BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Application of Pacific Gas and Electric Company for Authority to Increase Electric Rates and Charges to Recover Costs Relating to California Solar Photovoltaic Manufacturing Development Facility (U 39 E)	A.10-11-002 (Filed November 1, 2010)

OPENING BRIEF OF THE WESTERN POWER TRADING FORUM, DIRECT ACCESS CUSTOMER COALITION AND MARIN ENERGY AUTHORITY

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Pursuant to Rule 2.6 of the Commission's Rules of Practice and Procedure, the Western Power Trading Forum ("WPTF"),[1] Direct Access Customer Coalition ("DACC")[2] and the Marin Energy Authority ("MEA")[3] submit this joint opening brief with regard to the Application of Pacific Gas & Electric Company ("PG&E") filed on November 1, 2010, in the above-captioned docket ("Application"). WPTF, DACC and MEA urge rejection of the Application for several reasons. First and foremost, a Commission-regulated public utility should not be making venture capital investments at ratepayer expense. Second, any such investment, if it is to be made at all, should be the exclusive province of the PG&E Corporation shareholders. Third, the Application,

[1] WPTF is a California non-profit, mutual benefit corporation. It is a broadly based membership organization dedicated to enhancing competition in Western electric markets in order to reduce the cost of electricity to consumers throughout the region while maintaining the current high level of system reliability. WPTF actions are focused on supporting development of competitive electricity markets throughout the region and developing uniform operating rules to facilitate transactions among market participants.

[2] DACC is a regulatory advocacy group comprised of educational, governmental, commercial and industrial customers that utilize direct access for all or a portion of their electrical energy requirements.

[3] MEA is a joint powers authority and a public entity organized under the laws of the State of California and the operator of the State's only community choice aggregation program, which commenced service on May 7, 2010. MEA's current membership is comprised of municipalities that are located within the geographic boundaries of Marin County, including the cities of Belvedere, Fairfax, Mill Valley, San Anselmo, San Rafael, Sausalito and Tiburon, and the County of Marin.

as amended, is devoid of the financial due diligence information that should have been provided to justify any such proposal. As a result, there is insufficient evidence to justify the investment. Finally, if the Commission should at all seriously consider approving the Application, it should reject PG&E's proposal to have the associated costs placed in distribution rates that are charged to all customers. Instead, the investment, if it is not borne solely by shareholders, should be treated as a generation related cost and recovered through the generation rates. Direct Access and community choice aggregation customers should not be required to pay for the costs of a speculative investment that has potential benefits for no one other than its bundled customers and is explicitly a generation cost.

I. Application Summary

A. The Original Application

On November 1, 2010, PG&E filed its Application seeking Commission authorization to:

> . . . increase electric rates and charges to collect $35.6 million over 3 years as the reasonable level of revenue requirements necessary to provide partial support for the balance of non-federal matching funds under an application by SVTC Technologies, a for-profit entity, for an award of $98 million in federal funds from the U.S. Department of Energy (DOE) to construct a California solar photovoltaic (PV) manufacturing development facility (California Solar PV MDF) in San Jose, California. In return for PG&E's financial contribution, PG&E will receive a financial interest in SVTC Solar in order to provide the potential for full reimbursement to PG&E's customers over the long-term.[4]

The Application stated that, "Under PG&E's proposal, revenue requirements associated with PG&E's incremental costs plus an allowance for franchise fees and uncollectibles incurred on this project would be booked to the Distribution Revenue Adjustment Mechanism (DRAM)

[4] Application, at p. 1.

balancing account once the project is approved by this Commission and funding is approved by the DOE."[5]

This meant that the costs of the proposed ratepayer investment would be borne by all customers, including bundled, direct access and community choice aggregation. The claimed justification for this cost allocation mechanism was, "The benefits of the California Solar PV MDF to PG&E's customers could be significant. PG&E expects to add more solar PV capacity to its supply portfolio over time, while more and more of PG&E's customers continue to add PV to their rooftops (more than 43,000 as of this filing). If successful, PG&E's customers would benefit from lower-cost, higher-efficiency PV panels and the techniques to manufacture those panels in California."[6]

