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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Gas and Electric Company to Establish a Green Option Tariff	))))	Application 12-04-020 (Filed April 24, 2012)

PROTEST OF THE CALIFORNIA CLEAN ENERGY COMMITTEE AND THE SIERRA CLUB CALIFORNIA REGARDING THE PACIFIC GAS AND ELECTRIC COMPANY GREEN OPTION TARIFF

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Pursuant to Rule 2.6 of the California Public Utilities Commission (CPUC) Rules of Practice and Procedure, the California Clean Energy Committee[1] (CCEC) respectfully submits this protest to the application (Application) of Pacific Gas and Electric Company (PG&E), filed April 24, 2012, requesting authority to implement a green pricing program entitled "Green Option Tarriff." The Application was noticed in the Commission's Daily Calendar on April 25, 2012, making this protest timely filed.

I OVERVIEW OF THE APPLICATION

In this Application, PG&E proposes a new program entitled "Green Option," which, if approved, would allow its bundled customers to voluntarily choose to pay a rate that purportedly "supports up to 100% renewable energy . . . for a modest premium on their current utility bills" through PG&E's purchase of Green-e Energy certified renewable energy credits (RECs). For customers who choose 100% green power, PG&E will purchase whatever quantity of RECs is necessary to "green up" the customer's electricity beyond the current RPS-eligible renewable

[1] CCEC is a California non-profit mutual benefit corporation whose officers and board members are ratepayers in the PG&E service territory. CCEC maintains its principal place of business in Davis, California. The Committee advocates on behalf of the general public throughout the State of California for energy conservation, clean energy resources, reduced greenhouse gas emissions, and related issues. This filing represents the position of CCEC but not necessarily that of any particular affiliate with respect to the issues addressed herein.

content. Customers will have the alternative of purchasing "a designated Green Option quantity ('block product')."[2]

PG&E proposes only to purchase RECs that have been certified as meeting the Green-e renewable energy certification requirements. Green-e standards provide that the RECs only be used once. PG&E asserts that RECs purchased under the Green Option program will not be used for compliance with California's RPS standard and that RECs will be purchased from within the geographic boundaries of the Western Electric Coordinating Council (WECC).[3]

PG&E will have the authority to adjust the Green Option price either down or up, but the price is not to exceed 2 cents per kWh above the otherwise applicable bundled rate. Pricing adjustments will be exercised through a Tier 1 advice filing. All "administrative, marketing and procurement costs" incurred to fund the program will be borne by participating customers. PG&E asserts that costs in excess of revenues received will be borne by PG&E. PG&E will contract all or a significant portion of the marketing, REC procurement costs, and price risks. PG&E asserts that it "will not earn any profit or any incentive payment under the program."[4]

II BASIS FOR INTEREST

CCEC is a non-profit, environmental organization that seeks to accelerate the adoption of renewable energy and energy efficiency through advocacy at local, regional, and state government agencies. CCEC actively supports the application of the California Environmental Quality Act (CEQA) to energy conservation and greenhouse gas emission issues throughout California. CCEC advocates for the implementation of renewable generation and the reduction of greenhouse gas emissions through community choice aggregation (CCA). CCEC actively advocates for sustainable community design and energy efficient transportation systems. CCEC is tax-exempt under California Revenue and Taxation Code section 23701(f). CCEC has a particular interest in the Green Option because of the long-term adverse impacts that the proposal will have on developing renewable generation and installing energy efficiency in California.

Sierra Club California is comprised of more than 150,000 members and ratepayers throughout California. Sierra Club California supports successful implementation of the renewable

[2] Application, pp. 1-2.
[3] Application, p. 3.
[4] Application, p. 4.

portfolio standard such that it provides maximized environmental benefits in accordance with statute, including actual greenhouse gas emission reductions.

III PROTEST AND ISSUES TO BE CONSIDERED

PG&E's renewable energy option should be designed to give ratepayers that choose green power a commensurate value in return for their investment and to provide transparency so that ratepayers have a clear understanding of what they are buying, what it can accomplish, and what the Green Option cannot accomplish. The Green Option should not become a marketing tool that gives PG&E an unfair competitive advantage against community choice aggregators, solar companies, and energy efficiency companies competing with it for the same renewable energy customer base.

Nothing in the Application addresses these questions. It is of critical importance that these issues be fully aired in this proceeding and that the CPUC ensure that the "Green Option" product is adequately designed, fully disclosed, and fairly priced so that ratepayers and local agencies are not misled and so that PG&E is not given an unfair competitive advantage in the renewable energy and energy efficiency markets.

Customers who want to purchase renewable energy to green up their electricity supply should be charged the fair price of that product, not some constructed price that leaves them paying more than a fair price. The only support that PG&E offers for the merits of the proposed program is the fact that other utilities have adopted renewable energy programs and that this program will purchase only Green-e certified RECs. That does not demonstrate that this is an efficient way that customer support for renewable generation can be deployed in the service of environmental protection and economic efficiency.

