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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric
Company for Approval of a Power Purchase
Agreement with Mariposa Energy, LLC

A.09-04-001
(Filed April 1, 2009)

(U 39 E)

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E)
REPLY COMMENTS ON THE IMPACT OF DECISION 10-12-050 ON THE PETITION
FOR MODIFICATION FILED BY CALIFORNIANS FOR RENEWABLE ENERGY**

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February 18, 2011

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COMPANY

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Pacific Gas and Electric Company ("PG&E") files these reply comments in accordance with the *Ruling Regarding Comments on Impact of Decision 10-12-050 on the Petition For Modification Filed by Californians for Renewable Energy* ("Ruling") issued January 7, 2011 in this proceeding.

I. INTRODUCTION

CALifornians for Renewable Energy's ("CARE") and the Division of Ratepayer Advocates' ("DRA") Opening Comments again request that the Commission sanction PG&E for violating Commission Decision ("D.") 09-10-017, in which the Commission approved a long-term power purchase agreement ("PPA") for the Mariposa Energy Project ("Mariposa Project").^{1/} They also argue that the owners of the Mariposa Project should be penalized by a Commission order that "stays" the Mariposa Project or finds the project "no longer just and reasonable."^{2/} As discussed below, their requests must be denied.

First, PG&E cannot be subject to sanctions for violating a Commission decision when PG&E's conduct is expressly authorized by the Commission. In this case, CARE and DRA

^{1/} For purposes of these comments, D.09-10-017 is referred to as the "Mariposa Decision."

^{2/} DRA, p. 7; CARE, p. 4.

assert that PG&E violated the megawatt (“MW”) limit in the settlement approved in the Mariposa Decision by entering into a Purchase and Sale Agreement (“PSA”) for the Oakley Project. The Mariposa Settlement MW limit was based on the need determination in the 2006 Long-Term Procurement Plan (“LTPP”) proceeding established in D.07-12-052. However, the Commission expressly authorized the Oakley PSA in D. 10-12-050 outside of the 2006 LTPP decision need determination referenced in the Mariposa Settlement.^{3/} Given that the Commission has now approved the Oakley Project outside of that need authorization, there is no basis for CARE’s or DRA’s claims that PG&E violated the Mariposa Settlement. More fundamentally, PG&E cannot be sanctioned for acting in accordance with a Commission decision (*i.e.*, D.10-12-050 authorizing PG&E to proceed with the Oakley Project).

Second, PG&E’s Petition for Modification of D.10-07-045 did not violate the limitation in the Mariposa Settlement on the number of applications PG&E could subsequently file. The Commission, on its own accord, converted PG&E’s Petition for Modification of D.10-07-045 to an application. This is not a violation of an application limit set forth in the Mariposa Settlement, as DRA suggests.

Finally, the Commission’s approval of the Oakley Project in D.10-12-050 did not render the Mariposa Project “unjust and unreasonable.” There is no factual basis provided by DRA or CARE in their comments or in CARE’s Petition for Modification for re-opening the Mariposa decision, and such a result would be extremely prejudicial to the developers of the Mariposa Project, who relied on the finality of D.09-10-017 in continuing to take steps to timely develop its new facility.

^{3/} The 2006 LTPP Decision was issued by the Commission in December 2007 and is D.07-12-052. For purposes of this filing, it will be referred to either as the “2006 LTPP Decision” or “D.07-12-052.”

For these reasons, the Commission should dismiss CARE's Petition for Modification of D. 09-10-017.

II. DISCUSSION

A. CARE's and DRA's Requests for Sanctions Must Be Denied As PG&E Did Not Violate A Commission Decision.

As CARE and DRA note, the Mariposa Settlement provided that PG&E would seek to fill an additional 1,512 MW, inclusive of the Mariposa PPA, arising from PG&E's 2008 Long-Term Request for Offers ("LTRFO"). As PG&E noted repeatedly in many filings, PG&E's application for approval of the remaining winning bids from the LTRFO (A.09-09-021), sought approval of projects totaling 1,305 MW, which, adding to the Mariposa PPA, would have provided a total new procurement of 1,489 MW. PG&E later filed applications for approval of the DWR Novation PPAs and expressly stated when seeking authorization from the Commission that the PPAs were not offered for the purpose of filling the LTRFO need.^{4/} The Commission disagreed, and ultimately found that the Novation PPAs should be counted against the LTRFO need requirement.^{5/}

In D.10-12-050 approving the Amended Oakley PSA, the Commission expressly stated that the Oakley Project MW were outside of the LTRFO need amount, and were intended to fill resource needs beginning in a later period than other LTRFO winning bids, could fill a critical gap arising from a nearly two-year delay in the LTRFO cycles, and would serve as "additional insurance" to meet electric reliability needs.^{6/} Due to the gap of as long as five years between need determinations, the Commission determined that it would be prudent to approve the

^{4/} See e.g., *Opening Comments of Pacific Gas and Electric Company On Proposed Decision of ALJ Kenney*, A.09-10-034, p. 13 (May 10, 2010).

^{5/} D.10-07-042, Findings of Fact 7.

