ALJ/SJP/ek4 **Date of Issuance 10/17/2016**

Decision 16-10-011 October 13, 2016

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Housing Authority of the County of Yolo, aka Yolo County Housing (YCH), and the Regional Housing Authority of Sutter and Nevada Counties (RHASNC), and Siemens Industry, Inc., Complainants, vs. Pacific Gas and Electric Company (U39E), Defendant.	Case 16-02-006 (Filed February 3, 2016)

DECISION APPROVING SETTLEMENT AGREEMENT

Summary

This decision approves a Settlement Agreement between Pacific Gas and Electric Company, the Housing Authority of the County of Yolo, aka Yolo County Housing, the Regional Housing Authority of Sutter and Nevada Counties, and Siemens Industry, Inc., which resolves all issues in the complaint.[1] The complaint is dismissed with prejudice and this proceeding is closed.

[1] The Settlement Agreement is attached hereto as Attachment A.

1. Background

On February 3, 2016, the Housing Authority of the County of Yolo, aka Yolo County Housing, the Regional Housing Authority of Sutter and Nevada Counties, and Siemens Industry, Inc., filed a complaint against Pacific Gas and Electric Company (PG&E) seeking reinstatement of six Multifamily Affordable Solar Housing (MASH) program applications complainants had submitted to PG&E.[2]

The MASH program, which is part of the California Solar Initiative, is an incentive program that supports solar installations in qualifying multifamily affordable housing developments. In Decision (D.) 15-01-027, the Commission adopted a two-tiered incentive structure for the program with different eligibility criteria for each incentive level. The two incentive levels are known as Track 1C and Track 1D. The Track 1C incentive is offered at $1.10/watt for portions of a photovoltaic (PV) system that offset either: (1) common area load, (2) non-Virtual Net Metering (VNM) tenant load,[3] or (3) VNM tenant load where the tenant receives less than 50 percent of the economic benefit of the allocated generation. The Track 1D incentive is offered at $1.80/watt for portions of a PV system that use VNM to allocate generation that offsets tenant load and guarantee that tenants will receive at least 50 percent of the economic benefit of the generation allocated to them for the life of the system.

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[2] Application numbers 393, 394, 397, 399, 400, and 401.

[3] VNM allows electricity generated from a single solar energy system on a multifamily affordable housing property to be allocated as kilowatt hour credits to either common areas of the property or to individually metered tenant accounts, without requiring the system to be physically interconnected to each tenant's meter. (D.08-10-036 at 31.)

PG&E timely filed an answer to the complaint on March 21, 2016. The complainants' MASH applications had requested the higher incentives under Track 1D. In its answer, PG&E contended that it rejected complainants' MASH applications because they failed to meet Commission-approved eligibility criteria for the Track 1D incentive level. PG&E also contended that the complaint failed to state a claim for relief under Rule 4.1(a)(1),[4] which requires that a complaint set forth "any act or thing done or omitted to be done by any public utility … in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission."

A prehearing conference was held on April 15, 2016, to develop the procedural schedule and to determine the issues properly within the scope of the proceeding. The Assigned Commissioner's Scoping Memo and Ruling, issued on May 4, 2016, set forth the scope of the proceeding and the procedural schedule, and confirmed that hearings would be needed.

On May 24, 2016, PG&E on behalf of all of the parties to Case 16-02-006 requested suspension of the procedural schedule to allow parties time to finalize a motion for approval of a proposed settlement agreement that they intended to submit to the Commission. The assigned Administrative Law Judge (ALJ) granted this request on May 25, 2016.

On July 12, 2016, the parties filed a motion for approval of the settlement agreement (Settlement Agreement).

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[4] All references to a Rule or Rules are to the Commission's Rules of Practice and Procedure. (Cal. Code of Regs., tit. 20, div. 1, ch. 1.)

2. Discussion

2.1. Standard of Review

Pursuant to Rule 12.1(d), the Commission will not approve a settlement unless it is "reasonable in light of the whole record, consistent with law, and in the public interest." As a matter of public policy, the Commission generally favors settlements of disputes if they are fair and reasonable in light of the record.[5] This policy supports many goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce an unacceptable result.

