

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



July 20, 2016

Advice Letter 4761-E

Erik Jacobson
Director, Regulatory Relations
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177

**Subject: Approval of Forbearance Agreements between PG&E and
Solar Partners II, LLC and Solar Partners VIII, LLC for
Ivanpah Units #1 and #3**

Dear Mr. Jacobson:

Advice Letter 4761-E is effective as of March 17, 2016 per Resolution E-4771.

Sincerely,

A handwritten signature in cursive script that reads "Edward Randolph".

Edward Randolph
Director, Energy Division



Erik Jacobson
Director
Regulatory Relations

Pacific Gas and Electric Company
77 Beale St., Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177

Fax: 415-973-7226

December 18, 2015

Advice 4761-E

(Pacific Gas and Electric Company ID U 39 E)

Public Utilities Commission of the State of California

Subject: Approval of Forbearance Agreements between Pacific Gas and Electric Company and Solar Partners II, LLC and Solar Partners VIII, LLC for Ivanpah Units #1 and #3

Pacific Gas and Electric Company ("PG&E") respectfully requests that the California Public Utilities Commission ("Commission") approve the Forbearance Agreement between PG&E and Solar Partners II, LLC related to Ivanpah Unit #1 and the Forbearance Agreement between PG&E and Solar Partners VIII, LLC related to Ivanpah Unit #3. Solar Partners II, LLC and Solar Partners VIII, LLC are jointly referred to as the "Solar Partners" in this Advice Letter and Ivanpah Units #1 and #3 are jointly referred to as the "Projects." Copies of the Forbearance Agreements are included as Confidential Attachments A and B to this Advice Letter.

As explained in more detail below, the Power Purchase Agreements ("PPAs") for the Projects contain performance requirements. It now appears that the Projects may not meet these requirements. If that proves to be the case, PG&E may have to take certain steps (including declaring an event of default and invoking associated remedies) in order to protect the interests of its customers.

Under the Forbearance Agreements, PG&E agrees to refrain from taking these steps for an initial six-month period of time, without waiving any of its rights to later do so in periods subsequent to these agreements, in exchange for the Solar Partners agreeing to pay specified consideration. The Forbearance Agreements also provide for a six-month extension if the Projects meet certain production requirements during the initial six-month period. The Forbearance Agreements benefit PG&E's customers because they: (1) ensure the continued operation of innovative solar thermal resources that provide Renewable Portfolio Standard ("RPS")-eligible energy; (2) require the Solar Partners to pay consideration, which is not currently required under the PPAs; (3) allow the Projects time to continue to improve performance to meet the requirements of their respective PPAs. Accordingly, the Forbearance Agreements are reasonable and in the interest of PG&E's customers, and thus should be approved.

PG&E respectfully requests that the Commission issue a resolution on this Advice Letter by no later than March 31, 2016.¹ If the Forbearance Agreements are not approved by that date, PG&E may, in order to protect its customers' interests, need to begin a process that could lead to its declaring an event of default under the PPAs and invoking the remedies available to it (including contract termination).

Background

1. Ivanpah Units #1 and #3 and Commission Approval of The Power Purchase Agreements

Ivanpah Unit #1 was originally designed to be a 110 megawatt ("MW") solar thermal facility located in Ivanpah, California. Ivanpah Unit #3 was designed to be a 200 MW solar thermal facility also located in Ivanpah. Both Projects utilize an innovative tower and tracking technology to heat steam and subsequently produce electricity using solar power.² PG&E entered into two separate PPAs for the Projects and submitted these PPAs to the Commission for review and approval in May 2009 in Advice Letter E-4266. In August 2009, the Commission approved the PPAs in Resolution E-4266. The Commission determined that the terms, conditions, and payments to be made under the PPAs were reasonable and "in the public interest."³ The commercial operation date or "COD" for Unit #1 was July 2012 and for Unit #3 was July 2013.⁴ Each of the PPAs has a twenty-five (25) year term.

In July 2010, PG&E submitted Advice Letter 3703-E to the Commission requesting approval of certain amendments to the PPAs. Specifically, the amended PPAs increased the capacity of Unit #1 from 110 MW to 118 MW, decreased the capacity of Unit #3 from 200 MW to 130 MWs, adjusted the expected deliveries from each unit, and extended the COD dates for each unit.⁵ PG&E explained that the changes in project size, expected deliveries, and COD were to facilitate permitting and financing the Projects.⁶ The Commission reviewed the amendments, determined that the modifications were reasonable, and determined that the total expected costs of the Projects was reasonable.⁷ The Commission approved the amended PPAs in October 2010 in Resolution E-4369.

