Pacific Gas and Electric Company

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

RE: Reply to the Protest of Marin Energy Authority to Pacific Gas and Electric Company's Advice Letter 4253-E (Approval of Pacific Gas and Electric Company's Proposed Amendment of its Power Purchase Agreement with Chevron U.S.A., Inc. to include the Cymric Demonstration Project)

Dear Energy Division Tariff Unit:

Pacific Gas and Electric Company ("PG&E") hereby replies to the August 5, 2013 protest of Marin Energy Authority ("MEA") to PG&E's Advice Letter 4253-E ("Protest"). In this Advice Letter, PG&E requests approval of the proposed Fifth Amendment ("Proposed Amendment") to the Standard Offer 1 ("SO1") As-Delivered Capacity and Energy Power Purchase Agreement ("PPA") between Chevron U.S.A., Inc. ("Chevron") for the Cymric Facility. PG&E requests that the California Public Utilities Commission ("Commission" or "CPUC") dismiss the Protest as being without merit. MEA has consistently protested every step of implementation of the Qualifying Facility ("QF")/Combined Heat and Power ("CHP") Settlement Term Sheet ("Settlement") despite clear Commission decisions on these issues.

MEA asserts that the Commission should reject the Proposed Amendment because (1) the proposal is far too complex to permit the use of the Qualifying Facility Restructuring Reasonableness Letter ("QFRRL" or "Restructuring Advice Letter Filing ('RALF')") process; (2) the QFRRL is an antiquated mechanism that does not reflect the current energy market and regulatory environment; and (3) further evaluation is needed regarding the alleged costs and benefits of this proposal with regards to both bundled and unbundled ratepayers. These claims lack merit.

I. Background

The RALF process allows an investor-owned utility ("IOU") to seek expedited Commission review and approval of beneficial restructured QF contracts. In Decision ("D.") 98-12-066, the Commission adopted the RALF process, whereby the IOUs could submit a PPA amendment for Commission approval by advice letter, instead of by

application, conditioned upon the review and statement of support or neutrality of the Commission's ratepayer advocacy staff. In D.99-02-085, the Commission confirmed that a RALF advice letter must be supported by a staff letter stating that the proposed amendment is reasonable and that payments under the restructured contract should be recovered in rates, subject only to the utility's prudent administration of the contract.[1]

PG&E determined that the RALF process is the appropriate vehicle for seeking Commission approval of the Fifth Amendment to the Cymric PPA due to its clear benefits to PG&E's customers. The marginal increase to a legacy QF PPA nameplate (950 kilowatts), while significant, was not complex enough to mandate using the application process. PG&E consulted the Division of Ratepayer Advocates ("DRA") about the merits of seeking Commission approval of the Fifth Amendment.[2]

II. Response to MEA's Protest

In its Protest, MEA asserts that the QFRRL is "far too complex to justify approval by AL." The availability of the advice letter process does not depend on whether the utility's procurement transaction is complex or not.[3] The RALF process requires "that a statement of support or neutrality from ORA be attached to any restructuring Advice Letter filing. We will not limit the use of the restructuring Advice Letter in any other way, such as by dollar size or by type of QF."[4] None of the terms of the Fifth Amendment criticized by MEA are relevant to the availability of the RALF process. The Energy Division has not exercised its discretion to advise PG&E that the contract amendment is too complex and should be filed as an application.

MEA claims that due to changes in the retail energy market and regulatory environment, the RALF process is no longer appropriate. The Commission has not modified or rescinded its orders authorizing PG&E to use the RALF process. In fact, the Commission has continued to approve restructured QF PPAs that have been submitted through the RALF process.[5] MEA misconstrues the Commission's observation in the initial RALF decision that its ratepayer advocacy staff was most likely to protest QF restructuring. Eligibility for the RALF process is not premised on the assumption that the transaction would not be protested by other parties.[6] The

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[1] D.98-12-066.

[2] DRA's written statement of non-opposition to the transaction has been submitted as Confidential Appendix D to PG&E's Advice 4253-E.