RECs were established to promote and expand the renewable energy market as part of the RPS strategy. But when RECs are sold directly to ratepayers as renewable energy, they inevitably constitute a competitive challenge to other renewable energy providers and to energy efficiency industries. The casual and widespread marketing of non-RPS-qualified RECs may have very much the opposite effect from what RECs were intended to accomplish.

PG&E makes no effort in its application to quantify the GHG reductions that its Green Option program would produce. It makes no effort to demonstrate the quantity of additional

renewable generation that would be brought on-line as a result of customer payments into the program, either inside of California or outside. Essentially, PG&E argues that if ratepayer money is conveyed to the renewable industry by purchasing RECs, that will help get more renewable generation built. This does not demonstrate an efficient or fairly-priced program nor does this necessarily result in increased renewable energy. Unless fundamentally changed, PG&E's Green Option application should be rejected.

A. THE APPLICATION FAILS TO PROVIDE EVIDENCE THAT THE GREEN OPTION PRICE IS A JUST AND REASONABLE CHARGE FOR RENEWABLE ENERGY.

The obvious implication of the Green Option program is that renewable energy is more expensive and that ratepayers must pay more to power their homes and businesses using 100% renewable power. Under the proposed Green Option program, PG&E would require an additional payment to "green up" a consumer's electricity purchases. The price of the Green Option would be variable, not to exceed 2 cents per kWh.

In fact the 2 cents per kWh additional price under the Green Option program is not the cost to green up the customer's electricity supply. The 2 cents per kWh price is based on the cost of purchasing unbundled RECs proportionate to a customer's electricity usage, over the RPS renewable content. The 2 cents per kWh would also pay unknown administrative costs, broker fees, marketing expenses, and risk premiums.

It is not a payment to acquire renewable electrical energy and not the price of acquiring renewable energy. The cost of purchasing or generating renewable energy is not taken into account. Rather the Green Option price is based on the cost of unbundled RECs, which is primarily a function of the supply and demand for RECs. Demand for RECs varies tremendously depending on the type of REC purchased and also on regulatory requirements. The incremental cost of procuring an additional amount of renewable energy to provide a customer with 100% renewable energy is a completely different pricing question.

This pricing disconnect—where the ratepayer is charged the price of a financial instrument of unknown efficacy, rather than the actual cost of renewable power—leads to a variety of adverse consequences such as (i) PG&E obtaining an unfair pricing advantage over entities that actually are developing renewable power, installing solar panels, or installing energy

efficiency and (ii) consumers who believe they are paying a low-cost for renewable energy getting an incorrect price signal that leads them to freely increase electricity usage on the assumption that they are paying the cost of renewable energy.

But assuming that PG&E were to begin selling unbundled, non-RPS-qualified RECs to its customers as a proxy for renewable energy, does the proposed price represent a fair deal for the ratepayer? This is different from the question of whether RECs are an appropriate tool in the confines of RPS regulatory structures. This is the question of whether the pricing proposed is just and reasonable given what the customer is actually getting.

The evidence is very much that REC pricing is not what the Commission would accept as just and reasonable. Even the Commission's own research establishes this. According to the CPUC Staff White Paper, the cost of unbundled RECs exceeds the price required to induce delivery of more renewable power to California ratepayers.

> Under an unbundled regime, all generators except the marginal unit receive a total combined price for their energy and RECs that exceeds what they require to be willing to produce renewable energy. . . . [T]he price of RECs does not correspond to the above-market costs of all renewable generation. As the analysis above indicates, it represents the above-market costs only for the marginal unit. Thus SEP funding used to pay for RECs associated with the energy produced by infra-marginal generators would, rather than stimulating additional renewable development, end up contributing largely to producer surplus.[5]

In other words, buying a REC is the payment of a bonus to a renewable energy generator that exceeds the amount required to justify building and operating the renewable resource. The cost of a REC does not represent what would constitute a just and reasonable price for renewable generation. The CPUC has warned,

> To the extent that a REC program is intended to promote incremental investments in renewable generation, monies spent by ratepayers to procure RECs from facilities that would operate regardless would appear to increase the costs of the program unnecessarily. The Commission will need to think carefully about if and how it can limit the ability of these facilities to earn windfall gains at California ratepayer expense . . . .[6]

Obviously, providing "windfall gains at California ratepayer expense" is not a just and

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[5] CPUC, Renewable Energy Certificates and the California Renewables Portfolio Standard Program (April, 20, 2006) 8, emphasis added ("White Paper").

[6] White Paper at p. 46, emphasis added.

reasonable price.

Other commentators who have looked at the economic issues concerning RECs have reached similar conclusions.

