



August 15, 2013

California Public Utilities Commission  
Energy Division  
Attention: Tariff Unit  
505 Van Ness Avenue, 4th Floor  
San Francisco, CA 94102-3298

**Re: Protest of Marin Energy Authority to Supplemental Filing for Purchase and Sale Agreement for Procurement of Renewable Energy Credits between Barclays Bank PLC and Pacific Gas and Electric Company (Advice Letter 3632-E-C)**

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Dear Energy Division:

On July 26, 2013, Pacific Gas and Electric Company ("PG&E") submitted Advice Letter 3632-E-C ("Advice Letter"), regarding its Supplemental Filing for Purchase and Sale Agreement for Procurement of Renewable Energy Credits between Barclays Bank PLC and Pacific Gas and Electric Company ("Contract"). Marin Energy Authority ("MEA") requests that the protest period of this Advice Letter be reopened and hereby protests this Advice Letter.<sup>1</sup>

Specifically, (1) the contents of the Advice Letter are not appropriate to a "supplement" and should be filed separately as an Advice Letter; and (2) contract extensions of a "grandfathered" renewables portfolio standard ("RPS") contract cannot be extended and retain their "grandfathered" status.

**1. The contents of the Advice Letter are not appropriate to a "supplement"**

For the reasons set forth below, the contents of the Advice Letter are not appropriate to a "supplement." The original Advice Letter 3632 was filed March 12, 2010 and the supplement is a substantial change from the original Advice Letter. PG&E has in the past used new advice letters for amendments of existing contracts, such as AL 4253 -E (Chevron), and AL 4007-E (Sierra Power). Amendments and restatements of existing contracts, such as AL 4112-E (Liberty Biofuels), AL 4048-E (Bottle Rock), and AL 3989 -E (Rice Solar). The only similarly situated Advice Letter found by MEA was AL 3862-E-A (TransAlta) which has not been disposed of by the Commission and deals with the same subject matter.

<sup>1</sup> This protest is filed according to General Order 96-B, Section 7.5.1, which provides:

The filing of a supplement, or of additional information at the request of the reviewing Industry Division, does not automatically continue or reopen the protest period or delay the effective date of the advice letter. The reviewing Industry Division, on its own motion or at the request of any person, may issue a notice continuing or reopening the protest period. Any new protest shall be limited to the substance of the supplement or additional information.

## 2. Contract extensions of a “grandfathered” RPS contract cannot be extended and retain their “grandfathered” status

The idea of Senate Bill 1X2 (2011) was to protect, not punish, procurement decisions made prior to June 1, 2010. However, the idea is not to forestall the creation of new renewable facilities or to avoid compliance with the procurement content categories. As a result, any expansion or extension of a contract is not eligible for grandfathering unless it meets the criteria set forth in Public Utilities Code Section 399.16(d) or as further defined by Decision 12-06-038.

Decision 12-06-038 specifically provides that extensions are not to be grandfathered except under specified circumstances (at 88-89):

13. In order to conform to statutory requirements and preserve value for retail sellers and ratepayers, retail sellers should be allowed to use contracts or ownership agreements for RPS procurement signed prior to June 1, 2010 for all compliance purposes, so long as the contracts and the related renewable energy resources meet all the conditions set forth in Section 399.16(d).

14. In order to provide consistent treatment of RPS procurement, if a contract or ownership agreement originally signed prior to June 1, 2010 is amended or modified after June 1, 2010, to increase the nameplate capacity or expected quantities of annual generation, the originally contracted procurement should continue to count in full, but the incremental procurement resulting from the amendment or modification should be subject to the then -applicable rules for portfolio balance, long-term contracting, and excess procurement.

In this Advice Letter, PG&E proposes the opposite. The provisions of the requirement do not meet the requirements of Section 399.16(d), and PG&E is intending to count as grandfathered resources which were not originally grandfathered.

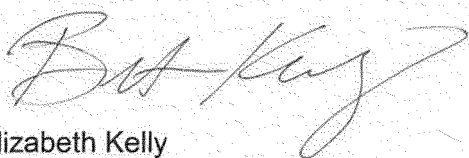
Public Utilities Code Section 399.16(d) includes the requirement that “the contract may be extended if the original contract specified a procurement commitment of 15 or more years.” (Subsection (3).) PG&E’s original Advice Letter 3632 stated that “the Commission’s approval of the Agreement will authorize PG&E to accept deliveries of Renewables Portfolio Standard (“RPS”)-eligible energy in 2010 and 2011.” This is clearly less than 15 years.

## 3. Conclusion

MEA has received energy from this same facility – Nine Canyon Wind – in years 2011 and 2012. In 2011 for MEA’s portfolio, this counted as a “grandfathered” contract; in 2012, this facility did not. This determination was based upon the date that the contract was signed. Apparently, if MEA had attempted to manipulate the system as PG&E is attempting to do here, that facility could have continued to count as a “grandfathered” RPS contract if MEA had merely “extended” the contract for Nine Canyon products.

The issues set forth in PG&E’s Advice Letter should be addressed through a stakeholder process in Rulemaking (R.) 11-05-005 prior, not through the instant supplement.

Respectfully Submitted,



Elizabeth Kelly  
Legal Director  
Marin Energy Authority

CC:

Service List R.11-05-005

Service List R.12-03-014

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