states 'As PG&E moves forward on Prime Ag land, I would hope our board would oppose it.' The article also highlights that Paul Dictos, Fresno County Assessor, recently sent a letter to PG&E stating they have usurped too much farmland for Solar. <a href="http://www.menafn.com/menafn/qn_news_story.aspx?storyid={1d0f38cc-334c-4b3c-ba10-cd0cdcfd0d78}">http://www.menafn.com/menafn/qn_news_story.aspx?storyid={1d0f38cc-334c-4b3c-ba10-cd0cdcfd0d78}</a>
November 16, 2011	PG&E UOG RFP closes	<u>PG&amp;E receives EPC bids for original Project Sites</u>
November 17, 2011	Fresno County Solar Guidelines Workshop	<u>PG&amp;E public outreach</u> : PG&E government relations representatives (Cindi Pollard) attempts to explain PG&E's site selection process for land designated as prime and in the Williamson act. The representative identifies the utility's ability to nullify WA land. PG&E outlines that in year 1 and 2 of the UOG program PG&E has built or is in the process of building solar PV projects on 634 acres of prime land of which 560 acres was in the Williamson Act (pages 13-14 of PG&E presentation). The Department of Conservation, Westlands Water District and the County make counter-presentations making a strong case that Solar PV should not be sited on Williamson Act lands. <a href="http://www.co.fresno.ca.us/DepartmentPage.aspx?id=6030">http://www.co.fresno.ca.us/DepartmentPage.aspx?id=6030</a>
December 9, 2011	PG&E UOG RFP shortlist	<u>PG&amp;E shortlists four EPCs for the original project Sites outlined in the RFP</u> : Cupertino, Elecnor, Solon and Swinerton asked to provide 'best and final' price for original sites.
~December 15, 2011	EPC Winners Selected	<u>PG&amp;E selects two EPCs for the original project Sites</u> : Cupertino and Elecnor
January 2011	Contract Awards Delayed	Winning EPCs are informed that PG&E is now pursuing new non-WA Sites to replace original Gates and Guernsey sites and abandon the Giffen site outlined in October 14 <sup>th</sup> RFP.
December-	<b><u>UOG Project Site</u></b>	<b><u>PG&amp;E relocates Williamson Act project Sites to non-</u></b>

June 2012	<b>Change</b>	<p><b><u>Williamson Act project Sites.</u></b></p> <p><u>Gates Solar</u></p> <p>Original Site: Williamson Act property located on Jayne Ave east of Lassen Ave. (i.e. Latitude 36, 08,53 N, Longitude 120, 05, 23W)</p> <p>New Sites:</p> <ul style="list-style-type: none"> <li>• Gates Solar 1- non-Williamson Act land owned by PG&amp;E (i.e. NW corner of the Gates substation, located on Jayne Ave west of Lassen Ave)</li> <li>• Gates Solar 3-non-Williamson Act land owned by PG&amp;E located near the Huron substation (i.e. Lassen and Gale Ave).</li> </ul> <p><u>Guernsey Solar</u></p> <p>Original Site: Williamson Act land across the street from the substation</p> <p>New Site: Non-WA act land 4.5miles from the substation</p>
June 2012	PG&E provides new project Sites	<p>Winning EPCs provided with new sites specification and were asked to re-price proposals for PG&amp;E</p> <p>Note: these new Sites did not go out for re-bid to entire shortlist</p>
August 2012	PG&E awards contracts	<p><u>Cupertino</u>-30MWs split between PG&amp;E's two new Sites (Gates Solar 1,3)</p> <p><u>Elecnor</u> -20MWs at new Site for Guernsey</p>

- **Sources:** These findings are based on review of CPUC decisions for the PV Program, PG&E's RFP for UOG Year 3 (PY3), PG&E's informal and formal responses to WSF requests, property assessment of Sites selected in the RFP for UOG PY3 (i.e. utilizing County of Fresno Agricultural Preserve Parcel Maps, Department of Conservation Farmland Mapping Monitoring Program (FMMP) and the CA National Resource Conservation Service database), and discussions with Fresno County officials and UOG qualified EPCs.

