

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

Order Instituting Rulemaking to Continue  
Implementation and Administration of  
California Renewables Portfolio Standard  
Program.

Rulemaking 11-05-005  
(Filed May 5, 2011)

**CLEAN COALITION RESPONSE TO PACIFIC GAS AND ELECTRIC COMPANY'S  
(U 39 E) APPLICATION FOR REHEARING OF DECISION 17-08-025**

Tam Hunt, J.D.  
Consulting Attorney  
SBN: 218673

Doug Karpa, J.D.  
Policy Director  
SBN: 266365

Kenneth Sahn White  
Director, Policy and Economic Analysis

Clean Coalition  
16 Palm Ct  
Menlo Park, CA 94025  
(805) 705-1352

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The Clean Coalition respectfully submits this response to **Pacific Gas and Electric Company’s (U 39 E) (PG&E) Application For Rehearing of Decision 17-08-025 (AFR)** submitted on September 27, 2017.

The Clean Coalition is a nonprofit organization whose mission is to accelerate the transition to renewable energy and a modern grid through technical, policy, and project development expertise. The Clean Coalition drives policy innovation to remove barriers to procurement and interconnection of distributed energy resources (“DER”)—such as local renewables, advanced inverters, demand response, and energy storage—and we establish market mechanisms that realize the full potential of integrating these solutions. The Clean Coalition also collaborates with utilities and municipalities to create near-term deployment opportunities that prove the technical and financial viability of local renewables and other DER.

The Clean Coalition’s comments are summarized as follows:

- The Commission has already responded to many of PG&E’s arguments, in the final decision and in response to PG&E’s similar arguments made in comments on the Proposed Decision
- The AFR contains errors of fact and faulty legal reasoning, including a

misapprehension that the Intergrated Resources Planning (IRP) is the sole venue for renewable planning, the Renewable Portfolio Standard (RPS) represents a ceiling rather than a floor for renewable procurement, that new procurement must be tied to an unmet RPS need, and that parties are entitled to endless rounds of rebuttal.

- The Clean Coalition generally agrees with the final decision’s responses to PG&E’s assertions and we note some further considerations in this response. This is now the third time that PG&E has challenged the Commission’s direction with respect to the remaining RAM solicitations. We strongly urge the Commission to reject this third attempt, on the merits as described below, but also to discourage utility pushback on clear policy directives provided by the Commission.
- If the Commission grants PG&E’s requested relief it will send a message to the utilities that they can simply “try, try, try again” to overturn clear Commission directives that they don’t agree with. The Commission has already addressed the issues raised by PG&E and ordered PG&E on three occasions in three different policy directives to hold the 2016 and 2017 RAM solicitations.
- PG&E asserts that there is no disagreement over PG&E’s need for additional renewable energy, but the Clean Coalition and other parties disagree on this statement as well as the underlying facts for which PG&E asserts that there is no disagreement.
- PG&E’s assertion that procuring the additional solar megawatts will cost \$445 million is absurd on its face since public data shows that the gross costs will likely be less than 1/3 of this amount, while providing no rationale based on any net cost to ratepayers relative to alternatives.
- PG&E fails in its argument that imposing additional procurement obligations on PG&E customers in order to meet statewide GHG reduction mandates is unfair, because of the specific history of both PG&E’s RAM and PV programs, similar treatment of other utilities, and PCIA protection against unequal burden.

## **I. Discussion**

### **a. PG&E’s AFR is faulty on the facts and reasoning and should be rejected**

PG&E asserts boldly (AFR, p. 3): “The facts in this matter are simple and undisputed. PG&E’s customers do not need additional RPS-eligible energy now or, for that matter, for the next 16 years. On this point, there is no disagreement.” In fact, there is substantial disagreement on this. The Clean Coalition does not agree with this statement. Nor does the Commission.

PG&E also argues that procuring the additional megawatts of solar will cost PG&E ratepayers \$445 million (id.). This statement is wrong and rather puzzling. It is well-known now that solar power is one of the cheapest forms of energy and is under \$1/watt for utility-scale projects. PG&E itself has argued in R.16-08-006 that replacing PG&E’s Diablo Canyon nuclear power station with a mix of energy efficiency and renewables like solar will be cheaper than relicensing the nuclear power plant. It is also the case that recent bids for solar power in California and other states are below the cost of natural gas-fired or coal-fired generation today, and the long term levelized cost of energy of fixed renewable prices are well below forecast cost from conventional sources, even before considering emission factors. We address this argument further below.

PG&E makes additional surprising assertions, including citing yet again to the 2015 RPS decision (D.15-10-031) regarding RPS requirements (AFR, p. 8, citations omitted):

PG&E also noted that in December 2015, the Commission had approved PG&E’s 2015 RPS Plan, which provided detailed information showing that, based on then-current resource and load forecasts, PG&E did not have any need for incremental RPS procurement until at least 2022, or later. Because these Commission-approved changes in PG&E’s electric demand forecast showed no need for incremental near-term RPS procurement, PG&E asked the Commission to terminate the remaining, outdated PV Program mandate. PG&E’s January 2016 Petition was supported by a declaration submitted under penalty of perjury.

