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

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

(U 39 E)

Application 09-02-019

(Filed February 24, 2009)

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39-E) RESPONSE TO THE
APPLICATION FOR REHEARING BY THE CONSUMER FEDERATION OF
CALIFORNIA**

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June 7, 2010

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CALIFORNIA**

Pursuant to Rule 16.1(c) of the Rules of Practice and Procedure of the California Public Utilities Commission (the “Commission”), Pacific Gas and Electric Company (“PG&E”) submits this Response to Consumer Federation of California’s (“CFC”) Application for Rehearing (the “Application”) of Decision (“D.”)10-04-052 regarding PG&E’s Photovoltaic (“PV”) Program (the “Decision”).

In its Application, CFC reiterates arguments that the Commission has already rejected in the course of this proceeding.^{1/} CFC’s arguments continue to lack factual or legal support. Because the Commission’s Decision is supported by a substantial evidentiary record and is consistent with all applicable laws, the Commission should deny the Application.

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^{1/} See, e.g., July 1, 2009 Assigned Commissioner’s and Administrative Law Judge’s Scoping Memo and Ruling at 12 (Ordering Paragraph 14) (denying CFC Motion to Dismiss).

I. THE APPROVED METHOD OF COST RECOVERY FOR THE PV PROGRAM IS CONSISTENT WITH PUBLIC UTILITIES CODE SECTION 454.8.

CFC argues that the Decision violates Section 454.8 of the California Public Utilities Code^{2/} because PG&E has not yet constructed its utility-owned PV Program facilities.^{3/} Section 454.8 states in relevant part that “any decision establishing rates” for a new capital projects that are “used and useful” should be recovered over the useful life of the facility so that ratepayers in a given year will not pay for the benefits received in other years.^{4/} The Decision considered and rejected CFC’s argument regarding Section 454.8.^{5/}

CFC continues to confuse the Decision’s determination regarding the reasonableness of costs to be incurred with the change in customer rates that will occur only after the PV Program facilities enter into commercial operation and become “used and useful.” Cost recovery (*i.e.*, the accrual of revenues) will only begin once the facilities are installed and delivering.^{6/} Actual recovery in rates of the costs of the operational facility will not begin until January 1 of the year following operation.^{7/} Following the commencement of commercial operation at a utility-owned PV Program facility but prior to rate recovery beginning for any such facility, PG&E will file an advice letter seeking approval to modify rates in the coming year to reflect the recovery of costs for that facility approved by the Commission in the Decision.^{8/} The Decision is fully consistent

^{2/} All subsequent references to codified sections are to the California Public Utilities Code.

^{3/} Application at 2.

^{4/} Pub. Util. Code § 454.8. The code section is cited in full at page 2 of the CFC Application.

^{5/} Decision at 47-48.

^{6/} A.09-02-019 Exhibit (“Exh.”) 1, Opening Testimony of Joe O’Flanagan, at p. 6-4.

^{7/} *Ibid.*

^{8/} *See, e.g.*, Advice 3518-E (PG&E’s 2009 Annual Electric True-Up (the “2009 AET”) preliminary forecast of rates to be in effect Jan. 1, 2010); Advice 3518-E-A (Updated and Amended 2009 AET); Res. E-4289 (approving PG&E’s 2009 AET rate changes subject to future audit, verification, and adjustment).

with Section 454.8 since at the time that any new rates are established reflecting the cost of utility-owned PV Program facilities, those facilities will be used and useful. Moreover, the approved cost recovery structure ensures that the costs of facilities will be recovered over their useful lives, as directed by Section 454.8.

The Commission's implementation of Section 454.8 is consistent with the legislative history of that provision. For example, during the Senate's consideration of the bill that would enact Section 454.8, the Senate Floor Analysis made clear that the intent of the bill was to set a maximum cost of a project in advance, subject to modification if circumstances later warrant, and then to require a rate recovery method which would be constant in real economic terms over the life of the facility.^{9/} The maximum cost adopted by the Commission was intended to be the maximum "reasonable and prudent" cost for constructing the plant.^{10/} In fact, the Commission is expressly authorized by statute to adopt a prospective estimate of reasonable capital costs in any proceeding.^{11/} In doing so here, the Decision has acted consistently with a number of recent approvals of generation projects, including the Colusa, Humboldt, and Gateway plants and the Diablo Canyon and San Onofre Steam Generator Replacement Projects.^{12/}

II. THE PV PROGRAM IS CONSISTENT WITH BOTH PG&E'S RPS PLAN AND PUBLIC UTILITIES CODE SECTION 399.14.

CFC argues that the Commission erred by: (1) requiring PG&E to amend its 2010 Renewables Portfolio Standard ("RPS") Procurement Plan (the "2010 RPS Plan") to include its PV Program; and (2) by stating its intention to review PV Program contracts for consistency with

^{9/} AB 179 (Sher), Senate Floor Analysis at Third Reading (Aug. 20, 1985).