B. The Amended Application

Subsequently, the DOE decided to fund the project at a level of $30 million, instead of the $98 million in federal funding originally requested and referenced in the original A.10-11-002. On April 6, 2011, Administrative Law Judge Karl J. Bemesderfer sent an email to all parties stating that, "The DOE funding announcement represents a fundamental change in the proposed program and renders the existing application obsolete. I concur with TURN and DRA that it would be a serious error to proceed without a revised application from PG&E that takes account of the radical reduction in federal funding and any other changes from the originally anticipated DOE grant." ALJ Bemesderfer then suspended the briefing schedule and directed PG&E to file an amended application. PG&E amended the Application on July 15, 2011. The Application, as amended to date, is referenced in this brief as the "Amended Application."

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[5] Application, at p. 9.

[6] Application, at p. 3.

Among other things, the Amended Application notes that, "The reduction in DOE funding means that PG&E's share of the costs of the project and investment in the project requested in the Application is reduced from $19.8 million to $9.9 million in after-tax support (from $35.6 million to $17.8 million in revenue requirements). The DOE funding reduction also means that the scope of the project is reduced from the original three phases proposed to DOE and described in the original Application, to one phase ("Phase 1a") focusing on silicon-only PV manufacturing development."[7] Importantly, the Amended Application also states that, "The details of PG&E's reduced revenue requirements request and the reduced scope of the California Solar PV MDF project are discussed below. In all other material respects, the original Application in this proceeding remains unchanged and is incorporated into this Amendment to the Application in full."[8]

This is significant because the Amended Application reiterates the proposal in the original application that "revenue requirements associated with PG&E's incremental costs plus an allowance for franchise fees and uncollectibles incurred on this project would be booked to the Distribution Revenue Adjustment Mechanism (DRAM) balancing account once the project is approved by this Commission and funding is approved by the DOE."[9] This means that the costs of this ratepayer investment will continue to be borne by all customers, including bundled, direct access ("DA") and community choice aggregation ("CCA").

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[7] Amended Application, at p. 1.

[8] Id at p. 2.

[9] Original Application, at p. 3; Amended Application at p. 7.

C. The Amended Application Fails to Provide a Convincing Rationale for Its Approval

As PG&E includes no testimony supporting its rate request, the presumed justification for charging these ratepayers for this questionable investment is contained within the following excerpt from the Amended Application:

- To expand the deployment of advanced solar PV domestic manufacturing technologies, in order to enhance the availability of cost-effective, efficient renewable solar PV electricity generation to replace fossil energy and reduce greenhouse gas emissions for customers;
- To obtain for the benefit of California consumers, businesses and government institutions a "fair share" of federal funds made available by the DOE to create jobs, foster economic recovery and stimulate technology innovation and competitiveness;
- To comply with the Commission's renewable energy and greenhouse gas reduction policies;
- To obtain for customers and California significant benefits of the solar PV renewable energy manufacturing projects in return for only being required to fund a small percentage of the costs of those projects in rates or through other nonfederal funds; and
- To foster and reinforce California's international leadership in technology innovation and entrepreneurship through utility/public/private partnerships in support of renewable energy projects and programs.[10]

PG&E simply asserts benefits that allegedly will flow from this project, without providing a shred of testimony or any other evidence that the project under consideration may achieve these benefits. For this reason alone, the complete lack of a supporting record, the Commission should reject the Amended Application.

Even assuming, for the sake of argument, that some benefits may be achieved by the project sought in the Amended Application, PG&E has provided no evidence, and has not even presented any argument, that can overcome what should be an extremely strong presumption

[10] Amended Application, at p. 8.

against using ratepayer funds to make this sort of speculative investment in private companies. PG&E is a Commission-regulated public utility that furnishes electricity and natural gas distribution and transmission services to all customers in its service territory. By means of the Amended Application, PG&E attempts to turn its entire (bundled and unbundled) customer base involuntarily into venture capitalists, investing at risk money in a new solar PV manufacturing facility in return for an unspecified financial interest in the company. Such an investment by PG&E, if undertaken at all, should be done with shareholder rather than ratepayer money.

