

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**I.D.# 11228
RESOLUTION G-3461
May 24, 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, three 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). In addition to the five affiliates identified in the advice letters, we find that two additional companies are affiliates under the Rules. This Resolution would further order an audit of PG&E's affiliate transactions from June 30, 2009 to June 30, 2011. PG&E is ordered to file Advice Letters implementing changes to the California Solar Initiative Program (CSI Program) Handbook as set out herein.

ESTIMATED COST: None¹

By PG&E Advice Letter (AL) 3182-G/3789-E , filed January 6, 2011, 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.

¹ Affiliate audits are performed at shareholder expense.

SUMMARY

This Resolution approves three 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, this 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 two of the companies; (iii) determines that the remaining two solar companies are in fact PG&E affiliates; (iv) approves compliance with the requirements of PG&E's Rule VI.B in its filings, conditioned upon execution of the independent compliance audit, as directed herein; (v) orders PG&E to implement changes to the California Solar Initiative Program (CSI Program) Handbook; and (vi) orders the scope of the Commission's affiliate transactions audit to include transactions between PG&E and the new affiliates identified herein.

This Resolution applies the Rules to fifteen distinct relationships among PG&E, PG&E Corporation, and nine solar companies. The relationships include tax equity financing transactions, service contracts, applications to the CSI Program where PG&E serves as program administrator, and investment in at least one of these companies through the acquisition of warrants, as described below. 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, which were designed to assess and ameliorate risk and prevent the potential misuse of market power engendered through transactions undertaken by a utility with its affiliates. Against this complex background, this Resolution assesses and mitigates any risk of improper market power sharing, in order to further the Commission's fundamental goals of fostering competition while protecting both ratepayers and consumers.

BACKGROUND

In 1997, the California Public Utilities Commission (the Commission) adopted industry-wide Rules, which expanded and strengthened existing rules designed to govern the transactions between energy utilities and their holding company affiliates that are 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.”² The broad standards of conduct that the Rules implement are non-discrimination, protection against information disclosure, and corporate separation.³ 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.⁴

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 as Program Administrator (PA) for the CSI Program,⁵ and in its role of

² See R.97-04-011/I.97-04-012, 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, Appendix A, and all numbered references to the Rules herein are to that decision.

³ Rules III, IV, V; see also R. 97-04-011, p. 5; D. 97-12-088, p. 12.

⁴ Rule VI.B.

⁵ 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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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. 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 full 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.

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/3763-E-A. PG&E filed AL 3091-G-A/3763-E-A on December 17, 2010, superseding AL 3091-G/3763-E.⁶ In AL 3091-G-A/3763-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 \$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.).

⁶ As a procedural matter, AL 3091-G/3763-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/3763-E-A notified the Commission of a new transaction executed by PEC I. AL 3091-G-A/3763-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/3763-E-A. The Commission will also effect procedural disposition of AL 3091-G-A/3763-E-A through this Resolution, as required in G.O. 96-B, Section 7.6.2.

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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.”

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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.

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.

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-E⁷

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

⁷ 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.

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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.

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 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.⁸ 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.⁹ In the second 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.¹⁰ 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.”

⁸ Rule VII.B.4.

⁹ Rule III.B; Rule VII.

¹⁰ Rule III.B.

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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 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, and makes the following observations.

The Transactions

In 2009, 2010, and 2011, PG&E Corporation (“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:

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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 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. The Commission's regulatory oversight is limited to entities that are affiliates as defined by the Rules.¹¹ The Rules set out three separate affiliate tests:

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."¹²
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."¹³

¹¹ 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.

¹² Rule I.A.

¹³ Id.

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.”¹⁴

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.¹⁵ 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.¹⁶ 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.¹⁷

AL 3182-G/3789-E

The Commission 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). The Commission 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

¹⁴ Id.

¹⁵ Rule II.B.

¹⁶ Rule II.B.

¹⁷ Rule I.A; D. 06-12-029, p. 17.

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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.¹⁸ 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.

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

¹⁸ Rule I.A.

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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,¹⁹ 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 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.

¹⁹ As also noted above, AL 3182-G/3789-E superseded AL 3091-G/3616-E and AL 3091-G-A/3616-E-A in their entirety, and this Resolution effects disposition of AL 3091-G-A/3616-E-A as a procedural matter.

