

**DRAFT**

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

**ITEM # 42**

**I.D.# 11228**

**ENERGY DIVISION**

**RESOLUTION G-3461**

**June 21, 2012**

**R E S O L U T I O N**

Resolution G-3461. Pacific Gas & Electric Company (PG&E)

PROPOSED OUTCOME: This Resolution approves, with conditions specified herein, four advice letters which notify us of the creation of new affiliates to PG&E, as required by the Affiliate Transaction Rules (the Rules) of the California Public Utility Commission (the Commission). We find that the five entities identified as affiliates in the advice letters are affiliates. We further find that two additional companies identified in the advice letters, while not affiliates under the Rules, have a relationship with PG&E Corporation and transact with PG&E under the California Solar Initiative Program (CSI Program) in a manner that raises a risk of preferential treatment. This Resolution would order an audit of PG&E's affiliate transactions and transactions with two additional entities under the CSI Program from June 30, 2009 to June 30, 2011. PG&E is ordered to file an advice letter implementing changes to the CSI Program Handbook as set out here.

ESTIMATED COST: None<sup>1</sup>

By PG&E Advice Letter (AL) 3182-G/3789-E , filed January 6, 2011, PG&E AL 3091-G-A/3616-E-A, filed December 10, 2010, PG&E AL 3141-G-A/3708-E-A, filed December 17, 2010, and PG&E AL 3170-G-A/3763-E-A, filed December 17, 2010.

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<sup>1</sup> Affiliate audits are performed at shareholder expense.

**SUMMARY**

This Resolution approves four advice letters notifying the Commission of investment and contractual transactions between PG&E Corporation (PG&E Corporation) and nine solar companies. The advice letters were protested by Division of Ratepayer Advocates (DRA), City and County of San Francisco (CCSF), and CALifornians for Renewable Energy (CARE).

Based on the protests and responses, and comments filed addressing the first version of this Draft Resolution, this modified Resolution: (i) approves PG&E's determinations regarding the affiliate status of five of the companies under the Commission's Affiliate Transaction Rules (the Rules); (ii) approves PG&E's determinations regarding the non-affiliate status of four of the companies; (iii) approves compliance with the requirements of Rule VI.B in PG&E's filings, conditioned upon execution of the independent compliance audit, as directed here; (iv) orders PG&E to implement changes to the CSI Program Handbook; and (v) orders the scope of the Commission's affiliate transactions audit to include transactions between PG&E and the new affiliates, as well as PG&E's transactions with two additional non-affiliate companies within the CSI Program.

This Resolution applies the Rules to fifteen distinct relationships among PG&E, PG&E Corporation, and nine solar companies. The Rules were designed to assess and ameliorate risk and prevent the potential misuse of market power engendered through, most typically, a single transaction between a utility or its holding company and one affiliate. In contrast, the relationships addressed here include tax equity financing transactions, service contracts, applications to the CSI Program under PG&E's administration, and investment through the acquisition of warrant rights. The number of entities involved, as well as the wide-ranging nature of the relationships among them, presents a challenge for analysis under the structure of the Rules. Against this complex background, this Resolution assesses and pragmatically mitigates the risk of improper market power gain. Our intent is to further the Commission's fundamental goals set out

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in the Rules: to foster competition while protecting both ratepayers and consumers.<sup>2</sup>

## **BACKGROUND**

In 1997, the Commission adopted the Rules, which expanded and strengthened existing rules designed to govern the transactions between energy utilities and their holding company affiliates active in providing energy and energy-related services. The Rules have several stated aims, including: “to prevent cross-subsidization of affiliates by the utilities, foster competition...and protect consumer interests.”<sup>3</sup> The broad standards of conduct that the Rules implement are non-discrimination, protection against information disclosure, and corporate separation.<sup>4</sup> Utilities must notify the Commission of a new or changed affiliate relationship via advice letter filing within 60 days, stating the affiliate’s purpose and activities, the utility’s determination of the applicability of the Rules to transactions between utility and the affiliate, and a demonstration of adequate procedures to assure compliance with the Rules.<sup>5</sup>

PG&E notified the Commission in the instant ALs of five affiliate relationships. Of those, PG&E determines that three are companies active in the solar electricity industry and thus subject to the Rules. In the ALs, PG&E sets out its compliance plan, and specifically states that PG&E will interact with these affiliates in its role

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<sup>2</sup> Decision (D.) 97-12-088 (*Opinion Adopting Standards of Conduct Governing Relationships Between Utilities and Their Affiliates*, issued December 16, 1997 in R.97-04-011/I.97-04-012), p. 9.

<sup>3</sup> See R.97-04-011/I.97-04-012 (*Order Instituting Rulemaking to Establish Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates*, filed April 9, 1997), pp. 1-5, and D. 97-12-088, pp. 7, 9. The Rules were last updated by the Commission for the large energy utilities in D.06-12-029 (*Opinion Adopting Revisions to (1) the Affiliate Transaction Rules and (2) General Order 77-L, As Applicable to California’s Major Energy Utilities and Their Holding Companies*, issued December 14, 2006 in R.05-10-030), Appendix A-3, and all numbered references to the Rules are to that decision.

<sup>4</sup> Rules III, IV, V; see also R. 97-04-011/I.97-04-012, p. 5; D. 97-12-088, p. 12.

<sup>5</sup> Rule VI.B.

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as Program Administrator (PA) for the CSI Program,<sup>6</sup> and in its role of processing and approving applications for interconnection of distributed self-generation resources under Rule 21.

PG&E also notified the Commission that two of the affiliates are wholly-owned subsidiaries of PG&E Corporation, but are not active in providing electricity-related products and services. As a result, in PG&E's determination, those affiliates are subject only to certain of the Rules.

Last, PG&E notified the Commission of four additional corporate entities involved in the transactions that are active in the solar electricity industry, but, in PG&E's determination, do not meet any of the tests in the Rules to determine affiliate status and applicability and are therefore not subject to the Rules.

### Advice Letters

The ALs that address these transactions are described below. The Commission requested that each of the ALs be served on R.10-05-004, the ongoing distributed generation proceeding whose scope includes the CSI Program. PG&E complied with this request.

AL 3091-G/3616-E. PG&E filed AL 3091-G/3616-E on February 10, 2010, notifying the Commission of the reclassification of Pacific Venture Capital LLC, a wholly-owned subsidiary of PG&E Corporation, to the status of an affiliate engaged in the provision of electricity-related products and/or services, and thus subject to the Rules. AL 3091-G/3616-E was protested by Californians for Renewable Energy (CARE) on March 3, 2010. Energy Division (ED) rejected AL 3091-G/3616-E without prejudice on July 7, 2010, for failing to meet the burden of Rule VI.B, which requires a demonstration of how the utility will ensure compliance with the Rules with respect to the new affiliate.

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<sup>6</sup> The CSI Program offers incentives for installation of solar rooftop self-generating systems up to 1.0 MW. As PA, PG&E is responsible for the full administration of the program in its service territory, including handling customer applications, ensuring that technical criteria are met, making incentive payments and conducting inspections, among other responsibilities.

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AL 3141-G/3708-E. PG&E filed AL 3141-G/3708-E on July 23, 2010, notifying the Commission of a transaction in which PEC II, a wholly-owned subsidiary of PG&E Corporation, acquired a membership interest in SunRun Pacific Solar, LLC (SunRun Pacific), a provider of rooftop solar installations. PEC II provided \$100 million in capital to SunRun Pacific for installation of a certain number of systems. SunRun Pacific executed an Operations and Maintenance Contract with SunRun, Inc. for billing and maintenance of the systems.

AL 3170-G/3763-E. PG&E filed AL 3170-G/3763-E on November 22, 2010, notifying the Commission of a transaction in which PEC III, a wholly-owned subsidiary of PG&E Corporation, acquired a membership interest in Sequoia Pacific Solar I, LLC (Sequoia Pacific), a provider of rooftop solar systems. PG&E further notified the Commission that the managing member of Sequoia Pacific was Sequoia Pacific Member I, LLC (Sequoia Pacific Member I), an entity affiliated with SolarCity Corp. PEC III provided \$120 million in capital to Sequoia Pacific for installation of a certain number of systems; in turn, Sequoia Pacific executed a Maintenance Services Agreement with SolarCity Corp. for billing and maintenance of the systems.

AL 3091-G-A/3616-E-A. PG&E filed AL 3091-G-A/3616-E-A on December 17, 2010, superseding AL 3091-G/3616-E.<sup>7</sup> In AL 3091-G-A/3616-E-A, PG&E notified the Commission of the renaming of PG&E Corporation subsidiary Pacific Venture Capital, LLC to Pacific Energy Capital I (PEC I). PG&E further notified the Commission of an additional transaction, in which PEC I invested

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<sup>7</sup> As a procedural matter, AL 3091-G/3616-E was rejected by the Energy Division (ED) on July 17, 2010, which, under General Order (G.O.) 96-B, Section 7.6.1, is considered a final disposition. PG&E's filing of AL 3091-G-A/3616-E-A notified the Commission of a new transaction executed by PEC I. AL 3091-G-A/3616-E-A was protested by CARE, and PG&E responded to CARE's protest. However, as noted, PG&E filed AL 3182-G/3789-E, superseding AL 3091-G/3616-E and AL 3091-G-A/3616-E-A. The Commission will address the substance of AL 3182-G/3789-E in this Resolution, and will address the points made by CARE in its protest to AL 3091-G-A/3616-E-A. The Commission will also effect procedural disposition of AL 3091-G-A/3616-E-A through this Resolution, as required in G.O. 96-B, Section 7.6.2.

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\$78 million in rooftop solar installations to be installed and owned by Banyan SolarCity, LLC (Banyan SolarCity), a wholly-owned subsidiary of SolarCity Corporation (SolarCity Corp.).

AL 3170-G-A/3763-E-A. PG&E filed AL 3170-G-A/3763-E-A on December 17, 2010, superseding AL 3170-G/3763-E and providing additional information to the Commission on the transaction involving PEC III, Sequoia Pacific, Sequoia Pacific Member I, and SolarCity Corp.

AL 3141-G-A/3708-E-A. PG&E filed AL 3141-G-A/3708-E-A on December 17, 2010, superseding AL 3170-G/3763-E and providing additional information to the Commission regarding the transaction among PEC II, SunRun Pacific, and SunRun, Inc., as set out in AL 3141-G-A/3708-E.

AL 3182-G/3789-E. PG&E filed AL 3182-G/3789-E on January 6, 2011, describing the same transaction between PEC I, Banyan SolarCity, and SolarCity Corp. as set out in AL 3091-G-A/3616-E-A, and superseding AL 3091-G/3616-E and AL 3091-G-A/3616-E-A in their entirety.

Pursuant to G.O. 96-B, Section 7.6.2, this Resolution effects disposition of four advice letters: AL 3182-G/3789-E , AL 3141-G-A/3708-E-A , AL 3170-G-A/3763-E-A, and AL 3091-G-A/3616-E-A.

## **NOTICE**

Notice of AL 3182-G/3789-E , AL 3141-G-A/3708-E-A, AL 3170-G-A/3763-E-A, and AL 3091-G-A/3616-E-A was made by publication in the Commission's Daily Calendar. PG&E states that a copy of each of these ALs was mailed and distributed in accordance with Section 3.14 of G.O. 96-B.

## **PROTESTS**

On December 13, 2010, CCSF and CARE each filed a timely protest to AL 3170-G/3763-E.

PG&E filed a timely joint reply to the protests of CCSF and CARE on January 13, 2011.

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On January 14, 2011, CARE filed a joint protest to AL 3091-G-A/3616-E-A, AL 3170-G-A/3763-E-A, and AL 3182-G/3789-E, incorporating by reference its protest to AL 3170-G/3763-E.

On January 14, 2011, CCSF filed a joint protest to AL 3170-G-A/3763-E-A, AL 3141-G-A/3708-E-A, and AL 3182-G/3789-E, incorporating by reference its protest to AL 3170-G/3763-E.

On February 16, 2011, following extensions granted by ED, Division of Ratepayer Advocates (DRA) filed a protest to AL 3182-G/3789-E.

On February 24, 2011, PG&E filed a timely reply to the protest of DRA.