^{10/} See Consumer Affairs Department Analysis of AB 179 at 2 (July 31, 1985).

^{11/} Cal. Pub. Util. Code § 463.5(a).

^{12/} Exh. 4, Rebuttal Testimony of Joe O'Flanagan, at p. 5-4.

the 2010 RPS Plan.^{13/} CFC argues that the Commission cannot find that the PV Program complies with least-cost, best-fit (“LCBF”) principles under the approved methodology and that application of LCBF principles would in fact lead to a different outcome.^{14/}

CFC’s arguments fail to acknowledge that utility ownership of renewables has been a part of PG&E’s RPS planning process, including the annual RPS Plans and the Commission’s decisions approving those plans, for years.^{15/} Indeed, PG&E’s conformed 2009 RPS Plan, filed on June 22, 2009, and PG&E’s draft 2010 RPS Plan both include a discussion of renewable energy ownership opportunities in general, and the PV Program in particular.^{16/} PG&E specifically referenced utility-owned renewable projects in the resource planning section of its most recently-approved RPS Plan.^{17/} More generally, the Commission encouraged the development of utility-owned renewable generation in the 2006 Long-Term Procurement Plan proceeding.^{18/}

The record of this proceeding provides substantial evidence to support the Commission’s approval of the PV Program as consistent with LCBF principles. As discussed more fully in section IV below, the PV Program has a number of key benefits, including the use of an established technology, the ability to rapidly develop and interconnect smaller scale projects,

^{13/} Application at 4.

^{14/} *See id.* at 5.

^{15/} *See e.g.* D.09-06-018 at 48-51 (describing utility-ownership portion of 2009 RPS Plan); D.08-02-008 at 32-35 (same for 2008 RPS Plans); D.07-02-011 at 23-25 (describing utility-ownership portion of 2007 RPS plans).

^{16/} *See* PG&E Conformed 2009 RPS Plan at 34-38, Conf. App. D at 4-5 (public version available at https://www.pge.com/regulation/RenewablePortfolioStdsOIR-III-Admin/Other-Docs/PGE/2009/RenewablePortfolioStdsOIR-III-Admin_Other-Doc_PGE_20090622-01.pdf); Draft PG&E Draft 2010 RPS Plan at 43 (Feb. 17, 2010 Draft).

^{17/} *Id.* at 34.

^{18/} D.07-12-052 at pp. 79, 211.

relatively low transmission and distribution costs, and the portfolio benefits of solar, such as production of electricity during peak hours. Additionally, CFC fails to acknowledge that the PV Program site selection criteria are designed to ensure that PG&E procures and develops renewable resources that are consistent with LCBF criteria.^{19/}

In summary, the Commission has implemented the provisions of Section 399.14 by requiring PG&E to file an annual RPS Plan, and PG&E has incorporated the PV Program into its approved and proposed RPS Plans. The record contains substantial evidence supporting the Commission's determination that the PV Program, when implemented as approved, is consistent with the LCBF goals embodied in Section 399.14.

III. THE RECORD SUPPORTS THE COMMISSION'S DECISION TO CONDITIONALLY ALLOW RATE RECOVERY FOR THE PV PROGRAM.

CFC argues that the Decision violates Section 454^{20/} because PG&E did not meet a "burden of proof" to show that an increase in rates related to the PV Program is justified.^{21/} As an initial matter, PG&E complied with Section 454 when it submitted its PV Program for approval by the Commission through an application. PG&E's testimony and briefing in this proceeding demonstrated that cost recovery is justified, and the Commission, in approving the application, has found that specific costs are justified and recoverable.^{22/} Nothing in this proceeding constitutes a unilateral and unapproved change in electric rates of the kind that Section 454 prohibits.

^{19/} See Exh. 1, Opening Testimony of Brian McDonald, at pp. 2-3 to 2-4.

^{20/} Section 454 provides, in relevant part, that "no public utility shall change any rate . . . except upon a showing before the commission and a finding by the commission that the new rate is justified."

^{21/} Application at 5-6.

^{22/} See D.10-04-052 at 15 ("[W]e find that the PV Program is in the interest of ratepayers and the adopted prices are just and reasonable.")