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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 fact that PG&E Corporation has the right to purchase equity in SolarCity Corp. creates a "substantial financial interest:" PG&E has an interest in seeing the overall market value of SolarCity Corp. rise, because it would increase the value of PG&E Corporation's equity interest. Moreover, as will be discussed below, PG&E also has a mechanism by which to effect such a market share gain, because it acts as CSI Program Administrator and reaches determinations regarding eligibility for the CSI Program incentive applied for by affiliates and non-affiliates. The Commission

thus concludes that SolarCity Corp. is an affiliate and is engaged in the provision of products and services related to electricity, and all transactions between PG&E and SolarCity Corp. are subject to the Rules. As further discussed below, there is no evidence presently before the Commission that points to any violation of the Rules by PG&E with respect to SolarCity Corp.

Conclusion:

The Commission finds that PG&E Corporation's warrant rights holdings in SolarCity Corp. impart affiliate status to SolarCity Corp. under Rule I.A. Because SolarCity Corp. is engaged in the provision of products and services related to electricity, the Rules apply to transactions between PG&E and SolarCity Corp.

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 subject to 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 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.

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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. The arrangement imparts no control to the owner, SunRun Pacific, over the operations of the service provider, SunRun, Inc.

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-

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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 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. The size of this holding does not meet the five percent threshold set out in Rule I.A.

As discussed above with respect to PG&E’s warrant rights holdings in SolarCity Corp., the fact that PG&E Corporation has the right to purchase equity in SunRun, Inc. creates a “substantial financial interest” in the company: PG&E has an interest in seeing the overall market value of SunRun, Inc. rise, because it would increase the value of PG&E Corporation’s equity interest. Moreover, PG&E has a mechanism by which to effect such a market share gain, because it acts as CSI Program Administrator and reaches determinations regarding eligibility for the CSI Program incentive applied for by affiliates and non-affiliates. The Commission thus concludes that SunRun, Inc. is an affiliate and is engaged in the provision of products and services related to electricity, and all

transactions between PG&E and SunRun, Inc. are subject to the Rules. As further discussed below, there is no evidence presently before the Commission that points to any violation of the Rules by PG&E with respect to SunRun, Inc.

Conclusion:

The Commission finds that PG&E Corporation's warrant rights holdings in SunRun, Inc., impart affiliate status to SunRun, Inc. Because SunRun, Inc. is engaged in the provision of products and services related to electricity, the Rules do apply in full to transactions between PG&E and SunRun, Inc.

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.²⁰ 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

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

²⁰ Rule I.A.

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 finding of affiliate status for SolarCity Corp. as set out in Issue 1.5 above.

Conclusion:

The Commission finds that PG&E Corporation's warrant rights holdings in SolarCity Corp. create a "substantial financial interest" and thus impart affiliate status to SolarCity Corp. under Rule I.A. Further, because SolarCity Corp. is engaged in the provision of products and services related to electricity, the Rules apply in full to transactions between PG&E and SolarCity Corp.

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, SolarCity Corp., and SunRun, Inc.**PG&E's Burden**

Upon the creation of a new affiliate, PG&E 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 in their entirety, and "a demonstration to the Commission that there are adequate procedures in place that will assure compliance with these Rules."²¹

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.

²¹ Rule VI.B.

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

PG&E last filed an Affiliate Transaction Rules Compliance Plan ("PG&E Affiliate Compliance Plan") in June 2010.²² 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.

²² Filed via AL 3131-G/3694-E, on June 30, 2010.

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

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.

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PG&E AL 3170-G-A/3763-E-A /rp1

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

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

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 PVC I), Banyan SolarCity, and SolarCity Corp.

The ALs discussed in this Resolution (including AL 3182-G/3789-E, a new filing describing the same transaction as the rejected AL 3091-G/3616-E) 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 lack a robust discussion 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. As noted above, and as PG&E states in the ALs, PG&E affiliates are now in the position of applying to PG&E for CSI Program incentives, alongside all non-affiliate market participants.

While we continue to find that demonstration to be lacking in the instant ALs, we also note that our findings regarding affiliate status herein will obviate this

particular requirement as the biennial Rules compliance audit will enable ED staff to review PG&E's transactions with its affiliates, including as the designated PA for the CSI Program.

Based on this showing, the Commission finds that PG&E's demonstration of a compliance plan in the ALs meets its Rule VI.B burden. Thus, the Commission rejects the arguments of each 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. Next, we address the substantive questions of the nature of the risks created by the new relationships among the corporate entities involved in the transactions; and second, whether PG&E's procedures as designed are in fact functioning to mitigate those risks.

As to the first question, the Commission finds that the new PG&E-Affiliate relationships have introduced a risk of discriminatory treatment to PG&E's administration of the CSI Program. The Commission thus agrees with CARE, CCSF, and DRA to the extent that each has identified that this risk exists. For example, CCSF correctly identifies one such interaction carrying this risk: where Affiliates Sequoia Pacific and SunRun Pacific will be applying for and receiving 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,²³ and, as PG&E reports in the ALs, PG&E employees are informed of

²³ 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 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.

which entities are PG&E affiliates. As DRA states, CSI Program employees know that SolarCity Corp. has a corporate relationship with PG&E Corporation subsidiaries, and thus are in a position to grant preferential treatment.

