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

Re: PG&E's Reply to Protests of Advice Letter 4100-E, Request for Modification of PG&E's Renewable Auction Mechanism Program Pursuant to Decision 10-12-048

I. Introduction

Pacific Gas and Electric Company ("PG&E") filed Tier 3 Advice Letter 4100-E (the "Advice Letter") on August 16, 2012 to modify specific components of its Renewable Auction Mechanism ("RAM") Program and standard power purchase agreement ("PPA") for use in its third RAM Solicitation consistent with Commission Decision ("D.") 10-12-048 (the "RAM Decision").

On September 5, 2012, the Solar Energy Industries Association ("SEIA") and Clean Coalition filed and served protests to the Advice Letter. For the reasons described in this reply and in the Advice Letter, the Advice Letter should be approved by the Commission with some modifications noted below to address specific issues raised by SEIA and Clean Coalition.

II. Extension to the Guaranteed Commercial Operation Date

SEIA and Clean Coalition both expressed concern regarding PG&E's proposal to extend the Guaranteed Commercial Operation Date ("Guaranteed COD") from twenty-four (24) months to thirty-six (36) months. SEIA recommends complete rejection of this proposal, expressing concern that this could allow projects with a minimal chance of success to execute RAM contracts.¹ Although Clean Coalition does not agree with PG&E's suggestion to extend the Guaranteed COD, it asserts that there are numerous projects ready to build that are facing

¹ SEIA Protest at p. 2.

delays in final interconnection cost determination or permitting approvals and that a viable project with a PPA and ready to build should not have the PPA terminated due to regulatory or permitting delays.²

Based on lessons learned since the time the RAM Program was initially adopted, and experience with PG&E's solar photovoltaic ("PV") Program and Feed-in Tariff Program, it can often take more than thirty (30) months³ to reach commercial operation, even for a small, viable project. Furthermore, the RAM Program's upfront project viability screen further mitigates SEIA's concern.⁴

Clean Coalition supports an extension for the regulatory delay category and suggests a day-for-day extension for administrative cause for up to eighteen (18) months when the Seller has taken all commercially reasonable actions and met all its requirements and deadlines in seeking to obtain permit approval and interconnection agreements. PG&E agrees that the focus of the extension in COD should be to address interconnection, permitting and regulatory delays, so requests to modify its initial proposal and instead maintain the twenty-four (24) month Guaranteed COD while increasing the regulatory delay period to eighteen (18) months, thus focusing the extension in COD to address issues with regulatory, interconnection and permitting delays.

III. Obligation of Energy-Only Sellers

Both SEIA and Clean Coalition request that the Commission reject PG&E's proposal that energy-only Sellers be required to pursue deliverability via the annual process while capping the Seller's cost responsibility at \$50,000. SEIA is concerned that under this proposal, energy-only sellers would have to bear the financial burden of funding up to \$50,000 for annual deliverability studies and that these sellers would not be compensated for the Resource Adequacy ("RA") value conferred if the studies they fund result in full deliverability.⁵ Clean Coalition argues that PG&E did not provide justification for this proposal and notes a preference for the current approach of requiring the seller to apply for deliverability and only pursue it if there is no incremental cost. Clean Coalition is further concerned that a flat cap of \$50,000 would disproportionately disadvantage smaller projects.⁶

As stated in the Advice Letter, PG&E's proposal would allow utility customers to benefit if RA can be acquired at a low cost and without additional network upgrades. Additionally, sellers that bid in as energy-only should include the \$50,000 cost of their studies into their offer price when submitting their offers. Finally, in response to Clean Coalition's concern, PG&E proposes to modify its original request to establish a lower cap of \$30,000 for projects

² Clean Coalition Protest at p. 3.

³ The RAM Program currently permits projects 24 months from Commission approval to come online and an additional 6 months for regulatory delay, for a total of 30 months.

⁴ RAM Decision at p. 65

⁵ SEIA Protest at p. 2-3

⁶ Clean Coalition Protest at p. 1.

up to 10 megawatts (“MW”), and maintaining the cap of \$50,000 to for projects over 10 MW and up to 20 MW.