^{6/} D.10-12-050, p. 11.

Amended Oakley PSA in addition to filling the need authorization in D.07-12-052.^{7/} Therefore, PG&E did not violate the Mariposa Settlement.

Even assuming, *arguendo*, that PG&E did deviate from the terms of the Mariposa Settlement, the Commission would have no lawful basis to penalize PG&E, as DRA and TURN request, as PG&E's actions were authorized by Commission decisions. Public Utilities Code Section 701 permits the Commission to "do all things whether specifically designated in this part or in addition thereto, which are necessary and convenient for the exercise of such power [*i.e.* the power to supervise and regulate public utilities] and jurisdiction." The Commission's authority is expansive.^{8/} It is beyond reasonable dispute that the Commission had authority to authorize the Oakley Project, irrespective of the terms of the Mariposa Settlement. While the Commission, in certain circumstances has authority to penalize a utility for non-compliance with a Commission decision, here the actions regarding which DRA and CARE complain were authorized by the Commission, so the Commission has no basis to penalize PG&E.

B. The Commission's *Sua Sponte* Conversion of PG&E's Petition For Modification To An Application Does Not Constitute A Violation Of The Mariposa Settlement By PG&E.

As DRA and CARE note in their Opening Comments, in the Mariposa Settlement PG&E agreed to file only one additional application for approval of contracts arising from the 2008 LTRFO. The Mariposa Settlement provides: "[t]he balance of PG&E's need authorization in the LTPP Decision (1,328 MW) will be met, but not exceeded, by one application for approval

^{7/} *Id.*

^{8/} *Consumers Lobby Against Monopolies v. Public Utilities Commission*, 25 Cal.3d 891, 905-906 (1979); *People v. Western Airlines*, 42 Cal.2d 621, 630 (1954).

of additional agreements resulting from PG&E's 2008 LTRFO."^{9/} PG&E satisfied this requirement. After the Mariposa Decision, PG&E filed a single application for approval of the remaining contracts arising from the 2008 LTRFO (*i.e.*, A.09-09-021). After the Oakley Project was initially rejected in A.09-09-021, PG&E filed a petition for modification seeking approval of the Amended Oakley PSA. The Commission in D.10-12-050 denied PG&E's petition for modification and approved the Oakley Project on the Commission's own motion.^{10/} The Commission has clear statutory authority to modify previous Commission decisions and determinations.^{11/} CARE cannot claim that PG&E violated the Mariposa Settlement's limits on the number of applications that PG&E can file when it was the Commission itself that decided to treat PG&E's Petition For Modification as an application.

C. There Is No Basis In The Record To Reopen The Commission's Previous Findings That The Mariposa PPA Is Just and Reasonable.

DRA argues that the Mariposa Project should be suspended or stayed.^{12/} CARE goes even further, suggesting – without a scintilla of evidence regarding the Mariposa Project – that the Mariposa Project is no longer just and reasonable.^{13/} As PG&E discussed in its November 10, 2010 response to CARE's Petition for Modification of D.09-10-017, CARE's petition contains no facts that would justify re-opening or questioning the Commission's determinations in the Mariposa Decision that the project has ratepayer benefits, will help integrate intermittent

^{9/} See *Motion Of Pacific Gas And Electric Company (U 39 E), The Division Of Ratepayer Advocates, The Utility Reform Network, Californians For Renewable Energy, California Unions For Reliable Energy For Approval Of Settlement Agreement*, filed September 3, 2009, in A.09-04-001, which attached the Mariposa Settlement.

^{10/} *Id.*, at p. 8.

^{11/} Cal. Pub. Util. Code § 1708.

^{12/} DRA Opening Comments, p. 7.

^{13/} CARE Opening Comments, p. 4.

renewable resources, and is reasonable.^{14/} The only “facts” presented by CARE regard the Oakley Project and the DWR Novation PPAs. There is simply no reason to review the Commission’s earlier findings that the Mariposa PPA is in the interests of PG&E’s customers. Further, in reliance on the Mariposa Decision, Mariposa has moved forward with the development of the Mariposa Project. At this juncture, granting the relief requested by CARE would result in significant harm to the Mariposa Project. Power producers must be assured that when they follow the Commission’s direction and act in reasonable reliance on final and non-appealable Commission decisions, the Commission will not subsequently reverse itself, particularly due to a later dispute that does not involve the power producer. Reopening this proceeding based on facts completely unrelated to Mariposa Project would have a chilling effect on the participation of power producers in future utility solicitations.

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^{14/} D.07-12-052, Conclusions of Law 1, 2, 3, 7, and 13.

CERTIFICATE OF SERVICE

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is 77 Beale Street, San Francisco, California 94105

On February 18, 2011, I served a true copy of:

**PACIFIC GAS AND ELECTRIC COMPANY'S REPLY COMMENTS
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- [XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for A.09-04-001 with an e-mail address.
- [XX] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service list for A.09-04-001 without an e-mail address and the following parties:

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this February 18, 2011, at San Francisco, California.

/s/
JENNIFER S. NEWMAN