

Decision PROPOSED DECISION OF ALJ EBKE (Mailed 10/21/2014)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company to Implement and Recover in Rates the Costs of its Photovoltaic (PV) Program (U39E).

Application 09-02-019  
(Filed February 24, 2009)

**DECISION GRANTING, IN PART, PACIFIC GAS AND ELECTRIC COMPANY'S PETITION FOR EXPEDITED ORDER GRANTING MODIFICATION OF DECISION 10-04-052 - SOLAR PHOTOVOLTAIC PROGRAM**

**Summary**

This decision grants, in part, Pacific Gas and Electric Company's (PG&E's) February 26, 2014 Petition for Modification of Decision (D.) 10-04-052.<sup>1</sup> PG&E's request to close its Solar Photovoltaic Program (Solar PV Program) established in D.10-04-052 is granted. The Commission's goals in establishing this program have been substantially achieved. The program will close after completion of the Program Year 3 but will remain active for the purposes of the administration of all existing contracts and facilities and compliance reporting.

In conjunction with its request to close its Solar PV Program, PG&E requests that the Commission permit PG&E to procure the remaining megawatt (MW) volumes authorized in D.10-04-052 through a different procurement

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<sup>1</sup> The complete title of PG&E's February 26, 2014 filing is *Petition for Expedited Order Granting Modification of D.10-04-052<sup>1</sup> (Photovoltaic Program) and Approval of a Proposed Schedule for the Third Photovoltaic Program Power Purchase Agreement Solicitation.*

process, the Renewable Auction Mechanism (RAM). There are approximately 200 remaining MW in the program.<sup>2</sup> The question of whether to require PG&E to procure additional MW volumes through RAM will be addressed as part of the Commission's current comprehensive review of the RAM procurement mechanism in Rulemaking (R.) 11-05-005.<sup>3</sup> Therefore, we deny PG&E's request to transfer MW volumes to RAM but will consider it in R.11-05-005 when reviewing RAM.

## **1. Background**

The history of the issues addressed today is lengthy and involves two proceedings, this proceeding and Rulemaking (R.) 11-05-005, the proceeding known as the Renewables Portfolio Standard (RPS) proceeding. The issues were first presented to the Commission via two advice letters filed by PG&E in 2012.

### **1.1. PG&E's Advice Letters 4160-E and 4161-E**

PG&E filed Advice Letters 4160-E and 4160-E on December 10, 2012 seeking, among other things, to close its Solar Photovoltaic Program (Solar PV Program). The program, as authorized by the Commission in Decision (D.) 10-04-052, was a five year program and initially included 500 MW. In December 2012, several years remained in the program and PG&E had not solicited the full 500 MW.

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<sup>2</sup> Commission Resolution E-4659 (PG&E Advice Letter 4368-E) October 2, 2014 and PG&E February 26 Petition for Modification of D.10-04-052 at 4. PG&E will file a Tier 1 Advice Letter identifying the amount of capacity pursuant to a directive in R.11-05-005.

<sup>3</sup> Rulemaking 11-05-005, *Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program* (Filed May 5, 2011).

The advice letters described the changed circumstances since the Commission's approval of its Solar PV Program in D.10-04-052 that justified its request to close the program early. PG&E's advice letters also requested that, should the Commission agree to close the Solar PV Program early, the Commission also permit PG&E to procure the remaining MW volumes through a different RPS procurement program, Renewable Auction Mechanism (RAM). RAM is a RPS-eligible procurement process established by the Commission in R.11-05-005. D.10-12-048,<sup>4</sup> the decision establishing RAM, is explained in more detail below.

On February 7, 2014, consistent with General Order 96-B, the Commission's Energy Division issued a disposition letter rejecting these two advice letters without prejudice on the basis that these advice letters were not the appropriate procedural process for seeking the relief sought by PG&E.<sup>5</sup> A few weeks later, PG&E filed this petition for modification of D.10-04-052.<sup>6</sup> PG&E concurrently filed a separate petition for modification in R.11-05-005 that focused on those aspects of PG&E's request relevant to RAM.