## **DISCUSSION**

### **Summary of the Protests**

#### **Protest of CARE to AL 3170-G/3763-E**

CARE argues that as a general matter in AL 3170-G/3763-E, PG&E fails to “adequately explain how the utility PG&E will ensure compliance with the Affiliate Transactions Rules, or why these rules should not apply to Sequoia Pacific or Solar City.” CARE contends the transaction discussed in the AL is an “unlawful attempt to game the market of third party solar integrators.” CARE argues that the transactions discussed in the ALs raise market power concerns, because they create a “conflict of interest” in PG&E’s role as CSI Program Administrator, “in which Solar City is one of hundreds of solar installers whom PG&E monitors, [and to whom SolarCity Corp.] provides incentives and interconnection permits and sign-offs.” CARE further alleges that the conflict of interest will lead SolarCity Corp. to improperly use the utility affiliation for marketing purposes. CARE also argues that the transaction structure will lead to “double dipping,” by PG&E, as PG&E’s “new Venture Capital affiliate [Sequoia Pacific] will become part owner of Solar City, and PG&E shareholders will benefit from profits which SolarCity derives from both CSI ratepayer funded incentives and from ratepayer subsidized Net Energy Metering credits.”

CARE further argues that SolarCity Corp. and SunRun, Inc. have each lobbied against the Property Assessed Clean Energy Program (PACE Program), in order to make their solar lease and PPA products more attractive to customers.

CARE argues for rejection of AL 3170-G/3763-E on the basis of the above.

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PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

Protest of CARE to AL 3170-G/3763-E-A and AL 3091-G-A/3616-E-A

CARE incorporates by reference its protest to AL 3170-G/3763-E, and requests that the Commission reject AL 3170-G/3763-E-A and AL 3091-G-A/3616-E-A with prejudice.

Protest of CCSF to AL 3170-G/3763-E

CCSF first argues that the transaction among PEC III, Sequoia Pacific, and SolarCity Corp. creates a conflict of interest, where Affiliate Sequoia Pacific “stands to profit from participating in the [CSI] Program,” because PG&E could aid it through biased administration in violation of the non-discrimination standards in Rule III.A. CCSF states, “PG&E should not be allowed to benefit either directly or indirectly from the program it administers.”

Second, CCSF argues that a second implication of the relationship is “the potential for Sequoia Pacific to leverage its status as a PG&E affiliate to its own competitive advantage.”

Third, CCSF contends that the conflict of interest created by the transaction means that any interaction between “Sequoia Pacific as a residential rooftop installer and PG&E” as CSI Program Administrator falls outside the categories of permissible utility-affiliate transactions under Rule III.B.

Fourth, CCSF asserts that the internal mechanisms to guard against preferential treatment set out by PG&E in the AL are “not enough to overcome the direct conflict of interest.” CCSF argues that any failure by PG&E to administer the CSI Program impartially would violate the “just and reasonable” standard of California Public Utilities Code (Pub. Util. Code) section 451.

Fifth, CCSF also raises a separate market power concern, arguing that PG&E Corporation’s warrant rights holdings in both SolarCity Corp. and SunRun, Inc. create an incentive for PG&E to aggregate market power unfairly by “driv[ing] business toward” both of those entities.

Sixth, CCSF argues that the advice letter process is an inappropriate procedural vehicle to address the policy issues raised by the transaction.

On the basis of the above, CCSF requests that the Commission reject AL 3170-G/3763-E.

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
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Protest of CCSF to AL 3170-G-A/3763-E-A, AL 3141-G-A/3708-E-A, and  
AL 3182-G/3789-E

CCSF incorporates by reference its protest to AL 3170-G/3763-E, and on that basis requests that the Commission reject AL 3170-G-A/3763-E-A, AL 3141-G-A/3708-E-A, and AL 3182-G/3789-E.

Protest of DRA to AL 3182-G/3789-E<sup>8</sup>

DRA first argues that a conflict of interest is created by the transaction among PEC I, Banyan SolarCity, and SolarCity Corp., because “PG&E will know that SolarCity is partially funded by a subsidiary of PG&E Corp. (PEC I, in this case) and as [CSI Program Administrator], will be in a position to give preferential treatment to SolarCity.” DRA argues that this conflict of interest requires that that the Commission consider replacing PG&E as PA of the CSI Program.

Second, DRA argues that PG&E reads Rule II.A too narrowly in its assertion that neither Banyan SolarCity nor SolarCity Corp. are affiliates subject to the Rules. DRA cites Rule I.A’s third test, defining as an affiliate a company in which “the utility, its controlling corporation, or any of the utility’s affiliates . . . indirectly have substantial financial interests in the company exercised through means other than ownership.” DRA argues that the “multimillion dollar pass-through lease arrangements between PEC I and SolarCity/Banyan, and the associated rental income and tax credit revenues, plus the prospect of more such investments, at least arguably constitute a ‘substantial financial interest’” that renders Banyan SolarCity and SolarCity Corp. affiliates under the Rules.

Third, DRA argues that the structure of the transactions, as well as PG&E’s contention that neither Banyan SolarCity nor SolarCity Corp. are affiliates, constitutes an attempt to circumvent the Rules in violation of Rule II.C.

Fourth, DRA contends that PG&E’s assertion of an effective Rules compliance program is not substantiated, as the last affiliate transactions audit conducted examined PG&E activities in 2006.

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<sup>8</sup> The Protest of DRA references the transactions in AL 3141-G-A/3708-E-A and AL 3170-G/3763-E, but does not specifically protest those ALs.

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

On the basis of the above, DRA requests that the Commission reject AL 3182-G/3789-E.

### *PG&E's Replies to the Protests*

#### PG&E's Joint Reply to the Protests of CARE and CCSF

PG&E jointly replied to the Protest of CARE and the Protest of CCSF.

PG&E first argues that CCSF's assertion that PG&E should not benefit from its administration of the CSI Program "rests on the assumption that the Affiliate Transaction Rules...represent an inadequate regulatory tool[.]" CCSF's claim, PG&E argues, violates G.O. 96-B, Rule 7.4.2 by calling for relitigation of Commission decisions approving the Rules and the CSI Program. PG&E argues that instead, the proper scope of the Commission's review of the ALs is whether PG&E has met the burden of demonstrating a compliance plan sufficient to guard against violations of the Rules.

Second, PG&E contends that the implication of CCSF's argument that any actual preferential treatment will violate the just and reasonable standard of Pub. Util. Code section 451 is that utility affiliates are disallowed from participation in the CSI Program. Such an exclusion, PG&E argues, would run counter to the Commission decisions establishing the rules of the CSI Program.

Third, PG&E argues that it has met its burden in the ALs of demonstrating internal procedures sufficient to guard against violations of the Rules and ensure impartial treatment in its administration of the CSI Program.

Fourth, PG&E argues that under any of several definitions, the CSI Program is a service that falls within the permitted utility-affiliate transactions of Rule III.B. PG&E asserts that the CSI Program is a "tariffed" service comprising "rates, terms, and conditions of services" approved by the Commission.<sup>9</sup> Alternatively, PG&E argues that the CSI Program is a Commission-authorized "new product or service" that utilities and their affiliates are permitted to transact.<sup>10</sup> In the second

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<sup>9</sup> Rule VII.B.4.

<sup>10</sup> Rule III.B; Rule VII.

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PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

alternative, PG&E argues that the CSI Program is a product or service that PG&E, according to the CSI Program rules, makes available to all market participants through an open, competitive bidding process.<sup>11</sup> CCSF's interpretation, PG&E argues, would "unfairly exclude [utility affiliates] from participating in the CSI program, a result not contemplated" by the CSI Program's authorizing legislation or Commission decisions regarding the Rules.

Fifth, PG&E argues that CCSF's challenge to PG&E's use of the advice letter process is contrary to the mandate of Rule VI.B, requiring a utility to file an advice letter within 60 days of the creation of a new affiliate and demonstrating its plan for compliance with the Rules.

Sixth, PG&E argues that CCSF's claims that Sequoia Pacific may leverage its affiliate status to competitive advantage are unsubstantiated, and that the Rules are designed to guard against such behavior.

As to the Protest of CARE, PG&E argues that "[a]ll of CARE's claims are without merit and should be summarily dismissed."

#### PG&E's Reply to the Protest of DRA

PG&E takes issue with DRA's application of the third affiliate test set out in the Rules to the relationship between Banyan SolarCity and SolarCity Corp. PG&E argues that the key query in the Rules revolves around control: the third test in Rule I.A "logically refers to situations similar to that of an ownership interest of all or a part of one entity by another." Further, PG&E asserts, an ownership interest is defined by "first, allocation to the owner of the financial risks and rewards of the subsidiary's activities, and second, the control of its activities." PG&E argues that as neither PEC I's Master Lease Agreement with Banyan SolarCity, nor PEC I's Maintenance Service Agreement with SolarCity Corp., impart such an ownership interest to PEC I, neither entity is an affiliate as defined by the Rules.

Second, in response to DRA's contention that the transaction structure represents an attempt to circumvent the Rules, PG&E argues that PEC I's investment in

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<sup>11</sup> Rule III.B.

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
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solar rooftop systems did not in and of itself violate the Rules; instead, the Rules “exist to regulate the manner in which utility affiliate[s] such as PEC I interact with the utility.” PG&E refers to its compliance plan as adequate to meet that regulatory requirement.

Third, in response to DRA’s contention that the Commission should consider removing PG&E as CSI Program Administrator in its service territory, PG&E refers to procedures that it discusses in AL 3182-G/3789-E to guard against preferential treatment in the CSI Program and in managing interconnection applications under Rule 21.

Fourth, PG&E argues that DRA’s call for additional “measures” to address the transaction discussed in AL 3182-G/3789-E lacks specificity and should be disregarded.

The Commission has reviewed the ALs, protests and replies.

### **The Transactions**

In 2009, 2010, and 2011, PG&E Corporation, acting by itself and through three wholly-owned subsidiaries, executed a series of shareholder-funded tax equity financing, warrant rights, and contractual transactions that involved nine corporate entities, including two solar energy developers, SolarCity Corp. and SunRun, Inc.

### **PG&E’s Determination of Affiliate Status**

In AL 3182-G/3789-E, PG&E determines that PEC I is an affiliate by virtue of being a wholly-owned subsidiary of PG&E Corporation, and, as PEC I is engaged in the provision of electricity-related products or services, is subject to the Rules. PG&E further determines that Banyan SolarCity, a wholly-owned subsidiary of SolarCity Corp., and SolarCity Corp., are not affiliates and are not subject to the Rules. In summary, PG&E determines:

Entity	Interest held by PG&E, PG&E Corporation, or affiliate?	Engaged in provision of electricity-related products or services?	Subject to the Rules?
PEC I	Yes – Subsidiary of PG&E Corporation	Yes	Yes
Banyan SolarCity	No	Yes	No
SolarCity Corp.	No	Yes	No

In AL 3141-G-A/3708-E-A, PG&E determines that SunRun Pacific is an affiliate by virtue of PEC II's possession of a membership interest, and, as SunRun Pacific is engaged in the provision of electricity-related products or services, it is subject to the Rules. PG&E further determines that SunRun, Inc. is not an affiliate, and is not subject to the Rules. PG&E does not make an express determination regarding the affiliate status of PEC II. In summary, PG&E determines:

Entity	Interest held by PG&E, PG&E Corporation, or affiliate?	Engaged in provision of electricity-related products or services?	Subject to the Rules?
PEC II	Yes – Subsidiary of PG&E Corporation	Yes	No determination made
SunRun Pacific	Yes – Interest held by PEC II	Yes	Yes
SunRun, Inc.	No	Yes	No

In AL 3170-G-A/3763-E-A, PG&E determines that Sequoia Pacific is an affiliate by virtue of PEC III's possession of a membership interest, and, as Sequoia Pacific is engaged in the provision of electricity-related products or services, it is subject to the Rules. PG&E further determines that Sequoia Pacific Member I and SolarCity Corp. are not affiliates, and are not subject to the Rules. PG&E does not make a

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determination regarding the affiliate status of PEC III. In summary, PG&E determines:

Entity	Interest held by PG&E, PG&E Corporation, or affiliate?	Engaged in provision of electricity-related products or services?	Subject to the Rules?
PEC III	Yes – Subsidiary of PG&E Corporation	Yes	No determination made
Sequoia Pacific	Yes – Interest held by PEC III	Yes	Yes
Sequoia Pacific Member I	No	Yes	No
SolarCity Corp.	No	Yes	No

In each of AL 3182-G/3789-E, AL 3141-G-A/3708-E-A, and AL 3170-G-A/3763-E-A, PG&E identifies PG&E Corporation as a utility holding company not engaged in the provision of electricity-related products or services, and asserts that as a result, the Rules only apply to PG&E Corporation where explicitly provided.

