BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	Rulemaking 11-05-005 (Filed May 5, 2011)

PACIFIC GAS AND ELECTRIC COMPANY'S (U 39-E) OPENING COMMENTS ON ADMINISTRATIVE LAW JUDGE'S RULING SEEKING COMMENTS ON STAFF PROPOSAL ON IMPLEMENTATION OF SENATE BILL 1122

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Pursuant to the Administrative Law Judge's Ruling in this proceeding dated November 19, 2013, ("Ruling"), Pacific Gas and Electric Company ("PG&E") provides the following comments on the Staff proposal. PG&E appreciates the efforts made by the Commission Staff to identify and address challenges and potential solutions to implement SB 1122. PG&E generally supports the Staff's proposal to utilize the existing Renewable Market Adjusting Tariff ("ReMAT") tariff and Power Purchase Agreement ("PPA") terms but is concerned with some of the terms that affect the overall program costs as further discussed below. PG&E responds to questions included in the Ruling and offers comments on some additional measures to protect customers from excessive costs and ensure maximum value statewide for the SB 1122 program.

I. THE COMMISSION SHOULD CLARIFY THE DEFINITION OF SUSTAINABLE FOREST MANAGEMENT TO COMPLY WITH SB 1122.

The following comments are offered in response to Compliance with Bioenergy Category, Question F.3. (Ruling, p. 7.)

PG&E requests that the Commission provide further clarification on the definition of bioenergy using byproducts of sustainable forest management to ensure compliance with the

requirements of SB 1122. SB 1122 requires that the allocations under the sustainable forest biomass category "shall be determined based on the proportion of bioenergy that sustainable forest management providers derive from sustainable forest management in fire threat treatment areas, *as designated by the Department of Forestry and Fire Protection.*"[1] As the Energy Division notes, however, the definition it developed "does not necessarily reflect the views of CAL FIRE staff."[2] PG&E urges the Commission to provide SB 1122 participants in this proceeding with a clear delineation of what is deemed sustainable forest management feedstock to ensure full compliance.

II. THE COMMISSION SHOULD REFINE THE STAFF PROPOSAL REGARDING FUEL USE REQUIREMENTS TO ENSURE FULFILLMENT OF THE OBJECTIVES OF SB 1122.

The following comments are offered in response to Compliance with Bioenergy Category, Questions F.1, F3-F7, and F-9-11. (Ruling, pp.7-8.)

PG&E supports the Staff's proposal to require that at least 80 percent of the fuel used for a facility in the SB 1122 feed-in tariff ("FIT") program be sourced from the same category in which the facility bid.[3] This requirement is essential to achieving the Legislature's objectives to develop bioenergy technologies and to harness specific bioenergy feedstocks. This also protects customer interests by ensuring that projects do not bid into the category with the highest price if they are not providing the customers with the benefits provided by that category. PG&E proposes adjustments regarding establishing eligibility, monitoring fuel use compliance, and contractual remedies for noncompliance to ensure that the program lives up to the objectives set forth in SB 1122.

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[1] Calif. Public Utilities Code Section 399.20(f)(2)(A)(iii); emphasis added. All further section references are to the Public Utilities Code unless otherwise specified.

[2] CPUC Staff Proposal on Implementation of SB 1122, Nov. 19, 2013 ("Staff Proposal"), p. 25.

[3] Staff Proposal, p. 13.

Project developers should be required to establish that the facility is eligible to apply for a category by providing an attestation that their project will be in compliance with fuel source requirements. PG&E agrees with Staff's views regarding the importance of monitoring project fuel use to prevent fuel switching. However, PG&E objects to the Staff's proposal to place the responsibility of fuel source monitoring on the Investor Owned Utilities ("IOUs"),[4] because such monitoring could prove administratively burdensome and costly. Such a proposal goes against the Commission's guiding principle of ensuring "administrative ease and lower transaction costs for the buyer, seller, and regulator."[5]

