



**FILED**  
12-20-13  
04:59 PM

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

Application of San Diego Gas and  
Electric Company (U902E) For Authority  
To Implement Optional Pilot Program To  
Increase Customer Access to Solar  
Generated Electricity

Application No. 12-01-008  
(Filed January 17, 2012)

In the Matter of the Application of Pacific  
Gas and Electric Company to Establish a  
Green Option Tariff

Application No. 12-04-020

**REPLY COMMENTS OF THE SUSTAINABLE ECONOMIES LAW CENTER  
ON PG&E AND SDG&E REVISED TESTIMONY TO SUPPORT PROPOSED  
PROGRAMS**

Linda Barrera, Esq.  
Caroline Lee, Esq.  
The Sustainable Economies Law Center  
436 14th Street, Suite 1120  
Oakland, California 94612  
Telephone: (760) 569-6782  
E-mail: linda@theselc.org  
E-mail: caroline.SELC@gmail.com

Dated: December 20, 2013

## Table of Contents

I. Introduction .....	1
II. Shared Renewable Programs Should Support Community-Based Renewable Energy Projects With True Community Attributes .....	2
III. PG&E’s Proposed Green Tariff Shared Renewable Energy Program .....	6
A. PG&E’s Enhanced Community Renewables Program Component Is Inadequately Vague .....	7
B. PG&E’s Proposal to Decide The Details of Its Enhanced Community Renewables Program Outside This Proceeding Does Not Comport With SB 43 .....	8
C. To Satisfy the Enhanced Community Renewables Program Term of SB 43, PG&E Should Implement The Shared Renewable Program Proposed By VSI, IREC, and SEIA and Facilitate Community-Based Renewable Projects As Proposed By SELC .....	10
D. PG&E Should Modify Its Procurement Process to Give Priority to Community-Based Renewable Projects As Proposed By SELC .....	11
E. PG&E Should Use This Proceeding To Design How It Will Include Smaller Scale Renewable Generation Located in Proximity to Expected or Actual Subscribers .....	14
F. PG&E’s Proposed GTSR Program Is Inconsistent with the Requirement of SB 43 to Procure a Portion of Capacity from Facilities Located in the Most Impacted and Disadvantaged Communities .....	15
G. PG&E Should Modify Its Proposed GTSR Program to Describe How it Will Identify Impacted Communities and Procure Capacity from these Communities .....	18
IV. SDG&E’s Proposed Green Tariff Shared Renewable Energy Program .....	21
A. SDG&E Should Modify Its <i>Share the Sun</i> Program to Include the Shared Renewable Program Design Elements Proposed By VSI, IREC, and SEIA And Should Relax Developer Qualification Criteria For Community-Based Organizations .....	21
B. SDG&E Should Modify Its Procurement Process to Seek Capacity From Community-Based Renewable Projects As Proposed By SELC .....	23
C. SDG&E’s Proposal Does Not Describe How it Will Identify “Impacted and Disadvantaged Communities,” Nor Is it Sufficient to Meet Procurement Requirements under SB 43 .....	24
V. Conclusion .....	26

## I. Introduction

Pursuant to the October 25, 2013 scoping ruling issued in this consolidated proceeding (Scoping Ruling),<sup>1</sup> the Sustainable Economies Law Center (SELC) respectfully submits these reply comments on PG&E's and SDG&E's revised testimony on their proposed Green Tariff Shared Renewables (GSTR) Programs. With respect to PG&E's revised testimony, pursuant to Rule 12.2 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, SELC will specify the portions of PG&E's proposed Joint Settlement Agreement<sup>2</sup> (Proposed Settlement) that we oppose, the factual issues that we contest, and the legal basis of our opposition.

As noted in the Scoping Ruling, this consolidated proceeding now requires that PG&E and SDG&E file revised testimony to explain how each of their proposed programs comply with the provisions of Senate Bill (SB) 43 (Wolk, Stats. 2013, ch. 413; Green Tariff Shared Renewables Program).<sup>3</sup> SB 43 added Sections 2831 through 2833 to the Public Utilities Code (Pub. Util. Code), requiring the three investor-owned utilities (IOUs) to implement programs that allow ratepayers to participate directly in offsite electrical generation facilities that use eligible

---

<sup>1</sup> *Assigned Commissioner and Administrative Law Judge's Scoping Ruling* (October 25, 2013) ("Scoping Ruling").

<sup>2</sup> A.12-04-020, *Joint Motion of PG&E, TURN, Coalition of California Utility Employees, The Black Economic Council, National Asian American Coalition, Latino Business Chamber of Greater L.A., Sierra Club and California Clean Energy Committee to Adopt a Settlement*, Attachment A, filed April 11, 2013; PG&E's Green Tariff Renewable Program Revised Testimony, Chapter 1, Attachment A, Prepared by Witness David E. Rubin ("PG&E Proposed Settlement").

<sup>3</sup> Statutes of 2013, Chapter 413.

renewable energy resources. The programs must also be consistent with the statute's findings and statement of intent in Section 2831 and be administered in accordance with Section 2833.<sup>4</sup>

## **II. Shared Renewable Programs Should Support Community-Based Renewable Energy Projects With True Community Attributes.**

As an organization dedicated to providing education, research, and advocacy to support the transition to just and resilient local economies, one of SELC's objectives is to remove barriers to locally controlled renewable energy. In promoting community-based renewable energy generation, SELC supports the implementation of shared renewable programs in California that permit and encourage the development of renewable energy projects with true community attributes. SELC believes these community attributes to be: (1) the majority of the project is owned by individual residents of the community or by a local organization or cooperative that is managed and controlled by individual residents of the community, (2) the project's generating capacity does not exceed 1 megawatt (MW) and is located in or near the community, and (3) the majority of the project's economic benefits are distributed locally.<sup>5</sup> [Hereinafter SELC will refer to projects with these attributes as "Community-Based Renewable Projects."]

With regards to community solar projects, these attributes would be demonstrated by a solar-electric system that provides power and/or financial benefits to multiple residents of a

---

<sup>4</sup> Scoping Ruling, at 8-9.