### **Issue 1. Determination of Affiliate Status**

#### **Affiliates**

The threshold issue for the Commission in applying the Rules is a determination of the affiliate status of the entities involved in the transactions.<sup>12</sup> The Rules set out three separate affiliate tests:

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<sup>12</sup> The protestants did not uniformly raise this issue with respect to all of the entities involved. CARE alleged that Sequoia Pacific's relationship to SolarCity Corp. may render SolarCity Corp. an affiliate, and DRA alleged that PEC I's relationship to Banyan SolarCity and SolarCity Corp. may impart affiliate status to either or both of those entities.

1. Under the first test, an entity is an affiliate where “5 percent or more of [the entity’s] outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a utility or any of its subsidiaries, or by that utility’s controlling corporation and/or any of its subsidiaries.”<sup>13</sup>
2. Under the second test, an entity is an affiliate where a “utility, its controlling corporation, or any of the utility’s affiliates exert substantial control over the operation of the company.”<sup>14</sup>
3. Under the third test, an entity is an affiliate where a “utility, its controlling corporation, or any of the utility’s affiliates...indirectly have substantial financial interests in the company exercised through means other than ownership.”<sup>15</sup>

The Rules apply in full to an entity which meets any of the above tests and which is engaged in the provision of electricity-related products and/or services.<sup>16</sup> A smaller subset of the Rules applies to entities which are affiliates but are not engaged in the provision of electricity-related products and/or services.<sup>17</sup> Where the entity is not an affiliate, the Rules do not apply.

### *Holding companies*

Only certain Rules apply to utility holding companies that are not engaged in the provision of electricity- or gas-related products and/or services.<sup>18</sup>

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<sup>13</sup> Rule I.A.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Rule II.B.

<sup>17</sup> Rule II.B.

<sup>18</sup> Rule I.A; D. 06-12-029, p. 17.

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

AL 3182-G/3789-E and AL 3091-G-A/3616-E-A

Energy Division rejected PG&E's original AL 3091-G/3616-E, which described this transaction and the same relationships among PEC I (that entity was titled Pacific Venture Capital at the time AL 3091-G/3616-E was filed). Energy Division cited three reasons for rejecting AL 3091-G/3616-E: first, PG&E failed to sufficiently provide "*a demonstration to the Commission that there are adequate procedures in place that will assure compliance with these Rules*" for transactions between PG&E and PEC I; second, PG&E failed to demonstrate why the Rules should not apply to Banyan SolarCity or SolarCity Corp. (i.e., whether Banyan SolarCity and/or SolarCity Corp. should be determined to be an affiliate); and third, the protest of CARE raised significant policy issues in addition to the Rules that the Commission should address, more appropriately addressed through an application rather than an advice letter. The threshold issue in reconsidering this AL is whether the relationships among PG&E, PEC I, Banyan SolarCity, and SolarCity Corp. render any of those entities affiliates under the Rules.

**Issue 1.1 Affiliate Status - PG&E Corporation Subsidiary PEC I**

PEC I is a wholly-owned subsidiary of PG&E Corporation, and thus meets the first affiliate test.<sup>19</sup> As PEC I will rent the installed systems to host customers and receive the associated payments, PEC I is engaged in the provision of electricity-related products and services.

Conclusion:

The Commission finds that PEC I is a wholly-owned subsidiary of PG&E Corporation, meeting the first affiliate test set out in Rule I.A. The Commission further finds that PEC I is engaged in the provision of electricity-related products and services, meeting the applicability requirements of Rule II.B. On that basis, the Commission finds PEC I is an affiliate, and that the Rules apply in full to all transactions between PG&E and PEC I.

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<sup>19</sup> Rule I.A.

**Issue 1.2 Affiliate Status - PEC I's Financing Transaction and Master Lease Agreement With Banyan SolarCity, a Wholly-Owned Subsidiary of SolarCity Corp.**

On December 17, 2009, PEC I and Banyan SolarCity, a wholly-owned subsidiary of SolarCity Corp., executed a Master Lease Agreement. Under that agreement, Banyan SolarCity will install and act as third-party owner of 9 MW of rooftop PV systems on residential and commercial properties in California and Arizona, including within PG&E's service territory.

PEC I will lease the systems from Banyan SolarCity over a 15-year term for \$61 million. PEC I will receive investment tax credits for the projects, and will rent the solar PV equipment to the host customers through power purchase agreements (PPA or PPAs) and solar leases. Banyan SolarCity may act as agent for PEC I in interactions with PG&E in its role as CSI Program PA. PG&E Corporation shareholder funds were used to finance this transaction.

In AL 3182-G/3789-E, PG&E provides additional information describing the transaction as structured to pass investment tax credits to PEC I in exchange for lease payments by Banyan SolarCity under the Master Lease Agreement. In this arrangement, PEC I makes lease payments to Banyan SolarCity, but has no control over management decisions made by Banyan SolarCity. Banyan SolarCity owns and installs capital assets leased by Affiliate PEC I, has contact with customers of PEC I, and may act as agent for PEC I, but those facts do not provide evidence of control by PEC I over Banyan SolarCity. None of the three affiliate tests are met in the PEC I-Banyan SolarCity relationship.

**Conclusion:**

The Commission finds that PEC I's financing transaction with Banyan SolarCity does not impart affiliate status to Banyan SolarCity. On that basis, the Rules do not apply to transactions between PG&E and Banyan SolarCity.

**Issue 1.3 Affiliate Status - PEC I's Maintenance Services Agreement With SolarCity Corp.**

Also on December 17, 2009, PEC I and SolarCity Corp. executed a Maintenance Services Agreement under which SolarCity Corp. will provide billing, installation, and upkeep services to host customers of rooftop installations that are owned by PEC I. The Maintenance Services Agreement contains provisions

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

addressing the scope of services; fees and payment schedules; standards of performance; and termination. In addition, SolarCity Corp. may act as agent for PEC I in interactions with PG&E in its role as CSI Program PA.

No provision of the Maintenance Services Agreement imparts control to the owner, PEC I, over the operations of the service provider, SolarCity Corp.

Conclusion:

The Commission finds that PEC I's Maintenance Services Agreement with SolarCity Corp. does not impart affiliate status to SolarCity Corp. On that basis, the Rules do not apply to transactions between PG&E and SolarCity Corp.

**Issue 1.4 Affiliate Status – PEC I's Financing Transaction With SolarCity Corp. for Wal-Mart Rooftop Installations**

On June 23, 2010, PEC I executed a separate financing transaction with SolarCity Corp. to provide \$17.2 million in capital to fund 4 MW of PV systems to be installed on Wal-Mart stores in California and Arizona. Similar to the PEC I-Banyan SolarCity transaction, this transaction is structured to pass investment tax credits to PEC I in exchange for PEC I's capitalization of solar rooftop installations by SolarCity Corp. Under the arrangement, PEC I retains no control over SolarCity Corp.'s use of the funds.

Conclusion:

The Commission finds that PEC I's financing transaction with SolarCity Corp. for Wal-Mart does not impart affiliate status to SolarCity Corp. On that basis, the Rules do not apply to transactions between PG&E and SolarCity Corp.

**Issue 1.5 Affiliate Status - PG&E Corporation's Warrant Rights Holdings in SolarCity Corp.**

Separate from the other transactions discussed in AL 3182-G/3789-E, PG&E Corporation reports that it holds warrant rights allowing it to acquire a two percent equity interest in SolarCity Corp. The warrant rights are the equivalent of an ownership stake, and viewed by themselves, these rights held by PG&E

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

Corporation do not rise to the level required for the first affiliate test.<sup>20</sup> However, the holding of warrant rights creates a commonality of interest between PG&E Corporation and SolarCity Corp. When the warrant rights are viewed in tandem with PG&E's role as CSI Program Administrator, as will be discussed further below, what becomes clear is that PG&E has a mechanism through which it can further the interests of SolarCity Corp., and thereby enhance the value of PG&E Corporation's warrant rights holding. We are cognizant of the challenge of applying the affiliate tests to complex transactions and relationships such as these. On that basis, we take a pragmatic approach to mitigating the risk that PG&E will preferentially treat SolarCity Corp. applications within the CSI Program, without finding here that SolarCity Corp. is an affiliate under the first test. We are interested in preventing preferential treatment regardless of whether the entity is an affiliate or not.

Comments filed on the first version of this Draft Resolution argued both for and against the applicability of the third affiliate test to the relationships among PG&E Corporation, PG&E, and SolarCity Corp. and SunRun, Inc., respectively. We have found no cases where an entity was designated an affiliate on the basis of the third test, and thus have little guidance in how this test is applied. Because these issues are being resolved in the context of advice letters, which is an informal process, and because we have addressed possible conflict issues in the administration of the CSI Program relating to SolarCity Corp. and SunRun, Inc., through the scope of the audit and revisions to the CSI Program Handbook, we do not need to apply the third test here, nor do we need to decide here under what circumstances the third test might apply. Our decision not to apply the third test, and not to determine the circumstances in which the third test might apply, is limited to the facts of the matter before us, and is not precedential.

### Conclusion:

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<sup>20</sup> D.00-06-005, filed in *Application (A.) of Southern California Gas Company for Authority Pursuant to Public Utilities Code Section 851 to Sell Certain Intellectual Property Known as Energy Marketplace*, 2000 Cal. PUC LEXIS 281 at \*4-5 (evaluating stock warrants as the equivalent of stock options).

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

The Commission finds that PG&E Corporation's warrant rights holdings in SolarCity Corp. do not impart affiliate status to SolarCity Corp. under the first affiliate test. This finding is limited to the facts presented in the advice letters before us, and does not constitute Commission precedent as to the applicability of the third affiliate test to future relationships among utilities, holding companies, and private market actors.

AL 3141-G-A/3708-E-A

**Issue 1.6 Affiliate Status - PG&E Corporation Subsidiary PEC II**

PEC II is a wholly-owned subsidiary of PG&E Corporation, meeting the first affiliate test in Rule I.A. PEC II is not engaged in the provision of electricity-related products and/or services, and thus its interactions with PG&E are subject to the Rules where explicitly provided.

Conclusion:

The Commission finds that as PEC II is a wholly-owned subsidiary of PG&E Corporation, and, as PEC II is not engaged in the provision of electricity-related products and/or services at present, the Rules apply to transactions between PG&E and PEC II where explicitly provided.

**Issue 1.7 Affiliate Status – Affiliate PEC II's Membership Interest in SunRun Pacific**

On May 25, 2010, Affiliate PEC II invested \$100 million of PG&E Corporation shareholder funds in SunRun Pacific to finance 3,500 residential solar energy installations nationwide in 2010 and 2011, including installations in PG&E's service territory. The "managing member" of SunRun Pacific is SunRun, Inc. SunRun Pacific will become the third-party owner of rooftop solar systems financed by this transaction and installed by SunRun, Inc.

As a result of this transaction, PEC II holds a "membership interest" in SunRun Pacific. SunRun Pacific will own the rooftop installations, and thereby is engaged in the provision of electricity-related products and services.

Conclusion:

The Commission finds that the membership interest held by Affiliate PEC II in SunRun Pacific meets the first affiliate test set out in Rule I.A. The Commission further finds that SunRun Pacific is engaged in the provision of electricity-related

products and/or services, meeting the applicability requirements of Rule II.B. On that basis, the Commission finds that SunRun Pacific is an affiliate, and that the Rules apply in full to all transactions between PG&E and SunRun Pacific.

