BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	Docket No. R. 11-05-005 (Filed May 5, 2011)

REPLY OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E) CONCERNING MOTION FOR CLARIFICATION REGARDING EXISTING ASSEMBLY BILL 1969 FEED IN TARIFF PROGRAM

MARIA N. VANKO
CHARLES R. MIDDLEKAUFF

Pacific Gas and Electric Company
77 Beale Street, B30A
San Francisco, CA 94105
Telephone: (415) 973-5639
Facsimile: (415) 972-5952
E-mail: mnva@pge.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

Dated: May 6, 2013

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	Docket No. R. 11-05-005 (Filed May 5, 2011)

REPLY OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E) CONCERNING MOTION FOR CLARIFICATION REGARDING EXISTING ASSEMBLY BILL 1969 FEED IN TARIFF PROGRAM

I. INTRODUCTION

Pursuant to Rule 11.1 (f) of the California Public Utilities Commission ("Commission") Rules of Practice and Procedure, Pacific Gas and Electric Company ("PG&E") hereby files a reply to comments filed by Alpaugh Irrigation District ("Alpaugh") and Clean Coalition concerning PG&E's Motion for Clarification Regarding Existing Assembly Bill ("AB") 1969 Feed in Tariff Program (the "Motion"). PG&E's reply comments are filed with permission granted by Administrative Law Judge ("ALJ") DeAngelis via email on April 28, 2013.

PG&E respectfully filed its Motion to clarify its administration of the AB 1969 Feed in Tariff ("FIT") program in response to repeated inquiries from a developer seeking to participate in PG&E's E-PWF tariff. PG&E filed its Motion in good faith to clarify what the developer considered to be an opportunity to participate in PG&E's E-PWF tariff and Power Purchase Agreement ("PPA") applicable to public water and wastewater customers. PG&E's E-PWF tariff and PPA, unlike comparable tariffs and PPAs administered by Southern California Edison ("SCE") and San Diego Gas and Electric Company ("SDG&E"), does not explicitly restrict the Seller entity in the PPA to entities that are public water or wastewater agencies. Due to this small anomaly and the closure of PG&E's E-SRG tariff, one developer has repeatedly sought

participation in PG&E's E-PWF tariff after being repeatedly informed that they have not met the tariff's eligibility criteria. Accordingly, PG&E has requested clarification through its Motion in order to dispel any ambiguity that may exist and to ensure that AB 1969 tariffs are being administered consistently across counterparties and Investor Owned Utilities ("IOUs"). Thus, the Motion is not directed at any particular party. However, because Alpaugh disparages PG&E's administration of its AB 1969 FIT Program, PG&E is also compelled to reply to specific allegations made by Alpaugh in its comments to PG&E's Motion.

II. LIMITING E-PWF TARIFF PARTICIPATION TO PUBLIC WATER AND WASTEWATER AGENCIES IS CONSISTENT WITH LAW AND COMMISSION PRECEDENT.

The Commission should reject arguments to modify PG&E's AB 1969 FIT Programs to expand E-PWF eligibility to entities other than public water and wastewater agencies. PG&E's implementation of its E-PWF tariff is consistent with applicable law, Commission precedent, and Commission implementation and oversight of the Investor Owned Utilities ("IOU") AB 1969 FIT Programs.

PG&E has had no direct communications with Alpaugh concerning the eligibility of special purpose entities to participate in the E-PWF tariff or requirements for the execution of an E-PWF PPA or regarding the submission of two PPAs with Sustainable Central Valley Solar One, LLC ("SCVS, LLC"). All direct communication with PG&E (i.e., telephone, mail, or email) concerning SVCS, LLC has come from EcoPlexus, a solar developer, and Pillsbury Winthrop Shaw Pittman LLP, which represented to PG&E that it was EcoPlexus' counsel. PG&E consistently communicated its E-PWF eligibility criteria and interpretations of applicable law and Commission precedent concerning two separate and distinct AB 1969 FIT Programs to EcoPlexus and EcoPlexus' counsel. Throughout its communications, PG&E clarified to EcoPlexus that a public water or a public wastewater agency, and not a special purpose entity,

must be PG&E's counterparty under any E-PWF PPA. Therefore, PG&E did not execute the PPAs with SCVS, LLC because SCVS, LLC is not a public water or wastewater agency.

Even if the Commission requires PG&E to expand its E-PWF program to entities other than public water and wastewater agencies, it should not necessarily tailor eligibility criteria based upon Alpaugh's comments concerning the SVCS, LLC project, which Alpaugh has indicated is 50% "owned" by EcoPlexus, although ownership was not defined by Alpaugh. Moreover, for the Commission to do so would result in inconsistent administration of the AB 1969 FIT Program across the IOUs, an outcome that would betray the very "beauty" and "simplicity" of a feed in tariff program extolled by Alpaugh.