The new PG&E-Affiliate relationships thus create a risk of violation of any number of the Rules, including Rule IV's ban on improper information transfer, Rule V's corporate separation standards and marketing rules,²⁴ and Rule VII's guidelines for new and tariffed goods and services offered by utilities and their affiliates.²⁵

A distinguishable yet related risk is created by PG&E Corporation's relationships with all of the entities identified in the ALs, as PG&E Corporation is the originating source of the investments. PG&E Corporation's relationships present a risk of violations of Rule II.C, which bars a holding company from directing or causing a utility to violate the Rules, whether known to the utility or not.

Should PG&E, PG&E Corporation, or any affiliate violate one of the Rules' standards, then market power in the behind-the-meter solar generation market may be improperly transferred from the utility. However, the Commission designed the Rules to "minimize the likelihood of abuses," and does not equate a *risk* of improper market behavior with *actual* violations.²⁶ The Commission cannot know *a priori* whether PG&E's procedures as reported in the ALs are in

²⁴ For example, CCSF discusses the risk that Sequoia Pacific may improperly leverage its affiliate status.

²⁵ The Commission notes that the Rules limit the Commission's regulatory oversight to the relationships among PG&E, PG&E Corporation, and the entities that the Commission determines are affiliates. Thus, CARE's allegation that SolarCity may "improperly use the utility affiliation" for marketing purposes is not a basis for rejecting AL 3170-G/3763-E, as CARE urges, because the Commission has determined that at present, SolarCity Corp. is not an affiliate.

²⁶ D.97-12-088, p. 11.

fact functioning to eliminate or sufficiently mitigate the risks. Such transfer of market power, if any, will be identified and measured in the upcoming audit.

As set out in the Rules, the Commission may audit PG&E's transactions with each of its affiliates with the objectives of: (i) substantiating compliance (or identifying violations) of the Rules, (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.

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 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."²⁷ The Rules are expressly designed to empower the Commission to evaluate and manage the market-related risks posed by utility-affiliate relationships.

The Commission thus rejects the arguments of the Protestants that would find an a priori violation of the Rules, based only on the existence of the 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

²⁷ D.06-12-029, p. 10.

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.
- (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 an affiliate of PG&E, 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 an affiliate of PG&E, 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 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.
- (f) SunRun, Inc. is an affiliate of PG&E, 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 new PG&E-affiliate relationships create risks of Rules violations by PG&E, PG&E Corporation, and/or any of the affiliates identified herein 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 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.
- (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 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 identified herein.

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

PG&E Demonstration of Compliance Plan

PG&E sets out its general procedures for handling 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 deployed, 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. Moreover, interconnection approval relies on engineering review, a technical function that is most accurately and efficiently handled by PG&E's interconnection departments. 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 SolarCity Corp., SunRun, Inc., or PEC I, SunRun Pacific, or Sequoia Pacific.

California utilities conduct 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.

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-come, first-served interconnection queuing rules.²⁸ 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 with respect to affiliates and non-affiliates.
- (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 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

²⁸ R.11-09-011.

Rule 21 from any of PEC I, SunRun Pacific, Sequoia Pacific, SunRun, Inc., or SolarCity Corp.

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. impart affiliate status to those entities. However, the Commission rejects CCSF's argument for denying the ALs on the basis of the PG&E Corporation's warrant rights holdings alone.

The Commission has addressed the "tensions between the benefits of integration (economies of scope) and encouraging market competition."²⁹ 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.³⁰ 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.³¹

²⁹ 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").

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

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

Our determination that SolarCity Corp. and SunRun, Inc. are affiliates makes all transactions between those companies and PG&E subject to the Rules. As discussed above, this determination is not a finding that improper market share gain has occurred on the basis of this relationship. Instead, the audit ordered herein will examine transactions between PG&E and its affiliates in order to determine whether any risk of Rules violations has been realized.

Conclusion:

As discussed with respect to Issues 1.5, 1.10, and 1.14 above, the Commission finds that SolarCity Corp. and SunRun, Inc. are affiliates of PG&E by virtue of PG&E Corporation's warrant rights holdings in those entities. As both entities are engaged in the provision of electricity-related products and services, the Rules apply in full, and transactions between PG&E and each of SolarCity Corp. and SunRun, Inc. will be audited as ordered herein.

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.