### **1.2. PG&E's Petition for Modification of D.10-04-052**

On February 26, 2014, PG&E filed this *Petition for Expedited Order Granting Modification of D.10-04-052 (Photovoltaic Program) and Approval of a Proposed Schedule for the Third Photovoltaic Program Power Purchase Agreement Solicitation* (Petition). This Petition essentially seeks the same relief as PG&E previously

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<sup>4</sup> D.10-12-048, *Decision Adopting Renewable Auction Mechanism* (December 16, 2010).

<sup>5</sup> PG&E February 26 Petition for Modification of D.10-04-052 at Appendix 1.

<sup>6</sup> D.10-04-052, *Decision Adopting a Solar Photovoltaic Program for Pacific Gas and Electric Company* (April 28, 2010); *rehearing denied*, D.11-03-050.

requested in Advice Letters 4160-E and 4161-E.<sup>7</sup> Any differences between the December 10, 2012 advice letter filings and the February 24, 2014 Petition reflect the passage of time. As the Petition states, now we are at a different point in time in the solicitation schedules under the Solar PV Program.<sup>8</sup>

The relief sought by PG&E's Petition is basically two-fold. PG&E requests that the Commission modify D.10-04-052 to: (1) terminate procurement under the Solar PV Program now, after the third program year, subject to final reporting and accounting requirements; and (2) authorize that any remaining MW volumes in the Solar PV Program be procured through RAM.<sup>9</sup>

PG&E also requests that the Commission modify D.10-04-053 to permit PG&E to schedule a Solar PV Program solicitation with the fifth RAM solicitation. The fifth RAM solicitation (known as RAM 5) closed on June 7, 2014.<sup>10</sup> Therefore, this request is moot.

Before addressing the issues presented, we provide the pertinent details of the decision that PG&E seeks to modify, D.10-04-052, below. Next we review the pertinent details of the other decision PG&E is seeking to modify, D.10-12-048, which established RAM.

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<sup>7</sup> PG&E February 26, 2014 Petition for Modification of D.10-04-052 at 1.

<sup>8</sup> PG&E February 26, 2014 Petition for Modification of D.10-04-052 at 2.

<sup>9</sup> PG&E February 26, 2014 Petition for Modification of D.10-04-052 at 3-6.

<sup>10</sup> PG&E February 26, 2014 Petition for Modification of D.10-04-052 at 9-12.

### 1.3. D.10-04-052 – PG&E’s Solar PV Program

In D.10-04-052,<sup>11</sup> the Commission approved, with certain modifications, PG&E’s request for a five-year 500 MW<sup>12</sup> solar photovoltaic program that provided for development of RPS-eligible solar facilities in two manners, through (1) utility-owned generation (UOG) and (2) power purchase agreements (PPA) with third-parties.<sup>13</sup>

The Commission’s adopted PG&E’s Solar PV Program with the goals of promoting the development of smaller scale PV<sup>14</sup> in PG&E’s service territory and supporting PG&E to expeditiously meet its RPS goals.<sup>15</sup> In approving of PG&E’s Solar PV Program, the Commission also relied on its existing goal to support the development of RPS UOG.<sup>16</sup> The Commission placed particular emphasis on the benefits of promoting small scale projects when approving of this program in 2010.<sup>17</sup>

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<sup>11</sup> PG&E filed this Petition pursuant to Rule 16.4 of the Commission’s Rule of Practice and Procedure.

<sup>12</sup> As PG&E noted in A09-02-019 and D.10-04-052, unless otherwise specified, references to capacity and overall program design in this filing are presented as alternating current (AC). PV unit cost estimates, on the other hand, are presented in terms of \$/unit of direct current (DC) output as PV panels are usually priced in DC. PG&E relies on a conversion factor of 0.82 to convert from MW (DC) to MW (AC). Based on this conversion factor, PG&E’s 250 MW (AC) PV UOG Program equates to the development of up to 305 MW (DC).

<sup>13</sup> PG&E filed Application 09-02-019 on February 2, 2009 seeking authorization of a program that resulted in D.10-04-052.