A. The Commission Should Reject Clean Coalition's Attempt to Subvert the Ongoing Stakeholder Process to Implement Amendments to Section 399.20.

Clean Coalition contends that the Commission has committed legal error by removing eligibility distinctions for the Senate Bill ("SB") 32 FIT Program, but not the AB 1969 FIT Program.[1/] The Commission should reject Clean Coalition's request for PG&E to "eliminate any distinction between the types of developers with respect to its AB 1969 Program"[2/] as moot. The Commission has clarified that the existing AB 1969 tariffs remain in effect pending Commission direction no less than twice in this proceeding.

As PG&E explains in its Motion, to implement AB 1969, the Commission adopted Decision ("D.") 07-07-027 and issued Commission Resolution E-4137 implementing the Section 399.20 FIT Program. Following the enactment of AB 1969, the Legislature adopted a number of amendments to Public Utilities ("PU") Code Section 399.20, including SB 380, SB 32 and SB 2 (1x). These statutory amendments were each addressed by the Commission in D.12-05-035,

1/ Clean Coalition Comments at pp. 4-5.
2/ Clean Coalition Comments at 3.

which established the framework for the Renewable Market Adjusting Tariff ("ReMAT"), the successor to the AB 1969 FIT program.

Following the Adoption of D.12-05-035, ALJ DeAngelis removed any ambiguity concerning the applicability of the AB 1969 FIT tariffs by clarifying that existing PU Code Section 399.20 FIT Programs implemented by AB 1969 will remain effective until replaced by new tariffs.[3/] Next, the Commission again affirmed ALJ DeAngelis' Ruling that AB 1969 FIT tariffs should remain in effect until replaced by the new tariffs ordered by D. 12-05-035 in its Decision responding to Clean Coalition's own Application of Rehearing of D.12-05-035.[4/]

As of the date of this filing, the Commission has issued a Proposed Decision, and an Alternate Proposed Decision which are each pending CPUC action. Both proposed decisions direct the IOUs to replace their AB 1969 tariff with tariffs incorporating post-AB 1969 statutory revisions to Section 399.20 and establish a schedule and process for replacement by such successor tariffs. Given the imminent implementation of the successor ReMAT program,[5/] the Commission should not again entertain Clean Coalition's request to further modify the AB 1969 FIT Program when it has twice clarified that the existing AB 1969 FIT tariffs remain in effect until replaced.

B. There is no Legal Support for Alpaugh's Assertion that a Special Purpose Entity is Eligible to participate in the E-PWF Tariff.

Alpaugh falsely alleges that PG&E "cites no authority requiring sole public agency ownership in its Motion."[6/] Alpaugh's allegation entirely lacks support.[7/] Particularly, PG&E's

---

3/ ALJ's Ruling Clarifying Status of Existing Assembly Bill 1969 Feed-In-Tariff Program Per the Motion by Southern California Edison Company, dated July 10, 2012.

4/ D. 13-01-041 at p. 19.

5/ *See* California Public Utilities Commission, Public Agenda 3314 (May 9, 2013 Meeting) at Item 29 and 29 a, *available at* http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M064/K583/64583142.PDF (last visited May 3, 2013).

6/ Alpaugh Comments at p. 4.

7/ Alpaugh fails to cite to any authority ascribing a meaning to the term public water or wastewater agencies to include non-public entities such as limited liability corporations or other special purpose entities.

Motion utilizes legal precedent including AB 1969, and Commission authority implementing that statute, including D. 07-07-027, and Resolution E-4137. Moreover, Alpaugh's unsupported position that PG&E "misadministered" its E-PWF program[8/] is hostile to the Commission's own administrative oversight of the AB 1969 Program because the Commission approved comparable SCE and SDG&E tariffs limiting participation to public water and wastewater agencies as defined under the state's Water Code.

While deceptively alleging that PG&E's Motion is unsupported by law, Alpaugh's own comments are entirely devoid of references to AB 1969 to support its premise that special purpose entities are eligible to receive tariff service as public water and wastewater agencies. This omission is perhaps intentional because Alpaugh's argument would insult the fundamental tenets of statutory interpretation: the plain and common sense meaning of "public water and wastewater agencies" simply does not include LLCs. As PG&E explains in its Motion, AB 1969 unambiguously established a FIT Program for public water and wastewater agencies.[9/] In examining a statute, the Legislature's intent should be examined so as to effectuate the law's purpose.[10/] To effect the law's purpose, the statute's words are accorded a plain and common sense meaning.[11/] If the statutory meaning is plain and unambiguous, then the plain meaning controls.[12/] Because there is no ambiguity in the term "public water and wastewater agency," efforts to ascribe new meaning are irrelevant. Accordingly, the Commission should not interpret "public water or wastewater agencies" to include LLCs.