### **Issue 1.8 Affiliate Status – Affiliate SunRun Pacific’s Operations and Maintenance Agreement with SunRun, Inc.**

Also on or around May 25, 2010, SunRun Pacific executed an Operations and Maintenance Agreement with SunRun, Inc., under which host customers will work directly with SunRun, Inc. for billing, installation, and upkeep of their rooftop solar installations. SunRun, Inc. may act as agent for SunRun Pacific in interactions with PG&E in its role as CSI PA.

The Operations and Maintenance Agreement between SunRun Pacific and SunRun, Inc. imparts no control to SunRun Pacific over SunRun, Inc. The Operations and Maintenance Agreement contains provisions addressing the scope of services; fees and payment schedules; standards of performance; and termination.

#### Conclusion:

The Commission finds that the Operations and Maintenance Agreement between SunRun Pacific and SunRun, Inc. does not impart affiliate status to SunRun, Inc.

### **Issue 1.9 – Affiliate Status - PEC II’s Relationship With SunRun, Inc. as Co-Members of SunRun Pacific**

SunRun Pacific is an entity created in order to: (i) serve as a pass-through vehicle for capital investment passed from PEC II to SunRun, Inc.; (ii) serve as a pass-through vehicle for investment tax credits passed from SunRun Inc. to PEC II; (iii) own and maintain the rooftop installations capitalized by PEC II; and (iv) contract with other entities to provide needed services for maintenance of the rooftop installations.

The “Members” of Affiliate SunRun Pacific are SunRun, Inc. (the “Managing Member”) and Affiliate PEC II. Each of the two Members has distinct, specific obligations under SunRun Pacific’s membership structure, in order to effect the capitalization and installation of rooftop generating systems. The arrangement does not impart control to SunRun Pacific over management or operations of

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

SunRun, Inc. The arrangement further does not impart control to PEC II over management or operations of SunRun, Inc.

Conclusion:

The Commission finds that SunRun, Inc.'s status as Managing Member of Affiliate SunRun Pacific, and where Affiliate PEC II is the other Member of SunRun Pacific, does not impart affiliate status to SunRun, Inc. On that basis, the Rules do not apply to transactions between PG&E and SunRun, Inc.

**Issue 1.10 Affiliate Status - PG&E Corporation's Warrant Rights Holdings in SunRun, Inc.**

PG&E notifies the Commission that separate from the other transactions discussed in AL 3141-G-A/3708-E-A, PG&E Corporation holds warrant rights allowing it to acquire a one percent equity interest in SunRun, Inc. As stated above in Issue 1.5 with respect to PG&E Corporation's warrant rights holdings in SolarCity Corp., the size of this holding does not meet the five percent threshold set out in Rule I.A. In comments filed April 23, 2012, on the original version of this Draft Resolution, SunRun, Inc. submits additional facts showing that the warrant rights held by PG&E Corporation were time-limited, the rights did not vest during the applicable time period, and will never vest.

With respect to the question of affiliate status during the time period between the filing of AL 3141-G-A/3708-E-A on December 17, 2010, and the date that PG&E Corporation's warrant rights in SunRun, Inc. were terminated, we reach the same conclusion here as in Issue 1.5, above. PG&E Corporation's warrant rights are the equivalent of an ownership stake, and viewed by themselves, these rights do not rise to the level required for the first affiliate test. However, the commonality of interest between PG&E Corporation and SunRun, Inc. imparted by the warrant rights, in tandem with PG&E's role as CSI Program Administrator, means that for the period of time in which PG&E Corporation held the warrant rights with vesting potential, PG&E possessed a mechanism through which it could further the interests of SunRun, Inc. and thereby the value of PG&E Corporation's holding. As already noted, we will take a pragmatic approach to mitigating the risk that PG&E preferentially treated SunRun, Inc. applications within the CSI Program during the time period in which PG&E Corporation

could have exercised its vesting rights, without finding here that SunRun, Inc. is an affiliate under the first test.

Also as noted in Issue 1.5 above, because we are addressing possible conflict issues via the scope of the audit and revisions to the CSI Program Handbook, we do not need to apply the third affiliate test here, nor decide under what circumstances the third test might apply. Our decision not to apply the third test, and not to determine the circumstances in which the third test might apply, is limited to the facts of the matter before us, and is not precedential.

Conclusion:

The Commission finds that PG&E Corporation's warrant rights holdings in SunRun, Inc., do not impart affiliate status to SunRun, Inc. under the first affiliate test. This finding is limited to the facts presented in the advice letters before us, and does not constitute Commission precedent as to the applicability of the third affiliate test to future relationships among utilities, holding companies, and private market actors.

AL 3170-G-A/3763-E-A

**Issue 1.11 Affiliate Status - PG&E Corporation Subsidiary PEC III**

PEC III is a wholly-owned subsidiary of PG&E Corporation, and thus meets the first affiliate test.<sup>21</sup> PEC III is not presently engaged in the provision of electricity-related products and services, and thus its interactions with PG&E are subject to the Rules where explicitly provided.

Conclusion:

The Commission finds that as PEC III is a wholly-owned subsidiary of PG&E Corporation, and, as PEC III is not engaged in the provision of electricity-related products and/or services at present, the Rules apply to transactions between PG&E and PEC III where explicitly provided.

**Issue 1.12 – Affiliate Status - PEC III's Interest in Sequoia Pacific**

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<sup>21</sup> Rule I.A.

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

On September 21, 2010, Affiliate PEC III invested \$120 million of PG&E Corporation shareholder funds in Sequoia Pacific, thereby acquiring a “membership interest.” PEC III’s investment provides capital for approximately 23 megawatts of residential and commercial solar installations in 2010 and 2011, including installations in PG&E’s service territory. SolarCity Corp. will install the solar systems. Sequoia Pacific will become the third-party owner of the rooftop solar systems financed by this transaction, and SolarCity Corp. may “act as agent” for Sequoia Pacific in its interactions with PG&E in its role as CSI Program PA.

PG&E reports that as Affiliate PEC III holds a membership interest in Sequoia Pacific, and as Sequoia Pacific is engaged in the provision of electricity-related products and/or services, Sequoia Pacific is a utility affiliate to which the Rules fully apply.

Conclusion:

The Commission finds that the “membership interest” held by Affiliate PEC III in Sequoia Pacific imparts affiliate status to Sequoia Pacific as set out in Rule I.A. The Commission further finds that as Sequoia Pacific is engaged in the provision of electricity-related products and/or services, the Rules apply in full to all transactions between PG&E and Sequoia Pacific.

**Issue 1.13 Affiliate Status - PEC III’s Relationship with Sequoia Pacific Member I as Co-members of Affiliate Sequoia Pacific**

PG&E identifies the “Members” of Affiliate Sequoia Pacific as Sequoia Pacific Member I, LLC (Sequoia Pacific Member I) and PEC III. PG&E states that Sequoia Pacific Member I is an “affiliate” of SolarCity Corp., and is a provider of residential sales, financing, and monitoring services. In AL 3170-G-A/3763-E-A, PG&E does not make a determination of Sequoia Pacific Member I’s affiliate status.

Conclusion:

The Commission finds that Sequoia Pacific Member I is not a utility affiliate as defined by the Rules based on its participation with Affiliate PEC III as a co-member of Affiliate Sequoia Pacific. The Commission finds that as factual, legal, financial, or other circumstances may change in the future, Sequoia Pacific Member I could become a utility affiliate by virtue of this relationship.

**Issue 1.14 Affiliate Status - PG&E Corporation's Warrant Rights Holdings in SolarCity Corp.**

PG&E notifies the Commission that separate from the other transactions discussed in AL 3170-G-A/3763-E-A, PG&E Corporation holds warrant rights allowing it to acquire a two percent equity interest in SolarCity Corp. This is the same warrant rights holding as described by PG&E in AL 3182-G/3789-E, and results in the same findings as set out in Issue 1.5 above.

**Conclusion:**

The Commission finds that PG&E Corporation's warrant rights holdings in SolarCity Corp. do not impart affiliate status to SolarCity Corp. under the first affiliate test. This finding is limited to the facts presented in the advice letters before us, and does not constitute Commission precedent as to the applicability of the third affiliate test to future relationships among utilities, holding companies, and private market actors.

**Issue 2 Market Power Concerns: Risk of PG&E Preferential Treatment in Administration of CSI Program With Respect to Affiliates PEC I, SunRun Pacific, Sequoia Pacific, and Non-Affiliates SolarCity Corp. and SunRun, Inc.****PG&E's Burden**

Upon the creation of a new affiliate, a utility must notify the Commission by filing an advice letter that states the affiliate's purpose or activities, the utility's claim as to whether the affiliate is subject to the Rules, and "a demonstration to the Commission that there are adequate procedures in place that will assure compliance with these Rules."<sup>22</sup>

The following sets out PG&E's demonstration of its "procedures in place" to assure compliance; this demonstration is substantially similar in each of the ALs.

**PG&E's General Rules Compliance Plan (Rule VI.A)**

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<sup>22</sup> Rule VI.B.

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

PG&E last filed an Affiliate Transaction Rules Compliance Plan (“PG&E Affiliate Compliance Plan”) in June 2010.<sup>23</sup> In it, PG&E employees are “directed to understand and comply with PG&E’s [internal] Affiliated Transaction Company Procedures,” and employees affected by specific Rules receive related training. An independent audit of PG&E’s Rules compliance was last conducted in 2006, and PG&E states that the auditor found “that PG&E procedures have been effective.”

*PG&E Controls to Ensure Non-Discrimination (Rule III.A)*

PG&E states that as CSI Program PA, it provides compliance counseling and training to employees administering the CSI Program to ensure that PG&E does not provide any preferential treatment to any of the Affiliates or to SolarCity Corp. or SunRun, Inc.

In Appendix A to each of the ALs, PG&E details its batching and review of CSI Program applications based on the date received, the separate teams that review CSI Program incentive documentation, and its internal accuracy and quality control of at least one in every three confirmed incentive reservations. PG&E further notes that it conducts field inspections of installed projects according to the rules set out in the CSI Program Handbook. PG&E states that decisions to place a contractor on probation or inspection are made collectively by PG&E, the other CSI Program Administrators (Southern California Edison, and the California Center for Sustainable Energy, in San Diego Gas & Electric’s service territory). Last, PG&E reports that it implements a dispute resolution process for disqualified contractors as set out in the CSI Program Handbook.

As to interconnection processing under Rule 21, PG&E states that application review, engineering review, and bi-directional meter installation are all conducted in chronological order.

*PG&E Controls to Prevent Tying Services (Rule III.C)*

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<sup>23</sup> Filed via AL 3131-G/3694-E, on June 30, 2010.

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

PG&E states that no PG&E customers will be required to install solar systems leased from an affiliate in order to receive services from PG&E.

*PG&E Controls to Prevent Customer Assignment (Rule III.D) and Improper Affiliate Business Development (Rule III.E)*

PG&E states that interactions between the affiliates and PG&E will be limited and present a low risk of customer assignment or improper business development; and moreover, any such risk will be mitigated by PG&E's employee training procedures.

*PG&E Controls to Prevent Discriminatory Access to Information or Disclosure (Rule IV.A-G)*

PG&E states that in compliance with Rule IV.A, the affiliates will not have access to PG&E customer data by virtue of their participation in the CSI Program.

PG&E states that in compliance with Rule IV.B, the affiliates' participation in the CSI Program "will neither require nor benefit from acquisition of non-public utility information."

Last, PG&E states that compliance with Rules IV.C (service provider lists only upon customer request), IV.D (affiliate access to non-public information from unaffiliated suppliers prohibited), IV.E (customer assistance with regard to affiliates prohibited), and IV.F and IV.G (documentation of tariffed and non-tariffed transactions) will be ensured through employee training.

*PG&E Controls to Prevent Market Power Gain Through Improper Marketing Practices (Rule V.F)*

PG&E states that the affiliates "will have no role in managing or operating the PV facilities" and thus will not engage in any advertising or promotion. PG&E further states that it regularly monitors and investigates allegations of unauthorized use of the PG&E trademark, or false claims by affiliates that they represent PG&E, and that its strategies to halt any unauthorized marketing practices range from informal discussions to formal litigation in the appropriate state or federal court.

*PG&E Controls to Ensure Transfer of Goods and Services From Affiliate to Utility at Fair Market Value (Rule V.H)*

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

PG&E states that the affiliates will only receive services from PG&E pursuant to approved CSI Program procedures or tariffs, and are thus deemed to be at fair market value under Rule V.H.3. PG&E further states that none of the Affiliates will provide goods or services to PG&E.

