

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



May 3, 2010

Brian Cherry  
Vice President, Regulatory Relations  
Pacific Gas and Electric Company  
77 Beale Street  
San Francisco, CA 94105

Dear Mr. Cherry:

This is to respond to your March 12 letter offering PG&E's ideas on how it intends to solicit customer opt-outs from Marin Energy Authority's community choice aggregation (CCA) program. I have also been copied on an April 14, 2010 letter sent by PG&E's Sanford L. Hartman to Gregory W. Stepanicich; my response to you references certain aspects of that letter as well, detailed below. Finally, I also wish to address the mailers that PG&E is sending to its customers in Marin County encouraging them to opt out. As I will discuss below, some of the procedures outlined in these letters, and other practices that have come to our attention, are in violation of your tariffs and must cease. In addition, the PG&E mailers that we have reviewed are misleading, and PG&E must refrain from sending any mailers of this nature in the future.

The purpose of this letter is to call to your attention certain aspects of Commission decisions and Commission-approved tariffs related to Community Choice Aggregation so that PG&E understands its obligations, as well as its rights, with respect to its communications with its customers in Marin County and other jurisdictions that may be considering or implementing a CCA program. On the whole, your suggested approach to customer communications, and the content of the mailers, indicate a fundamental misunderstanding of PG&E's role under AB 117 and the Commission's actions to implement that law.

The Commission—and PG&E—must comply with the entirety of AB 117, not just selected portions. PG&E may not implement alternatives to the approach to CCA implementation contemplated by AB 117. Public Utilities Code Section 366.2, among others, codifies AB 117, and provides in part:

*(c)(9) All electrical corporations shall cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs.*

Commission Decision (D.) 05-12-041, among others, was issued to implement AB 117, and includes Conclusion of Law 8:

*The use of the term "fully cooperate" in Section 366.2(c)(9) is reasonably interpreted to mean that utilities shall facilitate the CCA program and a CCA's efforts to implement it to the extent reasonable and in ways that do not compromise other utility services.*

## **Violations of PG&E's Tariff**

### **PG&E's Calling Practices Violate PG&E's Tariffs**

In your letter, you suggest that PG&E may initiate a telephone call with one of its customers for the purpose of soliciting the customer's opt-out from CCA service, then transfer that customer to the same PG&E customer service representatives who handle incoming telephone contacts from customers who have actually received one of the statutorily-required opt-out notices from the CCA that plans to serve them. This proposed practice is contrary to your tariff, and I expect PG&E not to implement it, and if it has, to cease any such practices currently underway. Pursuant to Resolution E-4250 (effective April 8, 2010), Rule 23 B.22 of PG&E's electric tariffs describes the process for opting out of CCA service as follows:

... In order to exercise its right not to participate in CCA Service, a customer must request to "opt out" of CCA Service through the required action as prescribed in the CCA Notification. ...

MEA's CCA notification described two methods of opting out: "To opt out, you may phone (866) 743-0335 or visit [www.pge.com/cca](http://www.pge.com/cca)." Accordingly, in order to opt out, *the customer* must telephone the listed number or visit the listed webpage.

Prior to its amendment by Resolution E-4250, Rule 23 B.22 provided: "In order to exercise its right not to participate in CCA Service, a customer must request to 'opt-out' of CCA Service through the required action as prescribed in the CCA Notification or by contacting utility." This language is equally clear that the customer must contact PG&E to effectuate an opt-out.

Under neither version of this language is the utility authorized to contact its customers by telephone for the purpose of obtaining an opt-out during that utility-initiated call, as your letter suggests. More broadly, in no circumstances may the utility transfer any call that it has initiated to the telephone number that customers use to opt out. That would be in violation of either version of this tariff provision.<sup>1</sup>

Accordingly, PG&E must cease attempting to obtain opt-outs by this means. Furthermore, any attempted opt-outs that PG&E has obtained by this method are not valid. If any opt-outs were obtained in this manner, PG&E must work with Energy Division staff and MEA to (1) identify the specific customers who have opted out of MEA service in this manner, and (2) develop a means of informing these customers that their opt-out is invalid.

### **PG&E Misunderstands the Limits on What it Can Do to Secure Opt-outs**

On a directly related matter, I have been copied on a letter sent by PG&E's Sanford Hartman to Gregory W. Stepanicich, dated April 14, 2010. Based on my review of this letter, I conclude that PG&E misunderstands its tariff requirements with respect to its ability to interact with its customers in order to solicit opt-outs from MEA. In a section titled "The Opt-Out Process" Mr. Hartman makes numerous inaccurate assertions regarding actions that are permissible by PG&E.

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<sup>1</sup> Your letter also suggested that PG&E might send a representative to a residential customer's home for the purpose of obtaining from that customer, during the visit, an opt-out request. As this method of obtaining an opt-out is not authorized by the CCA Notification, if this proposal were to be implemented it would violate PG&E's tariffs.