<sup>14</sup> The term *smaller scale* referred to facilities of 20 MW or less, and primarily ground-mounted PV facilities. D.10-04-052 at 53 and Appendix at 1-2.

<sup>15</sup> D.10-04-052 at 15-17 and 20.

<sup>16</sup> D.10-04-052 at 18.

<sup>17</sup> D.10-04-052 at 19, the Commission stated “As explained above, these projects, while potentially more expensive than the larger scale projects that tend to dominate the RPS solicitations, offer a number of specific benefits that we believe are not accounted for in

*Footnote continued on next page*

Under the UOG portion of PG&E's Solar PV Program, the Commission authorized PG&E to install up to 250 MWs of facilities from 1 to 20 MW located in PG&E's service territory. The Commission authorized PG&E to install these UOG facilities at a rate of 50 MW per program year, subject to certain provisions.<sup>18</sup> In D.10-04-052, the Commission also established deadlines for PG&E to bring the UOG facilities online. The Commission required PG&E to bring 50 MW online within a year of each of the five program years. As a result, for program year 1 (2010), the winning UOG projects came online in 2011; for program year 2 (2011), the winning UOG projects came online in 2012; and for program year 3 (2012), the winning UOG projects came online in 2013. In total, as of the date of this Petition, PG&E has developed 150 MW of UOG under the Solar PV Program established by the Commission in D.10-04-052.<sup>19</sup>

Under the other part of the program, known as the Power Purchase Agreement (PPA) portion of the Solar PV Program, the Commission authorized PG&E to solicit 250 MWs from third-party PV facilities from 1 to 20 MW in size located in PG&E's service territory, also at a rate of 50 MW per program year.<sup>20</sup> The Commission established a slightly different process for procurement of PPA

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the RPS program and, in particular, are not offered by projects of a larger scale, namely the relative ease and certainty of deployment these facilities offer. In light of these benefits, we believe the premium ratepayers may pay for these particular resources are justified, provided the price paid is the result of a competitive process and appropriate incentives are in place to maximize system performance."

<sup>18</sup> D.10-04-052 at 2-3.

<sup>19</sup> PG&E's February 26, 2014 Petition for Modification of D.10-04-052 at 4. This 150 MW excludes PG&E's Pilot Program, separately authorized by D.10-04-052.

<sup>20</sup> D.10-04-052 at 2.

volumes than for the UOG volumes under the Solar PV Program.<sup>21</sup> The terms and condition for PPA projects were approved by the Commission in a standard form contract.<sup>22</sup> Only projects that could achieve commercial operation within 18 months of signing a contract were eligible to participate. PG&E launched the first program year PPA solicitation on February 2, 2011 and sought approval of the 50 MW resulting from the selected offers via Advice Letter 3877-E (July 20, 2011).<sup>23</sup> PG&E launched its second program year PPA solicitation on April 3, 2012 and sought approval of 48 MW from that solicitation via Advice Letter 4106-E (September 7, 2012).<sup>24</sup> PG&E also launched a third program year PPA solicitation.

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<sup>21</sup> PG&E's solicitation protocol for the PV PPA Program was approved by Commission Resolution E-4368, and the compliance versions of PG&E's PV solicitation protocol and PPA became available in January 2011.

<sup>22</sup> D.10-04-052 at 82 (Ordering Paragraph 18). The Commission did not approve a contract from smaller scale projects, under 3 MW. Instead, PG&E sought approval of a standard contract for projects of 3 MW and under by advice letter pursuant to Ordering Paragraph 9 of D.10-04-052 at 79.

<sup>23</sup> The Commission approved Advice Letter 3877-E August 22, 2011.

<sup>24</sup> The Commission approved Advice Letter 4106-E on October 16, 2012.

As a result of these first and second program year PPA solicitations, two PPA projects, with a combined capacity of 38 MW, from the first program year have achieved commercial operation, and three 2 MW PPA projects, for a total of 6 MW, from the second program year have been terminated.<sup>25</sup> The remainder of the executed PPA projects is under development at this time, and PG&E states that it appears likely that successful projects in both the first and second program years of the PPA portion of the Solar PV Program will begin coming online in 2014 and thereafter.<sup>26</sup> In total, PG&E expects to procure 92 MW as a result of program year 1 and 2 of the PPA portion of the Solar PV Program.<sup>27</sup>

PG&E expects to enter into contracts for approximately 58 MW as a result of its third solicitation.