D. Should the Commission Consider Approval of the Amended Application, then the Associated Rate Recovery Should Be Borne by Bundled Customers Only through PG&E's Generation Rates

Aside from being a wholly inappropriate use of ratepayer funds, the cost allocation proposed in the Amended Application, were the Commission to provide ratepayer funding for the investment, is inappropriately targeted to all PG&E ratepayers, when the investment is clearly a generation-related proposal. PG&E admits this when it states that it wishes to, "replace fossil energy and reduce greenhouse gas emissions" for its customers. DA customers have their own generation suppliers that have their own greenhouse gas obligations with which to comply. Similarly, MEA, the only operating CCA in California has its own generation supplier and its own greenhouse gas obligations. The costs associated with those obligations are included in the prices that DA and CCA customers are charged by their suppliers.

This means that asking DA and CCA customers to bear the costs of their own suppliers, <u>as well as a share of the costs incurred by PG&E to facilitate meeting its own greenhouse gas obligations</u>, is simply inequitable. Moreover, as discussed below, there is ample Commission precedent that argues against allocating costs to unbundled customers based on theories of generalized societal benefits. Finally, the Commission also quite recently recognized the

potential harm to competitive markets that can occur through improper cost allocation in the electric vehicle docket, as also discussed below.

II. Many Fundamental Questions Remain Unanswered by the Amended Application

In their joint protest to the original Application and the amended Application, WPTF, DACC and MEA pointed out that there are any number of essential issues that are left unaddressed by PG&E with regard to its proposed SVTC investment. Unless the Amended Application is rejected outright, our protest strongly recommended that the Commission should insist that PG&E respond to the following questions before making any decision in this proceeding:

- If this is such a prudent and beneficial investment, why are PG&E shareholders not undertaking the investment and taking the associated risks?
- Even assuming that venture capital investment is an appropriate use of ratepayer funds (an enormous and unsupported assumption), what are the risks and projected benefits of this particular investment?
- Why should non-generation customers of PG&E be required to subsidize PG&E's private investment in support of future generating resources?
- What are the qualifications of the target company's management?
- What competition exists for the manufacture of solar PV?
- Why should PG&E customers be forced to invest in a solar manufacturing facility when other solar manufacturers are closing their facilities (i.e. the Solyndra plant closure)?
- What is the projected capital structure of this joint venture?
- What assets are securitized by this investment?

- What access to additional capital might the target company need?
- If the target company does need additional capital, is PG&E (i.e. ultimately the ratepayer) subject to a "capital call" or other financial risk?
- How was the "financial interest" in the target valued; i.e., what are the projected returns and when will they be paid?
- How liquid is the interest?
- Who at PG&E is managing PG&E's interest in this investment?
- What, if any, expertise does PG&E bring to the project?

It is critical to recognize that none of these questions have been addressed in the original Application or the amended Application. The lack of any testimony that addresses these questions, as well as PG&E's effort to have this investment approved based solely on the sparse information provided to date is shocking. The Application lacks any form of credibility. Commission approval would not comply with its duties to protect and safeguard the interests of California ratepayers.

The questions posed here are questions that <u>any prospective investor should and would ask before he or she could presumably make a reasonably prudent investment decision</u>. In this proceeding, ratepayers are being forced to make a multi-million dollar investment literally sight unseen. No prudent investor would make such an investment and PG&E's failure to provide this level of detail in the Amended Application, even after the issues were raised in protests against it, should be proof enough that it is ill-prepared to undertake this sort of investment with its ratepayers' money. This shoot-from-the-hip approach to investing would be dangerous enough if PG&E were proposing this as a shareholder venture, in which case only the PG&E Corporation shareholders would be harmed by such a casual approach to investment due

diligence. The Commission, who must represent the ratepayers who are being asked to support this investment must recognize that PG&E's Application simply asks for the authority to assess its monopoly distribution customers for a multi-million dollar investment with no meaningful analysis or due diligence. This request is unconscionable as a premise for using ratepayer money and should be rejected without further consideration.