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

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 document widely available in public, and has undergone constant modification by the Commission within the CSI Program proceeding (R.10-05-004). The CSI 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 to affiliates and non-affiliates. PG&E’s compliance with the Rules in its processing of applications from affiliates and non-affiliates 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, the Affiliates 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 the Affiliates, 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:

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

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

Discussion

As structured, the transactions will make each of PEC I, SunRun Pacific, and Sequoia Pacific parties to lease instruments and PPAs with host customers,

creating consumer vulnerability in the event of bankruptcy or other form of default by any of those entities.

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.³²

In the ALs discussed here, PG&E does not identify provisions in the third-party ownership instruments executed by each of PEC I, SunRun Pacific, and Sequoia Pacific with host customers. To comply with the consumer-protective goals of the Rules, such provisions should address ownership, location, maintenance, and other consumer protections in the event of third-party owner bankruptcy or default. Specific provisions in a third-party ownership agreement 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.

PG&E does not notify the Commission of any changes to its ring-fencing provisions occasioned by the new affiliate relationships, including the affiliates’ and non-affiliates’ relationship to PG&E Corporation. The independent audit ordered herein shall examine the adequacy of PG&E’s ring-fencing provisions to protect it from the bankruptcy of its holding company in light of these new relationships.

Conclusions:

(1) The Commission finds that an independent audit is required to ensure that the third-party ownership instruments executed by each of PEC I, SunRun Pacific, Sequoia Pacific, SolarCity Corp., and SunRun, Inc. comply fully with the Public Utilities Code.

³² Rules IX.C, D.

(2) The Commission finds that an independent audit is required to assess the adequacy of PG&E's ring-fencing provisions to protect it against the effects of bankruptcy on PG&E Corporation by any of its 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 three 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.

Conclusion:

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.

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 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:

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:

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:

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

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment

prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived or reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

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
 - c. Sequoia Pacific
 - d. SolarCity Corp.
 - e. SunRun, Inc.
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. The Commission finds that the following entities are not affiliates of PG&E:
 - a. Banyan SolarCity
 - b. Sequoia Pacific Member I
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:
- 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 an affiliate of PG&E, 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 an affiliate of PG&E, 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 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.
 - f. SunRun, Inc. is an affiliate of PG&E, 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 new PG&E-affiliate relationships create risks of Rules violations by PG&E, PG&E Corporation, and/or any of the affiliates identified herein 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 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, 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.
 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 herein.
 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 PEC I, SunRun Pacific, Sequoia Pacific, SunRun, Inc., or SolarCity Corp.
 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, Sequoia Pacific, SolarCity Corp., or SunRun, Inc. Nothing in this Resolution constitutes Commission approval of resource procurement in any form by PG&E from any of PEC I, SunRun Pacific, Sequoia Pacific, SolarCity Corp., or SunRun, Inc.
 17. The Commission finds that an independent audit is required to ensure that the third-party ownership instruments executed by each of PEC I, SunRun Pacific, Sequoia Pacific, SolarCity Corp., and SunRun, Inc. comply fully with the Public Utilities Code.
 18. The Commission finds that an independent audit is required of the adequacy of PG&E's ring-fencing provisions to protect it against the effects of bankruptcy on PG&E Corporation by any of its affiliates.

19. 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.
20. 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.
21. 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.
22. 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.

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 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 imparts

affiliate status to SunRun, Inc. All transactions between PG&E and SunRun, Inc. are subject to the Rules.

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 imparts affiliate status to SolarCity Corp. All transactions between PG&E and SolarCity Corp. are subject to the Rules.
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 2011 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 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 either SolarCity Corp. or SunRun, Inc., or both, 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 either SolarCity Corp. and/or SunRun, Inc. pursuant to the Rules.

This Resolution is effective today.

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

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 May 10, 2012; the following Commissioners voting favorably thereon:

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 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), Sequoia Pacific Solar I, LLC (Sequoia Pacific), SolarCity Corporation, and SunRun, Incorporated.

Service of Findings: The audit findings shall be served on the California Solar Initiative proceeding service list (R.10-05-004) and the CPUC Affiliate Transaction Rules service list.

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 with respect to applications to the California Solar Initiative Program (CSI Program) in PG&E's service territory.

(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.
- (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.
- (f) Review of the standard third-party ownership instrument(s) used by each of PEC I, SunRun Pacific, Sequoia Pacific, SolarCity Corporation, and SunRun, Incorporated, respectively, when acting as third-party owners of solar systems installed on residential and commercial properties for full compliance with the California Public Utilities Code, including but not limited to Section 2869.
- (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 PEC I, SunRun Pacific, Sequoia Pacific, SolarCity Corporation, and SunRun Incorporated, respectively, even after implementation of additional recommended mitigating practices.

END of Attachment B