To accomplish the goal of verifying fuel supply source compliance after a PPA is executed and the project is in operation, PG&E proposes that the Commission use a third-party process, such as the one currently being used in the Renewables Portfolio Standard ("RPS") program for multi-fuel facilities. As the Staff proposal notes, the California Energy Commission ("CEC") already has a mechanism for facilities to provide annual reports to measure RPS generation from multi-fuel facilities in the RPS program. PG&E recommends that the Commission leverage the current CEC mechanism and coordinate with the CEC to modify the existing process to reflect additional fuel types that capture the SB 1122 feedstock categories (i.e. adding forest waste biomass, dairy digester gas, and agricultural digester gas). The project developer or seller under the PPA would be required to provide PG&E with the resulting fuel verification documentation so that PG&E can monitor compliance.

To ensure the effectiveness of the monitoring program, there must be an appropriate enforcement mechanism to deter noncompliance. For example, if a seller fails to provide RPS-eligible generation under an RPS PPA, the seller is in breach of its obligations. A similar

[4] Staff Proposal, pp. 32-33.

[5] Staff Proposal, p. 10.

obligation and enforcement mechanism with respect to fuel use should be added to the SB 1122 PPA to ensure compliance with the fuel use requirements specific to the bioenergy category under which the seller was awarded a PPA.

PG&E proposes that once a decision has been made regarding fuel use requirements, the Commission authorize the IOUs to include the appropriate terms and conditions in the tariff and the PPA to address these issues.

III. THE COMMISSION SHOULD TAKE STEPS TO CONTAIN COSTS.

The following comments are offered in response to the Staff Proposal on Pricing, Questions 4-7. (Ruling, pp. 9-10.)

PG&E is concerned by the magnitude of costs that IOUs may incur to implement the SB 1122 program in comparison to alternative RPS sources. As the Black and Veatch Report points out, SB 1122 project costs could approach $130 to $200 per megawatt hour ("MWh") for a blended rate.[6] The report estimates that this would translate into a total cost estimate of between $253 million and $387 million in net IOU customer expenditures per year. Assuming that developers seek to execute contracts with a 20-year term, these expenditures will amount to approximately $5 billion to $7.7 billion throughout the lifetime of the program for the three IOUs.[7] In the Staff proposal, Energy Division notes that one of the Staff's guiding principles is to "contain costs and ensure maximum value to the ratepayer and the utility."[8] While the Legislature developed a bioenergy mandate through SB 1122, it included explicit language to

[6] Final Consultant Report Small-scale Bioenergy: Resource Potential, Costs and Feed-in Tariff Implementation Assessment prepared for California Public Utilities Commission, Oct 31, 2013, p. 1-1.

[7] Black & Veatch Report, p. 1-10.

[8] Staff Proposal, p. 10.

ensure ratepayer indifference[9] and a market-based price mechanism.[10] The Legislature clearly indicated a concern about the costs of renewable resources in directing the Commission to establish a procurement expenditure limitation.[11]

PG&E recognizes the delicate balance needed to ensure the development of the bioenergy sector in California while monitoring the impact on customer costs. However, in order to protect customers from potential excessive costs, it is imperative that the overall costs of the SB 1122 program be contained and shared equitably statewide.

The market depth requirement of a minimum of five sellers per category per IOU, which is an essential element in ReMAT, was severely weakened in the Staff proposal by being pooled across all three IOUs. Given this and the significantly higher proposed starting price relative to alternative renewable options, PG&E stresses the need for the development of critical cost containing mechanisms to ensure the customer protections contained within the SB 1122 program. The following are PG&E's recommendations for enhancing cost containment.

Starting Price. PG&E is concerned that the starting price suggested in the Staff proposal is much higher than current prices available to California retail sellers from alternative renewable energy sources. According to the CPUC RPS Quarterly Report, 2nd Quarter 2013, the Renewable Auction Mechanism ("RAM") 1 and 2 executed PPAs had a weighted average post-time of deliveries ("TOD") price of less than $90/MWh, while RAM 3 executed PPAs had a weighted average post-TOD price of less than $80/MWh.[12] More recently, a number of public

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[9] Section 399.20 (d)(4).

[10] Section 399.20 (d)(2).