<sup>5</sup> See The Sustainable Economies Law Center, Community Renewable Energy Web site, <http://www.thesecl.org/community-renewable-energy/>; see also Community Power Network, What is Community Power? Web site, <http://communitypowernetwork.com/node/395>.

community,<sup>6</sup> ownership or management control opportunities for the residents of the community, and mechanisms for local utilities to purchase excess power from the shared solar facility.

SELC believes there are several advantages to this Community-Based Renewable Project approach. First, these small-scale distributed facilities—placed on the roofs of schools, churches, offices, apartment buildings and parking-garages; in identified brownfield locations; and in otherwise under-utilized public spaces—become the renewable-energy equivalent of infill development. In becoming infill, power generation is located close to power consumption, therefore minimizing the need for new transmission lines. Second, while individual ownership is not a required component of Community-Based Renewable Projects, those that are owned by individual residents of the community create access to clean energy for personal consumption while also building wealth through direct asset ownership, essentially a very small power plant in contract with a local utility. Third, siting solar facilities in residential communities provides local jobs and retention of local dollars.<sup>7</sup> Last, Community-Based Renewable Projects give ratepayers the ability to actively voice their concerns of how and where their energy supply is produced and sourced, providing the opportunity to reduce environmental pollution and other hazards that can lead to negative public health effects.

SB 43's GTSR Program contains several provisions that should lead participating utilities to support these Community-Based Renewable Projects. Specifically, the Legislative Findings stated that "the enactment of [SB 43] will create a mechanism whereby ... *groups of individuals,*

---

<sup>6</sup> See generally Jason Coughlin, et al., *A Guide to Community Shared Solar: Utility, Private, and Nonprofit Project Development* (National Renewable Energy Laboratory 2012), available at <http://www.nrel.gov/docs/fy12osti/54570.pdf>.

<sup>7</sup> See Vote Solar, *Economic and Job Creation Benefits of SB 43/AB 1014: A California Shared Renewable Energy Program* (2013), available at <http://votesolar.org/wp-content/uploads/2013/04/VSI-SB-43-AB-1014-JEDI-final.pdf>.

can meet their needs with electric generation from eligible renewable energy sources.”<sup>8</sup> Moreover, it requires the IOUs to “provide support for enhanced community renewables programs to facilitate development of eligible renewable energy resource projects located close to the source of demand.”<sup>9</sup> SB 43 also states that “to the extent possible, a participating utility shall seek to procure eligible renewable energy resources that are located in reasonable proximity to enrolled participants.”<sup>10</sup> Finally, it mandates that each renewable energy facility not exceed 20 MW in nameplate generating capacity, and for facilities located in areas with socio-economically vulnerable or disproportionately-polluted communities, not exceed 1 MW.<sup>11</sup> Combined together, these provisions support the inclusion of Community-Based Renewable Projects within the design and implementation of the GTSR Programs.

While SB 43 does not directly mandate that individual residents of a community collectively own or control the qualifying renewable energy facility, participating utilities should include a plan to procure renewable energy from facilities that are owned or controlled by residents of the community and that directly benefit their local economy. Without incorporating the program elements that SELC is advocating for in these comments, the IOUs will not be providing diverse programs that test customer preferences.

California is a leader in renewable energy mandates; however, in the area of community-based and community-owned renewables, California falls behind despite a specific legislative intent of SB 43 to promote energy independence.<sup>12</sup> Since 2008, Colorado, Massachusetts, Maine, and Washington have enacted legislation that specifically supports community-owned

---

<sup>8</sup> Cal. Pub. Util. Code, § 2831(f) (2013).

<sup>9</sup> *Id.*, at § 2833 (o).

<sup>10</sup> *Id.*, at § 2833 (e).

<sup>11</sup> *Id.*, at § 2833 (d)(1)(A).

<sup>12</sup> *Id.*, § 2831(e).

renewable energy projects.<sup>13</sup> In addition, many communities across the country have developed community-owned renewable projects working closely with their local utilities.<sup>14</sup> Until California enacts a more specific community renewables statute, SELC believes this proceeding to implement SB 43 provides the legal framework necessary to increase opportunities for community-based and -owned renewable energy generation. SELC urges the Commission to consider our recommendations on modifying PG&E's and SDG&E's proposed GTSR Programs as described in detail below.

---

<sup>13</sup> See Colorado Community Solar Gardens Act, Colo. Rev. Stat. § 40-2-127 (2)(b)(I)(A) (2010) (“Community Solar Garden” means a solar electric generating facility with a nameplate capacity of two megawatts or less that is located in or near a community served by a qualifying retail utility where the beneficial use of... the facility belongs to the subscribers to the community garden. There shall be at least ten subscribers. The owner of the community solar garden may be...nonprofit entity or organization, including a subscriber organization organized under this section, that contracts to sell output from the community solar garden to the qualifying retail utility...”); see also Massachusetts Green Communities Act, Mass. Gen. Laws ch. 164 § 138-140 (2008) (“Neighborhood net metering facility”, a Class I, II or III net metering facility that: (i) is owned by, or serves the energy needs of, a group of 10 or more residential customers that resides in a single neighborhood and is served by a single distribution company; and (ii) is located within the same neighborhood as the customers that own or are served by the facility); see also Maine Community-Based Renewable Energy, Me. Rev. Stat. Ann. tit. 35-A, § 3601 *et seq.* (2009) (“Locally owned electricity generating facility” means an electricity generating facility of at least 51% of which is owned by one or more qualifying local owners; “Qualifying local owner” means a person or entity that is (A) An individual who is a resident of the State . . . (E) A nonprofit corporation, organized under the laws of the State.”); see also Washington’s SB 6170, Chapter 469, Laws of 2009 (Community solar projects are defined as solar energy systems up to 75 kW that are owned by local entities and placed on local government property or owned by utilities and funded voluntarily by utility ratepayers. This legislation also allows projects on local government property that are owned by limited liability companies, cooperatives, or mutual corporations or associations to receive a production incentive).