### Discussion

#### *Rule VI.B Burden, New Affiliates, and Affiliate Transaction Audit*

ED rejected AL 3091-G/3616-E on July 7, 2010, in part because PG&E failed to meet its Rule VI.B burden. At that time, ED found that PG&E inadequately explained the procedures in place to assure compliance with the Rules with respect to the transaction involving PEC I (then named PVC I), Banyan SolarCity, and SolarCity Corp.

The ALs discussed in this Resolution all contain a more detailed discussion of PG&E's procedures to assure compliance with the Rules. For example, as the above recounting shows, in the ALs PG&E discusses its procedures to assure compliance with respect to the new affiliates under Rule III, Rule IV, and Rule V, and each sub-rule. PG&E also discusses its internal procedures designed to ensure that PG&E does not discriminate between affiliates and non-affiliates in its CSI Program administration and Rule 21 interconnection processing. PG&E also describes its procedures to monitor and take action against potential unauthorized use of PG&E's trademarks, or false marketing claims. At the same time, the ALs' discussion is less than robust of the methods by which PG&E will comply with Rules specifically designed to mitigate the effects of potential conflicts of interest, such as Rules II.H, III.B.2, and III.B.6.

Despite these flaws, we approve the ALs in order to enable ED staff to move forward with an audit of PG&E's transactions, including its transactions as CSI Program Administrator.

We thus find that PG&E's demonstration of a compliance plan in the ALs meets its Rule VI.B burden. The Commission rejects the arguments of CCSF, CARE, and DRA urging rejection of the ALs on the basis of an alleged failure by PG&E to make the required showing.

We will audit PG&E's transactions with each of its affiliates with the objectives of: (i) substantiating compliance (or identifying violations) of the Rules,

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

(ii) identifying risks that, if not cured, are likely to lead to future violations, and  
(iii) soliciting an independent auditor's opinion on the seriousness of the threat, if any, that such risks pose to accomplishment of the Commission's competition-fostering and consumer-protection goals.

The audit will also examine PG&E's mechanisms and procedures, verified statements from PG&E Corporation, and the corporate separation standards to evaluate PG&E's compliance with Rule II.C.

#### *Non-Affiliates and Audit of Transactions Within the CSI Program*

We turn now to SolarCity Corp. and SunRun, Inc. We find, above in Issues 1.5 and 1.10, that those entities are not affiliates, but they nonetheless share a commonality of interest with PG&E Corporation, and simultaneously are active applicants to the CSI Program under PG&E's administration. This unusual context requires that we address the nature of the risks presented by these facts, and our authority to mitigate such risks.

As to the first question, we find that PG&E Corporation's warrant rights holdings in both SolarCity Corp. and SunRun, Inc., plus PG&E's administration of the CSI Program, where both SolarCity Corp. and SunRun, Inc. are active applicants, introduces a risk of discriminatory treatment. The Commission thus agrees with CARE, CCSF, and DRA to the extent that each has identified that this risk exists.

SolarCity Corp. and SunRun, Inc. apply for and receive CSI incentive payments directly from PG&E. The risk results from the fact that no portion of the CSI Program application process is blind. PG&E's CSI Program employees know at all times which entity is applying to the CSI Program.<sup>24</sup> Further, as DRA states,

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<sup>24</sup> The CSI Program Handbook permits a third party to act as an applicant to the CSI Program; as a designee of the customer hosting the rooftop system for purposes of reserving and/or receiving the CSI incentive; or as the owner of the system. The identities of the applicant, host customer, or host customer designee must be submitted with the initial CSI Program Application, and the system owner must be designated at either the reservation request stage or the incentive claim stage. As described by PG&E, PEC I, SunRun Pacific, and Sequoia Pacific

*Footnote continued on next page*

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

CSI Program employees know that SolarCity Corp. and SunRun, Inc. have corporate relationships with PG&E Corporation subsidiaries. Even if SolarCity Corp. and SunRun, Inc. are not affiliates, CSI Program employees are in a position to grant preferential treatment to them.

In this context, inappropriate behavior by any of the actors may improperly facilitate a market power gain. However, we do not equate a *risk* of improper market behavior with *actual* violations.<sup>25</sup> The Commission cannot know *a priori* whether PG&E's procedures as reported in the ALs are in fact functioning to eliminate or sufficiently mitigate such risks.

The Rules cover transactions between utilities and affiliates. However, under Public Utilities Code section 701, the Commission may do all that is "necessary and convenient" in its regulation of utilities. Because the relationship between PG&E Corporation and SolarCity Corp. and SunRun, Inc., respectively, creates a potential conflict for PG&E in its role as CSI Program Administrator, we rely on our broad authority under the Public Utilities Code to audit PG&E's transactions with those entities within the CSI Program.<sup>26</sup> We note as well that the Commission may review CSI Program administration at any time, with respect to preferential treatment of participants, as part of a CSI Program-funded evaluation.

The Commission thus agrees with PG&E that PGE Corporation's investments in its subsidiaries, and the new relationships created by PG&E's transactions with the affiliates, are not in and of themselves barred. Moreover, the Commission

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will each be system owners; SolarCity Corp. may act as agent for PEC I and Sequoia Pacific; and SunRun, Inc. may act as agent for SunRun Pacific. As a result, PG&E's CSI Program staff will be aware of instances in which any of these corporate entities are associated with a CSI application.

<sup>25</sup> This principle is stated in Commission decisions addressing the Rules. See, e.g., D.97-12-088, p. 11.

<sup>26</sup> The addition of these non-affiliate entities should not unreasonably expand the scope of the audit, which, pursuant to the Rules, is to be funded at PG&E Corporation shareholder expense. The audit scope in Attachment B is directed to focus primarily on the transactions between PG&E and its affiliates.

has expressly contemplated the “likelihood of preferential treatment, unfair competitive advantage, or the sharing of competitively sensitive confidential information within the partly regulated, mostly unregulated utility-affiliate corporate family,” and has nevertheless approved affiliate transactions in the service of a different purpose or policy.<sup>27</sup> We designed the Rules to empower our evaluation and management of the market-related risks posed by utility-affiliate relationships.

The Commission rejects the arguments of the Protestants that would find an *a priori* violation of the Rules, based only on the existence of these relationships. Specifically, the Commission rejects CCSF’s argument for rejecting the ALs based on the unsupported allegation that preferential treatment will necessarily occur. The Commission also rejects CCSF’s argument to exclude the affiliates from participation in the CSI Program prior to reviewing the results of an audit. By the same token, the Commission rejects DRA’s allegation that the structure of the transaction in AL 3182-G/3789-E constitutes an attempt to circumvent the Rules.

The Commission will closely review the audit findings, and will take any substantiation of Rules violations among any of the entities here seriously. The Commission has designed the Rules to foster marketplace competition and protect consumers, and any substantiated violation would endanger those two goals.

Conclusions:

(1) The Commission finds that the new relationships resulting from the transactions that are the subject of the instant ALs create a risk of discriminatory treatment in PG&E’s administration of the CSI Program, as follows:

- (a) PEC I is both an affiliate of PG&E and an applicant to the CSI Program in PG&E’s service territory, where PG&E serves as CSI Program Administrator.

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<sup>27</sup> D.06-12-029, p. 10.

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

- (b) Sequoia Pacific is both an affiliate of PG&E and an applicant to the CSI Program in PG&E's service territory, where PG&E serves as CSI Program Administrator.
  - (c) SolarCity Corp. is not an affiliate of PG&E on the basis of a warrant rights transaction with PG&E Corporation, yet is an applicant to the CSI Program, and may act as agent for PEC I in applications to the CSI Program in PG&E's service territory, where PG&E serves as CSI Program Administrator.
  - (d) SolarCity Corp. is not an affiliate of PG&E on the basis of a warrant rights transaction with PG&E Corporation, yet is an applicant to the CSI Program, and may act as agent for Sequoia Pacific in applications to the CSI Program in PG&E's service territory, where PG&E serves as CSI Program Administrator.
  - (e) SunRun Pacific is an affiliate of PG&E, and SunRun, Inc. has submitted applications on SunRun Pacific's behalf to the CSI Program in PG&E's service territory, where PG&E serves as CSI Program Administrator.
  - (f) SunRun, Inc. is not an affiliate of PG&E on the basis of a warrant rights transaction with PG&E Corporation, yet is an applicant to the CSI Program, and may act as agent for SunRun Pacific in applications to the CSI Program in PG&E's service territory, where PG&E serves as CSI Program Administrator.
- (2) The Commission finds that the relationships between PG&E and its new affiliates create risks of Rules violations by PG&E, PG&E Corporation, and/or any of the affiliates, and that the relationships between PG&E and non-affiliates SolarCity Corp. and/or SunRun, Inc. create risks of behavior by PG&E and/or those non-affiliates that may lead to improper market power gain.
- (3) The Commission finds that PG&E Corporation's new corporate relationships resulting from the transactions described in the instant ALs pose a risk of violations of Rule II.C.
- (4) The Commission finds that PG&E has met its Rule VI.B burden in the ALs discussed here, by sufficiently demonstrating procedures that, as designed, appear to ensure compliance with the Rules. This finding is applicable only to the instant ALs, and is not precedential with respect to future affiliate transaction

advice letter filings by any utility under this Commission's regulatory authority and the threshold for meeting the Rule VI.B burden.

(5) The Commission finds that the current version of the CSI Program Handbook does not clearly articulate a first-come, first-served procedure at key points during the application process.

(6) The Commission finds that PG&E presently has no obligation, in its role as CSI Program Administrator, to publish data comparing its processing of CSI Program applications from affiliates to applications from non-affiliates. The Commission may review CSI Program administration at any time, with respect to preferential treatment of participants, as part of a CSI Program-funded evaluation.

(7) The Commission finds that an independent audit is required to determine whether PG&E's internal procedures are in fact functioning to ensure compliance with the Rules with respect to applications to the CSI Program associated with any of PEC I, SunRun Pacific, Sequoia Pacific, SunRun, Inc. acting for itself or as agent for SunRun Pacific, or SolarCity Corp. acting for itself or as agent for PEC I or Sequoia Pacific.

(8) The Commission finds that an independent audit is required to discover whether the corporate separation and other internal safeguarding mechanisms are in fact functioning to ensure compliance with the Rules, and particularly Rule II.C, with respect to PG&E Corporation.

(9) The Commission finds that the results of an independent audit are necessary to further Commission consideration of measures to guard against improper market share gain by any of the affiliates and non-affiliates identified here.

### **Issue 3      Market Power Concerns: Risk of Discriminatory Treatment in PG&E Processing of Interconnection Applications Under Electric Rule 21**

#### ***PG&E Demonstration of Compliance Plan***

PG&E sets out its general procedures for handling Electric Rule 21 (Rule 21) interconnection applications in Appendix A (identically attached to each AL). PG&E generally articulates a process in which completed interconnection

applications pass through engineering review and meter installation in chronological order.

Discussion

The Commission finds that PG&E has met its Rule VI.B burden here, in that it describes internal procedures that, if properly observed, ensure processing of applications in chronological order, which is in compliance with Rule 21 and with the Rules.

The Commission further finds that the same risk of discriminatory treatment exists here as set out in Issue 2 above. PG&E's interconnection department is responsible for processing applications for self-generation facilities to the PG&E distribution and transmission system under Rule 21. Interconnection approval relies on engineering review, a technical function that is handled by PG&E's interconnection department. PG&E, like all California utilities, conducts engineering review of eligible interconnection applications for self-generating systems under Rule 21 using a serial queue, which is established in chronological order by the date the customer submits a completed application.

Similar to the CSI Program application process, the Rule 21 interconnection application process is not blind, and so PG&E employees will be aware of applications associated with non-affiliates SolarCity Corp. or SunRun, Inc., and affiliates PEC I, SunRun Pacific, or Sequoia Pacific.

As with PG&E's administration of the CSI Program, the Commission cannot know *a priori* whether the existing procedures within Rule 21 are in fact functioning to eliminate or sufficiently mitigate the risks present in PG&E's new affiliate relationships. As PG&E recently passed 51,000 net energy metering interconnections processed under Rule 21, the continued success of the self-generation market in PG&E's service territory clearly depends on a non-discriminatory process.