Of the total MW volumes authorized by the Commission for the Solar PV Program, 258 MW remain, 98 MW for the UOG portion of the program and 158 MW for the PPA portion of the program, including 58 MW approved for PY 3 RFO.

PG&E's Petition states 200 MW, an amount that does not take into consideration the third solicitation, remain in the program and should be transferred to RAM. Our review of PG&E's request takes into consideration the fact that the MW remaining in the program is now 198.

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<sup>25</sup> PG&E has classified these 6 MW as "drop outs" under language of D.10-04-052 at 52.

<sup>26</sup> PG&E February 26, 2014 Petition for Modification of D.10-04-052 at 4.

<sup>27</sup> PG&E February 26, 2014 Petition for Modification of D.10-04-052 at 4.

#### **1.4. D.10-12-048 – the Commission’s Renewable Auction Mechanism**

In D.10-12-048, the Commission established the RAM Program as a procurement mechanism for RPS-eligible projects up to 20 MW in size.<sup>28</sup> The Commission ordered the three largest investor-owned utilities to collectively procure a total of 1,000 MW<sup>29</sup> of RPS-eligible energy and to hold a total of four auctions, one every six months, over a two-year period. The Commission further implemented the RAM Program via Resolution E-4414, which adopted solicitation protocols and a standard PPA for each IOU. The Commission modified the RAM Program on several occasions since its initial implementation, including Resolutions E-4489 and E-4546.

Notably, on May 9, 2013, the Commission approved Resolution E-4582, which extended the RAM Program for one additional auction. This May 9, 2013 Resolution also allocated one-third of the MW volume originally allocated to the fourth RAM auction to this additional RAM auction, RAM 5 auction, to be closed by June 27, 2014.<sup>30</sup> The Commission has not authorized any additional auctions under RAM, beyond the fifth auction.

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<sup>28</sup> The initial RAM authorization in D.10-12-048 included procurement for projects sized 1-20 MW. D.12-05-035, which implemented the revised Section 399.20 Feed-in Tariff, changed the minimum project size for RAM to projects greater than 3 MW. *See*, D.12-05-035 (May 24, 2012), *Decision 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 and Denying Petitions for Modification of D.07-07-027 by Sustainable Conservation and Solutions for Utilities, Inc., Ordering Paragraph 7* at 125.

<sup>29</sup> Since the initial RAM authorization of 1,000 MW, the authorized capacity of the program was increased to 1,330 MW by D.12-02-002, D.12-02-035, and D.13-05-033.

<sup>30</sup> Commission Resolution E-4582, *Ordering Paragraph 2* at 12.

Recently, the Commission embarked on a comprehensive review of RAM within the context of RPS-eligible procurement. To initiate this review, the Administrative Law Judge issued a Ruling seeking party comments on the existing RAM Program and posed questions about potentially extending RAM under the same or a different format. This review continues in R.11-05-005.

Issues to be examined in R.11-05-005 include whether the factors underlying the program's original authorization continue to apply and whether reauthorization of the program is appropriate. Additional issues, such as program elements (e.g. eligibility, viability, etc.) and contract terms and conditions will also be reviewed.<sup>31</sup> The issue of whether additional RAM auctions should be authorized, a RAM 6 or more, is also under consideration. Additional RAM auctions would be needed to accommodate any MW volumes transferred from the Solar PV Program to RAM.<sup>32</sup>

## **2. Petition for Modification of D.10-04-052**

In this Petition, PG&E states that both the UOG and PPA portions of the Solar PV Program have played an important role in facilitating the development and transformation of the smaller scale PV market in California through the construction and operation of smaller scale projects ...."<sup>33</sup> PG&E also states that,

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<sup>31</sup> December 31, 2013 ALJ Ruling.