> REC schemes are prone to a problem know as additionality. That is, they tend to support only renewable energy projects that would have occurred anyway. Given the inconsistency between REC programs and problems with unpredictable prices, many project developers do not rely on the potential sale of RECs when they decide to invest in a renewable project. Instead, they consider RECs as "gravy" something that is nice on top of what they expect but by no means central to their investment.[7]

It is important to recognize that the Commission's approval of unbundled RECs for RPS compliance[8] did not involve the question of what was a just and reasonable charge to ratepayers for renewable power. Furthermore, in the RPS proceeding the Commission took advantage of its rulemaking authority to mitigate the negative aspects of RECs by designing the RPS-compliant REC market. Even in that context, both the Legislature and the Commission sharply limited the use of unbundled REC's for RPS compliance. Such protections are non-existent for ratepayers in the Green Option program. Unlike the RPS program, the Green Option would purchase 100% unbundled RECs. And the RECs sold to ratepayers under the Green Option program will likely note even qualify for the RPS program. For example, Green-e certified RECs can be issued by renewable resources built or repowered within the last 14 years.[9] Because of the inherent flaws in RECs, and particularly in non-RPS-compliant RECs, the price consumers will pay for the Green Option is not just or reasonable.

Nor should the Commission ignore such issues because payments for the Green Option are "voluntary." To some degree, all payments made to PG&E are optional. Most consumers can turn off electric load or take any number of other steps that would reduce or eliminate their energy purchases. Certainly, the fact that ratepayers choose out of conscience to select a renewable product should not mean that they are entitled to less protection by the Commission than would apply in other rates-setting proceedings. A voluntary payment may actually be more in need of effective oversight by the Commission.

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[7] M. Mendonca et al., *Powering the Green Economy* (earthscan 2010) at p. 160 (Powering the Green Economy).

[8] Rulemaking 06-02-012.

[9] Green-e Energy, National Standard Version 2.1, § II.E.

Other circumstances indicate that the pricing of the Green Option is not just or reasonable. Developments in renewable technology or changes in natural gas prices could dramatically lower the cost of renewable energy in comparison to conventional generation. But in that case, the Green Option pricing still leaves the consumer paying the ordinary price of fossil-fuel-powered generation plus the cost of unbundled RECs. This is an unfair and unreasonable price structure for renewable energy. Customers who want to purchase renewable energy to green up their electricity supply should be charged the fair price of that product, not a price constructed from a financial instrument that leaves them paying more or less than a fair price.

B. PG&E MUST FAIRLY DISCLOSE TO RATEPAYERS WHAT PRODUCT THE COMPANY WILL DELIVER IN EXCHANGE FOR PAYMENTS MADE BY RATEPAYERS.

Under the Green Option program, PG&E will ostensibly provide customers the option to "green up" their power supply by opting for "100% green power." The Green Option program would represent to customers that 100% of "the customer's electricity content" is from renewable energy resources. This is deceptive marketing. PG&E would not buy any additional renewable power to meet customer demand for the Green Option. PG&E would only be purchasing unbundled renewable energy credits (RECs) certified by Green-e in "those incremental quantities necessary to 'green up' a customer's electricity content."[10]

PG&E misleadingly asserts that Green-e certification "provides assurances to consumers and businesses that the green electricity products they purchase meet strict standards regarding renewable content."[11] And PG&E's April 24, 2012 press release asserted that "[t]hese certificates represent proof that specific quantities of electricity were generated."[12] These plainly are misleading statements. The Green-e certification provides no assurance that the utility has purchased or would generate any renewable energy or otherwise "green up" the power supply. The certificate is a representation that an energy generator produced a megawatt hour of electricity from renewable resources such as solar, wind, geothermal, hydropower, biodiesel, and

[10] Application at p. 2.
[11] Application at p. 3.
[12] PG&E, PG&E Announces New Green Energy Program to Give Electricity Customers More Renewable Options (April 24, 2012).

certain biomass resources. The electricity could have been generated anywhere in the Western Electricity Coordinating Council (WECC), which consists of 11 western states and two Canadian provinces. The energy need not be delivered to PG&E's service territory or to California. The facility producing a Green-e certified REC need only have begun operation or repowered during the past 14 years.[13] The renewable energy generator need not install any additional capacity or increase its generation in order to sell the REC.

The ratepayer who pays the voluntary Green Option premium to PG&E does not receive 100% green power because PG&E does not buy any additional renewable energy, because PG&E does not produce any additional renewable energy, and because PG&E does not invest in additional renewable facilities or take any other steps to increase its renewable content as a result of the customer's payment for the Green Option. PG&E simply conveys a sum of money to a renewable generator who in turn agrees that PG&E can claim to have generated a given quantity of renewable energy. PG&E purchases the exclusive right to take credit for having produced a given quantity of renewable generation. PG&E is not providing a renewable energy product as the name of the program and the description of the program implies. Unless PG&E actually procures additional renewable resources to meet the customer's usage, it cannot represent to customers that it is doing so.