The Commission has undertaken reform of Rule 21 within a separate proceeding, the scope of which includes examination and definition of transparent, first-

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

come, first-served interconnection queuing rules.<sup>28</sup> As R.11-09-011 is likely to result in modifications to Rule 21 that provide greater clarity regarding non-discriminatory treatment, that proceeding should be allowed to reach completion before ordering additional modifications to Rule 21.

Conclusions:

- (1) The Commission finds that the new corporate relationships resulting from the transactions that are the subject of the instant ALs create a risk of discriminatory treatment in PG&E's processing of interconnection applications under Rule 21 similar to the discriminatory treatment risks present in PG&E's administration of the CSI Program.
- (2) The Commission finds that PG&E has met its Rule VI.B burden in the ALs by sufficiently demonstrating procedures that, as designed, appear to ensure compliance with Rule 21 and with the Rules. This finding is applicable only to the instant ALs, and is not precedential with respect to future affiliate transaction advice letter filings by any utility under this Commission's regulatory authority and the threshold for meeting the Rule VI.B burden.
- (3) The Commission finds that an independent audit is required to discover whether PG&E's internal procedures are in fact functioning to ensure compliance with the Rules with respect to processing interconnection applications under Rule 21 from any of the new affiliates discussed here.

**Issue 4 Market Power Concerns: Risk of Anticompetitive Behavior By PG&E Corporation to Increase Equity Stake in SolarCity Corp. and/or SunRun, Inc.**

Discussion

As a threshold matter (see Issues 1.5, 1.10, and 1.14 above), the Commission has found that the PG&E Corporation's warrant rights holdings in SolarCity Corp. and SunRun, Inc. do not impart affiliate status to those entities. The Commission

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<sup>28</sup> *Order Instituting Rulemaking on the Commission's own motion to improve distribution level interconnection rules and regulations for certain classes of electric generators and electric storage resources*, R.11-09-011, filed September 22, 2011.

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

rejects CCSF's argument for denying the ALs on the basis of the PG&E Corporation's warrant rights holdings alone.

The Commission has acknowledged the "tensions between the benefits of integration (economies of scope) and encouraging market competition."<sup>29</sup> That same tension is present here: PG&E Corporation's investments have aided in capitalizing two customer-side rooftop solar panel companies operating in a market that shows signs of healthy competition. For example, SolarCity Corp. and SunRun, Inc. are large companies relative to other solar developers, but they are two of 1,400 installation contractors currently active with the CSI Program.<sup>30</sup> The number of installation contractors shows that California's solar industry marketplace offers significant consumer choice and low barriers to entry. Further, the California Solar Statistics website, developed by the Commission, features data on each active installer's average cost per watt, which permits consumer-friendly, transparent cost comparisons.<sup>31</sup>

We have found that SolarCity Corp. and SunRun, Inc. are not affiliates, and yet that a risk of preferential treatment exists, because they can apply to the CSI Program on their behalf and on behalf of affiliates. On that basis, we include CSI Program transactions between PG&E and SolarCity Corp. and SunRun, Inc., respectively, in the scope of the audit ordered here. We reiterate that we make no finding here that improper market share gain has occurred on the basis of these relationships.

#### Conclusion:

(1) The Commission finds that although SolarCity Corp. and SunRun, Inc. are not affiliates of PG&E on the basis of PG&E Corporation's warrant rights

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<sup>29</sup> D. 97-12-088, pp. 11-12 (permitting utility-affiliate joint ventures while noting, "if an affiliate's costs are lower than other market participants or potential entrants, it could use this cost difference to undercut bids to drive out incumbents or to prevent other potential competitors' entry").

<sup>30</sup> 2009 CSI Program Impact Evaluation, p. 11-32 (June 2010).

<sup>31</sup> See <http://www.californiasolarstatistics.org/>.

holdings, certain risks exist with respect to PG&E's treatment of SolarCity Corp. and SunRun, Inc. in its administration of the CSI Program. On that basis, PG&E's transactions with each of those entities under the CSI Program will be included in the scope of the audit ordered here.

## **Issue 5      Whether Transactions Between PG&E and Sequoia Pacific Exceed Limits of Rule III.B**

### Discussion

The issue here, as raised by CCSF, is whether the services provided within the CSI Program may be defined as a product or service that a utility and its affiliate may permissibly transact under Rule III.B.

Rule VII.B.4 defines "tariffed" as "rates, terms and conditions of services as approved by this Commission...whether by traditional tariff, approved contract or other such approval as the Commission...may deem appropriate." Rule VII.B expressly applies the definition of "tariffed" only to Rule VII, which addresses the types of products and services that a utility may offer. PG&E argues for application of the definition of "tariffed" in Rule VII.B.4 to Rule III.B.

Rule VII.B expressly limits the definition of "tariffed," and nothing in the Rules or Commission decisions discussing the Rules provides a justification for expanding its application to Rule III.B.

Rule III.B further permits a utility and its affiliate to transact "products or services made generally available by the utility or affiliate to all market participants through an open, competitive bidding process," or "information made generally available by the utility to all market participants."

The California Solar Initiative was authorized by the California Legislature in 2006, and the CSI Program was developed and implemented pursuant to that legislative mandate through a series of Commission decisions in 2006 and 2007. The Commission has maintained open proceedings to implement, monitor, and modify the CSI Program since its inception, and the CSI Program Handbook is the key document embodying the program's rules for applying for and receiving CSI Program incentives. The CSI Program Handbook is a public document, and has undergone constant modification by the Commission within the CSI Program proceeding (R.10-05-004) and related advice letter processes. The CSI

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Program Administrators' performance under the CSI Program rules is monitored by the Energy Division through several reporting mechanisms and other staff oversight. Any market participant may apply, and PG&E's determination of eligibility for a CSI Program incentive is an application of the CSI Program Handbook rules, which leave little room for discretion.

The CSI Program and the services provided by PG&E in its role as CSI Program Administrator are thus "products or services made generally available by the utility...to all market participants." They are available through a process that is set out in a public document, in which the rules for eligibility determinations are clear and leave little room for discretion. Finally, the administrator's performance in applying the rules and reaching eligibility determinations is subject to Commission oversight. As a result, affiliates that apply to PG&E in its role as CSI Program Administrator are participating in a transaction that is permitted within the limits of Rule III.B.

Nothing in this finding assumes that PG&E is in fact in complete compliance with the Rules in its administration of the CSI Program. PG&E's compliance with the Rules in its processing of CSI Program applications will be investigated separately through an audit and reports as discussed above.

#### Conclusion:

The Commission finds that the PG&E's administration of the CSI Program, including determination of the eligibility of applications from affiliates for a CSI Program incentive, falls within the utility-affiliate transaction limits set out in Rule III.B.

### **Issue 6      Whether Third-Party Ownership By PG&E Affiliates Constitutes Resource Procurement**

#### Discussion

Under some of the solar leases and PPAs transacted between host customers and any of PEC I, SunRun Pacific, and Sequoia Pacific, an affiliate may own the Renewable Energy Credits (RECs) attributable to the generated solar electricity. Rule III.B.1 requires Commission approval for any resource procurement by a utility from an affiliate, except in fully blind transactions. In the ALs discussed here, PG&E has not put forward a plan for compliance with Rule III.B.1. If PG&E plans to procure RECs or other resources from any of the affiliates discussed

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PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

here, PG&E shall seek Commission approval pursuant to the Rules for any such procurement. However, the Commission finds that the absence of a plan for compliance in the instant ALs does not form a basis for their rejection.

Conclusion:

(1) The Commission finds that PG&E has not sought Commission approval of resource procurement from PEC I, SunRun Pacific, or Sequoia Pacific. Nothing in this Resolution constitutes Commission approval of resource procurement in any form by PG&E from any of PEC I, SunRun Pacific, or Sequoia Pacific.

**Issue 7      Whether Customers Are Vulnerable In Event of Affiliate  
Bankruptcy or Other Form of Default**

Discussion

As discussed in the first version of this Draft Resolution, the transactions as structured will make each of PEC I, SunRun Pacific, and Sequoia Pacific parties to lease instruments and PPAs with host customers. In our original discussion, we noted that this creates consumer vulnerability in the event of bankruptcy or other form of default by any of those entities. On that basis, we ordered that the standard third party ownership instruments used by each of the affiliates be included in the scope of the affiliate transactions audit ordered herein, and that the instruments be reviewed for compliance with Public Utilities Code Section 2869. Specific to provisions in that law, we noted that the instruments should ensure that in the event of third-party owner bankruptcy or default, (i) the systems remain in place and continue to operate, (ii) an alternative entity capable of providing maintenance and upkeep is identified, and (iii) options for the transfer of ownership are expressly set out. Comments submitted on the first version of this Draft Resolution correctly pointed out that those instruments are transactions between utilities and their customers, and as such, lie outside the scope of the Commission's authority under the Rules.

Additionally in the first version of this Draft Resolution, we noted that Rule IX.C requires that PG&E maintain "ring-fencing" to prevent it from being pulled into the bankruptcy of the parent holding company. Rule IX.D further requires PG&E to notify the Commission of any changes to its ring-fencing provisions. Pursuant to the comments submitted on the first version of this Draft Resolution,

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

the scope of the audit is appropriately limited to a review of PG&E's ring-fencing provisions with respect to its holding company, PG&E Corporation.

Conclusions:

(1) The Commission finds that the terms and conditions in the third-party ownership instruments executed by any of the affiliates with their customers lie outside the scope of the Rules, and thus are not included in the scope of the affiliate transactions audit ordered here.

(2) The Commission finds that the affiliate transactions audit ordered here appropriately includes a review of PG&E's ring-fencing provisions in place to protect it against the effects of a bankruptcy of its holding corporation only, and not against the effects of a bankruptcy on the part of any of PG&E's affiliates.

### **Issue 8 – Whether Advice Letter Is Appropriate Procedural Vehicle**

Discussion

The Commission finds that PG&E acted in compliance with Rule VI.B and used the appropriate procedural vehicle by filing four advice letters notifying the Commission of the creation or reclassification of affiliates. As noted above, the Commission finds that PG&E met its burden under Rule VI.B and sufficiently demonstrated its plan for compliance with the Rules. As a result, the Commission rejects CCSF's argument and finds no basis here for rejection of the ALs.

While accepting and approving the advice letters here, we note that the informal advice letter process is inadequate to determine certain issues lacking Commission precedent or raising policy issues.<sup>32</sup> In fact, in its letter rejecting AL 3091-G/3616-E without prejudice on July 7, 2010, Energy Division specifically suggested that PG&E file a formal application for the approval requested of that transaction and any similar subsequent transactions. Our discussion of Issues

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<sup>32</sup> See, e.g., General Order 96-B, Section 5.1.

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

1.5, 1.10, and 1.14 above highlight this tension. While we find that it is reasonable and in compliance with the Rules in this instance to accept the advice letter filings, we note that this is not precedential with respect to future affiliate transaction filings by any utility under this Commission's regulatory authority. Where affiliate transactions are proposed by a utility for our approval that, for example, are of similar complexity or for which Commission precedent offers little guidance, we may require a formal application to be filed.<sup>33</sup>

### Conclusion:

(1) The Commission finds that PG&E complied with Rule VI.B in notifying the Commission of the creation or activation of the affiliates identified herein via advice letter filing. This finding is not precedential, and in the future, the Commission may require the filing of a formal application seeking approval of the creation or activation of new affiliates by any utility under this Commission's regulatory authority.

### **Issue 9 – Allegation of “Double-Dipping” by PG&E**

#### Discussion

The Commission finds that CARE offers no evidentiary support for its contentions that PG&E's “new Venture Capital affiliate [Sequoia Pacific] [sic] will become part owner of SolarCity,” or that PG&E will receive “dividends or growth from its ratepayer's [sic] payments and from Solar City's [sic] profits.” CARE fails to distinguish between PG&E and its holding company here. As set out in the ALs, the deals are not structured in such a way that PG&E could

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<sup>33</sup> The Rules permit utilities to file advice letters to notify the Commission of the creation or activation of an affiliate. See Rule VI.B; see also D. 97-12-088, *Opinion Adopting Standards of Conduct*, Ordering Paragraph 2, p. 99. However, an application rather than an advice letter may be deemed the preferred method for reviewing the request, per General Order 96-B, Section 5.1 (“The advice letter process provides a quick and simplified review of the types of utility requests that are expected neither to be controversial nor to raise important policy questions”).

receive any share of SolarCity Corp.'s profits, nor is it clear what CARE identifies as "dividends or growth" from "ratepayer payments" to PG&E.