<sup>32</sup> PG&E's Petition had requested that the MW volumes remaining in Solar PV Program be auctioned as part of the as-available peaking category of RAM 5. However, as mentioned above, RAM 5 has occurred. This issue will be considered in R.11-05-005.

<sup>33</sup> Petition for Modification at Appendix 4, Declaration of Donald Howerton at 1, #3 and #4.

“[g]iven the successful transformation of the PV market in California, the PV Program is no longer a necessary or efficient procurement tool.”<sup>34</sup>

In response, Independent Energy Producers Association (IEP), states that it supports PG&E’s Petition. IEP agrees the efficiencies will be gained by terminating the Solar PV Program. IEP states that the RAM and Solar PV Program are similar in many respects and are duplicative.<sup>35</sup> IEP also states that a competitive auction through RAM will likely result in lower costs to ratepayers should MW volumes be transferred from the Solar PV Program to RAM.<sup>36</sup> IEP also favors the transfer of MW volumes to RAM because, according to IEP, all the remaining MW should be subject to competitive procurement if transferred to RAM. In contrast, if the MW volumes remain within the existing framework of the Solar PV Program, only 100 MW would be subject to competitive procurement since some of the MW volumes would remain under the UOG portion of the Solar PV Program.<sup>37</sup>

For the reasons set forth below, we close PG&E’s Solar PV Program and defer consideration the second issue, of whether any remaining MW volumes in the program should be transferred to the as-available peaking category of RAM, to the Commission’s on-going review of RAM in R.11-05-005.

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<sup>34</sup> PG&E’s February 26, 2014 Petition for Modification at Appendix 4, Declaration of Donald Howerton at 1, #6.

<sup>35</sup> IEP March 28, 2014 Response at 2.

<sup>36</sup> IEP March 28, 2014 Response at 2.

<sup>37</sup> IEP March 28, 2014 Response at 3.

## 2.1. Closing the Solar PV Program

When we adopted this program in D.10-04-052, we anticipated needing the Solar PV Program for 5 years. However, PG&E's Petition presents a number of changed circumstances justifying our review of the Solar PV Program before the end of this five year period.<sup>38</sup> Most importantly, we agree with PG&E that the goals of the program have been largely achieved and that the Solar PV Program facilitated the development and transformation of the smaller scale PV market in California.

One of the goals of the Program was to support PG&E in achieving the state's RPS goals and promoted PG&E's development of RPS-eligible UOG. PG&E's current RPS portfolio indicates sufficient RPS-eligible deliveries to meet the RPS compliance requirements in the first and second RPS compliance periods (2011 through 2016).<sup>39</sup> PG&E also expects to be close to satisfying the remaining compliance period (2017-2020).<sup>40</sup>

Another goal of the Program was to provide a procurement process for smaller scale RPS-eligible products. Now, based on our review of the other existing procurement tools for smaller scale RPS-eligible products, the Solar PV Program is duplicative and administratively burdensome. Other programs, such as the Feed-In Tariff Program,<sup>41</sup> are in place to support the development of smaller scale RPS projects. The Commission's administration of multiple

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<sup>38</sup> PG&E's Petition for Modification of D.10-04-52, Appendix 4 Declaration of Howerton.

<sup>39</sup> PG&E's Petition for Modification of D.10-04-52, Appendix 4 Declaration of Howerton.

<sup>40</sup> PG&E's Petition for Modification of D.10-04-52, Appendix 4 Declaration of Howerton. PG&E notes that it expects to have some incremental need beyond 2020 in order to reach and maintain a 33% RPS level. Petition at 7.

<sup>41</sup> Section 399.20 of the Public Utilities Code; D.12-05-035, D.13-01-041, and D.13-05-034.

programs serving the same or similar markets results in inefficiencies in the market and within the Commission.

For all these reasons, we find that the Solar PV Program achieved its goals and should be terminated except for on-going administration of existing contracts and facilities.