2.2. Analysis of Settlement Agreement

The Settlement Agreement is an all-party settlement that resolves all issues pending under the complaint. The parties have agreed as follows:

1) PG&E will reinstate Complainants' MASH Applications Numbers 393, 394, 397, 399, 400, and 401 and provide conditional reservations for these projects for Track 1C incentives in the amount of $785,697.
2) Complainants will relinquish any and all claims for Track 1D incentives for these projects.
3) Complainants agree and understand that they must meet all applicable MASH requirements within the MASH Program deadlines in order to receive these reserved MASH incentives.

The parties contend that the Settlement Agreement meets the criteria set forth in Rule 12.1(d). They argue that the Settlement Agreement is in the public interest and represents an equitable resolution of all issues raised in the complaint regarding PG&E's administration of the MASH program.

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[5] D.14-12-040 at 15; D.11-12-053 at 72.

We find the Settlement Agreement to be reasonable in light of the whole record. As parties reached a settlement prior to the serving of testimony and evidentiary hearings, the record in this case consists of parties' pleadings, the motion for approval of the Settlement Agreement, and the Settlement Agreement itself. Based on our review of this record, we find that the Settlement Agreement reflects a reasonable compromise of the parties' respective litigation positions. The parties had disputed whether complainants' projects were eligible for the higher level MASH incentives under Track 1D. There is no dispute that the complainants' projects have always been eligible for conditional reservations under Track 1C. PG&E has agreed to reinstate the complainants' cancelled projects and provide them with conditional reservations under Track 1C while complainants have agreed to relinquish any and all claims for Track 1D incentives.

We find the Settlement Agreement to be consistent with law. PG&E will reinstate and provide conditional reservations under Track 1C for complainants' projects. However, the complainants will still have to meet all applicable MASH program requirements, including statutory and Commission-imposed requirements, in order to receive the reserved MASH incentives.

We also find the Settlement Agreement to be in the public interest. According to the parties, reinstating the complainants' cancelled applications with conditional Track 1C reservations will allow the planned solar projects to move forward. This outcome is consistent with the overall goal of the MASH program to promote the adoption of solar power in the affordable housing

sector.[6] The Settlement Agreement is also consistent with the Commission's well-established policy of supporting resolution of disputed matters through settlement, it reflects a reasonable compromise, and it avoids the time, expense, and uncertainty of evidentiary hearings and further litigation.

2.3. Conclusion

Based on the foregoing, we find the Settlement Agreement to be reasonable in light of the whole record, consistent with law, and in the public interest as required pursuant to Rule 12.1(d). Therefore, we approve the Settlement Agreement.

Our approval of the Settlement Agreement does not constitute a determination that complainants meet all of the requirements to receive the Track 1C incentives. As set forth in the Settlement Agreement, PG&E will provide conditional reservations for the projects for Track 1C incentives but the complainants must still meet all applicable MASH requirements within the MASH program deadlines in order to receive the reserved incentives.

The Settlement Agreement states that complainants will take any necessary steps to dismiss this complaint with prejudice within ten days of a final Commission decision approving the Settlement Agreement.[7] We find it unnecessary for complainants to take additional steps to dismiss the complaint. As our approval of the Settlement Agreement resolves all disputed issues under the complaint, we dismiss the complaint with prejudice.

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[6] *See* D.08-10-036 at 6-7.

[7] Settlement Agreement at III.C.

3. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

4. Assignment of Proceeding

Michael Picker is the assigned Commissioner and Sophia J. Park is the assigned ALJ.

Findings of Fact

1. The parties had disputed whether complainants' projects were eligible for MASH incentives under Track 1D.

2. PG&E has agreed to reinstate the complainants' cancelled projects and provide them with conditional reservations under Track 1C while complainants have agreed to relinquish any and all claims for Track 1D incentives.

3. The Settlement Agreement reflects a reasonable compromise of the parties' respective litigation positions.

4. The complainants will still have to meet all applicable MASH requirements within the MASH program deadlines in order to receive the reserved Track 1C incentives.

5. Reinstating the complainants' cancelled applications with conditional Track 1C reservations will allow the planned solar projects to move forward, which is consistent with the overall goal of the MASH program to promote the adoption of solar in the affordable housing sector.

6. Approval of the Settlement Agreement will avoid the time, expense, and uncertainty of evidentiary hearings and further litigation.