Conclusion:

(1) The Commission finds that PG&E Corporation's ventures described in the instant ALs are permitted under the Rules, and allegations regarding the structure of the joint ventures fail to substantiate any argument relevant to this Resolution.

**Issue 10 – Allegation of SolarCity Corp. and SunRun, Inc. Lobbying Against PACE Program**

Discussion

The Commission finds that CARE fails to establish the relevance of the PACE Program, and whether SolarCity Corp. and/or SunRun, Inc. engaged in lobbying against it, to any of the issues raised by the affiliate transactions analyzed here. As a result, this issue lies outside the scope of this Resolution.

Conclusion:

(1) The Commission finds that allegations that SolarCity Corp. and/or SunRun, Inc. have lobbied against the PACE Program lie outside the scope of the issues addressed in this Resolution, and that no further Commission action is warranted on this issue.

**Issue 11 – Allegation of Commission General Failure to Oversee Affiliates**

Discussion

The Commission finds that CARE fails to offer any evidentiary support for its contention that the Commission has generally failed to oversee utility affiliates. Due to its vagueness and lack of evidentiary support, the Commission finds that this issue lies outside the scope of this Resolution.

Conclusion:

(1) The Commission finds that allegations of the Commission's general failure to oversee utility affiliates lie outside the scope of this Resolution.

**COMMENTS**

Pursuant to Public Utilities Code section 311(g)(1), this resolution was served on all parties on April 5, 2012, and was available for at least 30 days of public review and comment prior to a vote of the Commission.

Timely comments were received from DRA, PG&E, San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) (filed jointly), SolarCity Corp., and SunRun, Inc.

In its comments, DRA (i) agrees with all determinations of affiliate status in the Draft Resolution; (ii) requests reversal of the finding in the Draft Resolution that PG&E met its Rule VI.B burden in its demonstration of a compliance plan in the ALs and/or a requirement that PG&E make an additional Rules compliance plan filing; and (iii) identifies technical inaccuracies.

PG&E's comments allege four errors in the Draft Resolution: (i) PG&E Corporation's warrant rights holdings in SolarCity Corp. do not rise to the level required for the first affiliate test; (ii) PG&E Corporation's warrant rights holdings in SunRun, Inc. similarly do not rise to the level required for the first affiliate test, and in addition, PG&E Corporation's rights did not vest and can no longer vest under the terms of the agreement; (iii) Rule IX.C (addressing ring-fencing) is misapplied to extend to customers of the affiliates; and (iv) the third-party ownership instruments used by affiliates with their customers are improperly included within the scope of the shareholder-funded audit ordered by this Resolution.

SDG&E's and SoCalGas' joint comments allege two errors in the original version of this Draft Resolution: (i) the finding of affiliate status for SolarCity Corp. and SunRun, Inc. is improper because warrant rights are a potential, not actual, ownership stake, and in any event here do not rise to the level required for the first affiliate test; and (ii) the discussion of terms and conditions in the third party ownership instruments between affiliates and their customers exceeds the Commission's jurisdiction.

SolarCity Corp.'s comments allege that (i) PG&E Corporation's warrant rights holdings in SolarCity Corp. do not rise to the level required for the first affiliate test, and (ii) the facts of PG&E's and SolarCity Corp.'s respective revenue

streams do not support a theoretical incentive for PG&E to manipulate the CSI Program to discriminate in favor of SolarCity Corp.

SunRun, Inc.'s comments allege that (i) PG&E Corporation's warrant rights holdings in SunRun, Inc. do not meet any of the three affiliate tests; (ii) PG&E's warrant rights were time-limited and, based on events since the date of the filing of the advice letter, the warrant rights have failed to vest, and thus no longer exist; (iii) the Commission's review of and requirement that certain provisions be included in SunRun, Inc.'s third-party ownership instruments lies outside the scope of the Rules; and (iv) applications for CSI Program incentives that were funded by the transactions discussed here were made by SunRun, Inc., not SunRun Pacific, and thus no incentive applications from SunRun Pacific will be available for audit.

We have considered all of the comments and have modified this version of the Draft Resolution accordingly, and note as follows:

With respect to the affiliate status of SolarCity Corp. and SunRun, Inc., the comments point out the difficulty of applying any of the tests in the Rules to transactions of this complexity, and the lack of Commission precedent applying the Rules to similar facts. We have modified this Draft Resolution to set out a more pragmatic approach, with emphasis on the nature of the risk posed and the primary tool (an independent audit) available to this Commission to mitigate that risk.

With respect to facts submitted by SunRun, Inc. and PG&E as to the termination of PG&E Corporation's warrant rights since the filing of AL 3141-G-A/3708-E-A on December 17, 2010, we have modified this Draft Resolution accordingly. The facts continue to show that SunRun, Inc. has been an applicant to the CSI Program under PG&E's administration at the same time that PG&E Corporation held active warrant rights. On that basis, inclusion of PG&E's transactions with SunRun, Inc. in the CSI Program for the identified time period is reasonable and appropriate.

With respect to application of Rule IX.B and the third-party ownership instruments, we agree with comments that the terms and conditions of agreements between affiliates and their customers lie outside the scope of the Rules, and have modified this Draft Resolution accordingly.

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

With respect to PG&E's ring-fencing provisions, we agree that the appropriate scope of the affiliate transactions audit will examine PG&E's protections against a bankruptcy of only its holding company, and not of any affiliate, as set out in Rule IX.C. We have modified this version of the Draft Resolution accordingly.

With respect to DRA's request that we order PG&E to file a new Rules compliance plan, we note that we have reserved the right to order additional risk-reducing actions following our review of the results of the audit.

### **FINDINGS AND CONCLUSIONS**

1. The Commission finds that the following entities are affiliates of PG&E and are engaged in the provision of electricity-related products and services, and thus all transactions between PG&E and these entities are subject to the Rules:
  - a. PEC I
  - b. SunRun Pacific  
Sequoia Pacific
2. The Commission finds that the following entities are affiliates of PG&E, but are not engaged in the provision of electricity-related products and services, and thus the Rules apply to transactions between PG&E and these entities where explicitly provided:
  - a. PEC II
  - b. PEC III
3. Limited to the facts presented in the instant advice letters, the Commission finds that the following entities are not affiliates of PG&E:
  - a. Banyan SolarCity
  - b. Sequoia Pacific Member I
  - c. SolarCity Corp.
  - d. SunRun, Inc.
4. The Commission finds that the new relationships resulting from the transactions that are the subject of the instant ALs create a risk of discriminatory treatment in PG&E's administration of the CSI Program, as follows:

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

- a. PEC I is both an affiliate of PG&E and an applicant to the CSI Program in PG&E's service territory, where PG&E serves as CSI Program Administrator.
  - b. Sequoia Pacific is both an affiliate of PG&E and an applicant to the CSI Program in PG&E's service territory, where PG&E serves as CSI Program Administrator.
  - c. SolarCity Corp. is not an affiliate of PG&E, has executed a warrant rights transaction with PG&E Corporation, is an applicant to the CSI Program, and may act as agent for Affiliate PEC I in applications to the CSI Program in PG&E's service territory, where PG&E serves as CSI Program Administrator.
  - d. SolarCity Corp. is not an affiliate of PG&E, has executed a warrant rights transaction with PG&E Corporation, is an applicant to the CSI Program, and may act as agent for Sequoia Pacific in applications to the CSI Program in PG&E's service territory, where PG&E serves as CSI Program Administrator.
  - e. SunRun Pacific is an affiliate of PG&E, and SunRun, Inc. has submitted applications on SunRun Pacific's behalf to the CSI Program in PG&E's service territory, where PG&E serves as CSI Program Administrator.
  - f. SunRun, Inc. is not an affiliate of PG&E, has executed a warrant rights transaction with PG&E Corporation, is an applicant to the CSI Program, and may act as agent for SunRun Pacific in applications to the CSI Program in PG&E's service territory, where PG&E serves as CSI Program Administrator.
5. The Commission finds that the relationships between PG&E and its new affiliates, and between PG&E and either of SolarCity Corp. or SunRun, Inc., create risks of Rules violations by PG&E, PG&E Corporation, and/or any of the affiliates identified here, as well as risks of inappropriate behavior by PG&E and/or non-affiliates SolarCity Corp. and SunRun, Inc. that may lead to improper market power gain.
  6. The Commission finds that PG&E Corporation's new corporate relationships resulting from the transactions described in the instant ALs pose a risk of violations of Rule II.C.

7. The Commission finds that PG&E has met its Rule VI.B burden in the ALs discussed here, by sufficiently demonstrating procedures that, as designed, appear to ensure compliance with the Rules. This finding is applicable only to the instant ALs, and is not precedential with respect to future affiliate transaction advice letter filings by any utility under this Commission's regulatory authority and the threshold for meeting the Rule VI.B burden.
8. The Commission finds that the current version of the CSI Program Handbook does not clearly articulate a first-come, first-served procedure at key points during the application process.
9. The Commission finds that PG&E presently has no obligation, in its role as CSI Program Administrator, to publish data comparing its processing of CSI Program applications from affiliates to applications from non-affiliates.
10. The Commission finds that an independent audit is required to discover whether PG&E's internal procedures are in fact functioning to ensure compliance with the Rules with respect to applications to the CSI Program associated with any of PEC I, SunRun Pacific, Sequoia Pacific, non-affiliate SunRun, Inc. acting for itself or as agent for SunRun Pacific, or non-affiliate SolarCity Corp. acting for itself or as agent for PEC I or Sequoia Pacific.
11. The Commission finds that independent review is required to discover whether the corporate separation and other internal safeguarding mechanisms are in fact functioning to ensure compliance with the Rules, and particularly Rule II.C, with respect to PG&E Corporation.
12. The Commission finds that the results of an independent audit are necessary to further Commission consideration of measures to guard against improper market share gain by any of the affiliates identified here.
13. The Commission finds that the new corporate relationships resulting from the transactions that are the subject of the instant ALs create a risk of discriminatory treatment in PG&E's processing of interconnection applications under Rule 21, similar to the risk of bias in PG&E's administration of the CSI Program.

14. The Commission finds that PG&E has met its Rule VI.B burden in the ALs by sufficiently demonstrating procedures that, as designed, appear to ensure compliance with Rule 21 and with the Rules. This finding is applicable only to the instant ALs, and is not precedential with respect to future affiliate transaction advice letter filings and the threshold for meeting the Rule VI.B burden.
15. The Commission finds that independent review is required to discover whether PG&E's internal procedures are in fact functioning to ensure compliance with the Rules with respect to processing interconnection applications under Rule 21 from any of affiliates PEC I, SunRun Pacific, Sequoia Pacific.
16. The Commission finds that the PG&E's administration of the CSI Program, including determination of the eligibility of applications from affiliates for a CSI Program incentive, falls within the transaction limits set out in Rule III.B. The Commission finds that PG&E has not sought Commission approval of resource procurement from PEC I, SunRun Pacific, or Sequoia Pacific. Nothing in this Resolution constitutes Commission approval of resource procurement in any form by PG&E from any of PEC I, SunRun Pacific, or Sequoia Pacific.
17. The Commission finds that PG&E complied with Rule VI.B in notifying the Commission of the creation or activation of the affiliates identified herein via advice letter filing. This finding is not precedential, and in the future, the Commission may require the filing of a formal application seeking approval of the creation or activation of new affiliates by any utility under this Commission's regulatory authority.
18. The Commission finds that PG&E Corporation's ventures described in the instant ALs are permitted under the Rules, and allegations regarding the structure of the joint ventures fail to substantiate any argument relevant to this Resolution.
19. The Commission finds that allegations that SolarCity Corp. and/or SunRun, Inc. have lobbied against the PACE Program lie outside the scope of the issues addressed in this Resolution, and that no further Commission action is warranted on this issue here.

