



ADVICE LETTER SUMMARY

ENERGY UTILITY



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

Company name/CPUC Utility No.: **Marin Clean Energy ("MCE")**

Utility type:

- ELC GAS WATER
 PLC HEAT

Contact Person: **Michael Callahan**

Phone #: (415) 464-6045

E-mail: mcallahan@mceCleanEnergy.org

E-mail Disposition Notice to: mcallahan@mceCleanEnergy.org

EXPLANATION OF UTILITY TYPE

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

(Date Submitted / Received Stamp by CPUC)

December 8, 2020

Advice Letter (AL) #: 46-E

Tier Designation: 1

Subject of AL: **SUBMITTAL OF COMMUNITY CHOICE AGGREGATOR FINANCIAL SECURITY REQUIREMENT INSTRUMENT IN COMPLIANCE WITH RESOLUTION E-5059**

Keywords (choose from CPUC listing): **Compliance**

AL Type: Monthly Quarterly Annual One-Time Other:

If AL submitted in compliance with a Commission order, indicate relevant Decision/Resolution #: **D.18-05-022; Resolution E-5059**

Does AL replace a withdrawn or rejected AL?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Summarize differences between the AL and the prior withdrawn or rejected AL: **n/a**

Confidential treatment requested? Yes No

If yes, specification of confidential information:

Confidential information will be made available to appropriate parties who execute a nondisclosure agreement. Name and contact information to request nondisclosure agreement/ access to confidential information:

Resolution required? Yes No

Requested effective date: **12/8/20**

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 proposed¹: **n/a**

Pending advice letters that revise the same tariff sheets: **n/a**

¹Discuss in AL if more space is needed.

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

CPUC, Energy Division
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102
Email: EDTariffUnit@cpuc.ca.gov

Name: Michael Callahan
Title: Senior Policy Counsel
Utility Name: Marin Clean Energy
Address: 1125 Tamalpais Ave.
City: San Rafael
State: California Zip: 94901
Telephone (xxx) xxx-xxxx: (415) 464-6045
Facsimile (xxx) xxx-xxxx:
Email: mcallahan@mceCleanEnergy.org

Name:
Title:
Utility Name:
Address:
City:
State: District of Columbia Zip:
Telephone (xxx) xxx-xxxx:
Facsimile (xxx) xxx-xxxx:
Email:

ENERGY Advice Letter Keywords

Affiliate	Direct Access	Preliminary Statement
Agreements	Disconnect Service	Procurement
Agriculture	ECAC / Energy Cost Adjustment	Qualifying Facility
Avoided Cost	EOR / Enhanced Oil Recovery	Rebates
Balancing Account	Energy Charge	Refunds
Baseline	Energy Efficiency	Reliability
Bilingual	Establish Service	Re-MAT/Bio-MAT
Billings	Expand Service Area	Revenue Allocation
Bioenergy	Forms	Rule 21
Brokerage Fees	Franchise Fee / User Tax	Rules
CARE	G.O. 131-D	Section 851
CPUC Reimbursement Fee	GRC / General Rate Case	Self Generation
Capacity	Hazardous Waste	Service Area Map
Cogeneration	Increase Rates	Service Outage
Compliance	Interruptible Service	Solar
Conditions of Service	Interutility Transportation	Standby Service
Connection	LIEE / Low-Income Energy Efficiency	Storage
Conservation	LIRA / Low-Income Ratepayer Assistance	Street Lights
Consolidate Tariffs	Late Payment Charge	Surcharges
Contracts	Line Extensions	Tariffs
Core	Memorandum Account	Taxes
Credit	Metered Energy Efficiency	Text Changes
Curtable Service	Metering	Transformer
Customer Charge	Mobile Home Parks	Transition Cost
Customer Owned Generation	Name Change	Transmission Lines
Decrease Rates	Non-Core	Transportation Electrification
Demand Charge	Non-firm Service Contracts	Transportation Rates
Demand Side Fund	Nuclear	Undergrounding
Demand Side Management	Oil Pipelines	Voltage Discount
Demand Side Response	PBR / Performance Based Ratemaking	Wind Power
Deposits	Portfolio	Withdrawal of Service
Depreciation	Power Lines	

December 8, 2020

California Public Utilities Commission
Energy Division
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102

Advice Letter MCE 46E

RE: SUBMITTAL OF COMMUNITY CHOICE AGGREGATOR FINANCIAL SECURITY REQUIREMENT INSTRUMENT IN COMPLIANCE WITH RESOLUTION E-5059

PURPOSE

Marin Clean Energy (“MCE”) hereby submits and posts its Community Choice Aggregator (“CCA”) Financial Security Requirement (“FSR”) Instrument pursuant to Resolution E-5059 of the California Public Utilities Commission (“Commission”). A pro-forma version of the FSR Instrument is appended hereto as Appendix A.