Accordingly, within 30 days of the effective date of today's decision, PG&E shall file a Tier 1 Advice Letter to terminate the Solar PV Program. The Advice Letter will summarize the current status of the program and remaining capacity. PG&E shall also file a Tier 2 Advice Letter establishing eligibility for any cost-savings incentives authorized by Ordering Paragraph 4 of D.10-04-052 for the UOG portion of the Solar PV Program after which PG&E's UOG compliance reporting requirements will cease. This filing shall be made after all actual capital cost data for program years 1-3 of the UOG portion of the Solar PV Program are final. PG&E's compliance obligations for the PPA portion of the Solar PV Program shall cease after submitting a report on its final PPA Solar PV Program solicitation.

## **2.2. Transfer of MW to RAM**

The question of whether the Commission will extend the use of RAM as a procurement mechanism is now under consideration in a separate docket, R.11-05-005. Therefore, PG&E's request to transfer MW volumes to RAM is denied. We address this matter today in R.11-05-005 as part of our current and on-going comprehensive review of the RAM procurement mechanism in R.11-05-005.

In undertaking this review, the Commission will revisit the request to rely on RAM as a mechanism for PG&E to procure additional MWs under the

as-available peaking category to address to early termination of the Solar PV Program.

### **3. Rule 16.4(d)**

Petitioners must meet the procedural requirement for a petition for modification as set forth in the Rules of Practice and Procedure. Regarding Rule 16.4(d), PG&E states that it was unable to file and serve this Petition within a year of the effective date of D.10-04-052 because the circumstances giving rise to the Petition did not yet exist. We find this explanation reasonable.

### **4. Comments on Proposed Decision**

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and procedure. Comments were filed by PG&E on November 10, 2014. Revisions in response to these comments are reflected in the decision.

### **5. Assignment of Proceeding**

Carla J. Peterman is the assigned Commissioner and Maryam Ebke is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. The goals of the Solar PV Program as set forth in D.10-04-052 have been achieved.
2. PG&E did not file this Petition within a year of the effective date of D.10-04-052.

### **Conclusions of Law**

1. Because the goals of the Solar PV Program have been substantially achieved, PG&E's obligation to procure additional PPAs and to build additional

PV facilities under D.10-04-052 should cease after completion of the PV PPA Programs Year 3 solicitation and the PV UOG Program Year 3 facilities. PG&E should be relieved of any requirement to initiate or complete Program Years 4-5 of the PV PPA Program and the Program Years 4-5 of the PV UOG Program. PG&E should also be relieved of its obligation to hold a program forum after the third PV PPA Program Solicitation. The Program remains open to administer existing contracts and projects and for certain administrative, compliance, and reporting requirements.

2. The question of whether to require PG&E to procure additional MW volumes of as-available peaking capacity through RAM will be addressed as part of our current and on-going comprehensive review of the RAM procurement mechanism in R.11-05-005.

3. PG&E's explanation under Rule 16.4(d) is reasonable that the circumstances giving rise to the Petition did not yet exist.

## **O R D E R**

### **IT IS ORDERED** that:

1. Within 30 days of the effective date of today's decision, Pacific Gas and Electric Company shall file a Tier 1 Advice Letter to terminate the Solar Photovoltaic (PV) Program established in Decision 10-04-052 to eliminate Program Years 4-5 from the PV power purchase agreement Program and the PV utility-owned generation Program and present the current status of the program. This Advice Letter may be combined with any Tier 1 Advice Letter authorized in Rulemaking 11-05-005 to transfer capacity to the Renewable Auction Mechanism.

2. Pacific Gas and Electric Company (PG&E) shall file a Tier 2 Advice Letter establishing eligibility for any cost-savings incentives authorized by Ordering Paragraph 4 of Decision 10-04-052 for the utility-owned generation (UOG) portion of the Solar Photovoltaic Program (Solar PV Program) after which PG&E's UOG compliance reporting requirements will cease. This Advice Letter filing shall be made after all actual capital cost data for program years 1-3 of the UOG portion of the Solar PV Program are final. PG&E's compliance obligations for the power purchase agreement (PPA) portion of the Solar PV Program shall cease after submitting a report on its final PPA Solar PV Program solicitation.

3. Application 09-02-019 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.