However, as the Clean Coalition highlighted in our response to the PFM, the 2015 RPS decision, in making its determinations with respect to the RPS program, relies specifically on PG&E actually meeting the RAM procurement requirements it now seeks to cancel. Accordingly, it is again puzzling why PG&E would make this argument as it has no merit.

**b. PG&E’s assertions of legal error are not sound**

PG&E’s AFR asserts three “serious legal errors” that we address as follows.

**i. PG&E’s assertion that the Decision conflicts with and is preempted by SB 350 is in error**

PG&E’s first argument fails because IRP is not the sole venue for utility procurement planning (AFR, p. 9). PG&E’s arguments ignores the plain text of SB 350, the absurdity of requiring all proceedings that touch on topics addressed in IRP, such as reliability or fairness of customer rates, and the obvious reality that IRP is prospective, not retrospective, nature and about the specific long-term nature of PG&E’s solar PV program and the related RAM program.

IRP does not preclude either the PV Program or the RAM, because the SB 350 from which PG&E selectively quotes does not speak to pilot or incentive programs, but to planning processes, and only requires consistency, but nowhere bars supplementary planning processes. The text of SB 350 nowhere bars other Commission proceedings and PG&E cites no authority creating such a bar. As PG&E points out, SB350 does require IRP to incorporate and not duplicate other *planning processes* of the Commission<sup>1</sup>, but that does not speak to pilot programs or incentive programs, such as both the PV Program or the RAM. Neither does SB 350 bar the Commission from developing secondary planning processes, provided that IRP incorporates and does not duplicate them. (For example, the Commission could engage in a particularized planning process that IRP incorporates by reference.) Indeed, PG&E itself underscores that IRP is not the sole venue for utility renewable procurement, emphasizing that IRP is the “*primary* venue for implementation of the SB 350 requirements related to resource planning for the electric sector,”<sup>2</sup> IRP cannot be the primary venue if there were not also secondary venues. A primary venue is not a sole venue.

Much of the rest of PG&E’s argument fails because PG&E erroneously applies the standards of IRP to a program outside of the scope of IRP. For example, PG&E fails to quote the full language PUC 454.52(c), which clearly limits its requirements to “additional procurement [] authorized for the electrical corporation *in the integrated resource plan* or the

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<sup>1</sup> AFR at 9, quoting Cal. Pub. Util. Code § 454.52(d).

<sup>2</sup> AFR at 9-10, quoting Assigned Commissioner and Assigned Administrative Law Judge’s Ruling Identifying Issues and Schedule of Review for 2017 Renewables Portfolio Standard Procurement Plans and Inviting Comments on Renewable Auction Mechanism, issued May 26, 2017 in R.15-02-020, at p. 20. (emphasis added).

procurement process *authorized pursuant to Section 454.5.*” PUC 454.52(c) Since the PV program and RAM procurement are not authorized within IRP, as PG&E emphatically emphasizes, this requirement does not apply here.

PG&E’s reading of SB 350 as the sole venue for any aspect of procurement it touches is simply untenable, because it would require IRP to swallow much of the Commission’s other work. In addition to the language cited by PG&E regarding renewable procurement, SB 350 also requires IRPs to “[e]nable each electrical corporation to fulfill its obligation to serve its customers at just and reasonable rates,” “[m]inimize impacts on ratepayers’ bills,” and [e]nsure system and local reliability.”<sup>3</sup> Under PG&E’s reading, these aspects of planning in any other process would be precluded by IRP, which clearly would be untenable.

As discussed below, the PV Program and RAM are designed with the intention to develop streamlined market mechanisms to provide long-term stability and market certainty, which are independent of the planning goals of IRP. The solar megawatts at issue in this proceeding originated with PG&E’s own application to create a solar PV procurement program, eight years ago in 2009, that would create a 5-year market transformation program for solar projects 3-20 MW. Then, again at PG&E’s request, the Commission agreed in 2014 to transfer the remaining MW from the PV Program into RAM and directed that PG&E issue three more solicitations to procure these megawatts. Again, one of the explicit goals was to provide long-term predictability and market certainty sufficient to spur the market to respond with competitive bids and to further reduce solar prices through such predictability and certainty.

If the Commission agrees with PG&E’s reasoning and opts to roll the issue of the remaining RAM procurement – which it has already re-affirmed in three rulings – it would moot efforts by the Commission to create any semblance of market certainty and predictability. It would also reward intransigence by PG&E in complying with clear Commission directives.

The Commission addressed this argument in the Decision (p. 14, *et seq.*) because PG&E made the same argument in opening comments on the PD. The Clean Coalition urges the Commission to stay with this determination in its ruling on the AFR.