BACKGROUND

Assembly Bill (“AB”) 117 enacted requirements for ensuring that bundled service customers of the investor-owned utilities (“IOUs”) are indifferent to the costs of electricity customers migration to and from CCA programs. Public Utilities Code Section 394.25(e) established consumer protections that require CCAs to post financial security to cover the reentry fees that would be imposed on CCA customers in the event these customers are involuntarily returned to IOU service. On June 7, 2018, the Commission issued Decision (“D.”)18-05-022, which found that Public Utilities Code Section 394.25(e) requires the implementation of both a reentry fee and a corresponding FSR to address the costs of a potential mass involuntary return of CCA customers to utility service.¹ The FSR represents the estimated amount that would be required to cover IOU administrative and procurement costs resulting from a mass involuntary return.² D.18-05-022 established the methods for calculating re-entry fees and financial security amounts and established a minimum CCA financial security amount of \$147,000.³

D.18-05-022 ordered each CCA to submit a compliance advice letter to the Commission’s Energy Division, providing notice of compliance with the FSR and requesting the return of the interim financial security posted with the Commission.⁴ D.18-05-022 determined that letters of credit, surety bonds, or cash held by a third-party are the acceptable instruments to satisfy the

¹ D.18-05-022 at 14; Conclusion of Law 1.

² D.18-05-022 at 14; Conclusion of Law 2.

³ D.18-05-022 at 16; Ordering Paragraph 9.

⁴ D.18-05-022; Ordering Paragraph 10.

FSR.⁵ D.18-05-022 further ordered the amount of the FSR to be updated twice per year to reflect the change to forecasted procurement and administrative costs if the change in the amount of the reentry fees is greater than 10 percent.⁶

On August 15, 2018, Pacific Gas & Electric Company (“PG&E”) submitted Advice Letter (“AL”) 5354-E, Southern California Edison Company (“SCE”) submitted AL 3840-E, and San Diego Gas & Electric Company (“SDG&E”) submitted AL 3257-E (collectively, “IOU Advice Letters”) seeking Commission approval of proposed revisions to the three IOUs’ tariffs to define and calculate the CCA financial security and reentry fees requirements pursuant to D.18-05-022. On September 4, 2018, the California Community Choice Association (“CalCCA”) protested the IOU Advice Letters arguing that the IOU Advice Letters were overly broad and went beyond the scope of D.18-05-022.⁷

On October 9, 2020, the Commission issued Resolution E-5059 partially approving the IOU Advice Letters and directing the CCAs to post new FSR instruments within 60 days of the Resolution. Resolution E-5059 adopted the proposed tariff revisions that were specifically directed in D.18-05-022, but rejected those proposed revisions that did not comply with the decision.⁸ Resolution E-5059 determined that the FSR instrument will govern the rights and obligations of the parties and shall be based on commercially reasonable and accepted terms and conditions.⁹ Resolution E-5059 further states that the CCA FSR instrument may only be drawn upon in the event of an involuntary return, or as mutually agreed upon in, or pursuant to, the terms of the FSR instrument.¹⁰ Finally, Resolution E-5059 found that an IOU may not terminate CCA service without an order of the Commission for failure by a CCA to post its FSR instrument.¹¹

Resolution E-5059 also ordered the IOUs to resubmit their tariff sheets to clarify: (i) the terms of the FSR are subject to mutual agreement by the IOU, the CCA, and the third-party issuer of the FSR instrument, (ii) failure of the CCA to post the FSR instrument within the sixty-day period following issuance of Resolution E-5059 may be grounds for the CCA’s involuntary service suspension by the Commission, (iii) the IOU may not terminate CCA service without approval from the Commission, and (iv) the Involuntary Return Process as provided for in the Resolution.¹²

On November 6, 2020, the IOUs refiled their tariff sheets via respective Tier 1 Advice Letters to conform with Resolution E-5059.¹³ On November 30, 2020 CalCCA filed a Limited Protest

⁵ D.18-05-022; Ordering Paragraph 7.

⁶ D.18-05-022 at 10.

⁷ See CalCCA Protest, dated September 4, 2018.

⁸ Resolution E-5059 at 2.