20. The Commission finds that allegations that the Commission has generally failed to oversee utility affiliates lie outside the scope of this Resolution, and that no further Commission action is warranted on this issue here.

**THEREFORE IT IS ORDERED THAT:**

1. The notification by PG&E of the creation of affiliate PEC I as requested in AL 3182-G/3789-E and AL 3091-G-A/3616-E-A is acknowledged. All transactions between PG&E and PEC I are subject to the Rules.
2. The notification by PG&E of the creation of affiliate SunRun Pacific as requested in AL 3141-G-A/3708-E-A is acknowledged. All transactions between PG&E and SunRun Pacific are subject to the Rules.
3. The notification by PG&E of the creation of affiliate Sequoia Pacific as requested in AL 3170-G-A/3763-E-A is acknowledged. All transactions between PG&E and Sequoia Pacific are subject to the Rules.
4. The notification by PG&E in AL 3141-G-A/3708-E-A of PG&E Corporation's warrant rights holdings in SunRun, Inc. is acknowledged, and does not impart affiliate status to SunRun, Inc. under the first affiliate test.
5. The notification by PG&E in AL 3182-G/3789-E and AL 3170-G-A/3763-E-A of PG&E Corporation's warrant rights holdings in SolarCity Corp. is acknowledged, and does not impart affiliate status to SolarCity Corp. under the first affiliate test.
6. Within 60 days of the date of this Commission Resolution, PG&E shall file an advice letter revising the CSI Program Handbook to clearly articulate a first-come, first-served policy applicable to all procedural steps, as set out in Attachment A. PG&E shall coordinate filings to the same effect with the other CSI Program PAs.
7. The Commission shall conduct an affiliate transaction audit in 2012 of PG&E's interactions with all of its affiliates, including but not limited to the affiliates discussed here. The audit shall cover all transactions between PG&E and its affiliates from June 30, 2009 through June 30, 2011. Per Rule VI.C, the audit

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
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shall be at shareholder expense. The detailed scope of the audit is set out in Attachment B.

8. The Commission may use findings from the audit to order further modifications to the CSI Program Handbook, CSI Program procedures, Rule 21 interconnection procedures, and any associated program or procedure to ensure protection against violations of the Rules.
9. Within 60 days of any future date on which PG&E Corporation executes its warrant rights in SolarCity Corp., PG&E shall report such execution to the Commission via advice letter filing, including, pursuant to D.06-12-029, a preliminary determination by PG&E as to whether the resulting equity stake held by PG&E Corporation confers affiliate status on SolarCity Corp. pursuant to the Rules.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on June 21, 2012; the following Commissioners voting favorably thereon:

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Paul Clanon  
Executive Director

## Attachment A to Resolution G-3461

### California Solar Initiative Program Handbook Modifications

The California Solar Initiative Handbook shall be modified as set out below. Text proposed for deletion is ~~struck through~~; text proposed for addition is *underlined and italicized*.

#### Modifications to Section 4 Application Process for CSI Projects

Through the CSI Program, funding may be reserved for Applicants who have committed to purchase and install an eligible solar energy system at a given Site. A funding reservation provides the purchaser assurance that the reserved funds will be available when the incentive claim is made. *For completed applications, reservations are made on a first-come, first-serve basis, and last for the duration of the applicable reservation period.* The CSI Program uses an online application tool to simplify the application process and confirm the rebate amount reserved, contingent on receiving all

documents. To apply for a CSI incentive online visit [csi.powerclerk.com](http://csi.powerclerk.com) or your Program Administrator's website for downloadable forms. For the submission of all time-sensitive documents, to ensure confirmation of receipt, it is recommended that documentation be delivered to the appropriate Program Administrator by certified or overnight mail. No faxes or hand deliveries will be accepted.

### **Modifications to Section 4.3.1.2 Approval of Reservation Request**

~~Once received,~~ The Program Administrator will review ~~the~~ received application packages on a first-come, first-served basis to determine ~~for~~ completeness and ~~determine~~ eligibility. Applications will also be screened to ensure that the project has not applied for incentives through other Program Administrators or other state- or government-sponsored incentive programs.

Once the Program Administrator approves the reservation request, the Program Administrator will issue a Confirmed Reservation Notice, confirming that a specific incentive amount is reserved for the project. The system must be purchased, installed, and put into operation by the Reservation Expiration Date (see Table 8 for length of reservation) as listed in the Confirmed Reservation Notice. The Confirmed Reservation Notice will list the specific reservation dollar amount and the Reservation Expiration Date.

### **Modifications to Section 4.3 2-Step Application Process for GM CSI Small (< 10 kW) Non-Residential and All Residential Projects**

#### **Section 4.3.2 Step # 2: Submit Incentive Claim Form Package**

After the solar energy system is purchased, installed, and put into operation, the Applicant should submit the Incentive Claim Form and the required supporting documentation.

The Incentive Claim Form Package must have signatures of Applicant, Host Customer and System Owner (if different from Host Customer), and should be submitted with the following documentation:

1. Incentive Claim Form with Signatures

2. PMRS Cost Cap Exemption Documentation (if no eligible PMRS is installed)
3. Copy of Executed PDP Contract (PBI Only)
4. Revised EPBB Calculation Printout (if applicable) (for other solar electric generating technologies, a copy of the SOF chart marking the correct data point)
5. Signed Field Verification Certification Form (for Reservation Request Applications first received on or after 7/1/09)
6. Copy of Retro-commissioning Report (EPBB Existing Commercial buildings  $\geq 100,000$  sq ft and Benchmarking  $< 75$ )

The online tool can be used to assist at the Incentive Claim Form stage even if it had not been used for the original Reservation Request Package. Although the Applicant is no longer required to submit Proof of Authorization to Interconnect, the Program Administrators will verify interconnection prior to any incentive payment. *The Program Administrators will conduct verifications in the order that completed Incentive Claim Form Packages are received.*

#### **Modifications to Section 4.4 3-Step Application Process for Large Non-Residential Projects ( $\geq 10$ kW)**

##### **Section 4.4.2.1 Required Proof of Project Milestone Documentation**

The following documentation must be submitted on or before the Proof of Project Milestone date indicated in the initial Reservation Notice.

1. Completed Proof of Project Milestone Checklist.
2. Copy of executed contract for System Purchase and Installation.
3. Copy of Executed Alternative System Ownership Agreement (if System Owner is different than Host Customer).
4. Revised EPBB Calculation Printout (if applicable) (for other solar electric generating technologies a copy of the SOF chart marking the correct data point).

5. Copy of RFP or Solicitation (Government, Non-Profit, and Public Entities only).

For more information on the above-referenced documentation, see Section 4.10.2.

Once Applicants have successfully met the Proof of Project Milestones requirements, the Program Administrator will issue a Confirmed Reservation Notices *in the order received*.

### **Section 4.4.3 Step # 3: Submit Incentive Claim Form Package**

Upon Project completion and prior to the Reservation Expiration Date, Applicants must submit a completed Incentive Claim Form along with all of the necessary documentation to request an incentive payment. The Incentive Claim Form Package must have signatures of Applicant and Host Customer and should be submitted with the following documentation:

1. Incentive Claim Form with Signatures.
2. PMRS Cost Cap Exemption Documentation (if no eligible PMRS is installed).
3. (PBI Only) Copy of Executed PDP Contract.
4. Revised EPBB Calculation Printout (if applicable) (for other solar electric generating technologies, a copy of the SOF chart marking the correct data point).
5. Signed Field Verification Certification Form (for Reservation Request Applications first received on or after 7/1/09).
6. Copy of Retro-commissioning Report (EPBB Existing Commercial buildings  $\geq 100,000$  sq ft and Benchmarking  $< 75$ )

The online tool can be used to assist at the Incentive Claim Form stage even if it had not been used for the original Reservation Request Application Package.

Refer to Section 4.10.3 for more information about the requirements associated with submitting the Incentive Claim Form package. *The Program*

Administrator will process complete Incentive Claim Form Packages in the order received.

#### **Section 4.7 Incentive Payment Process**

Once a Project is completed, Applicants may request payment of the CSI Incentive amount listed on their Incentive Claim Form. A Project is considered completed when it is completely installed, interconnected, permitted, paid for, and capable of producing electricity in the manner and in the amounts for which it was designed.

To receive the CSI Incentive, all CSI Program requirements must be met and a complete Incentive Claim Form package submitted prior to the Reservation Expiration Date. Applicants are advised to keep a copy of the Incentive Claim Form package along with all required documentation for their records. The Application Process sections and Section 4.10.3 contain more detailed information on the Incentive Claim Form package and submittal process. The Program Administrator processes completed Incentive Claim Form packages on a first-come, first-served basis.

The Program Administrator reserves the right to withhold final CSI Incentive payment pending review and approval of the incentive claim documentation and field inspection results if that Project is determined to require a field inspection.

The SASH Program has its own incentive payment process, described below in Appendix E.

**Attachment B to Resolution G-3461**

**Scope of Work**

**Affiliate Transactions Audit of Pacific Gas & Electric Company**

Period covered: June 30, 2009 – June 30, 2011

Expenses: All audit costs are to be at shareholder expense

Affiliates covered: All entities that are Pacific Gas & Electric Company (PG&E) affiliates pursuant to the Affiliate Transaction Rules (D.97-12-088 and subsequent modifications) as of June 30, 2011, including, but not limited to, Pacific Energy Capital I, LLC (PEC I), Pacific Energy Capital II, LLC (PEC II), Pacific Energy Capital III, LLC (PEC III), Pacific Energy Capital IV, LLC (PEC IV), Pacific Energy Capital V, LLC (PEC V), SunRun Pacific Solar, LLC (SunRun Pacific), and Sequoia Pacific Solar I, LLC (Sequoia Pacific).

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Non-Affiliates Covered: SolarCity Corporation and SunRun, Incorporated (See limitations on scope below. The focus of the audit shall be primarily on the affiliates listed above, with a secondary, limited focus on transactions between PG&E and the non-affiliates within the CSI Program during the applicable time period.)

Service of Findings: The audit findings shall be served on the California Solar Initiative proceeding service list (R.10-05-004), the CPUC Affiliate Transaction Rules service list, the Rule 21 interconnection proceeding service list (R. 11-09-011), and any relevant successor proceedings.

Scope of Work: (a) Review of PG&E's compliance with the CPUC Affiliate Transaction Rules (Rules) in their entirety in transactions with each of its affiliates, including transactions between PG&E and the affiliates listed above, and transactions between PG&E and non-affiliates SolarCity Corporation and SunRun, Incorporated limited to applications to the CSI Program by those entities in PG&E's service territory during the time period covered by this audit.

(b) Review of PG&E's compliance with the Rules in their entirety in transactions with each of its affiliates, including transactions between PG&E and the affiliates listed above with respect to interconnection applications under Electric Rule 21 (Rule 21).

(c) Review of PG&E's compliance with the Rules where explicitly provided with respect to non-Rule II.B affiliates, including, but not limited to, PEC II and PEC III.

(d) Review of PG&E's 2009, 2010, and 2011 Rules compliance plans (filed June 30 of each year) demonstrating specific mechanisms and procedures in place within both PG&E and holding company Pacific Gas & Electric Corporation (PG&E Corporation) to ensure compliance with the Rules.

PG&E AL 3182-G/3789-E, PG&E AL 3091-G-A/3616-E-A,  
PG&E AL 3141-G-A/3708-E-A, PG&E AL 3170-G-A/3763-E-A/rp1

- (e) Review of verified statements filed annually with the Rules compliance plans by PG&E and PG&E Corporation with regard to compliance with the Rules.
- (g) Professional recommendations as to practices implementable by PG&E that could further mitigate the risk of Rules violations in light of PG&E's new relationships with each of PEC I, SunRun Pacific, Sequoia Pacific, SolarCity Corporation, and SunRun Incorporated, respectively.
- (h) Professional opinion as to the nature and extent of the risk of Rules violations that may continue exist between PG&E and each of affiliates PEC I, SunRun Pacific, Sequoia Pacific, and non-affiliates SolarCity Corporation and SunRun Incorporated, respectively, even after implementation of additional recommended mitigating practices.

END of Attachment B