<sup>14</sup> See Island Community Solar LLC, *available at* <http://islandcommunitysolar.com/>); see also Brewster Community Solar Garden Cooperative, *available at* <http://www.brewstercommunitysolargarden.com/>; see also Acorn Energy Solar One, LLC, Acorn Renewable Energy Cooperative, *available at* <https://www.acornenergycoop.com/offerings/group-net-metering>; see also University Park LLC, *available at* <http://www.universityparksolar.com/>; see also Clean Energy Collective, Xcel Community Solar, *available at* <http://www.coloradocommunitysolar.com/> (includes community-owned solar garden program for Xcel customers in Boulder, Denver, Jefferson and Summit Counties).

### III. PG&E's Proposed Green Tariff Shared Renewable Energy Program

In PG&E's November 15, 2013 Opening Comments and December 6, 2013 Revised Testimony, PG&E stated that its GTSR Program is consistent with the terms of SB 43.<sup>15</sup> However, PG&E's Proposed Settlement and Revised Testimony continue to be vague and ambiguous on how it will comply with several SB 43 mandates.

Pursuant to Rule 12.1(d) of the Rules of Practice and Procedure, the "Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest." As such, PG&E has the burden of proving its Proposed Settlement satisfies each of these requirements.<sup>16</sup> Specifically, PG&E must prove that its Proposed Settlement is consistent with Pub. Util. Code Sections 2831 through 2833.<sup>17</sup>

The Commission's Scoping Ruling noted that "evidence supporting the [PG&E] settlement has not been accepted into the record."<sup>18</sup> The Scoping Ruling also found PG&E's Proposed Settlement inadequately vague on several issues that PG&E deferred to an Advisory Group including: "[d]ecisions regarding incorporating small scale local generation into the Green Options Portfolio; and [t]he future consideration of an enhanced community renewables program element that would facilitate development of additional renewable projects located closer to

---

<sup>15</sup> See *Opening Comments of PG&E on Green Tariff Shared Renewables Programs*, filed November 15, 2013, at 2 ("PG&E Opening Comments"); see also PG&E's Green Tariff Renewable Program Revised Testimony, Chapter 1, Prepared by Witness David E. Rubin, at 1-3.

<sup>16</sup> See D.92-12-019, *In the Matter of the Application of San Diego Gas and Electric Company for Authority to Increase its Rates and Charges for Electric...Service*, 1992 Cal. PUC LEXIS 867 (1992), at 12.

<sup>17</sup> Cal. Pub. Util. Code, § 2832(d); Scoping Ruling at 8-9.

<sup>18</sup> *Id.*, at 7.



load.”<sup>19</sup> For these reasons, the Commission ruled that PG&E must provide, “more detail . . . as to specifics of the program and the evidentiary basis for the adoption of the settlement.”<sup>20</sup>

Despite the Commission’s ruling, PG&E continues to claim compliance with all of the terms in SB 43 without providing an evidentiary record to support such claims. Accordingly, pursuant to Rule 12.4, the Commission should reject PG&E’s Proposed Settlement because it is not reasonable in light of the whole record and is inconsistent with SB 43.

In the following sections, pursuant to Rule 12.2, SELC discusses the portions of the PG&E’s Proposed Settlement we contest and explains the legal basis for our opposition. In addition, SELC offers recommendations for modifying the Proposed Settlement that could bring the GSTR program into compliance if adopted. We respectfully request the Commission consider these recommendations.

#### **A. PG&E’s Enhanced Community Renewables Program Component Is Inadequately Vague.**

SB 43 requires the IOUs to propose enhanced community renewables programs in this consolidated proceeding. Specifically, Pub. Util. Code section 2833(o) mandates that “[a] participating utility *shall* provide support for enhanced community renewables programs to facilitate development of eligible renewable energy resource projects located close to the source of demand.”<sup>21</sup> [emphasis added.] Despite the explicit direction in SB 43, PG&E’s proposed GTSR Program does not contain an enhanced community renewable program. Instead, PG&E’s Opening Comments continued to propose the identical process outlined in the Proposed Settlement, for the “settling parties to work towards the development of a community-based

---

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Cal. Pub. Util. Code, § 2833(o).

renewable option that could incorporate some of the attributes of [SDG&E's] '*Share the Sun*.'"<sup>22</sup> Furthermore, the Opening Comments stated that "[t]he settling parties agree to submit any such program that *might* be developed for Commission review and approval in a subsequent phase of this proceeding."<sup>23</sup> [emphasis added.] PG&E's Revised Testimony continues to be vague, indicating only that "PG&E has *started* meeting with the settling parties to *explore* different potential elements of the GTSR Program that *could* facilitate additional renewables located closer to load."<sup>24</sup> [emphasis added.]

The Commission's Scoping Ruling already determined that PG&E's proposal was "vague" and "requir[es] more detail from PG&E as to specifics of the program."<sup>25</sup> PG&E cannot rely on the same proposal as evidence that it is in compliance with SB 43 where it was already found by the Commission to be inadequately vague. The record contains no evidence that PG&E will in fact comply with SB 43's direction to implement an enhanced community renewable program. Therefore, SELC respectfully requests that the Commission not approve PG&E's current proposal.

#### **B. PG&E's Proposal to Decide The Details of Its Enhanced Community Renewables Program Outside This Proceeding Does Not Comport With SB 43.**

Article 3.7 of PG&E's Proposed Settlement defers its enhanced community renewable program to be decided at some future date<sup>26</sup> in consultation with the settling parties.<sup>27</sup> PG&E's

---

<sup>22</sup> See PG&E Opening Comments, at 4.

<sup>23</sup> *Id.*

<sup>24</sup> See PG&E's Green Tariff Renewable Program Revised Testimony, Chapter 1, Prepared by Witness David E. Rubin, at 1-8.

<sup>25</sup> Scoping Ruling, at 8.

<sup>26</sup> In Section 3.7 of the Joint Settlement Agreement, PG&E only states that "the settling parties would *strive* to complete their work within 60 days of CPUC approval of th[e] settlement." [emphasis added.] PG&E Proposed Settlement, at 16.