¹ Although the Forbearance Agreements do not amend the PPAs, seeking approval of these agreements through an advice letter is appropriate because they are related to the administration of RPS-eligible PPAs.

² Resolution E-4266 at p. 14 (describing technology).

³ *Id.*, Findings 5-8, 14, and 17.

⁴ *Id.* at p. 2.

⁵ *Id.*

⁶ Resolution E-4369 at pp. 4-6.

⁷ Resolution E-4369, Findings 3 and 8-9.

After the amended PPAs were approved, the Solar Partners proceeded with permitting, financing and constructing the Projects. The Solar Partners applied for and obtained Department of Energy (“DOE”) loan guarantees for the Projects, as well as for Unit #2 which is under contract to Southern California Edison Company. The total DOE loan guarantees for all three units is approximately \$1.6 billion.⁸

The Initial Energy Delivery Dates for Units #1 and #3 were January 21, 2014 and January 27, 2014, respectively.

2. PPA Provisions Regarding Guaranteed Energy Production

The PPAs for the Projects require a certain amount of Guaranteed Energy Production or “GEP” from each unit. GEP is measured over a rolling 24-month period starting with the first calendar month following the Initial Energy Delivery Date. The specific GEP percentage required for each unit, and how the GEP is calculated, is specified in each PPA and described in more detail in Confidential Attachment C to this advice letter.⁹ Under the PPAs, if either Unit #1 or #3 delivered less than the specified GEP amount in any Performance Measurement Period, PG&E, at its option, could declare an event of default for the applicable PPA. In the case of a default, the PPAs include certain requirements regarding notice of the default and the timing for potential remedies, including PPA termination.

3. Current Performance Status of the Projects

Because the Projects started deliveries in mid to late January 2014, the two-year GEP requirement will be calculated effective February 1, 2016 and will be based on a 24-month rolling requirement after that date. In February 2015, the Solar Partners contacted PG&E to discuss the performance of the Projects. Since that time, representatives of NRG, one of the primary stakeholders in the Solar Partners, and PG&E have met on a number of occasions to discuss the performance of the Projects and the GEP requirements. In a 10-Q dated June 30, 2015, NRG explained that it “expects that either or both units [*i.e.*, Units #1 and #3] may not meet their guaranteed energy production amount for the initial performance measurement period.” NRG has explained that there are a number of reasons for these initial performance problems, and that it expects the performance of the Projects will improve going forward. The performance of the Projects has improved substantially between the first contract year and the second contract year of the 24-month GEP period.¹⁰

Description and Benefits of the Forbearance Agreements

PG&E and the Solar Partners have negotiated the Forbearance Agreements to allow more time for the Projects to perform and to assess whether the Projects will be able to achieve GEP.

⁸ See <http://energy.gov/lpo/ivanpah> (DOE website describing loan guarantee for Ivanpah).

⁹ Confidential Attachment C includes relevant contract terms and performance information regarding the Projects. The PPA GEP terms are described in Attachment B, Section A.

¹⁰ See Confidential Attachment C, Section B.

Under the Forbearance Agreements, PG&E has agreed not to declare an event of default under the PPAs' GEP provisions through the performance measurement period ending July 31, 2016. In exchange, the Solar Partners have agreed to pay PG&E and its customers consideration for the GEP shortfall through January 31, 2016. In addition, further consideration will be paid to PG&E and its customers for any shortfall in performance relative to the targets set in the forbearance agreement. The Forbearance Agreements are contingent on Commission approval.¹¹ The Forbearance Agreements do not modify or amend any of the terms of the PPAs and terminate on August 1, 2016, unless extended for an additional six months if the Projects are able to meet certain production requirements during the initial six months. If any GEP shortfall occurs during the extension, the Solar Partners will pay consideration for such shortfall.