7. The Settlement Agreement is an all-party settlement that resolves all issues pending under the complaint.

Conclusions of Law

1. The Settlement Agreement is reasonable in light of the whole record.
2. The Settlement Agreement is consistent with law.
3. The Settlement Agreement is in the public interest.
4. The Settlement Agreement should be approved.
5. Evidentiary hearings are not needed.
6. The complaint should be dismissed with prejudice.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement between Pacific Gas and Electric Company, the Housing Authority of the County of Yolo, aka Yolo County Housing, the Regional Housing Authority of Sutter and Nevada Counties, and Siemens Industry, Inc., attached hereto as Attachment A, is approved.
2. No evidentiary hearings are necessary.
3. The complaint is dismissed with prejudice.

4. Case 16-02-006 is closed.

This order is effective today.

Dated October 13, 2016, at Long Beach, California.

MICHAEL PICKER
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
LIANE M. RANDOLPH
Commissioners

Commissioner Carla J. Peterman, being necessarily absent, did not participate.

ATTACHMENT A

BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

The Housing Authority of the County of Yolo, aka Yolo County Housing (YCH), and the Regional Housing Authority of Sutter and Nevada Counties (RHASNC), and Siemens Industry, Inc., Complainants, vs. Pacific Gas and Electric Company (U39E), Defendant.	Case No. (C.) 16-02-006 (Filed February 3, 2016)

SETTLEMENT AGREEMENT AMONG
PACIFIC GAS AND ELECTRIC COMPANY (U39E),
YOLO COUNTY HOUSING (YCH), THE REGIONAL HOUSING AUTHORITY OF SUTTER AND NEVADA COUNTIES (RHASNC), AND SIEMENS INDUSTRY, INC.

LISA BAKER
147 W. Main Street
Woodland, CA 95695
Telephone: (530) 662-5428
E-mail: lbaker@ych.ca.gov

FOR THE HOUSING AUTHORITY OF THE COUNTY OF YOLO, AKA YOLO COUNTY HOUSING

GUSTAVO BECERRA
1455 Butte House Road
Yuba City, CA 95993
Telephone: (530) 671-0220
E-mail: g.becerra@rhasnc.org

FOR THE REGIONAL HOUSING AUTHORITY OF SUTTER AND NEVADA COUNTIES

SCOTT MEINZEN
25821 Industrial Boulevard, Suite 300
Hayward, CA 94545
Telephone: (510) 305-0967
E-mail: scott.meinzen@siemens.com

FOR SIEMENS INDUSTRY, INC.

STACY W. WALTER
Pacific Gas and Electric Company
Post Office Box 7442
San Francisco, CA 94120
Telephone: (415) 973-6611
E-mail: sww9@pge.com

Attorney for
PACIFIC GAS AND ELECTRIC COMPANY

BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

The Housing Authority of the County of Yolo, aka Yolo County Housing (YCH), and the Regional Housing Authority of Sutter and Nevada Counties (RHASNC), and Siemens Industry, Inc., Complainants, vs. Pacific Gas and Electric Company (U39E), Defendant.	Case No. (C.) 16-02-006 (Filed February 3, 2016)

SETTLEMENT AGREEMENT AMONG
PACIFIC GAS AND ELECTRIC COMPANY (U39E),
YOLO COUNTY HOUSING (YCH), THE REGIONAL HOUSING AUTHORITY OF SUTTER AND NEVADA COUNTIES (RHASNC), AND SIEMENS INDUSTRY, INC.

Pursuant to California Public Utilities Commission (Commission) Rule of Practice and Procedure 12.1, Pacific Gas and Electric Company (PG&E), the Housing Authority of the County of Yolo aka Yolo County Housing (YCH), the Regional Housing Authority of Sutter and Nevada Counties (RHASNC) and Siemens Industry, Inc. (Siemens) (also referred to collectively as "the Parties" or individually as "the Party"),[1/] hereby enter into this agreement (Settlement Agreement) resolving all issues raised in Complaint (C.) 16-02-006 (Complaint). This Settlement Agreement is in the public interest and represents an equitable resolution of all issues raised in the Complaint regarding the Multifamily Affordable Solar Housing (MASH) program. The Parties request that the Commission approve the Settlement Agreement in full.

[1/] YCH, RHASNC and Siemens are also referred to in this pleading as "Complainants".