[11] See Section 399.15(c) (requiring the Commission to establish expenditure limitations for renewable resources).

[12] CPUC Renewables Portfolio Standard Quarterly Report 2nd Quarter 2013, Nov. 2013, p. 12. (http://www.cpuc.ca.gov/NR/rdonlyres/68D58BFE-E350-4D49-B3D6-DAB43B806A5F/0/2013Q2RPSReportFINAL.PDF).

announcements on renewable energy PPAs have demonstrated even lower numbers. In June 2013 Palo Alto Municipal Utility signed three 30-year PPAs for $69/MWh,[13] and in September 2013 the City of Riverside approved two 20-year PPAs for under $70/MWh.[14] Even bioenergy participants in the previous AB 1969 FIT program have offered lower prices than the Commission's proposed starting price. PG&E has executed 8 biogas and biomass contracts in the previous FIT program, with pre-TOD prices ranging from $84.48/MWh to $112.86/MWh.[15] PG&E proposes that the starting price for SB 1122 projects should be similar in concept to how the starting price for the ReMAT was determined. It should be the simple average price (pre-TOD) of all active RAM projects executed by all IOUs in the first four auctions. The starting price should not be based solely on prices bid from bioenergy projects as such projects do not reflect the current market for renewables. Over time, the permitted price adjustments in SB 1122 will reflect what bioenergy projects are reasonably priced and satisfy the Staff's guiding principle of containing costs.

Market Depth Requirement. The market depth requirement was established after an extensive regulatory process at the Commission that included input from all stakeholders. As the Staff proposal notes, this mechanism "responds to true market conditions – rather than to the economic circumstances of one or two unrepresentative projects."[16] Market depth is essential to

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[13] City of Palo Alto News Release, June 18, 2013. The news release does not specify whether these are post or pre TOD prices. (http://www.cityofpaloalto.org/news/displaynews.asp?NewsID=2243&TargetID=235,310).

[14] Riverside Public Utilities Authority, Board of Public Utilities Minutes, Sept 6, 2013. The news release does not specify whether these are post or pre TOD prices. (https://riversideca.legistar.com/MeetingDetail.aspx?ID=233724&GUID=10E29A0D-B458-4865-B961-089E104A96CA&Search).

[15] PG&E, Existing E-PWF and E_SRG Project List, as of Nov. 7, 2013 (see http://www.pge.com/feedintariffs/).

[16] Staff Proposal, p. 35.

prevent market malfunction that would bring with it the risk of undue cost increases to customers.

Under the Staff proposal, the price for each category adjusts if there are a minimum of five eligible projects from different developers in the queue for a particular product type; if fewer than five projects participate, the price remains unchanged.[17] While this aspect of the Staff proposal is the same as the ReMAT program, Staff proposes one critical difference that is very likely to lead to an upward pressure on prices. By making this mechanism apply across the three IOU service territories rather than within each IOU service territory, the proposal greatly weakens the cost containment efficacy of this mechanism and undermines the goal of establishing a market-based pricing mechanism.[18] PG&E understands the Commission's desire to design a market-based program that considers the current market realities of the bioenergy industry, but believes that requiring only five projects across all three IOU territories does not create sufficient market depth to protect against market malfunction. PG&E suggests that if the Commission maintains the current "pooled" requirement across the three IOUs, an increase in the minimum number of developers to ten should be required to adjust the price.

PG&E also asks the Commission to clarify that – like ReMAT – the requirement of participating eligible projects must be from different developers. Multiple projects owned by the same or affiliated developers across all three IOUs' service territories should be considered as a single developer for purposes of implementing price adjustments.

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[17] In addition to the minimum seller requirement, ReMAT includes an additional threshold requirement for the price adjustment. If the capacity subscribed at the offered price is less than 20% of the capacity offered for that program period, the price will increase the following program period. If a sufficient number of generators accept the offered price such that offering contracts to all willing generators would result in subscription of 100% of the capacity offered for that program period, the price will decrease. If subscribed capacity falls in between the two thresholds, the price remains unchanged.

[18] Section 399.20(d)(1).