Consequently, the proposed program does not meet the just and reasonable service mandate of the Public Utilities Code. (Pub. Util. Code § 451.) Further, the program as proposed would violate Business and Professions Code section 17505, which prohibits a producer from misrepresenting the character, extent, volume or type of its business. The program is also unlawful under Business and Professions Code section 17500 which prohibits any business from making misleading statements in connection with the sale of products or services.[14] The

[13] Green-e Energy, National Standard Version 2.1.

[14] See also Bus. & Prof. Code § 17500 ["It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or

National Association of Attorneys General has specifically cautioned electricity marketers to "avoid making claims based on a tagging system that state or imply that the supplier has actually purchased the power itself—as opposed to its environmental attributes—from the preferred generators."[15]

PG&E should conspicuously disclose whenever making representations regarding the program that under Green Option program it will not be cleaning up any of its own generation equipment and that the company intends to continue operating and delivering to its customers the exact same mix of fossil-fuel and nuclear-generated electricity regardless of the customer's payment for the Green Option. Customers must be informed that business as usual continues at PG&E and not be left with the mistaken impression that some change has taken place in the PG&E energy supply as a result of this payment.

C. THE GREEN OPTION WOULD UNFAIRLY COMPETE WITH LOCAL RENEWABLE PROJECTS, SOLAR SYSTEM INSTALLERS, AND ENERGY EFFICIENCY INSTALLERS.

Community choice aggregators, solar companies, and energy efficiency companies will be selling renewable energy and installing energy efficiency products as opportunities for customers to reduce their consumption of conventionally-generated electrical energy. If the costs of these products and services turns out to be more than paying for a proportionate purchase of RECs through the Green Option program, PG&E obtains an unfair market advantage because purchasing a given quantity of RECs does not assure that an equivalent amount of conventional generation is no longer needed. Purchasing a REC does not ensure any additional renewable generation occurred. It only assures that a payment was made to a renewable generator.

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disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that imprisonment and fine.']

[15] National Association of Attorneys General, "Environmental Marketing Guidelines for Electricity" (December, 1999) at 2(b)(App. 4).

Unlike a renewable energy generator or the energy efficiency installer, the REC seller makes no reciprocal promise to produce any additional renewable power. There is no assurance that a customer who buys the Green Option program will get any equivalent reduction in conventional generation or will cause any increase in renewable generation.

Yet to the customer joining the Green Option program, the program looks like a cheaper way to transition to renewable energy. The cost of a REC under the Green Option program will likely be less than the cost of installing a megawatt of renewable energy or a megawatt of energy efficiency because REC prices are based on whatever a renewable generator can sell its claim-to-have-generated-renewable-energy for, not on what it costs to produce a megawatt of renewable energy. Unlike the price charged by a solar company or an energy efficiency installer, the price for a REC does not represent the cost to "green up" the customer's energy supply. Moreover, PG&E's competitors have to earn a reasonable profit, but PG&E would price the Green Option program without any profit according to its Application, thus further reducing the price in competition with renewable and energy efficiency companies.

These are unfair competitive advantages. The customer is misled about the cost of cleaning up their energy supply. Competitors who produce renewable energy and energy efficiency are forced to meet an unfair price competitor who appears to be selling the same product at a lower cost. If PG&E intends to compete in the clean energy market, the product it supplies must be priced at the cost of actually producing additional renewable generation. To do otherwise allows PG&E to use the vast marketing resources inherent in its monopoly control to deploy misleading claims. Under the program as designed, PG&E would advertise to its customer, that it can provide them renewable energy at a much lower cost. In fact PG&E is not providing renewable energy but is selling a completely different, less effective, and less-expensive product.

As has been pointed out, this not only provides a considerable advantage to the incumbent utility, but it also stifles market innovation inherent in a diverse and competitive market.

> Because the major aim of REC systems is to increase flexibility and lower costs, they tend to favour least-cost technologies, not a rich assortment of different (and less mature) renewable energy resources. "All too often," an anonymous high ranking official in the US confided to one of the authors, "the flexibility involved with REC trading schemes means only flexible to make more money." Certificate trading

> can enable some companies to extract windfall profits. While literally thousands of studies critiquing tradable certificate schemes have been published in the past five years, one from 2009 is most telling. The study looked at the performance of national REC programmes in Flanders, Sweden and the UK. The study found that in *each case* REC schemes favoured incumbent companies and large utilities, that only invested in the cheapest renewable resources (and did not develop less mature technologies), and tended to induce excessive levels of high profits.[16]

D. THE RATEPAYER SHOULD BE INFORMED THAT THE "GREEN OPTION" AS DESIGNED WILL NOT PROVIDE THE BENEFITS OF CLEAN ENERGY TO THE LOCAL COMMUNITY.