The Forbearance Agreements provide a number of benefits for PG&E's customers. First, the Forbearance Agreements help assure the continued operation of two innovative solar thermal facilities which are currently providing RPS-eligible energy to PG&E and its customers. The agreements do this by providing an uninterrupted stream of revenue to the Projects. If PG&E were to declare an event of default and invoke its contractual remedies, there is some possibility that the Projects would cease operation. Continuing the delivery of RPS-eligible energy from these innovative energy facilities is in the interest of all parties and furthers important state and federal policy goals. The Ivanpah facility comprises three solar thermal power plants, including the Projects, consisting of more than 173,000 heliostat mirrors focusing sunlight on receivers located on centralized solar power towers. The Projects were the first facilities in the United States to commercially utilize "solar power tower" technology.

Second, the Forbearance Agreements are for a limited duration (*i.e.*, six months, with a potential six-month extension), do not amend the PPAs, and do not waive PG&E's right to enforce the GEP provisions at a later time. The agreements provide PG&E and the Solar Partners time to further evaluate the performance of the Projects, which has been steadily improving, and to assess whether these Projects will be able to meet GEP for the remaining term of the PPAs.

Third, PG&E's customers will receive consideration for the GEP shortfall, which they are not currently entitled to under the PPAs. The Solar Partners have agreed to pay these considerations in exchange for PG&E not declaring an event of default through July 31, 2016. And further consideration will be paid for any shortfall in performance relative to the targets set out in the Forbearance Agreements while they remain in effect.

Finally, approving the Forbearance Agreements does not limit Commission review of any future changes to the PPAs. If PG&E and the Solar Partners determine that changes to the PPAs are necessary, PG&E will then file an advice letter describing these amendments or modifications and seeking Commission approval. The Commission and parties will have an opportunity to carefully review any proposed modifications or amendments to determine if they are reasonable and in the interests of PG&E's customers.

¹¹ The Forbearance Agreements are also contingent on Senior Secured lender approval and payment of an initial portion of the consideration by the Solar Partners upon execution.

Procurement Review Group Consultation

PG&E notified its Procurement Review Group (“PRG”) on December 16, 2015 that it was negotiating the Forbearance Agreements with the Solar Partners.

Requested Timing For Approval and Requested Relief

PG&E is requesting timely review and consideration of this Advice Letter because of the contractual deadlines for exercising PG&E’s remedies if the Forbearance Agreements are not approved. As described above, the initial 24-month GEP period ends January 31, 2016. If the Forbearance Agreements are not approved, PG&E may have to provide the Solar Partners with a notice of default for failure to meet GEP and shortly thereafter it may have to invoke its contractual remedies, including possible contract termination. The date by which it would need to do so is May 2, 2016. Therefore, PG&E is requesting that the Commission act on this Advice Letter by no later than March 31, 2016 so that if the Forbearance Agreements are not approved, PG&E has sufficient time to take the appropriate actions required under the PPAs.

PG&E respectfully requests that the Commission approve the Forbearance Agreements and determine that they are just, reasonable, and in the public interest.

Protests

Anyone wishing to protest this filing may do so by letter sent via U.S. mail, facsimile or E-mail, no later than January 7, 2016, which is 20 days after the date of this filing. Protests must be submitted to:

CPUC Energy Division
ED Tariff Unit
505 Van Ness Avenue, 4th Floor
San Francisco, California 94102

Facsimile: (415) 703-2200
E-mail: EDTariffUnit@cpuc.ca.gov

Copies of protests also should be mailed to the attention of the Director, Energy Division, Room 4004, at the address shown above.

The protest shall also be sent to PG&E either via E-mail or U.S. mail (and by facsimile, if possible) at the address shown below on the same date it is mailed or delivered to the Commission:

Erik Jacobson
Director, Regulatory Relations
c/o Megan Lawson
Pacific Gas and Electric Company

77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, California 94177

Facsimile: (415) 973-7226
E-mail: PGETariffs@pge.com

Any person (including individuals, groups, or organizations) may protest or respond to an advice letter (General Order 96-B, Section 7.4). The protest shall contain the following information: specification of the advice letter protested; grounds for the protest; supporting factual information or legal argument; name, telephone number, postal address, and (where appropriate) e-mail address of the protestant; and statement that the protest was sent to the utility no later than the day on which the protest was submitted to the reviewing Industry Division (General Order 96-B, Section 3.11).

Effective Date

PG&E requests that this Tier 3 advice filing become effective by no later than March 31, 2016, and that the Commission issue a resolution by that date approving the Forbearance Agreements.