<sup>27</sup> *Id.*

approach to consider proposals from a limited group of settling parties outside of this phase of the proceeding is problematic for the following reasons. First, this consolidated proceeding includes parties from a larger group of community-based organizations than the parties to the Proposed Settlement. The parties to this consolidated proceeding have distinct interests in the enhanced community renewables program that would go unheard under PG&E's current proposal, should only parties to the Proposed Settlement be consulted. Unlike SDG&E's evaluation of several community-based solar models and input received through ratepayer surveys, including five days of public workshops,<sup>28</sup> PG&E has not considered any similar proposals on community-based or community-owned renewables from the public-at large. Second, it is a far more efficient use of both the Commission's resources, and the resources of intervenor parties, for PG&E to present a detailed enhanced community renewables program in this proceeding, to evaluate PG&E's proposal against SB 43 mandates and compare it with SDG&E's proposal.

PG&E's enhanced community renewable program contained in Article 3.7 of the Proposed Settlement is incomplete, lacks a well-developed evidentiary record, and does not satisfy Pub. Util. Code section 2833(o). Accordingly, PG&E fails to meet its burden of proof. SELC respectfully requests that the Commission strike Article 3.7 of PG&E's Proposed Settlement and urges the Commission to require PG&E to propose an actual enhanced community renewables program in this consolidated proceeding.

---

<sup>28</sup> See Scoping Ruling, at 7-8; see also SDG&E Revised Testimony, Chapter 2, by Witness Aaron Franz, at 4-7.

**C. To Satisfy the Enhanced Community Renewables Program Term of SB 43, PG&E Should Implement The Shared Renewable Program Proposed By VSI, IREC, and SEIA and Facilitate Community-Based Renewable Projects As Proposed By SELC.**

SELC recommends that PG&E develop a program similar to SDG&E's *Share the Sun* program option, along with the adjustments set forth in Vote Solar Initiatives' (VSI), the Interstate Renewable Energy Council's (IREC), and Solar Energy Industries Association's (SEIA) comments ("Joint Comments") as well as incorporate SELC's recommendations proposed herein. The Joint Comments propose a "Shared Renewables Program" that allows utility customers to subscribe to a specific offsite clean energy project with the characteristics the customers prefer and in return receive a utility bill credit. This would be distinct from a Green Tariff program that only allows utility customers to sign up for generic, bundled clean energy that would not include the community attributes SELC promotes. The Joint Comments adjust SDG&E's *Share the Sun* proposal. SELC supports the Joint Comments and makes the following additional recommendations.

First, to satisfy the enhanced renewable energy program term of SB 43, SELC recommends that PG&E develop a detailed process outlining how it will commit to, and express a preference for, procuring energy from renewable energy facilities located in close proximity to participating customers. Second, SELC recommends that PG&E develop a plan that facilitates renewable energy projects wherein individual residents of a community collectively manage, control, or own the underlying facility, similar to the Community-Based Renewable Projects described by SELC.

In order to implement a Community-Based Renewable Project with the attributes SELC promotes, PG&E must adjust its Renewable Market Adjusting Tariff (ReMAT) procurement

mechanism. By adapting the ReMAT mechanism to the terms of SB 43, a level playing field for community-based and -owned renewable energy projects could be accomplished.

**D. PG&E Should Modify Its Procurement Process to Give Priority to Community-Based Renewable Projects As Proposed By SELC.**

SB 43 requires IOUs to use Commission approved tools and mechanisms to procure additional renewable energy sources for the GTSR Program.<sup>29</sup> Thus, the IOUs must utilize existing procurement mechanisms such as the Renewable Auction Mechanism (RAM) (for projects greater than 3 MW and up to 20 MW) and ReMAT (for projects less than 3 MW) to sign Power Purchase Agreements (PPAs) with shared renewable projects. The ReMAT program is most relevant to SELC's comments, given our Community-Based Renewable Projects are generally under 1MW.

The procurement process through ReMAT<sup>30</sup> should be modified to be consistent with the intent of SB 43 in order to allow for the actual implementation of enhanced community renewables programs. SELC notes that the most recent ReMAT mechanism, which sets forth a goal of 750 MW in total program capacity, was developed pursuant to SB 32 (Negrete McLeod, Stats. 2009, ch. 328).<sup>31</sup> SB 43 creates a new program, requiring an additional 600 MW total capacity, all of which needs to be located in reasonable proximity to the demanding load and 100 MW must be located in socio-economically vulnerable or disproportionately-polluted communities. Given SB 32 had different purposes and mandates than does SB 43, SELC

---

<sup>29</sup> Cal. Pub. Util. Code, § 2833(c).

<sup>30</sup> These feed-in tariffs are supposed to provide a simple mechanism for small renewable generators to sell power to the utilities at predefined terms and conditions, without engaging in timely contract negotiations.

<sup>31</sup> See Cal. Pub. Util. Code, § 399.20; see also D.12-05-035, *Revising Feed-in Tariff Program, Implementing Amendments to Public Utilities Code Section 399.20 Enacted by Senate Bill 380, Senate Bill 32, and Senate Bill 2 1X* (May 31, 2012) (it implemented the revised ReMAT, a mechanism that allows the feed-in tariff price to adjust in real time based on market conditions).

recommends that the Commission provide clear guidance to the IOUs on how they are to modify the ReMAT procurement process to comply with the terms of SB 43.

PG&E acknowledged it must use existing procurement methodologies that are tailored to GTSR Program-specific competitive solicitation in order to procure additional renewable energy resources.<sup>32</sup> Unfortunately, PG&E has not specified exactly how it intends to procure enhanced community renewables to satisfy the SB 43 mandate to locate these community renewable facilities in close proximity to customers.<sup>33</sup> PG&E's Revised Testimony provided a general overview of the competitive solicitations process.<sup>34</sup> However, the overview is vague and unclear regarding the solicitation for new, smaller-scale and locally sited renewable projects.<sup>35</sup> Moreover, Article 3.3.2(e) of the Proposed Settlement is noncommittal, stating only that "PG&E *may* also execute long-term contracts... for new smaller-scale renewable generation located in proximity to concentrations of expected or actual subscribers... [and b]efore making any decisions... shall consult with the Settling Parties." [emphasis added.]

In reviewing PG&E's Revised Testimony and current ReMAT mechanism, the specific barriers for community-based organizations, such as non-profit organizations or cooperatives, developing Community-Based Renewable Projects include the high collateral requirement of \$20

---

<sup>32</sup> See PG&E's Green Tariff Renewable Program Revised Testimony, Chapter 1, Prepared by Witness David E. Rubin, at 1-2.