A REC represents a far different package of benefits from what the typical consumer would expect from renewable energy. PG&E proposes, in effect, to unbundle the package of benefits connected with renewable energy generation and to sell consumers a limited portion of that package without informing them of what is missing. In adopting the California Renewables Portfolio Standard Program, the California Legislature provided a good description of what benefits a ratepayer might expect from buying the proposed Green Option. In SB 1078, the Legislature declared,

> (b) Increasing California's reliance on renewable energy resources may promote stable electricity prices, protect public health, improve environmental quality, stimulate sustainable economic development, create new employment opportunities, and reduce reliance on imported fuels.
>
> (c) The development of renewable energy resources may ameliorate air quality problems throughout the state and improve public health by reducing the burning of fossil fuels and the associated environmental impacts.[17]

So consumers who voluntarily contribute to PG&E's Green Option program may be motivated by the expectation that their investment will:

- Promote stable energy prices for themselves and their community
- Protect public health in their community
- Improve environmental quality in their community

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[16] *Powering the Green Economy* at 160.
[17] Stats.2002, ch. 516 (SB 1078) § 3.

- Stimulate sustainable economic development in their community
- Create new employment opportunities in their community
- Reduce reliance on imported fuels nationally
- Ameliorate air quality problems in their community and region

To the extent that the proposed purchase of RECs that are unfit for RPS compliance can do anything, they assuredly do not provide these benefits to California or to local communities. The RECs proposed for the Green Option are for renewable energy generated anywhere in the Western Electricity Coordinating Council. The energy need not be delivered to PG&E's service territory or to California.[18]

The benefits of renewable energy typically include a hedge against energy price volatility. The value of a renewable resource as a hedge is largely a product of the operational characteristics of the renewable facility and the type of facility it displaces. For example, if the marginal generator that would otherwise operate is gas-fired, the renewable resource insulates residential and business customers from gas-price swings.[19] Purchasing an unbundled REC from a renewable facility in the WECC does not provide businesses or consumers in California any hedge against energy price volatility because an unbundled REC does not involve the purchase of renewable energy.[20] Under the Green Option program the consumer continues to pay the price of conventionally-generated electricity plus the cost of the RECs. There is no hedge.

Purchasing unbundled RECs through the Green Option will not result in any economic benefit for the local community or the State of California. In the uncertain event that some renewable generation is ultimately built as the result of the purchase of non-RPS-qualified RECs, the new renewable capacity could be built at any location in the WECC. California and its communities and regions are deprived of the economic benefits of renewable generation. Local ratepayers bear the cost of subsidizing economic development that provides little direct economic benefit to them.[21] Building a new renewable generation facility in Canada that sells RECs, for example, provides no economic benefits in PG&E service territory.

Similarly, the purchase of RECs does not necessarily reduce the amount of criteria air pollutants emitted by fossil-fired generating plants in California since no renewable energy is

[18] Green-e Energy, National Standard Version 2.1.
[19] White Paper at pp. 20-21.
[20] White Paper at p. 34.
[21] White Paper at p. 19.

imported as a part of the Green Option program. The Green Option, which purports to switch the customer's energy mix to 100% renewable, is still using the same polluting facilities. Consequently, the Green Option provides no health benefits from reduced air pollution in the local air basin. Only when a community actually receives its power from renewable generation are conventional generation facilities within the community displaced and the quantity of air pollutants reduced. The same can be said of the other unmitigated environmental impacts connected with conventional generation plants in California such as groundwater contamination, hazardous waste creation, the destruction of animal and plant habitat, etc. As one authority notes,

> By unbundling renewable electricity from credits, tradable credit schemes create a de facto segregation of electricity markets. Renewable electricity and the manifold benefits it brings, such as diversification, cleaner air, and better jobs, goes to one community while the credit goes to another. This can lock in existing asymmetries where renewable-resource-rich regions become cleaner and healthier but renewable-resource-poor communities, which end up buying RECs, become worse off. The REC system can become self-replicating because once a region becomes dependent on importing RECs they will usually not have the funds to build their own renewable energy capacity, creating the need to purchase more RECs.[22]

The National Association of Attorneys General has specifically warned against the kind of hidden loss of renewable energy benefits embodied in the Green Option program.

> Consumers should be informed, by clear and prominent disclosure, if a claim states or implies an environmental attribute or benefit which actually occurs or exists-outside the geographic area in which the environmental marketing claim is being made.[23]

Even the name proposed for PG&E's program—the "Green Option"—is misleading in the view of the National Association of Attorneys General.

> It is deceptive to misrepresent, directly or by implication, that any product or company is "green." "Green" is a term of general environmental benefit, and as such, every implied representation of significant environmental benefit or lack of significant environmental harm that the general assertion conveys to consumers must be substantiated. Accordingly, use of "green" should be accompanied by clear and prominent disclosure of the sense in which the term is being

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[22] *Powering the Green Economy* at p. 160.