I. BACKGROUND

The Complaint requested that the Commission reinstate six Multifamily Affordable Solar Housing Program (MASH) applications submitted by Complainants to PG&E.[2/] The CPUC-approved MASH program has two incentive levels and corresponding eligibility criteria for the incentive levels. Complainants submitted applications seeking the higher level MASH incentives (Track 1D). Under the MASH program requirements as approved by the Commission and documented in the MASH Handbook, approval for the higher Track 1D incentives requires that the applicants guarantee that their low income tenants will receive at least a 50% economic benefit from the portion of the solar energy system allocated to the tenant via virtual net metering for the lesser of 20 years or the life of the system.[3/] Because Complainants were not able to demonstrate compliance with the 50% tenant benefit requirement within the specified timeline,[4/] PG&E cancelled the six projects in October 2015 consistent with the timelines laid out in the MASH program rules.[5/] The other level of MASH incentives (Track 1C) does not include the fifty percent tenant benefit requirement. The Parties agree that Complainants' applications currently meet all the requirements for Track 1C MASH incentives.

A prehearing conference was held by the Commission on April 15, 2016. During this proceeding the Parties scheduled a settlement discussion for April 25, 2016. The settlement session was successful and Parties reached agreement as described herein.

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[2/] Complaint, p. 2.

[3/] The California Public Utilities Commission Multifamily Affordable Solar Housing Program Handbook, First Edition (MASH Handbook), Section 2.6, p. 25. See also D.15-01-027, pp. 40-41.

[4/] MASH Handbook, Section 4.8.3, p. 63, provides that applications will be cancelled if required information is not provided within 10 calendar days.

[5/] Id.

II. RECITALS

A. The California MASH solar incentive program has two incentive levels, Track 1D and Track 1C. The Commission established the requirements for each level in Decision (D.) 15-01-027: "The Track 1C incentive will be offered at $1.10/watt for portions of a PV system that offset either (1) common area load, (2) non-VNM tenant load, or (3) VNM tenant load where the tenant receives less than 50% of the of the economic benefit of the allocated generation. The Track 1D incentive will be offered at $1.80/watt for portions of a PV system that use VNM to allocate generation that offsets tenant load and guarantee that tenants will receive at least 50% of the economic benefit of the generation allocated to them for the life of the system."[6/]

B. Complainants applied for Track 1D incentives for MASH applications 393, 394, 397, 399, 400 and 401(MASH Applications).

C. While Complainants' MASH Applications would have met all requirements needed for PG&E to conditionally reserve Track 1C MASH incentives, they did not submit the level of detail required to document how the tenant economic benefit would have been reached as required for reservation of Track 1D incentives.

D. The Track 1D tenant benefit requirement was relatively new and did not apply to projects enrolled in MASH prior to the reopening of the program in August, 2015.

E. The Parties exchanged numerous emails and phone calls between July 31st, 2015 to October 13th, 2015 during the MASH application submittal period in an effort to address questions and concerns regarding the Track 1D tenant benefit requirement. However, agreement on sufficient documentation of the tenant benefit requirement was not reached during the application timeline provided for in the MASH Handbook, leading to the Complaint.

[6/] D. 15-01-027, p. 40.

III. SETTLEMENT AGREEMENT PROVISIONS

In order to resolve all issues pending under this Complaint the Parties agree as follows:

A. Settlement Parameters

1) PG&E agrees to reinstate Complainants' MASH Applications # 393, 394, 397, 399, 400 and 401 and provide conditional reservations for these projects for Track 1C incentives in the amount of $785,697 as follows:

- 393 - $69,244
- 394 - $239,829
- 397 - $124,456
- 399 - $98,525
- 400 - $98,525
- 401 - $155,119

2) Complainants agree to relinquish any and all claims for Track 1D incentives for these projects; and

3) Complainants agree and understand that they must meet all applicable MASH requirements within the MASH Program deadlines in order to receive these reserved MASH incentives.

B. Commission Approval

This Settlement Agreement shall become effective on the mailing date of a final Commission decision approving the terms of this Settlement Agreement without modifications unacceptable to any Party.

C. Dismissal of Complaint Case

Complainants will take any necessary steps to dismiss this Complaint case with prejudice within ten (10) days of a final Commission decision approving the Settlement Agreement.

D. General Terms and Conditions

1. The Parties agree to support the Settlement Agreement and perform diligently, and in good faith, all actions required or implied hereunder to obtain Commission approval of this Settlement Agreement and dismissal of the complaint, including without limitation, the preparation of written pleadings. No Party will contest in this proceeding, or in any other forum or in any manner before the Commission, this Settlement Agreement.