III. Any Investment Made by PG&E Should Be Funded by its Shareholders, Not Ratepayers

The Commission should note that on November 22, 2010, PG&E filed its **A**dvice Letter 3170-G/3763-E. The Advice notified the Commission of the formation of a new affiliate under Rule II.B of the Affiliate Transaction Rules. Specifically, it announced the formation of Sequoia Pacific Solar I, LLC and stated as follows:

> On September 21, 2010, PG&E Corporation's subsidiary, Pacific Energy Capital III, LLC ("PEC III"), acquired a membership interest in Sequoia Pacific Solar I, LLC, a Delaware limited liability company ("Sequoia Pacific"). Sequoia Pacific is an affiliate of Pacific Gas and Electric Company and it is subject to the Affiliate Transaction Rules under Rule II.B thereof because it is active in the electric energy business as a provider of residential rooftop solar energy installations. PEC III's investment in Sequoia Pacific is funded by PG&E Corporation shareholders.[11]

The Advice Letter demonstrates that PG&E is prepared to make investments in solar PV ventures at shareholder risk. The Commission must ask why the utility has not done so here. What is the nature of the difference between a solar venture that PG&E has found suitable for its shareholders versus one that it is willing to undertake only with ratepayer money? What the criteria that PG&E has used to make these distinctions? Again, the Amended Application raises far more questions than it answers.

[11] Advice, at p. 1 (emphasis added).

PG&E Corporation has certain rights, subject to its management approvals, to make shareholder investment(s). However, that is not the situation the Commission faces in considering the SVTC investment that is so very briefly discussed in the Amended Application. When an investment is being made with ratepayer instead of shareholder funds, the Commission must step in and cast a very wary eye on such proposals. This is only right and proper and an appropriate exercise of its duties and responsibilities. If PG&E is picking and choosing among investments and has established some internal criteria for those that should remain with its shareholders and other criteria for those that should be funded by ratepayers, then PG&E is consciously acting as judge, jury and executioner of ratepayer risk allocations, with a very real potential that it may be seeking to impose higher risk on its ratepayers than it is willing to impose on its shareholders. This obvious conflict of interest, and the lack of transparency with which PG&E is managing this conflict of interest, cannot be allowed. There is, however, a very simple way to ensure this does not happen. If the SVTC investment is to be made at all, it should be funded by PG&E Corporation shareholders and not by monopoly distribution ratepayers, just as PG&E Corporation has elected to do with its Sequoia Pacific investment

IV. If the Investment is Authorized, None of the Costs Should be Allocated to Direct Access or Community Choice Aggregation Customers.

PG&E justifies this investment on the grounds that, "PG&E expects to add more solar PV capacity to its supply portfolio over time," but nevertheless proposes to assess the costs to all distribution customers rather than having the costs collected in generation rates. If this Amended Application is approved, despite the manifest reasons why it should be rejected, the costs should be recovered through generation rates. This speculative investment is generation-related, and neither DA nor CCA customers will see any benefits from this, so they should not bear any of the risks. DA and CCA customers make elections to be served by alternate suppliers in order

that they may actively manage their own electric supply risks and rewards. They have no interest, and should have no obligation, to fund PG&E's venture capital forays.

A. Established Principles of Cost Causation Dictate that the Investment be Allocated Solely to Bundled Customers

With regard to the costs of the SVTC investment, the Commission should follow the well-established regulatory principle of cost causation.[12] Under this principle, costs are allocated to those customers that created the need for the costs to be incurred.[13] Thus, the Commission has stated, as a general rule "it is appropriate to allocate revenue responsibility among customer classes on the basis of cost causation principles."[14] It has further held that "allocation of costs based on energy consumption is consistent with our long-standing principle of allocation by cost causation."[15] Consequently, the costs of an SVTC investment that has alleged long-term benefits that will accrue solely to PG&E in the satisfaction of its RPS or greenhouse gas obligations should be paid for solely by bundled customers in generation rates.

DA and CCA customers do not take generation service from PG&E. They do not and need not bear any responsibility for meeting PG&E's renewable portfolio standard ("RPS") obligations or for assisting the utility in complying with its greenhouse gas requirements. Instead, DA and CCA pay for generation from their own load-serving entities and through their

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[12] *See, e.g., Opinion Implementing Policy on Broadband Over Power Lines*, D.06-04-070, 248 P.U.R. 4th 305, 2006 Cal. PUC LEXIS 147, at p. *49 ("Costs should be allocated on a cost causation basis.").