First, Mr. Hartman states: "With respect to the use of opt-out forms, you believe that the only means by which a customer may opt-out of the MEA CCA Program are those means identified in Marin Energy Authority's opt-out notice. There is no such limitation in any tariff, CPUC order or statute." The tariff language quoted above (Rule 23 B.22) clearly provides such a limitation. Furthermore, the tariff language contained in Rule 23 B.22 does not conflict with the tariff language in Rule 23 I.1 that Mr. Hartman quotes in his letter. That provision provides:

- 1 The utility shall provide an opt-out process to be used by all CCAs. The utility shall offer at least two (2) of the following options as a part of its opt-out process:
  - a. Reply letter or postcard (postage paid) enclosed in CCA Customer Notifications.
  - b. Automated phone service.
  - c. Internet service.
  - d. Customer Call Center contact.(Emphasis added.)

MEA's notice specifies two options: a phone number for the customer to call, and a website. Those are the two options that PG&E must offer, and no others. Mr. Hartman states: "We therefore intend to continue ... soliciting and processing opt-out notices, even if some of these procedures are not included in the Marin Energy Authority opt-out notices." PG&E must not act in this manner. Accordingly, PG&E must meet immediately with Energy Division staff to identify any opt-outs that occurred as a result of any unauthorized means, for the purpose of informing those customers that their opt-out was not properly obtained.

Second, Mr. Hartman makes a number of additional statements with respect to "soliciting" opt-outs and PG&E's claimed right to do so. For example, Mr. Hartman states: "In Resolution E-4250, the CPUC specifically reconfirmed the right of PG&E to solicit opt-outs, including soliciting such opt-outs through telephone or other means to its customers." In fact, Resolution E-4250 makes no such statement. To the extent that the text of the Resolution refers to "soliciting" opt-outs, it does not over-ride the tariff language imposed by the Resolution. Accordingly, opt-outs by customers may occur only by those methods included in the notification provided by the CCA discussed elsewhere in this letter.

#### PG&E Newspaper Advertisements Violate PG&E's Tariffs

It has also come to our attention that PG&E has placed advertisements in the *Marin Independent Journal* that included a mail-in form that customers could use to opt out of MEA's CCA service. Pursuant to Rule 23 I.1 of PG&E's tariffs, there are four authorized methods of effectuating an opt-out, of which only two have been selected by MEA. A newspaper coupon is not one of these methods. Accordingly, PG&E's creation of these forms is a violation of PG&E's tariffs, and any newspaper opt-out forms received by PG&E are not valid opt-outs. PG&E must work with Energy Division staff and MEA to (1) identify the specific customers who have opted out of MEA service in this manner, and (2) develop a means of informing these customers that their opt-out is invalid.

#### Violations of the Public Utilities Code

##### PG&E's Mailers in Marin County

Commission staff have received several examples of mailers that PG&E is sending to its customers in Marin County for the purpose of encouraging these customers to opt out of the community choice

aggregation program established by the Marin Energy Authority. These mailers have the appearance of an official opt-out notice, and are thus likely to create unnecessary customer confusion. The mailers therefore violate the statutory requirement that PG&E "shall cooperate fully with any community choice aggregators". (Public Utilities Code section 366.2(c)(9)). As the Commission has noted, it is important for utilities to cooperate in good faith with a CCA in order to avoid "unnecessary customer confusion". Accordingly, PG&E must cease sending to customers any materials that could be mistaken for an official opt-out notice.

PG&E's mailers directly undermine the opt-out process contemplated by the statute, as described in Resolution E-4250. This is the case because the mailers are provided on PG&E-logo cardstock, include instructions for opting out, and omit any information from which the customer would readily conclude that they are merely marketing material encouraging customers to opt out, and not the official opt-out notice, which is required by statute to contain the terms and conditions of CCA service.

As the Commission stated in Decision (D.) 05-12-041, the statutory language requiring that utilities shall "cooperate fully" means that "utilities shall facilitate the CCA program and a CCA's efforts to implement it to the extent reasonable and in ways that do not compromise other utility services."

I hope this letter clarifies the Commission's expectations of PG&E with respect to acting cooperatively and collaboratively to implement the Community Choice Aggregation law in California. All of PG&E's customer communications--as well as those initiated on behalf of PG&E by PG&E's agents—should comport with the guidance provided in this letter. PG&E must immediately cease the practices described in this letter that are in violation of its tariffs. Please arrange to meet with the Energy Division immediately in order to determine which opt-outs are not valid and how to inform the customers involved. Please indicate within three days PG&E's willingness to abide by the terms set forth in this letter and your specific plan to reverse any opt-outs that are invalid.

Sincerely,



Paul Clanon  
Executive Director

cc: Attorney General (Clifford Rechtschaffen)  
Sanford L. Hartman  
Gregory W. Stepanicich  
Dawn Weisz  
Frank Lindh  
Julie Fitch