Notice

In accordance with General Order 96-B, Section IV, a copy of this advice letter is being sent electronically and via U.S. mail to parties shown on service list for R.15-02-020. Address changes to the General Order 96-B service list should be directed to PG&E at email address PGETariffs@pge.com. For changes to any other service list, please contact the Commission's Process Office at (415) 703-2021 or at Process_Office@cpuc.ca.gov. Send all electronic approvals to PGETariffs@pge.com. Advice letter filings can also be accessed electronically at: <http://www.pge.com/tariffs/>.

/S/

Erik Jacobson
Director, Regulatory Relations

Attachments:

Attachment A (Confidential)	Forbearance Agreement with Solar Partners II, LLC
Attachment B (Confidential)	Forbearance Agreement with Solar Partners VIII, LLC
Attachment C (Confidential)	Summary of Relevant PPA Terms and Facts

cc: Service List for R.15-02-020

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No. **Pacific Gas and Electric Company (ID U39 E)**

Utility type:

ELC GAS
 PLC HEAT WATER

Contact Person: Jennifer Wirowek

Phone #: (415) 973-1419

E-mail: J6WS@pge.com and PGETariffs@pge.com

EXPLANATION OF UTILITY TYPE

ELC = Electric GAS = Gas
PLC = Pipeline HEAT = Heat WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: **4761-E**

Tier: 3

Subject of AL: **Approval of Forbearance Agreements between Pacific Gas and Electric Company and Solar Partners II, LLC and Solar Partners VIII, LLC for Ivanpah Units #1 and #3**

Keywords (choose from CPUC listing): Agreements

AL filing type: Monthly Quarterly Annual One-Time Other _____

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #: _____

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: No

Summarize differences between the AL and the prior withdrawn or rejected AL: _____

Is AL requesting confidential treatment? If so, what information is the utility seeking confidential treatment for: Yes

Confidential information will be made available to those who have executed a nondisclosure agreement: Yes

Name(s) and contact information of the person(s) who will provide the nondisclosure agreement and access to the confidential information: Martin K. Wyspianski (415)-973-9720

Resolution Required? Yes No

Requested effective date: **March 31, 2016**

No. of tariff sheets: N/A

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: N/A

Service affected and changes proposed: N/A

Pending advice letters that revise the same tariff sheets: N/A

Protests, dispositions, and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:

California Public Utilities Commission

Energy Division

EDTariffUnit

505 Van Ness Ave., 4th Flr.

San Francisco, CA 94102

E-mail: EDTariffUnit@cpuc.ca.gov

Pacific Gas and Electric Company

Attn: Erik Jacobson

Director, Regulatory Relations

c/o Megan Lawson

77 Beale Street, Mail Code B10C

P.O. Box 770000

San Francisco, CA 94177

E-mail: PGETariffs@pge.com

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

PACIFIC GAS AND ELECTRIC COMPANY U-39-E

**DECLARATION OF MARTIN K. WYSPIANSKI
SEEKING CONFIDENTIAL TREATMENT
FOR CERTAIN DATA AND INFORMATION
CONTAINED IN ADVICE LETTER 4761-E**

I, Martin K. Wyspianski declare:

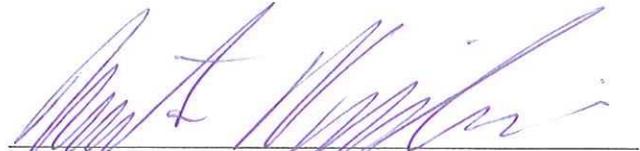
1. I am the Senior Director leading the Renewable Energy group of the Energy Procurement organization at Pacific Gas and Electric Company (PG&E). In this position, my responsibilities include managing a team responsible for renewable energy policy, planning and procurement. This declaration is based on my personal knowledge of PG&E's practices and my understanding of the Commission's decisions protecting the confidentiality of market-sensitive information.

2. Based on my knowledge and experience, and in accordance with the Decisions 06-06-066, 08-04-023, and relevant Commission rules, I make this declaration seeking confidential treatment for Appendix A, B and C to Advice Letter 4761-E submitted on December 18, 2015. By this Advice Letter, PG&E is seeking the Commission's approval of the Forbearance Agreement between PG&E and Solar Partners II, LLC related to Ivanpah Unit #1 and the Forbearance Agreement between PG&E and Solar Partners VIII, LLC related to Ivanpah Unit #3.