⁹ Resolution E-5059 at 26.

¹⁰ Resolution E-5059 at 27.

¹¹ Resolution E-5059 at 16.

¹² Resolution E-5059 at 26-27; Ordering Paragraph 4.

¹³ See PG&E Advice Letter 5354-E-B, SCE Advice Letter 3840-E-A, SDG&E Advice Letter 3257-E-A (“Updated IOU Advice Letters”).

of the Updated IOU Advice Letters requesting clarification regarding certain tariff revisions regarding the treatment of protested reentry fees as well as the timing and circumstances in which CCA customer payment remittances may be withheld.¹⁴

MCE has continued to work diligently to reach an agreement with PG&E on terms and conditions for the FSR instrument. MCE and PG&E have come to an agreement regarding the timing and circumstances under which PG&E may withhold customer payment remittances, and the timing associated with PG&E's draw of the FSR Instrument. These matters are reflected in the FSR Instrument. However, no agreement has been reached regarding whether PG&E may draw the full amount of the reentry fees if MCE submits a protest disputing the amount of the reentry fees. The FSR Instrument sufficiently addresses this outstanding issue by providing that PG&E will act in good faith to comply with Commission orders related to protested reentry fees. MCE expects that the Commission will address these issues in response to CalCCA's protest of the Updated IOU Advice Letters.

FINANCIAL SECURITY REQUIREMENT INSTRUMENT

Under Resolution E-5059, a CCA has complied with the FSR posting requirements when the CCA has demonstrated that the financial instrument has been formed, and the IOU made its obligee, recipient, or equivalent.¹⁵ Appendix A to this advice letter contains the pro forma letter of credit that has been used as the underlying document for the actual FSR Instrument that has been executed by MCE and PG&E.¹⁶ In the event that an involuntary return occurs, Resolution E-5059 requires the IOU to submit a Tier 1 Advice Letter within 30 days of the involuntary return to notify the Commission that the return has occurred and to set forth the reentry fee calculation.¹⁷ The FSR instrument states, unless otherwise mutually agreed, PG&E will not draw from the FSR amount until at least 20 days after PG&E submits the Tier 1 Advice Letter notifying the Commission of the involuntary return. Moreover, the FSR instrument states that PG&E will not draw from the FSR amount except (a) upon written agreement between MCE and PG&E or (b) until at least 15 calendar days after PG&E has issued a written demand for payment to MCE and no sooner than 20 calendar days following PG&E's filing of the Tier 1 Advice Letter notifying the Commission of the involuntary return.

ATTESTATION

The form and terms of the attached pro forma FSR instrument, including the specific conditions under which the FSR is activated, have been mutually agreed upon between MCE and PG&E. By submitting this Advice Letter, the undersigned attests that it has formed an FSR Instrument, consisting of a letter of credit, and PG&E has been made its obligee, recipient, or equivalent, as directed by the Commission in Resolution E-5059.

¹⁴ See California Community Choice Association's Protest of SCE Advice Letter 3840-E-A, PG&E Advice Letter 5354-E-B, and SDG&E Advice Letter 3257-E-A Community Choice Aggregation Financial Security Requirements.

¹⁵ Resolution E-5059 at 26; Finding of Fact 17.

¹⁶ See D.18-05-022 at 16; Ordering Paragraph 7 ("Letters of credit...are acceptable forms for satisfying the financial security requirement.")

¹⁷ Resolution E-5059 at 27; Ordering Paragraph 7.

REQUEST FOR RETURN OF INTERIM SECURITY

MCE previously posted an interim FSR of \$100,000 with the Commission in compliance with Resolution E-4133. Per Resolution E-5059 and D.18-05-022, the interim financial security posted with the Commission should be returned to the posting CCA when the CCA complies with the financial security requirements as described in Resolution E-5059.¹⁸ Through this advice letter, MCE is requesting the return of the interim FSR amount of \$100,000.

EFFECTIVE DATE

MCE requests that this Tier 1 Advice Letter become effective on December 8, 2020, which is the date of this submission.

APPENDICES

Appendix A: Pro Forma Letter of Credit

PROTESTS

Anyone wishing to protest this advice filing may do so by letter via U.S. Mail, facsimile, or electronically, any of which must be received no later than 20 days after the date of this advice filing. Protests should be mailed to:

CPUC, Energy Division
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, California 94102
E-mail: EDTariffUnit@cpuc.ca.gov

Copies should also be mailed to the attention of the Director, Energy Division, Room 4004 (same address above). In addition, protests and all other correspondence regarding this advice letter should also be sent by letter and transmitted via facsimile or electronically to the attention of:

Michael Callahan
Senior Policy Counsel
Marin Clean Energy
1125 Tamalpais Ave.
San Rafael, CA 94901
mcallahan@mceCleanEnergy.org

There are no restrictions on who may file a protest, but the protest shall set forth specifically the grounds upon which it is based and shall be submitted expeditiously.