2. The Parties understand that time is of the essence in obtaining the Commission's approval of this Settlement Agreement and that each will extend its best efforts to ensure that the Commission issues a final decision approving the Settlement Agreement.

3. The Settlement Agreement is not intended by the Parties to be precedent regarding any principle or issue. The Parties have assented to the terms of this Settlement Agreement only for the purpose of arriving at the compromise embodied in the Settlement. Each Party expressly reserves its right to advocate, in current and future proceedings, positions, principles, assumptions, and arguments which may be different than those underlying this Settlement Agreement and each Party declares this Settlement Agreement should not be considered as precedent for or against it.

4. The Parties agree by executing and submitting this Settlement Agreement that the relief requested herein is just, fair and reasonable, and in the public interest.

5. This Settlement Agreement embodies compromises of the Parties' positions. No individual term of this Settlement Agreement is assented to by any Party, except in consideration of the other Parties' assent to all other terms. Thus the Settlement Agreement is indivisible and each part is interdependent on each and all other parts. Any Party may withdraw from this Settlement if the Commission modifies, deletes from, or adds to the disposition of the matters stipulated herein. The Parties agree, however, to negotiate in good faith with regard to any

Commission-ordered changes in order to restore the balance of benefits and burdens, and to exercise the right to withdraw only if such negotiations are unsuccessful.

6. The terms and conditions of the Settlement Agreement may only be modified in writing subscribed to by the Parties.

7. This Settlement Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which, taken together, shall constitute a single instrument. This Settlement Agreement may be executed by signature via facsimile or PDF transmission and either shall be deemed the same as an original signature.

The Parties have caused this Settlement Agreement to be executed by their authorized representatives. By signing this Settlement Agreement, the representatives of the Parties warrant that they have the requisite authority to bind their respective principals.

By: _____
Name
Title CEO
Dated: 6/29, 2016

HOUSING AUTHORITY OF THE COUNTY OF YOLO, AKA YOLO COUNTY HOUSING

By: _____
Name Scott Meinzen
Title Account Executive
Dated: June 16, 2016

SIEMENS INDUSTRY, INC.

By: _____
Name
Title
Dated: _____, 2016

REGIONAL HOUSING AUTHORITY OF SUTTER AND NEVADA COUNTIES

By: _____
Name
Title
Dated: _____, 2016

PACIFIC GAS AND ELECTRIC COMPANY

Commission-ordered changes in order to restore the balance of benefits and burdens, and to exercise the right to withdraw only if such negotiations are unsuccessful.

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By: _____
Name
Title
Dated: _____, 2016

HOUSING AUTHORITY OF THE COUNTY OF YOLO, AKA YOLO COUNTY HOUSING

By: _____
Name SCOTT MEINZEN
Title ACCOUNT EXECUTIVE
Dated: JUNE 16, 2016

SIEMENS INDUSTRY, INC.

By: _____
Name
Title
Dated: _____, 2016

REGIONAL HOUSING AUTHORITY OF SUTTER AND NEVADA COUNTIES

By: _____
Name
Title
Dated: _____, 2016

PACIFIC GAS AND ELECTRIC COMPANY

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By: _____
Name
Title
Dated: _____, 2016

HOUSING AUTHORITY OF THE COUNTY OF YOLO, AKA YOLO COUNTY HOUSING

By: _____
Name
Title
Dated: _____, 2016

SIEMENS INDUSTRY, INC.

By: _____
Name Gustavo Becerra
Title Executive Director
Dated: June 16, 2016

REGIONAL HOUSING AUTHORITY OF SUTTER AND NEVADA COUNTIES

By: _____
Name
Title
Dated: _____, 2016

PACIFIC GAS AND ELECTRIC COMPANY

Commission-ordered changes in order to restore the balance of benefits and burdens, and to exercise the right to withdraw only if such negotiations are unsuccessful.

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By: _____
Name
Title
Dated: _____, 2016

HOUSING AUTHORITY OF THE COUNTY OF YOLO, AKA YOLO COUNTY HOUSING

By: _____
Name
Title
Dated: _____, 2016

SIEMENS INDUSTRY, INC.

By: _____
Name
Title
Dated: _____, 2016

REGIONAL HOUSING AUTHORITY OF SUTTER AND NEVADA COUNTIES

By: _____
Name Dan Halperin
Title Director, Distributed Generation
Dated: July 6, 2016

PACIFIC GAS AND ELECTRIC COMPANY

(END OF ATTACHMENT A)