<sup>33</sup> See *id.*, at 1-7. SELC notes that PG&E has only stated that it will "communicate in advance the communities that are furthest along in terms of customer and usage enrollments, and state its intent to preferentially procure power from appropriately priced, viable projects that are located in (or adjacent to) these communities." *Id.*

<sup>34</sup> "Competitive solicitations may occur periodically, annually, or as needed, depending on the type of product that is being solicited and the Company's needs based on its energy programs and energy procurement objectives." See PG&E's Green Tariff Renewable Program Revised Testimony, Chapter 3, Prepared by Witness Roy Alvarez, at 3-2.

<sup>35</sup> See *id.*, at 3-2 to 3-3.

per kW and the "developer experience" requirement.<sup>36</sup> SELC recommends that PG&E identify Community-Based Renewable Projects (i.e., under 1MW and with the other attributes SELC advocates for) as a sub-category and implement a more streamlined procurement approach for these projects. SELC recommends that this streamlined approach include lowering the collateral amount and relaxing the developer experience criteria. By identifying the distinct needs of Community-Based Renewable Projects and creating this sub-category, the playing field would be more level so that these projects are not precluded from participating.

SELC also notes that PG&E's implementation schedule for new, smaller-scale projects located closer to customers is undefined. Community-based groups structured as for-profit organizations may be able to take advantage of the Business Energy Investment Tax Credit (ITC) which is equivalent to 30 percent of the cost to install a Community-Based Renewable Project.<sup>37</sup> SELC recommends that PG&E develop a prompt implementation schedule so that these community-based organizations are able to take advantage of the ITC which expires at the end of December 2016.<sup>38</sup>

SELC believes these are only a few of the barriers that small-scale, locally sited renewable energy projects developed by community-based organizations will face when attempting to utilize the existing ReMAT procurement process. While the barriers identified above are important from SELC's perspective to begin leveling the playing field for community-

---

<sup>36</sup> See PG&E Advice Letter 4246 E, Implementation of PG&E's Renewable Market Adjusting Tariff Program as Required by D.12-05-035, D.13-01-031, and D.13-05-034, *available at* [http://www.pge.com/nots/rates/tariffs/tm2/pdf/ELEC\\_4246-E.pdf](http://www.pge.com/nots/rates/tariffs/tm2/pdf/ELEC_4246-E.pdf).

<sup>37</sup> The ITC allows commercial, industrial, and utility owners of qualifying renewable energy systems to take a one-time tax credit equivalent to 30 percent of installed costs. See 26 USC § 48.

<sup>38</sup> See DSIRE Solar, Federal Incentives/Policies for Renewables & Efficiency, Business Energy Investment Tax Credit (ITC) Web site, [http://www.dsireusa.org/incentives/incentive.cfm?Incentive\\_Code=US02F](http://www.dsireusa.org/incentives/incentive.cfm?Incentive_Code=US02F).

based renewable energy projects, other financial and non-financial barriers related to procurement likely exist and should be addressed.

We respectfully request the Commission accept SELC's recommendations. Moreover, SELC urges the Commission to require that PG&E seek the input of multiple ratepayers and ratepayer groups interested in implementing small-scale, locally sited projects that are community-based and community-owned.

**E. PG&E Should Use This Proceeding To Design How It Will Include Smaller Scale Renewable Generation Located in Proximity to Expected or Actual Subscribers.**

Article 3.3.2(e) of the Proposed Settlement requires PG&E to consult with the Settling Parties or the Advisory Group prior to “making any decisions regarding the products, targets or strategies for incorporating small-scale, local generation into the Green Option portfolio.”<sup>39</sup> It appears Article 3.3.2(e) targets Pub. Util. Code section 2833(e) specifically, as separate from the enhanced community renewable requirement of section 2833(o). The PG&E Revised Testimony indicated the Advisory Group “will seek to meet on a quarterly basis”<sup>40</sup> and reiterated the consultation requirement contained in Article 3.3.2(e) of the Proposed Settlement.<sup>41</sup>

PG&E does not provide a clear protocol for how it plans to procure renewable energy closer to the demand, for either its bundled program or its enhanced community renewable program, as mandated by Pub. Util. Code sections 2833(e) and (o). Further, these important decisions should not be deferred to an Advisory Group and should instead be decided within this proceeding. PG&E only indicated it “intends to utilize enrollment in the program as an objective indicator of a community’s interest in the program, thereby providing a useful determinant of

---

<sup>39</sup> PG&E Proposed Settlement, at 10.

<sup>40</sup> PG&E’s Green Tariff Renewable Program Revised Testimony, Chapter 2, Prepared by Witness Molly Hoyt, at 2-4.

<sup>41</sup> See PG&E Proposed Settlement, at 10.



where to solicit local projects.”<sup>42</sup> By using enrollment in the program, PG&E intends to create a “sub-category for solicitation”<sup>43</sup> for customers already enrolled in the existing GSTR program. This sub-category of enrolled customers, combined with PG&E’s “solicitations for the Shared Renewables Program,” would apparently allow PG&E to “indicate in its Request for Proposals the communities in which it is seeking to receive bids...separate from and in addition to the general solicitation.”<sup>44</sup>

SELC finds this approach problematic for several reasons. First, the language PG&E uses is vague and unclear. Specifically, it is unclear how PG&E will address its concern for expected subscribers and place them on a level playing field for future long term contracts with currently enrolled customers. Second, deferring future procurement decisions and protocol for satisfying SB 43 mandates to either the Settling Parties or the yet to be created Advisory Group, does not conform to the law.

SELC respectfully requests that the Commission require PG&E to offer clear guidelines on how it will execute future long term contracts, as well as its products, targets and strategies<sup>45</sup> in this proceeding and not defer to the Settling Parties or an Advisory Group.

**F. PG&E’s Proposed GTSR Program Is Inconsistent with the Requirement of SB 43 to Procure a Portion of Capacity from Facilities Located in the Most Impacted and Disadvantaged Communities.**

SB 43 declares that 100 MW of the 600 MW statewide limitation on capacity procured under the GTSR programs shall be reserved for small facilities (less than 1 MW in nameplate

---

<sup>42</sup> PG&E’s Green Tariff Renewable Program Revised Testimony, Chapter 2, Prepared by Witness Molly Hoyt, at 2-12.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*, at 2-12, 2-13.