Moreover, substantial evidence supports the Commission's finding that the approved PV Program costs are just and reasonable. The record contains substantial evidence supporting cost estimates for the PV Program, which were based on vendor data and indicative cost estimates from PV manufacturers and system integrators, as well as PG&E-supplied balance of plant components.^{23/} PG&E's testimony also includes a breakdown of the PV Program cost components, as well as a detailed description of each component.^{24/} Additionally, as more fully discussed in section IV below, the record contains substantial testimony from PG&E and from other parties regarding the benefits that customers and the state in general stand to gain by the Commission's adoption of the PV Program. The Commission acted well within its discretion when it found that the PV Program costs are just and reasonable in light of the benefits.

IV. THE COMMISSION'S DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD.

CFC disputes the Commission's findings that the PV Program is in the interest of the ratepayers and that its adoption is prudent.^{25/} However, these findings are supported by substantial evidence in the record, and CFC's disagreement with the Commission's reasonable exercise of its discretion does not constitute legal error.

The record in this proceeding supports the Commission's finding that the PV Program's costs are reasonable given the many benefits that will flow to PG&E customers. PG&E's witness testified that these benefits include the viable development of near-term renewable power for PG&E's customers,^{26/} the diversification of PG&E's and California's renewable

^{23/} See Exh. 1, Opening Testimony of Doug Herman at p. 4-1.

^{24/} *Id.* at pp. 4-3 to 4-6.

^{25/} See Application at 7; See also Decision at 15.

^{26/} See Exh. 1, Opening Testimony of Fong Wan, at p. 1-6.

portfolio through the addition of utility ownership and a focus on mid-sized PV,^{27/} the advancement of state policies and legislative goals,^{28/} and the stimulus the PV Program will provide to California’s renewable power component and services markets.^{29/}

These benefits are in addition to the more general social benefits that have led California’s policymakers to adopt and expand requirements for the development of renewable power. The Commission appropriately took notice of the expressed RPS goals of the state.^{30/} In a recent Executive Order, Governor Schwarzenegger noted that such renewable resources provide “multiple and significant benefits to California’s environment and economy, including improving local air quality and public health, reducing global warming, diversifying our energy supply, improving energy security, enhancing economic development and creating jobs.”^{31/} Similarly, the California legislature declared as part of California’s landmark Global Warming Solutions Act that global warming poses a serious threat to the environment of California, implying that actions, like the PV Program, that reduce emissions that cause global warming will significantly benefit the State.^{32/} The Governor made this connection explicit in his Executive Order when he declared that “substantially increased development of renewable energy, energy efficiency, and demand response are all needed to meet the greenhouse reduction goal of 1990 levels by 2020 and 80 percent below 1990 levels by 2050, making the success and expansion of

^{27/} *Ibid.*

^{28/} *Id.* at p. 1-5 through p. 1-6.

^{29/} *Id.* at p. 1-7.

^{30/} *See, e.g.,* Decision at 15 (“It is clear that development of renewable generation to meet the RPS goals for 2010 and beyond is a priority for this state and this Commission.”).

^{31/} Executive Order (“E.O.”) S-21-09, (Preamble).

^{32/} *Id.* (citing Chapter 488, Statutes of 2006, “AB 32”).

renewable sources of energy a key priority for California's economic and environmental future."^{33/}

The benefits noted by the Governor and legislature apply to the PV Program since its primary goal is to produce new sources of renewable power in California. The PV Program will lead to a rapid increase in renewable resource energy deliveries that will be available to help meet both the near-term and longer-term RPS goals.^{34/} Assuming full completion of the entire 500 MWs, the PV Program will contribute up to 1.3 percent of PG&E's retail sales.^{35/} Particularly in a time of economic upheaval and unusually tight credit markets, the UOG component of the PV Program takes advantage of PG&E's ability to secure credit and ensure the development of the facilities needed to achieve RPS and greenhouse gas mandates.^{36/}

PG&E proposed a 500 MW PV Program because the energy output from a program of this size will contribute a significant part of PG&E's RPS goals^{37/} while allowing PG&E to benefit from economies of scale in the UOG component.^{38/} PG&E's witness also testified that a program of the size proposed will stimulate the PV industrial sector and spur the development of

^{33/} *Id.* at Preamble. The Governor stated more directly that "the goals and purposes of the RPS Program and the goals and purposes of AB 32 are mutual and compatible because an increase in the use of renewable electricity will reduce greenhouse gas emissions." *Id.*

^{34/} Exh. 1, Opening Testimony of Fong Wan, at p. 1-6.

^{35/} *Ibid.*

^{36/} *Id.* at p. 1-3, lines 5-9.

^{37/} Exh. 4, Rebuttal Testimony of Fong Wan, at p. 1-5, p. 1-7.