[3] Ail procurement under the Renewables Portfolio Standard is reviewed through the advice letter process. Decision ("D." 04-07-029.)

[4] D.98-12-066, p.17.

[5] Resolution E-4389, March 10, 2011 Request of PG&E for approval of amendments to its Interim SO 4 PPA with ENXCO Windfarm V, Inc.

[6] The Commission noted, "While an ORA (Office of Ratepayer Advocates) statement must be included with the restructuring Advice Letter, any other party may file a protest to the Advice Letter in the proper timeframe." D.98-12-066, p. 17.

Commission simply observed that if its advocacy staff did not object to the restructuring, that was good reason to use the streamlined advice letter process for approval. As previously noted, DRA does not object to the Fifth Amendment.

Finally, MEA claims that PG&E should resubmit the Fifth Amendment by an application to allow parties representing bundled and unbundled customers to challenge project costs due to the Fifth Amendment and their allocation. This request is clearly frivolous. PG&E explained in the advice letter that payments to the generator will increase to the extent that additional generation deliveries occur, but the actual amount of delivery cannot be predicted because the new bottoming cycle facility is essentially a small-scale prototype of a new energy recovery technology. Any energy deliveries will be purchased by PG&E's bundled customers. Unbundled customers, who do not purchase energy from PG&E, will not pay for any incremental deliveries under the Fifth Amendment. However, the 950 kW of incremental CHP capacity to be added to the Cymric Facility constitutes additional CHP procurement through the amendment of an existing PPA and will count towards PG&E's CHP and GHG Targets under the QF/CHP Settlement. PG&E will recover the cost of this incremental CHP capacity in accordance with QF/CHP Settlement Term Sheet Section 13.1.2.2. MEA has previously challenged PG&E's recovery of CHP capacity costs through the Cost Allocation Mechanism ("CAM") – like revenue recovery mechanism authorized by D.10-12-035; the Commission has rejected each challenge in its decisions approving procurement under the QF/CHP Settlement.[7] The costs and the methodology for allocating the above-market cost of CHP procurement were determined by the decision approving the QF/CHP Settlement.

III. Conclusion

The DRA's letter of non-opposition to the Fifth Amendment qualifies it for expedited review under the RALF process. MEA has provided no credible reason for the Energy Division to require resubmission of the Fifth Amendment through a different process, nor any reason to doubt the benefits of procurement from Cymric's new bottoming-cycle facility. The Proposed Amendment is a reasonable cost effective accommodation to a legacy QF PPA to allow an innovative CHP technology to deliver GHG free energy to the benefit of customers. The protest of MEA is without merit and should be rejected.

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[7] MEA, Shell Energy, and Alliance for Retail Energy Markets jointly challenged PG&E's recovery of the net capacity costs of the PPA that was the subject of PG&E's Advice 4074-E because the PPA did not provide energy deliveries. Regardless, the Commission stated, "Pursuant to the QF/CHP Settlement, the net capacity costs of this contract should be allocated pursuant to the cost allocation rules defined in Section 13.1.1 of the QF/CHP Settlement Term Sheet. CPUC Resolution E-4529, July 25, 2013. See also, D.11-03-010, decision approving PG&E's PPAs with four existing QF facilities under pre-existing SO PPAs, contingent upon effectiveness of the QF/CHP Settlement Agreement, and D.11-03-011, decision approving PG&E's PPAs with three existing QF facilities under identical conditions. "PG&E should proportionately allocate annually the power purchase agreements' net capacity costs and all resource adequacy benefits associated with them to all bundled, electric service provider, community choice aggregator and departing load customers on a non-bypassable basis pursuant to § 13.2.1 of the QF/CHP Settlement, and recover the bundled customer costs associated with them in its Energy Resources Recovery Account," D.11-03-010, D.11-03-011, Conclusion of Law 3.

Sincerely,

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Service List R.12-03-014 (superseding R.10-05-006, which was closed on April 24, 2012)
Service List A.08-11-001