Price Increments and Adjustment Thresholds. PG&E believes maintaining the current price adjustment increments ($4, $8, $12, with $12 being the maximum) is critical to ensuring a functioning and non-volatile market. These pricing mechanisms were established through the extensive ReMAT proceeding that was open to all stakeholders, culminating in the adoption of D.12-05-035, D.13-01-041, and D.13-05-034. SB 1122 calls for a market-based price mechanism, and the existing ReMAT adjustment mechanisms were developed in order to implement that legislative requirement.[19] The current price increments will provide market signals to encourage greater market depth and will temper the potential for market manipulation to protect customers from undue costs.

PG&E also asks the Commission to clarify that the price adjustment thresholds used in ReMAT (i.e. less than 20 percent for a price increase; 20 percent to less than 100 percent no price adjustment; and 100 percent or more for a price decrease) will be modified in SB 1122 to be based on the average MWs offered across the IOUs for any category.

Market Manipulation and Malfunction Filing. In the ReMAT program, the Commission ruled that to guard ratepayers from excessive cost exposure due to market manipulation or market malfunction, the three IOUs could file a motion to request temporary suspension of the ReMAT program when evidence of market manipulation or malfunction exists.[20] While evidence of market manipulation or malfunction is assessed, the ReMAT program continues.

PG&E proposes that the market manipulation and malfunction mechanism for the SB 1122 program be modified to better protect customer interests given the cost uncertainty and the potential for considerably higher costs. PG&E requests that the Commission allow the IOUs

[19] Section 399.20(d)(1).

[20] D.12-05-035, p. 47.

to file a Tier 1 Advice Letter, which would automatically freeze the program while the Commission assesses the IOU's request that either a market manipulation and/or malfunction has occurred.

Program Length. Under the Staff proposal (which is identical to ReMAT unless stated otherwise), the SB 1122 program would end 24 months after the first category's available capacity goes to zero or a de minimus amount. PG&E believes there is a need to modify this provision for the SB 1122 program due to the large range in the allocation of megawatts per category for each IOU. These allocations could create anomalous results with the current 24-month timeline. A specific end date or one that is linked to the ReMAT program length (e.g., SB 1122 program should run the same length as ReMAT) would be more appropriate and would result in more consistent treatment of the programs.

Program Price Cap. The Legislature clearly indicated a concern about the costs of renewable resources in directing the Commission to establish a procurement expenditure limitation.[21] The SB 1122 program should be included in any procurement expenditure limitation adopted by the Commission. A practical and fairly simple approach would be to set a maximum price at the project level (recognizing that bioenergy projects may be more costly than other renewable alternatives) and balance that with costs that will be imposed on electric customers. A balanced price cap would be 200 percent of the simple average (pre-TOD) price of all active RAM projects executed by all IOUs in the first four auctions. This approach successfully balances the needs of the industry while preventing excessive cost impacts to customers.

[21] See Section 399.15(c) (requiring the Commission to establish expenditure limitations for renewable resources).

Cost Equity. Due to the service territory restrictions in the statute and the location of bioenergy resources, one IOU's customers could wind up shouldering a disproportionate share of the State's SB 1122 program costs. PG&E acknowledges the efforts made by the Commission to mitigate some of these concerns through the allocation of megawatts and by creating a single state-wide starting price for each category. However, with so much uncertainty regarding the prices and viability of small-scale bioenergy projects, PG&E believes the Staff's allocation of megawatts may nonetheless result in disproportionate program costs among the IOUs, with more expensive projects falling in one IOU's territory. Additionally, resource constraints may challenge SB 1122 qualified project development in some IOU territories, even though the current allocation methodology took into account resource availability. Accordingly, IOUs may not have the same opportunities to contribute to the success of this statewide IOU program.