8/ Alpaugh Comments at p. 5.
9/ California Public Utilities Code Section 399.20 (e) (2006).
10/ *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 572 [88 Cal. Rptr. 2d 19, 981 P.2d 944].
11/ *Garcia v. McCutchen* (1997) 16 Cal. 4th 469, 476 [66 Cal. Rptr. 2d 319, 940 P.2d 906].
12/ *People v. Cole, 38 Cal. 4th 964, 974-75, 44 Cal. Rptr. 3d 261, 135 P.3d 669. See also* California Code of Civil Procedure § 1858 (specifying that in the construction of a statute, relevant inquiry is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted).

Second, D.07-07-027 recognized that AB 1969 limited its applicability to certain water and wastewater customers.[13/] However, the Commission utilized AB 1969's framework for standardization, efficiency, simplicity and transparency as a "useful model for other customers."[14/] As PG&E explained in its Motion, the Commission established an expanded, "separate and distinct" program to customers other than water/wastewater agencies. Accordingly, D.07-07-027 supports two FIT Programs: one program for water/wastewater agencies, and one program for all other entities. As PG&E further explained in its Motion, Resolution E-4137, approving "separate and distinct" tariffs and PPAs, even directed private entities which provide water service to utilize the separate program applicable to "other customers" rather than utilize public water or wastewater capacity.[15/] Clearly, SCVS, LLC as a private limited liability corporation that does not provide any public water services, is not a water/wastewater agency and should not avail itself of a special tariff program that the Commission and Legislature intended to be limited to public agencies.

Finally, PG&E's E-PWF administration is wholly consistent with Commission oversight of the AB 1969 FIT Programs. Specifically, the Commission has reviewed and approved comparable tariffs and PPAs established by SCE and SDG&E, each of which limit participation to entities that actually are public water and wastewater agencies as defined in the California Water Code.[16/] Despite the fact that PG&E's E-PWF documents do not contain exacting

---

13/ D. 07-07-027 at pp. 1, 43.
14/ Id. at p. 44.
15/ Resolution E-4137.
16/ *See* SDG&E Schedule WATER at Section 3, defining eligible public water agency as defined in Water Code Section 12970 and eligible public wastewater agency as defined in Water Code Section 12635 (b)) *available at* http://www.sdge.com/sites/default/files/documents/1948520498/schedule_WATER.pdf?nid=3553 (last visited May 6, 2013) and SDG&E WATER Standard Contract (identifying the counterparty "Producer" as a Public Water or Wastewater Agency and establishing a termination right at Section 4.2 if Producer fails to remain a Public Water or Public Wastewater Agency) (last visited May 6, 2013) *available at* http://www.sdge.com/sites/default/files/documents/1325495492/Form%20160-1000%20WATER.doc?nid=3551; and *See also* SCE Schedule WATER at Section 3, *(*defining eligible public water agency as defined in Water Code Section 12970 and eligible public wastewater agency as

language requiring the "Seller" to be a public water/wastewater agency as defined under the California Water Code, PG&E's tariff administration is wholly consistent with applicable law, Commission precedent, and IOU implementation. Therefore, the Commission should affirm that AB 1969 FIT Programs established for public water and wastewater agencies are available to public water and wastewater agencies and not to special purpose entities like SVCS, LLC or private-sector developers like EcoPlexus.

C. PG&E's Specific Requests for Clarification Are Required for PG&E to Administer Any Expanded E-PWF Program.

If the Commission directs PG&E to expand E-PWF eligibility to developers forming special purpose entities with public water or wastewater agencies, it is critical that the Commission also specify minimum eligibility criteria for those developers to participate in an expanded E-PWF tariff. While Alpaugh's comments present Commission with certain information concerning SVCS, LLC' intended structure, the Commission's should not merely direct PG&E to execute a PPA with SVCS, LLC based on Alpaugh's scant representations alone. PG&E has also received inquiries from developers other than EcoPlexus concerning participation in PG&E's E-PWF tariff over the past several years to whom PG&E has communicated the same eligibility criteria. Any decision by the Commission to expand E-PWF eligibility would need to clearly outline the detailed criteria upon which PG&E (and presumably the other California IOUs) could make a determination of eligibility with respect to any request for execution of an E-PWF PPA that may be submitted or re-submitted. All developers and financing situations are different; therefore, clear rules are required to ensure eligibility criteria are met, and consistency in tariff administration. Consequently, if PG&E is directed to expand

---

defined in Water Code Section 12635 (b)(1)) *available at* https://www.sce.com/NR/sc3/tm2/pdf/ce296.pdf (last visited May 6, 2013).