## Appendix 2

### PG&E Capital Cost Saving Incentive Mechanism

#### Overview

- Eligibility: Only PG&E's UOG projects.
- Mechanism: PG&E's shareholders receive a bonus equal to 10% of the difference between \$3920/KW DC and UOG DC project capital cost.

#### Estimate

- **Total: ~\$39.77M bonus for UOG PY3, 4, 5.**
- This analysis does not include PY1 or PY2.

#### Break-out

- PY3: ~\$8.22M bonus
  - Assumptions:
    - Elecnor announced that their winning price for PY3 was \$65.1M or \$2,604/KW on 25MW DC (20MW AC).
    - DC/AC ratio: 1.25 DC per 1 MW AC -based on Elecnor announcement.
    - Pricing: Conservatively assumes the remaining 30MW AC are also priced at \$2,604/KW despite these projects employing a cheaper fixed tilt technology
  - Formula:  $((\$3,920/\text{KW} - \$2,604/\text{KW}) * 62,500\text{KW} * .10) = \$8,225,000$
- PY4: ~\$13.9M bonus
  - Capex assumption: \$1,692/KW;
    - Assumes a 35% yoy reduction as demonstrated over the last 3 years
    - Formula =  $((\$2,604/\text{KW} - (\$2,604/\text{KW} * .35))$
    - Assumption is conservative considering that non-UOG projects (IPP portion) capex cost today are already \$1,900/KW
  - Formula :  $((\$3,920/\text{KW} - \$1,692/\text{KW}) * 62,500\text{KW} * .10) = \$13,921,250$
- PY5 ~\$17.6M bonus
  - Capex assumption: \$1,375/KW
    - Assumes a 35% yoy reduction as demonstrated over the last 3 years
    - Formula =  $((\$1,692/\text{KW} - (\$1,692/\text{KW} * .35))$
  - Formula :  $((\$3,920/\text{KW} - \$1,375/\text{KW}) * 62,500\text{KW} * .10) = \$17,623,812$

**Summary: PG&E has a mechanism which incentivizes completion of UOG projects. For projects which have been delayed due to site change during a time in which construction prices fell, PG&E's bonuses went up.**

## Appendix 3

### WSF Project and CFBF Williamson Act Lawsuit

#### Timeline:

August 30, 2011	Fresno County BoS	<u>Unanimous approval of WA contract cancelation, 5-0 Vote.</u>
October 20, 2011	Fresno County Planning Dept	<u>Fresno County issues Conditional Use Permit (CUP)</u>
November 7, 2011	CFBF	<u>CFBF sues Fresno County and BoS</u> CFBF files Verified Petition for Peremptory Writ of Mandate and Complaint over Fresno County's decision to cancel WSF's WA contract. <a href="http://www.capitalpress.com/print/TH-fresno-lawsuit-w-infobox-111111">http://www.capitalpress.com/print/TH-fresno-lawsuit-w-infobox-111111</a>
November 9, 2011	CFBF	CFBF files First Amended Verified Petition for Peremptory Writ of Mandate and Complaint For Injunctive Relief
December 14, 2011	Fresno County Planning Dept	<u>WSF receives WA 'Contract of Cancellation'</u>
December 19, 2011	WSF files for dismissal	<u>WSF files demurer against CFBF complaint</u> for hearing on 1/30/12 Claim is made that CFBF lacks standing in the case.
January 30, 2012	Judge recuses herself	New Judge continues 1/30/12 hearing until 3/21/12
March 21, 2012	Court Hearing	Judge grants WSF demurrer yet allows for amendment.
April 25, 2012	CFBF	CFBF files Second Amended Verified Petition for Peremptory Writ of Mandate and Complaint For Injunctive Relief - CFBF claims associational standing through Fresno County Farm Bureau
May 14, 2012	WSF files for dismissal	<u>WSF files demurrer to CFBF Second Amended Verified Petition.</u> WSF asserts that CFBF still lacks standing to file this lawsuit
June 28, 2012	Fresno County Court	<u>Judge allows CFBF lawsuit to proceed.</u> Judge determines that CFBF does have required associational standing in the case through its sole member in Fresno County: the Fresno County Farm Bureau which owns an office building in the city of Fresno (60 miles away). Judge sets hearing on CFBF Petition for Writ of Mandate for 10/19/12
September 2012	WSF	<u>WSF begins public campaign against CFBF</u> WSF leverages support from Fresno County, the Governor's office, CA renewable energy companies and county officials across the state. WSF representative speaks at the Fresno County hearing on AB1265 on September 11, 2012 at which the BoS will decide whether to support diminishment of the WA.