<sup>45</sup> *See* PG&E Proposed Settlement, at 10.

rated generating capacity) located in the “most impacted and disadvantaged communities.”<sup>46</sup> These communities must be “previously identified” by the California Environmental Protection Agency (California EPA); where “previously identified” communities are those identified prior to the commencement of construction of any facility.<sup>47</sup> Section 2833(d)(1)(A) of the Pub. Util. Code specifically dictates that “impacted and disadvantaged communities”<sup>48</sup> must be identified by census tract, and must be determined to be the most impacted 20 percent based on results from the best available cumulative impact screening methodology--designed to identify those communities that are socioeconomically vulnerable and disproportionately impacted by environmental pollution and other hazards.<sup>49</sup>

By declaring that 100 MW shall be “*reserved*” for impacted communities, SB 43 clearly requires that utilities identify target communities and set aside a portion of capacity for facilities in these communities *prior to* initiating procurement under a GTSR Program. The law does not leave room for a post-procurement determination of whether adequate capacity is located in impacted communities.

Section 2833(d)(1) specifically targets impacted communities because, among ratepayers with low access to onsite generation, socially vulnerable communities and communities who are disproportionately exposed to environmental hazards face particularly daunting barriers.<sup>50</sup> Not only do these communities often have low homeownership rates and lower access to financing for solar installations, they are also most in need of clean local industries that create jobs.

---

<sup>46</sup> Cal. Pub. Util. Code, § 2833(d)(1)(A).

<sup>47</sup> *Id.*, at § 2388(d)(1)(B)(1).

<sup>48</sup> Hereinafter referred to as “impacted communities.”

<sup>49</sup> Cal. Pub. Util. Code § 2833(d)(1)(A)(i) and (ii).

<sup>50</sup> The Legislature found that a GTSR program would expand access to renewable resources to all ratepayers who are currently unable to access the benefits of onsite generation. Cal. Pub. Util. Code § 2831(b).

Locating capacity within impacted communities is coterminous with increased opportunities for community ownership of solar projects--a strategy which can be a strong driver of poverty alleviation and job creation in these communities.<sup>51</sup> As such, these communities can be areas of strategic significance for utilities.

PG&E concludes that it has complied with Pub. Util. Code section 2833(d)(1).<sup>52</sup> It points to Articles 3.3 and 3.2.2 in its Proposed Settlement, and suggests that it has complied with Section 2833(d)(1) by increasing the number of MWs it will procure to accommodate capacity procured from facilities located in impacted communities, among other sources.<sup>53</sup> However, Article 3.2.2 and 3.3 of the Settlement are silent on the reservation of capacity for impacted communities. Article 3.2.2 states merely that 125 MW of PG&E's program cap will be reserved for the residential class, which demonstrates compliance with Section 2833(d)(2) and not (d)(1). PG&E's Proposed Settlement and Revised Testimony are therefore legally insufficient in multiple respects: they (1) fail to allot any portion of PG&E's program cap to procurement from facilities located in impacted communities, (2) fail to explain how these target communities will be determined, and (3) fail to describe mechanisms that PG&E will employ to ensure that it procures its proportionate share of capacity from facilities located in these communities. PG&E has thus not met its burden of demonstrating that its program is consistent with the requirements of SB 43.

SELC respectfully request that the Commission require that PG&E modify its Proposed Settlement in order to remedy these three deficiencies and reflect compliance with Pub. Util.

---

<sup>51</sup> Under its findings listed in Pub. Util. Code § 2831, the Legislature stated that job creation was one of the explicit benefits of building operational solar generating facilities.

<sup>52</sup> See PG&E's Green Tariff Renewable Program Revised Testimony, Chapter 1, Attachment D, at 1D-17 and 1D-18 (document titled *Appendix A: Joint Analysis Compliance with SB 43*).

<sup>53</sup> See *id.*

Code Section 2833(d)(1). Below, SELC recommends how PG&E might comply with this Section.

**G. PG&E Should Modify Its Proposed GTSR Program to Describe How it Will Identify Impacted Communities and Procure Capacity from these Communities.**

PG&E must follow the example set by SDG&E, and set clear numerical objectives for procurement of capacity from facilities located in impacted communities. To fulfill the mandate of SB 43, which requires that 100 MW of the total program cap of 600 MW be reserved for facilities located in the most impacted and disadvantaged communities, each utility should reserve approximately 1/6 of their program cap for these communities. In order to account for its proportionate share, SELC recommends that PG&E reserve approximately 42 MW for facilities located in these communities.

PG&E must also describe how it will determine the 20 percent most impacted communities in its service territory as previously identified by the California EPA, using the “best available cumulative impact screening methodology.” SELC recommends that PG&E use the Environmental Justice Screening Method (EJSM)--where this method is available--in order to identify impacted communities by census tract. This methodology is superior to CalEnviroScreen 1.1 (CES)--for the purposes of compliance with Section 2833(d)(1)--for the following three reasons.

First, EJSM is capable of identifying impacted communities by census tract as required by Section 2833(d)(1)(A), unlike CES which analyzes cumulative impact only at the zip code level. Second, where cumulative impacts are analyzed at the zip code level, PG&E will likely find it difficult to identify, by census tract, the 20 percent most impacted communities in its service territory. Including all the census tracts within the 20 percent most impacted zip codes

would likely be over-inclusive due to variability in impacts within zip codes. In fact, the top 20 percent most impacted zip codes, using CES methodology, captures a vast range of communities, and is unlikely to truly represent the most vulnerable and impacted communities. The range of communities spans from the most impacted zip codes to zip codes experiencing less than half of the impact of the worst impacted zip codes. This distribution is characteristic of methodologies with low granularity, as they produce results that skew towards the mean of the distribution. A more granular method of analysis is likely to produce a more representative distribution of impacts by geography.