[13] *See, e.g.*, D.03-02-06, 2003 Cal. PUC LEXIS 129, at *53 ("[F]rom a cost causation standpoint, if a distribution system is not interconnected to the grid and therefore imposes no costs on the transmission system, customers on that system should not be required to pay transmission charges.").

[14] *In re San Diego Gas and Electric Company*, D.99-06-058, 194 P.U.R. 4th 521 ("Our policy has consistently been that costs should be allocated to those customers who impose them."); see also D.01-09-059, 213 P.U.R. 4th 1 (2001) (rejecting principle of cost causation in this case on grounds specific to this case).

[15] *Final Opinion Regarding Policies Related to Post-Transition Ratemaking*, D.00-06-034, 2000 Westlaw 1071838,202 P.U.R. 4th 1 (2000).

rates enable these non-utility suppliers to meet their respective RPS and greenhouse gas obligations. Importantly, DA and CCA customers therefore impose no program costs on PG&E for those activities. To be consistent with the long-standing Commission policy of cost causation, PG&E's proposed cost allocation must be rejected.

B. Allocating the Costs of the SVTC Investment to DA or CCA Customers because of any Alleged Indirect Societal Benefits Must Also be Rejected.

The Commission has previously determined that allocating costs to customers who do not procure electricity from a utility based on any vague claims of indirect societal benefits would be unfairly discriminatory, arbitrary and speculative. A specific proceeding involved the proposed allocation of a bond charge to all customers for costs incurred by the utilities in procuring electricity from the California Department of Water Resources during the energy crisis of 2000 to 2001. The Commission stated:

> Attempting to assign a charge to DA customers *based solely on indirect societal benefits* would be arbitrary and speculative. Moreover, it would be *unfairly discriminatory* to assess a uniform bond charge among DA customers when some of them had actually consumed DWR power while others had consumed none. (Emphasis added.)[16]

The relevance to this case is clear. PG&E requests that the Commission allocate a share of its multi-million dollar SVTC investment to DA and CCA customers. Neither the original Application nor the Amended Application nor the PG&E responses to protests address the cost allocation issue in any way. It is to be expected, therefore, that in its reply brief, PG&E will justify this improper cost allocation in part on the strength of vague references to the indirect statewide benefits that may accrue from the SVTC investment. These arguments should be disregarded, just as the Commission disregarded them in D.02-11-022.

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[16] D.02-11-022, at p. 57.

C. The Amended Application Fails to Comply with Public Utilities Code Section 454

California Public Utilities Code Section 454 states in part as follows: "(a) Except as provided in Section 455, no public utility shall change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the commission and a finding by the commission that the new rate is justified . . ." This requires that PG&E show that the rates proposed to be charged to all customers (bundled, DA and CCA) resulting from its proposal are justified before they can go into effect. The utility has clearly not met its burden of proof imposed by Section 454 and fails to show that the increases to all customers' rates resulting from the company's proposed recovery of the implementation costs of this program are just and reasonable. The sparse record in this proceeding is seriously deficient and fails to demonstrate that the costs that the utility proposes to allocate to all customers are justified.

Further, by allocating the costs through the distribution function, they become charges that cannot be avoided by DA and CCA customers – in other words, they are non-bypassable. Any addition of non-bypassable charges, especially when unwarranted, reduces competitive opportunities and benefits the utilities vis-à-vis their competitors. In effect, PG&E's proposed cost recovery, if adopted, would have the costs for PG&E to facilitate the future meeting of its RPS and greenhouse gas compliance requirements paid for by the customers of competing load-serving entities. This is a blatantly anti-competitive approach.