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¹⁸ Resolution E-5059 at 5; *see also* D.18-05-022 at 11.

Respectfully submitted,

/s/ Michael Callahan _____

Michael Callahan
Senior Policy Counsel
Marin Clean Energy
1125 Tamalpais Ave.
San Rafael, CA 94901

Appendix A

Pro Forma Letter of Credit

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXXX

Date: [insert issue date]

Beneficiary: Pacific Gas and Electric Company
77 Beale Street, Mail Code B28L
San Francisco, CA 94105
Attention: Credit Risk Management

Applicant: [Insert name and address of Applicant]

Letter of Credit Amount: [insert amount]

Expiry Date: [insert expiry date]

Ladies and Gentlemen:

By order of **[insert name of Applicant]** (“Applicant”), we hereby issue in favor of Pacific Gas and Electric Company (the “Beneficiary”) our irrevocable standby letter of credit No. **insert number of letter of credit** (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[Insert amount in figures followed by (amount in words)]** (“Letter of Credit Amount”). This Letter of Credit is available with **[Insert name of issuing bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on **[insert expiry date]** (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[insert number]** and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:
 - A. “Under terms of the Electric Rule 23, Beneficiary is entitled to draw under Letter of Credit No. **[Insert number]** amounts owed by **[Insert name of the CCA]**. In presenting this statement and making this request (“Drawing Certificate”), Beneficiary represents and warrants as follows:
 - i. Beneficiary has not issued this Drawing Certificate except (A) upon written agreement between CCA and Beneficiary; or (B) after at least 15 calendar days (“15-day Period”) following Beneficiary’s written demand for payment to CCA in the amount of the re-entry fees due from CCA, calculated and delivered in conformance with Beneficiary’s tariff (“Re-Entry Fees”) and no sooner than 20 calendar days following Beneficiary’s notification to CCA and the California Public Utilities Commission (“Commission”),

through Beneficiary's submission of a Tier 1 advice letter consistent with Resolution E-5059, that CCA has involuntarily returned or has begun to involuntarily return its customers to Beneficiary.

- ii. Within the 15-day Period, (A) CCA has not paid the full amounts owed by CCA for Re-Entry Fees through direct payment by CCA to Beneficiary; or (B) Beneficiary and CCA have not agreed in writing that Beneficiary may withhold CCA customer remittances in full satisfaction of the Re-Entry Fee amount.
- iii. Beneficiary has in good faith complied with the Commission's orders related to whether Beneficiary can draw the full amount of the Re-Entry Fees even if CCA submits a protest to the Commission disputing the amount of the Re-Entry Fees."; or

B. "Letter of Credit No. **[Insert number]** will expire in thirty (30) days or less and **[Insert name of the CCA]** has not provided replacement security acceptable to Beneficiary."

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable; and
4. The Expiry Date of this Letter of Credit shall be automatically extended without a written amendment for a period of one year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date, we notify you by registered mail or courier that we elect not to extend the Expiry Date of this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at our offices at **[insert issuing bank's address for drawings]**.

All demands for payment shall be made by presentation of originals or copies of documents; or by facsimile transmission of documents to **[insert fax number]**, Attention: **[insert name of issuing bank's receiving department]**, with originals or copies of documents to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at **[insert phone number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts

presented in compliance with this Letter of Credit, if they are presented within thirty (30) days after the resumption of our business, and we will effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[insert number and any other necessary details]**.

Very truly yours,

[insert name of issuing bank]

By: _____
Authorized Signature

Name: _____ **[print or type name]**

Title: _____ **[print or type title]**

[Note: All pages must contain the number of the letter of credit for identification purposes]

Exhibit A SIGHT DRAFT

TO
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF PACIFIC GAS AND ELECTRIC
COMPANY THE AMOUNT OF U.S.\$ _____ (_____ U.S. DOLLARS)

DRAWN UNDER [Insert name of issuing bank] LETTER OF CREDIT NO. XXXXXX.

REMIT FUNDS AS FOLLOWS:

[Insert payment instructions]

DRAWER

BY: _____
NAME AND TITLE