[23] National Association of Attorneys General, "Environmental Marketing Guidelines for Electricity" (December, 1999) at 2(g)(App. 4) (Marketing Guidelines).

used . . . .[24]

E. THE SO-CALLED "GREEN OPTION" IS INEFFICIENT AND MISLEADING.

As a part of a fair disclosure of what the Green Option program is, PG&E should estimate the value of the REC market, calculate what percent of the funds paid for RECs actually go to projects that were already financially-feasible and that would have been built without REC payments, and estimate the price of any emissions reductions actually incentivized. Disclosing that information would give ratepayers a fair idea of how efficient or inefficient their voluntary contributions to the Green Option will be. Ratepayers are entitled to know that the money they are volunteering to pay to renewable energy producers in fact may have little effect. As designed, the Green Option program does not meet the just and reasonable service mandate of the Public Utilities Code.

It is widely recognized that RECs are not essential for many renewable energy projects. Renewable energy projects of various types were built long before RECs were any factor in the financial calculus. Renewable energy projects that pre-date the establishment of RECs did not require additional financial incentives from RECs to become viable projects.[25] Now and in the future many renewable facilities will not require RECs in order to be financially feasible. The CPUC has stated that where the value of the energy produced alone will be sufficient to cover the costs of the renewable facility, the REC is unnecessary to make the project financially-feasible.[26]

According to the CPUC study, REC payments to such facilities "end up contributing largely to producer surplus."[27] PG&E's application reads as if Green-e certification were a cure for all problems, but Green-e certification is completely indifferent to the question of whether the buyer's payment for REC made any difference in the amount of renewable energy produced. A project can sell Green-e certified RECs even if the REC revenues are fundamentally irrelevant to whether or not the project would be built or operated. The REC payment to such a project has no discernable financial value to ratepayers and the sale of such a product to consumers is not just

[24] Marketing Guidelines at 3(b).

[25] White Paper at p. 41.
[26] White Paper at pp. 38-40.
[27] White Paper at p. 40.

or reasonable. At the very least, ratepayers are entitled to know that PG&E does not intend to change their electricity mix and does not even know whether the use of the Green Option funds will result in any changes in the way electricity is produced.

The number of renewable energy plants that are financially feasible without any significant REC income may increase in the future. Renewable energy prices have generally been moving lower for some time due to technological advances and emerging economies of scale. Fossil fuel prices, and consequently conventionally-generated power, are likely to move up in the long term due to supply constraints, increased global demand, and environmental impacts. As a result of such trends, there may be even more cases in the future where RECs are committed to projects where they are simply a "windfall."

In the remaining cases, i.e., those cases where the income from REC sales could make a project feasible, using ratepayer funds to buy RECs may still not be an effective strategy for a number of reasons. According to Dr. Mark Trexler, managing director of Global Consulting Services at EcoSecurities in Portland, Oregon,

> Although the demand for RECs has . . . been growing, it is quite possible that we are buying and selling larage quantities of RECs without materially affecting whether more renewable energy facilities are built. In today's market, the question of whether a new wind farm gets built is usually a function of natural gas prices, falling technology prices, and federal tax incentives, rather than being a function of REC sales.[28]

Moreover, renewable developers need long-term contracts in order to secure financing.[29] The financial community requires renewable developers to demonstrate that prospective investments in renewable projects will generate sufficient revenues to cover debt obligations insuring the requisite level of certainty for their investment.[30]

> Renewable energy investors require reliable information and predictable rates of return from the start of the financing process. Researchers at the Lawrence Berkeley National Laboratory have tracked the wild fluctuation of REC prices and found them to be a significant deterrent to renewable energy investment.[31]

Consequently, the impact of the RECs purchased byPG&E ratepayers may be further

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[28] Quoted in A. Schendler, Getting Green Done (2009) at p. 158.i8
[29] White Paper at p. 14.
[30] White Paper at p. 35-36.
[31] *Powering the Green Economy* at 160.

degraded.[32] PG&E may not enter into long-term contracts due to uncertainty over the long-term subscription rate for the Green Option or due to the lack of any financial incentive for the risk. Or REC income could be too volatile. Project lenders may be unwilling to consider a voluntary REC to be a sufficiently secure source of income to justify financing a project.

Further, by specifying Green-e certified RECs, rather than RPS-certified RECs, PG&E proposes to offer to ratepayers RECs that would not be deemed adequate to meet the RPS requirements for RECs adopted by the Legislature and the CPUC. Among other differences, Green-e certified RECs can be issued by a facility that was constructed or repowered within the last 14 years.[33] RPS-certified RECs can only be issued by a renewable generator that is delivering power within the State of California or that commenced initial operation after 2005. (Pub. Resources Code § 25741.) RPS-certified RECs will be in demand for RPS compliance, and the Green Option most likely will be purchasing older, cheaper RECs, which will be discounted by comparison and will be less likely to have any positive impact. This is not a fair deal for ratepayers. RECs that were not good enough for the RPS are not a good buy for ratepayers either.