Finally, the criteria used by EJSM are also likely to capture communities that are socioeconomically vulnerable and disproportionately affected by environmental pollution and other hazards with greater accuracy than CES. The EJSM evaluates cumulative impact using indicators of vulnerability and environmental hazards that CES does not use; including the percentage of minority residents and the rate of homeownership in a given census tract. Incorporating these indicators would further the utility's effort to meet the underlying objectives of SB 43, which include the engagement of minority and low income communities,<sup>54</sup> and the expansion of access to groups that are currently less likely to access onsite solar generation, such as renters.<sup>55</sup>

Where EJSM is used to identify the most impacted and disadvantaged communities, the results must be compared to those produced by the CES methodology in order to ensure that the communities identified have indeed been "previously identified" by the California EPA as being impacted and disadvantaged. Where EJSM is not available due to data constraints, PG&E should rely on CES, which is the next best available cumulative impact screening methodology.

---

<sup>54</sup> See Cal. Pub. Util. Code § 2833(j).

<sup>55</sup> See *id.* at § 2831(b).

Whether PG&E elects to rely on CES to identify impacted communities in conjunction with the EJSM or to the exclusion of the EJSM, it must explain in its Proposal, how it will use this methodology to identify the 20 percent of communities that are most impacted, by census tract.

In addition to determining the capacity it will procure from facilities in impacted communities and the methodology used to identify these communities, SELC recommends that PG&E describe the mechanisms it will use to ensure that this program goal is met. Under SDG&E's feed-in-tariff (FiT) procurement proposal, the utility explains that it will use the ReMAT FiT mechanism to procure capacity from impacted communities, and that facilities in impacted communities will be prioritized in the utility's procurement queue in order to encourage siting in these communities.<sup>56</sup> PG&E's proposal contains no similar description of the mechanism it will use to ensure that it meets procurement goals under Pub. Util. Code section 2833(d)(1).

SELC recommends that PG&E meet its procurement goals from facilities in impacted communities by (1) creating incentives for the siting of facilities in these communities and (2) linking targets for the incremental procurement of capacity from disadvantaged and non-disadvantaged communities. Incentives may include the payment of a subsidy to projects sited in impacted or disadvantaged communities. Under a linked target program, PG&E may follow procurement methodology that resembles SDG&E's program, whereby capacity located in impacted or disadvantaged communities is prioritized in the utility's procurement queue. Alternatively, PG&E may create more strict guidelines for procurement, which would require it to procure 1 MW of capacity from facilities located in disadvantaged communities for every 5 MW of capacity it procures from non-disadvantaged communities.

---

<sup>56</sup> Our assessment of SDG&E's program with regard to compliance with Section 2833(d)(1) is contained below at section IV.C.

#### **IV. SDG&E's Proposed Green Tariff Shared Renewable Energy Program**

SDG&E proposes two independent pilot GSTR programs termed “*SunRate*” and “*Share the Sun*.” The *SunRate* program is designed to provide customers the option to subscribe to solar generation within SDG&E’s portfolio.<sup>57</sup> Alternatively, the *Share the Sun* program provides SDG&E customers the opportunity to contract directly with the participating solar providers to subscribe to a specific, local solar facility (as contrasted with *SunRate*’s blended portfolio of local solar generation).<sup>58</sup> Helpfully, SDG&E’s record is well developed in light of five days of workshops, the previous submission of testimony in response to the March 13, 2013 ALJ Ruling, revised testimony and reply comments.

Given SELC’s interest in representing ratepayers who would like to participate in the aforementioned Community-Based Renewable Projects, SELC will provide comments on SDG&E’s *Share the Sun* program specifically. SELC is generally supportive of the *Share the Sun* program; however, we propose several additional recommendations that advance the enhanced community renewable program directive in consideration of Community-Based Renewable Project attributes.

##### **A. SDG&E Should Modify Its *Share the Sun* Program to Include the Shared Renewable Program Design Elements Proposed By VSI, IREC, and SEIA And Should Relax Developer Qualification Criteria For Community-Based Organizations.**

SELC appreciates that SDG&E has proposed its *Share the Sun* program, which is its enhanced community renewables program as contemplated by SB 43. As described by SDG&E, this program will allow participating solar providers to contract with SDG&E customers to sell

---

<sup>57</sup> See *Opening Comments of SDG&E Per October 25, 2013 Scoping Ruling*, filed November 15, 2013, at 3 (“SDG&E Opening Comments”).

<sup>58</sup> *Id.*, at 5.

the energy produced by their solar facility to SDG&E.<sup>59</sup> SDG&E in turn will purchase the solar energy generated by the customers' subscribed portion of the solar facility and will provide a monthly credit to the customers based on their assigned facility's actual generation.<sup>60</sup> While the current *Share the Sun* program allows customers to subscribe to specific local projects located closer to their communities, SELC recommends that the Commission require that SDG&E adopt the adjustments to its *Share the Sun* program specified in the Joint Comments of VSI, IREC, and SEIA. Moreover, while SELC believes that the Shared Renewables Program outlined in the Joint Comments is a needed step forward, we have identified additional elements of SDG&E's proposed program that will likely create barriers to small-scale, community-based and community-owned renewable projects.

Specifically, the third-party developer qualification requirement poses a significant barrier to Community-Based Renewable Projects. SDG&E requires all *Share the Sun* developers to demonstrate how their business model--including marketing and advertising--will not violate federal or state securities law by: (a) obtaining a legal opinion by a law firm approved by SDG&E or by a law firm that is a member of the American Lawyer Top 50 for 2012 or (b) obtaining a non-action letter from the U.S. Securities and Exchange Commission stating that their business model does not involve the offer or sale of securities.<sup>61</sup>

We believe this developer qualification will be overly burdensome for small-scale community-based developers. These developers likely have less financial resources to afford the costly legal fees a Top 50 law firm requires, and SDG&E's process for approving alternative law

---

<sup>59</sup> See SDG&E Revised Testimony, Chapter 2, by Witness Aaron Franz, at 17-18.

<sup>60</sup> *Id.*

<sup>61</sup> See *id.*, at 28.



firms is unknown. Moreover, obtaining a no-action letter from the U.S. Securities and Exchange Commission would cause significant delay.

Should a legal opinion ultimately be required, SELC recommends SDG&E create a sub-category for Community-Based Renewable Project providers and permit a legal opinion from an attorney in good standing who specializes in securities law.