E-PWF to entities other than water and wastewater agencies, it will need to develop criteria to apply to any applicant, not just EcoPlexus.

The Commission should not accept that such criteria are unnecessary based on Alpaugh's blatant mockery of PG&E's criteria and policies;[17/] policies play a valuable and necessary role in PG&E's tariff administration. Specifically, PG&E employs policies and procedures to ensure that PG&E consistently administers its AB 1969 FIT Program. Such policies are essential to ensure fair treatment of market participants and are necessary to ensure that no one developer is favored.

Accordingly, if the Commission directs PG&E to make available E-PWF PPAs to entities other than public water and wastewater agencies, PG&E should not be empowered to wantonly execute PPAs with private entities without clear eligibility criteria. To that end, PG&E requests that the Commission explicitly establish, at a minimum: (1) which entities qualify for E-PWF service; (2) what minimum percentage of ownership is required by a public water agency is required at the time of the entity's request for a E-PWF PPA and thereafter; and (3) the basis upon which PG&E is to calculate public water or wastewater agency ownership (particularly given the possibility of different classes of "ownership" and/or variation in the allocation of economic benefits and risk across "owners").

PG&E also requires the ability to request additional information to verify adherence to the Commission's established criteria. Alpaugh's assertions that PG&E document requests are "a backdoor attempt to obtain proprietary corporate documents"[18/] is hyperbole. PG&E's requests for limited information are reasonably tailored for PG&E to evaluate and confirm tariff

17/ Alpaugh Comments at pp. 6-8 (construing PG&E's administration as "unsanctioned" and falsely alleging that that PG&E's criteria have no support in any applicable statute or regulation or other legal support).

18/ Alpaugh Comments at p. 7.

eligibility.[19] PG&E has no interest in the proprietary information of Alpaugh, SCVS, LLC or EcoPlexus.

Moreover, as PG&E explained in its Motion, minor revisions to the E-PWF PPAs are necessary to enforce any expanded eligibility criteria established by the Commission. The minor revisions include the addition of (1) representations and warranties of the Seller based on any eligibility criteria established by the Commission; and (2) Buyer termination rights if any such expanded eligibility criteria are breached by Seller.[20] PG&E's E-PWF PPA requires modifications because PG&E's existing PPA offers the utility and its customers no protections if the ownership structure of a special purpose entity is modified to reduce the percentage ownership by or to eliminate the participation of the public water or wastewater agency. PG&E proposes to submit any revised PPA to the Commission for approval. In contrast to Alpaugh's assertions, Commission approval of any necessary PPA modifications through the Tier 2 advice letter process is not antithetical to the FIT Program. Instead, Commission review and approval is necessary to ensure the consistent administration of a highly regulated, tariffed product.

III. CONCLUSION

For all of the foregoing reasons, PG&E requests that the Commission affirm its administration of the E-PWF Program. As demonstrated in PG&E's Motion and these

///

///

///

19/ PG&E further notes that neither EcoPlexus nor Alpaugh has provided documentation requested by PG&E pursuant to PG&E's policies and procedures to confirm that Alpaugh is qualifying public water or wastewater agency.

20/ The termination provision requested is consistent with SDG&E's WATER PPA at Section 4.2 (b), which establishes a termination right if the Producer is no longer a Public Water or Wastewater Agency. The PPA's definition of Public Water or Wastewater Agency refers to SDG&E's WATER Tariff, defines Public Water or Wastewater Agencies based on the California Water Code definitions. *See supra* note16.

comments, PG&E's E-PWF program is consistent with applicable law, Commission precedent, and Commission administration of comparable IOU Programs.

Respectfully submitted,

CHARLES R. MIDDLEKAUFF
MARIA VANKO

By: /s/ *MARIA N. VANKO*
MARIA N. VANKO

Pacific Gas and Electric Company
77 Beale Street, B30A
San Francisco, CA 94105
Telephone: (415) 973-5639
Facsimile: (415) 972-5952
E-mail: mnva@pge.com

Dated: May 6, 2013

VERIFICATION

I am an employee of PACIFIC GAS AND ELECTRIC COMPANY, a corporation, and am authorized to make this verification on its behalf. I have read the foregoing **REPLY OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E) CONCERNING MOTION FOR CLARIFICATION REGARDING EXISTING ASSEMBLY BILL 1969 FEED IN TARIFF PROGRAM**. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 6th day of May, 2013 at San Francisco, California.

/s/CARLOS ABREU
CARLOS ABREU
Principal, Competitive Solicitations
Renewable Energy Department