Therefore, PG&E recommends that the Commission adopt a programmatic mechanism that would facilitate greater equity among IOUs. An example of such a mechanism could be if one IOU has executed more than 50 percent of the SB 1122 contracts executed across all IOUs, the SB 1122 procurement requirements for that IOU could be suspended by that IOU until the other IOUs have executed a sufficient number of contracts to make their combined share of the program's executed megawatts at least 51 percent. If this suspension is in effect for an IOU, projects in the queue in that IOU's service territory would not execute a contract, nor would they count towards the minimum developer threshold. An IOU would only be eligible to rely on this mechanism once it has executed at least 25 percent of its total allocated megawatts under the SB 1122 program (for example, 25 percent of the individual IOU total allocated program-wide megawatts for all three categories, or in PG&E's case 27.25 MW out of its total 111 MW allocation).

This mechanism could be administered with the existing annual reporting cycle and could be implemented through a Tier 1 advice letter filing following the submission of the annual report. If the other two IOUs have not executed at least 51 percent of the total executed program megawatts by the following annual reporting filing, the IOU would be required to file another advice letter in order to receive an extension of its procurement hold from the Commission. Under this proposal, if PG&E were to execute 30 MW in total from all three SB 1122 categories in the first year, but SCE and SDG&E only executed a collective total of 20 MW, then PG&E would be eligible to request a temporary procurement hold because it had met both the "good faith showing" criteria (over 27.25 MW executed across the three categories out of 111 MW allocated) and had executed more than half of the total program megawatts across the three categories (for this example, 30 MW out of 50 MW total across the three categories and the three IOUs is 60 percent of the MW and thus exceeding the 50 percent threshold).

IV. THE COMMISSION SHOULD CLARIFY THAT THE REMAT TARIFF AND PPA TERMS APPLY UNLESS A TERM IS SPECIFICALLY MODIFIED BY THE COMMISSION.

The following comments are offered in response to the Staff Proposal on Pricing, Question 8. (Ruling, p. 1.)

The Staff Proposal highlighted some aspects of the ReMAT tariff and PPA terms that would remain the same in the SB 1122 program. In many instances, however, the Staff proposal was silent as to whether various details would continue in the SB 1122 program. PG&E recommends that the Commission verify that aspects of the ReMAT tariff and PPA will remain the same unless a specific element is specifically modified by the Commission.

The ReMAT PPA was developed through an extensive multi-year and multi-stakeholder process and resulted in a package of terms that balance the interests of buyers and sellers. It is appropriate to utilize the ReMAT PPA, using the Baseload terms where applicable, for the

SB 1122 program. Only modifications necessary to reflect the differences between the SB 1122 and ReMAT program terms should be made to (e.g., provisions to enforce fuel source requirements), and the specific language can be proposed in the advice letter process.

V. OTHER ISSUES

The following comments are offered in response to Other Issues, Questions 4 and 5. (Ruling, p. 11.)

Locational Requirements. PG&E does not believe the Commission should interpret the locational requirement for facilities to apply to fuel feedstock as well. The SB 1122 program is already expected to result in power prices significantly above market benchmarks for RPS energy. Limiting the radius for sourcing fuel may further increase prices and create market distortions. The Commission should allow natural market forces (i.e., the economic balance between increased fuel supply options and higher transportation costs) to determine the optimal fuel sourcing strategy for facilities. PG&E suggests that the locational requirement should only apply to the physical location of the plant.

Subsidies. While PG&E does not actively track subsidy programs for bioenergy facilities, PG&E agrees that SB 1122 projects should pursue subsidies or other incentives to minimize ratepayer costs. PG&E supports SB 1122 projects applying to these programs, which should enable them to accept lower offered prices. To the extent that subsidies or incentives become available after a PPA is executed, PG&E proposes adding language to the PPA that evenly shares any subsidies or incentive payments received by a project. A sharing mechanism would ensure that ratepayers are not overpaying for energy, while providing sellers with an incentive to pursue subsidies.

VI. CONCLUSION

PG&E supports balancing the development of SB 1122-eligible resources and customer costs so that PG&E customers receive the best value at the lowest cost for these resources. Concerns remain regarding the potential costs of this program, and additional cost containment mechanisms must be incorporated to ensure the lowest program costs for customers. PG&E is committed to working with Energy Division and other stakeholders to finalize these crucial programmatic elements.

Respectfully submitted,

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