A reasonable ratepayer who expects to green up "the customers electricity mix" would not anticipate that funds would be invested in a program that not only does nothing to change the renewable content of PG&E's power mix, but actually uses those funds on RECs that the Commission will not accept for RPS compliance and that, according to the Commission study, may "end up contributing largely to producer surplus." In those cases where renewable facilities would have been built regardless of REC income, the Green Option is effectively a waste of ratepayer funds. This does not meet the just and reasonable service mandate of the Public Utilities Code.

Any claim of environmental benefits requires supporting "tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results." (16 CFR § 260.5.) Any qualifications on the claims made to consumers about the Green Option "should be sufficiently clear, prominent and understandable to prevent deception." (16 CFR § 260.6(a).) The failure to

[32] White Paper at p. 34.
[33] Green-e National Standard Version 2.1 at p. 5.

do so renders the program unlawful. (Bus. & Prof. Code § 17580.5.)

F. THE MISPRICED GREEN OPTION MAY LEAD TO WASTEFUL ENERGY PRACTICES.

PG&E asserts that "for an average of a few dollars a month,"[34] customers can green up their electricity supply to 100% renewable power. Consequently, consumers who elect the program will have the impression that they are operating on 100% clean energy, and in many cases they may feel free to use whatever amount of energy may be convenient and to forego energy efficiency upgrades. Since the ratepayer is in fact burning a predominantly a fossil-fired/nuclear product, this misinformed behavior leads to significant adverse environmental impacts. In practice the consumer may conclude that if they use a little bit more energy or conserve a little less energy, that will not be a problem because they are burning 100% renewable power.

Consequently, the overall result of consumer purchases of the Green Option in California will certainly be to expand the use of fossil fuel and nuclear power and to cause greater pollution. PG&E has a responsibility not to convey a misleading message regarding the product benefits or to cause such unintended consequences. Energy conservation is a highly important goal in California. The National Association of Attorneys General has specifically stated that any claim of environmental benefits "should be accompanied by disclosure of all significant environmental harms associated with the relevant product . . . that reduce or eliminate the stated environmental benefit."[35]

G. PG&E MUST DISCLOSE THE ADMINISTRATIVE AND OVERHEAD COSTS OF THE GREEN OPTION PROGRAM.

PG&E's Application asserts that the charge to customers will not exceed 2 cents per kWh. The Application provides no information or percentages on what costs go into calculating that number. Consequently, it would be impossible to determine whether the rate is just or reasonable.

Ironically, given the point above about keeping costs low, green power

[34] PG&E, News Release (April 24, 2012) (News Release).
[35] Marketing Guidelines at 2(c).

> programmes *do* tend to be more expensive than other policy mechanisms. This is because the programmes need firms to certify credits, match buyers with sellers, track trades, and ensure no "double counting" occurs (i.e. that the same credit is not used more than once). . . . [T]hese extra transaction costs do add to the expense of green power programmes. In 2009, for example, the average purchase price for wind electricity from a green power programme in the US was $0.091/kWh (Gomez, 2009) when the US Department of Energy reported that the average cost of producing and transmitting that electricity was less the $0.07/kWh (US Department of Energy, 2008). This implies an extra cost of about $0.02/kWh merely to manage the programme.[36]

The 2 cents per kWh that PG&E proposes as a cap on the cost of its green pricing program, at least according the above example, could be disproportionately used for the administrative and overhead costs of operating the program. This would be highly-material to voluntary investors in the Green Option. PG&E must disclose to the Commission how much of its green pricing program will be expended on administrative overhead before any determination can be made that the rate is just and reasonable.

H. WHAT ASSURANCE DO RATEPAYERS HAVE THAT PG&E WILL NOT SETTLE FOR A TOKEN AND INEFFICIENT GREEN POWER PROGRAM AS SOON AS IT HAS GARNERED THE PUBLIC RELATIONS BENEFITS?

It is evident from the News Release on the Green Option program that PG&E intends to use the program as a significant public relations opportunity.[37] The program delivers the public relations benefits to PG&E at no cost. Given the general good-faith of ratepayers making a voluntary contribution to renewable energy, the Commission should insure that before PG&E is allowed to use ratepayer contributions to claim for itself the mantle of environmental steward, the Green Option program is fully vetted and determined to be the most efficient use of ratepayer funds for that purpose, not just the easiest or cheapest way to garner a public relations bonus or to hamstring local competitors.