3. Attached to this declaration is a matrix identifying the data and information for which PG&E is seeking confidential treatment. The matrix specifies that the material PG&E is seeking to protect constitutes confidential market sensitive data and information covered by D.06-06-066 and Commission rules. Further, the matrix also specifies the category or categories in the IOU Matrix to which the data and information corresponds, if applicable, and why confidential protection is justified. The information for which PG&E seeks confidential treatment is not already public and the data cannot be aggregated, redacted, summarized or

otherwise protected in a way that allows partial disclosure.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on December 18, 2015, at San Francisco, California.



MARTIN K. WYSPIANSKI

PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)
Advice Letter 4761-E

IDENTIFICATION OF CONFIDENTIAL INFORMATION

Redaction Reference	Category from D.06-06-066, Appendix 1, or Separate Confidentiality Order That Data Corresponds To	Justification for Confidential Treatment	Length of Time Data To Be Kept Confidential
Confidential Appendix A – Forbearance Agreement with Solar Partners II, LLC	VII) G) Renewable Resource Contracts under RPS contracts – without SEPS	Agreement is related to the administration of an RPS-eligible PPA. Disclosure of this agreement information would provide market sensitive information regarding contracts and contract amendments.	Three Years
Document: Confidential Appendix B – Forbearance Agreement with Solar Partners VII, LLC	VII) G) Renewable Resource Contracts under RPS contracts – without SEPS	Agreement is related to the administration of an RPS-eligible PPA. Disclosure of this agreement information would provide market sensitive information regarding contracts and contract amendments	Three Years
Confidential Appendix C – Summary of Relevant PPA Terms and Fact	VII) G) Renewable Resource Contracts under RPS contracts – without SEPS General Order 66-C	Disclosure of information would provide market sensitive information regarding contracts and contract amendments. In addition, Attachment C includes confidential operating information provided to PG&E, which is protected under General Order 66-C.	Three Years

**PG&E Gas and Electric
Advice Filing List
General Order 96-B, Section IV**

AT&T	Division of Ratepayer Advocates	OnGrid Solar
Albion Power Company	Don Pickett & Associates, Inc.	Pacific Gas and Electric Company
Alcantar & Kahl LLP	Douglass & Liddell	Praxair
Anderson & Poole	Downey & Brand	Regulatory & Cogeneration Service, Inc.
Atlas ReFuel	Ellison Schneider & Harris LLP	SCD Energy Solutions
BART	G. A. Krause & Assoc.	SCE
Barkovich & Yap, Inc.	GenOn Energy Inc.	SDG&E and SoCalGas
Bartle Wells Associates	GenOn Energy, Inc.	SPURR
Braun Blaising McLaughlin & Smith, P.C.	Goodin, MacBride, Squeri, Schlotz & Ritchie	San Francisco Water Power and Sewer
Braun Blaising McLaughlin, P.C.	Green Power Institute	Seattle City Light
CENERGY POWER	Hanna & Morton	Sempra Energy (Socal Gas)
CPUC	International Power Technology	Sempra Utilities
California Cotton Ginners & Growers Assn	Intestate Gas Services, Inc.	SoCalGas
California Energy Commission	Kelly Group	Southern California Edison Company
California Public Utilities Commission	Ken Bohn Consulting	Spark Energy
California State Association of Counties	Leviton Manufacturing Co., Inc.	Sun Light & Power
Calpine	Linde	Sunshine Design
Casner, Steve	Los Angeles County Integrated Waste Management Task Force	Tecogen, Inc.
Center for Biological Diversity	Los Angeles Dept of Water & Power	Tiger Natural Gas, Inc.
City of Palo Alto	MRW & Associates	TransCanada
City of San Jose	Manatt Phelps Phillips	Troutman Sanders LLP
Clean Power	Marin Energy Authority	Utility Cost Management
Coast Economic Consulting	McKenna Long & Aldridge LLP	Utility Power Solutions
Commercial Energy	McKenzie & Associates	Utility Specialists
Cool Earth Solar, Inc.	Modesto Irrigation District	Verizon
County of Tehama - Department of Public Works	Morgan Stanley	Water and Energy Consulting
Crossborder Energy	NLine Energy, Inc.	Wellhead Electric Company
Davis Wright Tremaine LLP	NRG Solar	Western Manufactured Housing Communities Association (WMA)
Day Carter Murphy	Nexant, Inc.	YEP Energy
Defense Energy Support Center	ORA	
Dept of General Services	Office of Ratepayer Advocates	