## Appendix 4

### Fresno County

Overview: WSF project is important to people of Fresno County. Fresno County governments, politicians, large farmer businesses and workers have been outspoken in its continued support of this project over the past year. This project is important to the economy of Fresno County. As you may know, Fresno County is currently facing harsh economic and low water conditions which are negatively impacting large segments of our local community. WSF's project will create much needed jobs and tax revenue for the County.

#### Groups supporting WSF Project

- *Elected officials:* The Fresno County Board of Supervisors, unanimously approved Williamson Act contract cancellation for this project by a 5-0 vote site in August of 2011. Commissioner Phil Larson, Debbie Poochigian and Henry Perea have all been outspoken in their support of the project. Driving their support is a fundamental belief that Fresno Farmers deserve the same solar opportunities as PG&E and large organizations. Fresno's elected officials and labor organizations have reached out to PG&E in person and by letter requesting that PG&E allow a site change to resolve a Williamson Act conflict with CFBF and bring the project to completion in order to create jobs.
- *Cities:* City of Huron and City of Mendota have written letters of support for this project.
- *Labor:* Fresno County Economic Development Committee (EDC) have written multiple letters of support for this project. Proteaus, a workforce development organization, has also expressed its strong support.
- *Large agricultural:* Borba Farms, Woolf Farms, Lyle diversified, Schuil and Associates, Western Milling, Limoniera, and many others have all expressed support for WSF's project.

#### PG&E Opportunity

- PG&E has a PR opportunity to resolve this issue to benefit the Fresno BoS, CFBF, Department of Conservation (DoC) and WSF. PG&E's role in meditating this contentious situation will be viewed very favorably by all parties. This type of positive PR will likely help mitigate the risk of load loss in the area (e.g. San Joaquin Power Authority CCA).

#### PG&E Risk

- PG&E risks alienating the aforementioned groups if it does not grant WSF (a local Fresno enterprise) the same opportunity it granted its own UOG projects.
- *Load:* Fresno is one of the largest and fastest growing peak loads for PG&E.
- *Existing relationship:* PG&E has a strained relationship with Fresno County particularly when it comes to Solar PV <http://overburyink.com/sample/?p=1275> Despite recent PG&E's new economic development electricity rate Fresnoians continue to express outrage at PG&E's high rates.



## Appendix 5

### Additional Considerations

- Precedent: In addition to PG&E allowing site change and extensions for its UOG projects, other renewable projects have been allowed Site change (i.e. PG&E-CalRenew AL 3074-E-A, SCE Sierra View Solar AL 2547-E-A.) Additionally, senior members of PG&E GIS have stated that Site change “occurs often when there are land issues.”
- Standing: WSF PV1 is in good standing with PG&E. WSF has always been on time with financial deposits and monthly projects reports.
- Protocol: WSF has followed proper protocol with all requests to date.
- Early Notification: WSF request to mitigate default risk was made eight (8) months in advance of its start of construction guaranteed milestone.
- Feasibility: CAISO and PG&E GIS have all determined that WSF’s request to move the project from 19536 Jayne Ave to 24862 Jayne Ave. (5miles west along the same point of interconnection) is feasible. CPUC has stated that WSF request is reasonable and would not require an Advice letter.
- CA business: WSF is small CA business founded by CA farmers and employing CA residents. WSF is not a large foreign corporation.
- Capital at risk: The WSF members have committed 3 +years of hard work and \$2M of our own money to this project. This will all be lost if PG&E does not grant WSF’s request