### **B. SDG&E Should Modify Its Procurement Process to Seek Capacity From Community-Based Renewable Projects As Proposed By SELC.**

In its Opening Comments and Revised Testimony, SDG&E has indicated that it will rely upon the ReMAT process for its *Share the Sun* procurement with modifications where necessary.<sup>62</sup> Unlike PG&E, SDG&E *Share the Sun* program has committed to procure up to 3 MW from qualifying developers in each bi-monthly feed-in-tariff (FiT) period until it has procured up to 10 MW for the program.<sup>63</sup> SDG&E explains its procurement process as follows: “assuming SDG&E has 9 MW in its initial FiT queue, some of which have indicated an interest in building a Share the Sun project and some of which have not, SDG&E will select projects on a first come first served basis in each bi-monthly period until it has fulfilled both its FiT capacity requirements and its 3 MW Share the Sun target.”<sup>64</sup>

SELC appreciates that SDG&E has described its procurement plan to obtain certain levels of capacity from facilities located closer to the source of demand. However, SDG&E should also propose a mechanism to level the playing field for Community-Based Renewable Projects specifically, and not only rely on a first come first served approach to selecting *Share the Sun* qualifying projects.

---

<sup>62</sup> See SDG&E Opening Comments at 6; see also SDG&E Revised Testimony, Chapter 4, by Witness Hillary Hebert, at 11.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

SELC recommends that SDG&E modify its procurement process to allow capacity procured from Community-Based Renewable Projects to “move to the front of the queue” in each bi-monthly procurement period. Again, these are projects wherein, in addition to being small-scale and located closer to customers, residents of the community own a portion of or control decisions related to the project, and the majority of the project’s economic benefits are distributed locally. Community-Based Renewable Projects will likely be far smaller than 1 MW. Therefore, allowing these projects to “move to the front of the queue” per bi-monthly procurement period will likely not adversely affect SDG&E’s procurement obligations under Section 2833(d)(1),<sup>65</sup> especially if a Community-Based Renewable Project also qualifies as a project located in the top 20 percent most impacted communities.

**C. SDG&E’s Proposal Does Not Describe How it Will Identify “Impacted and Disadvantaged Communities,” Nor Is it Sufficient to Meet Procurement Requirements under SB 43.**

As discussed above in section III.F, Pub. Util. Code § 2833(d)(1) declares that 100 MW shall be reserved for small facilities (less than 1 MW in nameplate rated generating capacity) located in the “most impacted and disadvantaged communities.”<sup>66</sup> SELC appreciates that SDG&E, unlike PG&E, has set concrete targets for procurement from facilities located in impacted communities, pursuant to Section 2833(d)(1). SDG&E has reserved approximately 10 MW of its 60 MW program cap for impacted communities.<sup>67</sup> SDG&E must also, however, describe how it will determine the top 20 percent most impacted communities, as previously identified by the California EPA, using the “best available cumulative impact screening methodology.”

---

<sup>65</sup> See section IV.C.

<sup>66</sup> Cal. Pub. Util. Code, § 2833(d)(1)(A).

<sup>67</sup> See PG&E’s Green Tariff Renewable Program Revised Testimony, Chapter 1, Attachment D, at 1D-17 and 1D-18 (document titled *Appendix A: Joint Analysis Compliance with SB 43*).

As discussed above in reference to PG&E,<sup>68</sup> SELC recommends that SDG&E also use the EJSM - where this method is available - in order to identify impacted communities by census tract. The comparative merits of this methodology versus CES are discussed above in Section II.D.2. Where EJSM is used to identify the most impacted and disadvantaged communities, the results must be compared to those produced by the CES methodology in order to ensure that the communities identified have indeed been “previously identified” by the California EPA as being impacted and disadvantaged. Where EJSM is not available due to data constraints, SDG&E should rely on CES, which is the next best available cumulative impact screening methodology. Whether SDG&E elects to rely on CES to identify impacted communities in conjunction with the EJSM or to the exclusion of the EJSM, it must explain, in its Proposal, how it will use this methodology to identify the 20 percent of communities that are most impacted, by census tract.

SELC also appreciates that SDG&E has described its mechanism for procurement of capacity from facilities located in impacted and disadvantaged communities with more particularity than PG&E. SDG&E states that it will procure projects for this portion of capacity procured under its GTSR program via the ReMat FiT mechanism. Although SDG&E will ordinarily choose projects for procurement on a first come first served basis, SDG&E will allow one project located in an impacted or disadvantaged community to “move to the front of its queue” every bi-monthly period, until it has satisfied its targets.<sup>69</sup>

This mechanism is a useful way to incentivize projects located in impacted or disadvantaged communities. However, by limiting the projects that can avail of this mechanism to one project per bi-monthly procurement period, SDG&E does not do enough to ensure that it

---

<sup>68</sup> See section III.G.

<sup>69</sup> SDG&E Revised Testimony, Chapter 4, by Witness Hillary Herbert, at 5.

will meet the requirements of Section 2833(d)(1). In many cases, facilities located in impacted communities may be far smaller than 1 MW, and thus, allowing only one such facility to “move to the front of the queue” per bi-monthly procurement period may not contribute significantly towards the utility’s procurement obligations under Section 2833(d)(1). SELC recommends that SDG&E modify its procurement requirements to allow up to 1/6 of the capacity procured in each bi-monthly period to “move to the front of the queue” if the capacity is located in an “impacted or disadvantaged community.” This would go further towards ensuring that SDG&E procures adequate capacity from facilities in impacted communities to meet the requirements of Section 2833(d)(1).

## **V. Conclusion**

SELC appreciates the opportunity to comment on PG&E’s and SDG&E’s revised testimony on their proposed GTSR Programs. We urge the Commission to require the IOUs to develop programs that facilitate development of Community-Based Renewable Projects, as explained in these comments, and respectfully request that the Commission adopt our recommendations and modifications to PG&E’s and SDG&E’s proposed GTSR Programs.

Respectfully submitted,

/s/ Linda Barrera

Linda Barrera  
The Sustainable Economies Law Center  
436 14th Street, Suite 1120  
Oakland, California 94612  
Telephone: (760) 569-6782  
E-mail: linda@theselc.org

Dated: December 20, 2013