As designed, the program has obvious inefficiencies. For one, PG&E has no incentive to ensure that the ratepayer funds it solicits for the Green Option will be used prudently or that the program will be promoted sufficiently to generate a substantial investment in renewable

[36] *Powering the Green Economy* at p. 163.
[37] News Release.

energy. PG&E simply acts as a conduit taking ratepayer funds in and transferring them to renewable energy generators. There is little to motivate the company to use those funds efficiently and effectively or to expand the program. All costs of the program are covered by the 2 cent per kWh charge. PG&E is to earn no profit and no incentive payments from the program. Even a low level of customer participation would garner the public relations benefits for the company and hobble the competition.

Commentators on green power pricing programs implemented by public utilities have noted this as a significant problem with green pricing programs.

> The lesson seems to be that green power programme managers have little incentive to improve or expand their programmes if they are already receiving a stable revenue stream from customers.[38]

In fact, PG&E has offered nothing that would demonstrate that REC purchases are an efficient use of the gratuitous payments by ratepayers. In its Application PG&E does not demonstrate that any concrete benefit will result from the Green Option program. It does not even address that question. The proposed program may be highly inefficient for all that the Application discloses.

> The trading of RECs is time consuming and involves transaction costs on both sides: for those who must produce, certify and sell a REC, and for those who must purchase and verify the authenticity of a REC. . . . Surcharges from brokers often occur on both sides of the transaction (one trader unofficially told one of the authors that they usual get a 10 percent commission on every REC that the sell), and national REC systems usually require a formal registry and auditors that can monitor transactions to avoid double counting.[39]

PG&E fails to demonstrate any consideration of other programs for the investment of voluntary contributions. There are many potential structures that could be developed to use customer funds to increase renewable generation. For example, SDG&E has recently proposed a green-pricing program that does not rely on RECs.[40] PG&E could use customer contributions to build new renewable power facilities or to convert planned facilities to renewable generation. PG&E could use the funds to subsidize the development of new renewable generation though low-cost financing. PG&E could reduce the cost for third parties to bring renewables on-line by streamlining or subsidizing interconnection. Taking ratepayer money and using it on voluntary

[38] *Powering the Green Economy* at p. 162.
[39] *Powering the Green Economy* at 157.
[40] San Diego Gas & Electric Company (filed Jan. 17, 2012) A1201008.

RECs without considering the most efficient way to increase renewable generation is not just or reasonable. There is nothing in the design of the Green Option or in the Application demonstrating that the pricing is or will be a reasonable and fair expenditure for customers.

IV RESPONSE TO APPLICANT'S PROCEDURAL PROPOSALS

Respondents concur with PG&E's proposed category of the proceeding as rate setting. Evidentiary hearings are likely necessary and, therefore, the adopted schedule should include time for hearings. PG&E's proposed schedule is acceptable. P-&E did not propose a list of specific issues to be considered in the proceeding. In this protest respondents raise threshold statutory and competitive issues and request that all of them be included in the scope of this proceeding, summarized as follows:

- The application fails to provide evidence that the Green Option price is a just and reasonable charge for renewable energy.
- PG&E must fairly disclose to ratepayers what product the company will deliver in exchange for payments made by ratepayers.
- The Green Option would unfairly compete with local renewable energy projects, solar system installers, and energy efficiency installers.
- The ratepayer should be informed that the Green Option as designed will not provide the benefits of clean energy to California or to the local community.
- The so-called Green Option is inefficient and misleading.
- The mispriced Green Option may lead to wasteful energy practices.
- PG&E must disclose the administrative and overhead costs of the Green Option program.
- What assurance do ratepayers have that PG&E will not settle for a token and inefficient green power program as soon as it has garnered the public relations benefits?

V CONCLUSION

The Green Option program as described in the Application is misleading, unfairly priced, and anticompetitive and consequently does not meet the just and reasonable service

mandate of Public Utilities Code section 451 or comply with California statutory law. PG&E's application should be rejected unless the program is fundamentally changed. PG&E should be required to rename the program, to clearly and expressly disclose the limitations of the program, to eliminate broad claims to environmental benefits, and to price its program so the customer will continue to pay the just and reasonable cost of adding a proportionate amount of renewable power to the electricity mix beyond the RPS requirement. Renewable power should not be treated as a throwaway, non-profit sector of the utility. It should be the primary focus. It is requested that the Commission include in the scope of this proceeding the legal and anti-competitive issues discussed above.

Respectfully submitted,

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APPENDICES

Appendix 1 Green-e Energy. National Standard Version 2.1.

Appendix 2 PG&E. PG&E Announces New Green Energy Program to Give Electric Customers More Renewable Options. (April 24, 2012).

Appendix 3 Federal Trade Commission. 1998, Guides for the Use of Environmental Marketing Claims.

Appendix 4 National Association of Attorneys General. 1999. Environmental Marketing Guidelines for Electricity.

Appendix 5 CPUC, Renewable Energy Certificates and the California Renewables Portfolio Standard Program (April, 2006).

Appendix 6 Federal Trade Commission, Part 260--Guides for the Use of Environmental Marketing Claims.