

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



June 7, 2013

Brian Cherry
Pacific Gas & Electric Company
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177
Email: PGETariffs@pge.com

Advice Letter 4210-E

Dear Mr. Cherry:

The Energy Division staff has reviewed the above mentioned advice letter and the attached Compliance Plan. Staff has also reviewed the five (5) protests filed by various parties and PG&E's Reply to those Protests. Energy Division finds that the Compliance Plan you submitted with the advice letter is not in compliance with Commission Decision D.12-12-036.

Compliance Requirements of D. 12-12-036: Pursuant to D.12-12-036/R.12-02-009, Attachment 1, the Code of Conduct and Expedited Complaint Procedure, Rule 2: "No electrical corporation shall market or lobby against a [CCA], except through an independent marketing division..."¹ Furthermore, Rule 22 provides: "...each electrical corporation that intends to market or lobby against a CCA shall submit a *compliance plan demonstrating to the Commission that there are adequate procedures in place that will preclude the sharing of information with its independent marketing division...*"²

Rule 22 in Attachment 1 of D 12-12-036 describes the compliance requirements as follows:

- 1) No later than March 31, 2013, each electrical corporation that intends to market or lobby against a CCA shall submit a compliance plan demonstrating to the Commission that there are adequate procedures in place that will preclude the sharing of information with its independent marketing division that is prohibited by these rules, and is in all other ways in compliance with these rules. The electrical corporation shall submit its compliance plan as a Tier 1 advice letter to the Commission's Energy Division and serve it on the parties to this proceeding. The electrical corporation's compliance plan shall be in effect between the submission and Commission disposition of the advice letter.
 - a. An electrical corporation shall submit a revised compliance plan thereafter by Tier 2 advice letter served on all parties to this proceeding whenever there is a proposed change in the compliance plan for any reason. Energy Division may reject the Tier 2 advice letter and require resubmission as a Tier 3 advice letter if Energy Division believes the change requires an additional level of review.
 - b. An electrical corporation that does not intend to lobby or market against any community choice aggregation program shall file a Tier 1 advice letter no later than March 31, 2013, stating that it does not intend to engage in any such lobbying or marketing.

¹ D.12-12-036/R.12-02-009, at Rule 2.

- i. If such an electrical corporation thereafter decides that it wishes to lobby or market against any community choice aggregation program, it shall not do so until it has filed and received approval of a compliance plan as described above, with its compliance plan filed as a Tier 2 advice letter with Energy Division. (See D.97-12-088, App. A, Part VI.A.)
- c. Any CCA alleging that an electrical corporation has 1) violated the terms of its filed compliance plan or 2) has engaged in lobbying and/or marketing after filing an advice letter stating that it does not intend to conduct such activities, may file a complaint under the expedited complaint procedure authorized in § 366.2(c)(11).

Energy Division rejects AL 4210-E for lack of compliance: In this advice letter filing, PG&E states that it “expects”³ to market against CCAs at some point in the future. However, PG&E also states it “has not yet formed an independent marketing division, does not have a specific timeline for forming one, and has no detailed plans at this time.”⁴ Energy Division cannot approve this advice letter as filed because PG&E says it expects to market against the CCAs in the future, but has not yet formed an independent marketing division. Thus, it has not demonstrated it has adequate procedures in place that will preclude the sharing of information with its independent marketing division that is prohibited by these rules.

Because PG&E expects to market against the CCAs sometime in the future, PG&E’s situation falls into the situation described in Rule 22 b)(i): “An electrical corporation that does not intend to lobby or market against any [CCA] shall file a Tier 1 advice letter ... stating that it does not intend to engage in any such lobbying or marketing. (i) *If such an electrical corporation thereafter decides that it wishes to lobby or market against any [CCA], it shall not do so until it has filed and received approval of a compliance plan as described above with its compliance plan filed as a Tier 2 advice letter.*”⁵

Advice Letter 4210-E is hereby rejected for lack of adequate procedures that will preclude the sharing of information with the independent marketing division that is prohibited by these rules. PG&E shall not engage in marketing against CCAs until such time that it has filed a tier 2 advice letter under rule 22 b)(i) “*and received approval of the compliance plan.*”⁶

Sincerely,



Edward Randolph
Director-Energy Division
California Public Utilities Commission

Cc: CPUC, Energy Division Tariff Unit

³ A.L. 4210-E at 1.

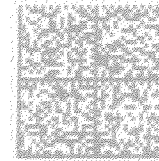
⁴ *Id.*

⁵ D.12-12-036/R.12-02-009, at Rule 22 b)(i) (emphasis added).

⁶ *Id.* (emphasis added).

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Mr. Brian Cherry
Pacific Gas & Electric Company
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177