IV. Letter of Credit Requirements

SEIA notes in its protest that it does not oppose in principle PG&E’s modifications to its letter of credit requirements, but is concerned that some of the proposed PPA language could be ambiguous and overbroad.⁷ Specifically, SEIA notes that the reference to “60% of total collateral” in Section 1.151 of the PPA could be interpreted to mean 60% of the total collateral posted by a Seller on a project that is the subject of the PPA, or 60% of the total collateral posted by the Seller on all of its projects with the issuing bank, or any issuing bank. PG&E confirms that the total collateral refers only to collateral posted under that particular PPA. PG&E notes that the ambiguity raised by SEIA has not been an issue in practice, as the “Seller” under each PPA is typically a limited liability company whose sole purpose is to serve as the legal entity for the project selling energy under a specific PPA.

Additionally, SEIA is concerned with the fact that the definition of “Maximum Issuing Amount” in the PPA could potentially result in Sellers having to obtain letters of credit from more than one bank. From its experience with the RAM Program, PG&E has found that it is uncommon for RAM participants to have to obtain letters of credit from more than one bank. However, even should a RAM participant be required to obtain a letter of credit from multiple banks, this provision is important to limit exposure to any one bank and ensure that PG&E’s customers be protected from the risk of loss due to the failure of any one issuing bank.

SEIA is also concerned about the provision that would enable PG&E to impose additional unspecified conditions in a letter of credit issued by a foreign bank. In response to this concern, PG&E proposes to remove the provision regarding additional changes to the form of letter of credit for a foreign bank. Specifically, PG&E proposes striking the following language from Section 1.148, “Letter of Credit,” “if the issuer is a U.S. branch of a foreign commercial bank, Buyer may require changes to such form.”

V. SEIA’s Request to Defer Addressing Changes to Align PG&E’s RAM PPA with its Draft 2012 RPS Form PPA Should be Denied

SEIA does not present any objections to the modifications PG&E proposes to better align its RAM PPA with its 2012 RPS Form PPA, but rather, suggests that the Commission defer consideration of these modifications to the 2012 RPS Procurement Plan process.⁸ The RAM Program and the 2012 RPS Procurement Plan process are governed by two entirely separate schedules. As a result, waiting for a decision on the 2012 RPS Plan would have the adverse consequence of eliminating an opportunity to implement improvements and lessons learned in the RAM Program in a timely manner. Although the 2012 RPS Procurement Plan process is currently underway, per the schedule proposed in the *Assigned Commissioner’s Ruling Identifying Issues and Schedule of Review for 2012 Renewables Portfolio Standard*

⁷ SEIA Protest at p.4-5.

⁸ SEIA Protest at p.5.

Procurement Plans Pursuant to Public Utilities Code Sections 399.11 et seq., and Requesting Comments on New Proposals Issued issued on April 5, 2012, this process is not expected to be resolved until at least the end of 2012, which is later than the third RAM solicitation scheduled for November. Unlike the 2012 RPS Form PPA, PG&E's RAM PPA is a non-negotiable standard contract, as a result, the opportunity to implement improvements into the third RAM solicitation is limited and should not wait for the 2012 RPS Procurement Plan process to be completed. Instead, this change should be made now so that the remaining RAM solicitations can be even more successful.

VI. Buyer Curtailment Hours

In its protest, Clean Coalition² does not object to PG&E's proposal to increase the required buyer curtailment hours from 100 to 250 hours, but requests clarification that during the buyer curtailment periods, the Seller will be paid the contract price for the incremental 150 hours of curtailed energy. PG&E confirms that the Seller will be paid the contract price for the entire 250 hour period.

VII. Conclusion

For all the foregoing reasons, the Commission should reject the protests and approve PG&E Advice Letter 4100-E with the limited modifications included in PG&E's reply above.

Sincerely,



Vice President - Regulatory Relations

cc: Edward Randolph, Director - Energy Division
Paul Douglas - Energy Division
Adam Schultz - Energy Division
Jeanne B. Armstrong - SEIA
Rob Longnecker - Clean Coalition
Kenneth Sahm White - Clean Coalition
R.11-05-005

² Clean Coalition Protest at p. 3