D. The Recent Decision in the Electric Vehicle Proceeding Identifies the Harm to Competitive Markets that can be caused by Inappropriate Cost Allocation

The entwined issues of cost allocation and competitive markets were also recently addressed by the Commission in its decision on Plug-In Electric Vehicles ("PEVs") in docket R.09-08-009. The most recent decision in the case, Decision 11-07-029, was issued on July 14

of this year.[17] It imposed several safeguards with regard to utility behavior in order to ensure that the nascent PEV market would grow and prosper. For example, the Commission restricted utility ownership of electric vehicle service equipment[18] and required each utility to use educational outreach to consumers that was ensured to be competitively neutral.[19] The Commission explicitly justified restricting utility ownership of PEV equipment by saying that:

> [T]he potential costs savings of a "single buyer" approach would, in all likelihood, limit customer choice and, perhaps, even dampen the competition that may yield cost reducing innovation. As such, we do not find that the benefits of utility ownership of electric vehicle service equipment outweigh the potential for competitive limitations resulting from utility ownership.[20]

There is much that is analogous between these two proceedings. In the PEV case, the Commission identified that improper cost allocation has competitive market implications. By finding that the utilities' proposals to allocate their PEV meter costs to the "general body of ratepayers" raised serious "competitiveness concerns" [21] and by rejecting those proposals, the Commission found that the proposed cost allocation "may result in unfair advantage for utilities."[22] Similarly, asking DA and CCA customers to pay for a putative investment that may accrue future benefits to PG&E in meeting its RPS and greenhouse gas requirements would raise similar competitiveness concerns. In the PEV proceeding, the Commission directed that the customers that used utility PEV services would be responsible for the costs.[23] This is both

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[17] Phase 2 Decision Establishing Policies to Overcome Barriers to Electric Vehicle Deployment And Complying With Public Utilities Code Section 740.2 (D.11-07-029).

[18] Id at p. 49.

[19] Id at p. 66.

[20] Id at p. 49.

[21] Id at p. 47.

[22] Ibid.

[23] Ibid.

congruent with the principles of cost causation and conducive to the promotion of competitive markets. Furthermore, approving the PG&E cost allocation to DA and CCA customers would be contrary to the guiding principle espoused by the Commission in the ongoing direct access rulemaking (R.07-05-025), where the Commission affirmed its ongoing commitment, "to the fundamental principles that have guided electricity market restructuring in California and elsewhere: competition and customer choice."[24]

V. The Commission Should Avoid Picking Winners and Losers in the Competitive Solar Photovoltaic Market.

The inherent fallacies of having governmental agencies seek to pick winners and losers in competitive markets have been aptly demonstrated by the recent Solyndra debacle. PG&E's attempt to have the Commission authorize the use of ratepayers' money to fund this SVTC investment is inescapably the same. Putting taxpayer or, in this case, ratepayer money at risk to subsidize private companies is inherently dangerous. In the case of SVTC, it is reasonable to ask, what happens if the company fails and the investment is lost, and whether that burden, which will be considerable, should be imposed on captive ratepayers. Even if successful, using ratepayer funds to pick the technological winners and losers in the emerging renewable technologies is hardly the precedent that the current Commission should want to impose on its future brethren. Approval of the Amended Application will undoubtedly embolden PG&E or other utilities to make further such proposals in the future, perhaps for far greater sums of money. The precedent will have been set by the approval of the Amended Application and the gold rush will be on. Down that path lies the next Solyndra. The PG&E Amended Application should be rejected in its entirety.

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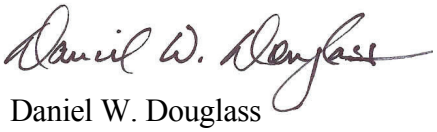
[24] R.07-05-025, at p. 2.

VI. Summary and Conclusion

PG&E's Application has the potential to set a precedent that could plague ratepayers for years to come. Quite simply, the preeminent issue here is the need for the Commission to ratify and define the fundamental, appropriate role for a utility. PG&E seeks through its Amended Application to greatly expand the traditional and conventional role of a utility by taxing its ratepayers to serve as proxy venture capitalists for investments that should be made, if at all, by the utility's shareholders.

For the reasons discussed above, WPTF, DACC and MEA urge the Commission to reject the Amended Application. Alternatively, if the Commission will not reject the Amended Application summarily, the investment should accrue to the benefit or loss of PG&E bundled customers only, as neither Direct Access nor Community Choice Aggregation customers have any interest at all in funding PG&E's venture capital exploits nor will they gain any benefits from RPS and greenhouse gas benefits that may accrue to the utility from this investment.

Respectfully submitted,



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