^{38/} *Id.* at p. 1-7.

new and lower-cost technologies, providing further benefits to PG&E customers over time.^{39/}

The Solar Alliance, an organization made up of PV developers, agreed.^{40/}

As noted above, PG&E views the development of utility-owned facilities as an important part of a broader risk diversification strategy for compliance with RPS and greenhouse gas mandates. This diversification also calls for the continuing participation of independent power producers. PG&E's witness testified that splitting the total capacity to be developed in the program between the UOG and PPA components benefits customers by allowing each type of power producer to apply its particular strengths and providing a broad stimulus to the PV industry.^{41/} Additionally, the inclusion of a UOG component provide a greater level of transparency for PG&E and the CPUC regarding the cost of renewable development that cannot be obtained through existing RPS contracting processes.^{42/}

The substantial evidence cited above supports the Commission's determination that the approved costs of the PV Program are just and reasonable when viewed in light of the benefits. CFC's assertion to the contrary should be rejected.

V. THE COMMISSION'S EX PARTE RULES PROVIDE ADEQUATE DUE PROCESS AND ARE CONSISTENT WITH APPLICABLE LAWS.

CFC reiterates its objection, made previously through a motion^{43/} and denied by the Administrative Law Judge,^{44/} to ex parte meetings between PG&E and the Commission.^{45/} CFC

^{39/} See Exh. 1, Opening Testimony of Fong Wan, at p. 1-2; Exh. 4, Rebuttal of Fong Wan, at p. 1-7.

^{40/} Exh. 10, Solar Alliance Data Response PGE-Solaralliance_001.

^{41/} Exh. 1, Opening Testimony of Fong Wan, at p. 1-7.

^{42/} *Id.* at p. 1-8.

^{43/} See Motion Objecting to the Proposed Meeting between PG&E and Commissioner Peevey (Feb. 2, 2010).

^{44/} Administrative Law Judge's Ruling Denying the Motion of the Consume Federation of California Objecting to an Ex Parte Meeting (March 1, 2010).

^{45/} PG&E notes that CFC's list of ex parte meetings is not accurate.

does not allege that PG&E failed to give a “3-day notice” to other parties of an oral ex parte communication with a Commissioner, but rather argues without factual or legal support that even when such notice is properly given and equal time is offered by the Commissioner to other parties, PG&E’s communication violated CFC’s right to procedural due process and the applicable code provisions and Commission Rules.^{46/}

Ex parte communications with Commissioners are allowed in ratesetting cases like the present one pursuant to Section 1701.3(c) and Rule^{47/} 8.2(c)(1). Section 1701.3(c) provides that “if an ex parte communication meeting is granted to any party, all other parties shall also be granted individual ex parte meetings of a substantially equal period of time and shall be sent a notice of that authorization at the time that the request is granted. In no event shall that notice be less than three days.”^{48/} The Commission has implemented this separate provision by allowing individual oral communications as follows:

If a decisionmaker grants an ex parte communication meeting or call to any interested person individually, all other parties shall be granted an individual meeting of a substantially equal period of time with that decisionmaker. The interested person requesting the initial individual meeting shall notify the parties that its request has been granted, and shall file a certificate of service of this notification, at least three days before the meeting or call.^{49/}

Finally, Rule 8.3 provides that a notice of qualifying ex parte communications with decisionmakers (e.g., Commissioners) and their advisors must be filed within three days subsequent to the ex parte communication.

PG&E adhered to the requirements and process set forth by Section 1701.3(c) and Rules

^{46/} See Application at 9.

^{47/} “Rule” refers to the Commission’s Rules of Practice and Procedure.

^{48/} Pub. Util. Code § 1701.3(c).

^{49/} Rule 8.2(c)(1).

8.2(c)(1) and 8.3. Because the statute and Rules provide fair access to decisionmakers, adequate notice, and other hallmarks of due process (assuming, *arguendo*, that due process requirements are applicable), and because PG&E complied with the applicable ex parte laws and regulations, CFC's claim of legal error should be rejected.

VI. CONCLUSION

For the foregoing reasons, PG&E requests that the Commission deny CFC's Application for Rehearing.

Respectfully submitted,

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By /s/ M. Grady Mathai-Jackson
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June 7, 2010

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL OR U.S. MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, CA 94105.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On the 7th day of June 2010, I served a true copy of:

PACIFIC GAS AND ELECTRIC COMPANY'S (U 39-E) RESPONSE TO THE APPLICATION FOR REHEARING BY THE CONSUMER FEDERATION OF CALIFORNIA

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for A.09-02-019 with an e-mail address.

[XX] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service lists for A.09-02-019 without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 7th day of June, 2010 at San Francisco, California.

/s/ Amy S. Yu

Amy S. Yu

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Last Updated: May 28, 2010

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