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<sup>3</sup> Public Utility Code § 454.52(c).

**ii. PG&E’s arguments applying the requirements of RPS to the RAM solar megawatts ignores the history of the PV Program and the RAM Program**

PG&E also makes a series of misplaced arguments founded on RPS requirements that fail because the PV Program and RAM program were never designed primarily to meet RPS requirements. In fact, the original PV program was expressly authorized as independent of the RPS requirements.

First, the original decision authorizing the PV program “emphasizes that procurement mechanisms and strategies other than the RPS solicitations can help facilitate the expeditious installation and operation of additional renewable facilities in California and bring benefits to ratepayers.”<sup>4</sup> Since the PV Program was independent of RPS requirements, the Commission found it necessary to “find that the PV Program does not interfere or conflict with the RPS program or other renewable energy programs.”<sup>5</sup> That authorizing decision cites Executive Order S-21-09 which orders “RB shall work with the PUC and the CEC to ensure that a regulation adopted under authority of AB 32 to encourage the creation and use of renewable energy sources shall *build upon* the RPS Program.”<sup>6</sup> “Building upon” the RPS program anticipates approaches to reducing GHG emissions above and beyond the RPS program. Finally, PG&E itself in its application cited authorities beyond the RPS standard as justification for the program, including a number of “California and Federal environmental goals including ... federal energy and environmental policy objectives outlined in President Obama’s energy plan.”<sup>7</sup> Clearly, the PV program was designed to promote federal and California policy to decarbonize electricity above and beyond the RPS requirements.

Furthermore, PG&E emphasizes that PG&E has met its RPS requirements, but this is not a changed circumstance, since this was also true in 2010 when the PV program was authorized. The PV program was clearly not part of the RPS program, because just as today, when the PV program was approved by the Commission, “PG&E ha[d] signed enough renewable contracts to

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<sup>4</sup> D.10-04-052 (April 28, 2010) at 15

<sup>5</sup> *Ibid.* at 15

<sup>6</sup> Executive Order S-21-09 (emphasis added).

<sup>7</sup> D.10-04-052 (April 28, 2010) at 5-6

meet its 2010 RPS compliance obligation”<sup>8</sup> Since having met RPS requirements was not a bar to adopting this program then, it is unclear why having met RPS requirements would be a bar now.

Ultimately, the Commission has always been clear that the PV program and RAM are not part of the RPS program and meet additional goals beyond the bulk procurement of renewable energy. Indeed, in its application, “PG&E emphasize[d] that the PV Program is designed ‘to expedite and simplify the regulatory approval process and to facilitate the annual, systematic development of PV resources,’”<sup>9</sup> In addition, the Decision emphasized the range of other goals above and beyond points to a number of other program goals beyond RPS procurement, including “ameliorat[ing] a sub-optimal grid condition,” “efforts to meet system and local reliability requirements” and “state’s overarching mandate to reduce 2030 GHG emissions by 40% below 1990 levels”<sup>10</sup>

Given this history, there is no merit to PG&E’s argument that its customers are being unfairly imposed upon by the Decision’s order to PG&E to procure the solar MW that it has long planned to procure, and including in its procurement forecasts. PG&E argues that it has “no need for any incremental RPS energy to satisfy its RPS procurement”<sup>11</sup> However, since the need for the PV Program and RAM was never solely about meeting RPS goals, the fact that PG&E does not currently have RPS needs does not mean that there is no need for the program. As PG&E acknowledges and the Decision finds, SB 350’s GHG reduction goals are only one reason for ongoing solar procurement beyond PG&E’s more immediate RPS obligations.

Similarly, PG&E’s attempts to apply the standards of the RPS program fails because the PV program and RAM are not solely authorized as RPS procurement. While Public Utilities Code Sections 399.15 and 454.5 do specify requirements for RPS procurement,<sup>12</sup> since these programs are distinct from RPS programs, those requirements do not apply here.

**iii. PG&E’s arguments that the finding that Commission justified the PV Program and RAM by California’s commitment to renewable**

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<sup>8</sup> Ibid at 15.

<sup>9</sup> D.10-04-052 (April 28, 2010) at 5-6

<sup>10</sup> D.17-08-025, at 15-16.

<sup>11</sup> AFR, at 12.

<sup>12</sup> See AFR, at 12



**resources ignores the express justifications in a series of decisions and showing by parties.**

PG&E's complaint that Finding of Fact 6 is not supported by the record essentially ignores the entire record. PG&E claims that "[t]he most logical reading of this phrase is that it refers to the statutory RPS program targets" would make sense only if the various decisions at issue had not consistently cited rationales *other* than meeting RPS goals. PG&E does not dispute the Decision's recounting of this history in which PG&E's PV Program was terminated early and the remaining MW were shifted into the RAM program – all at PG&E's request. This shifting of MW was done with the express order from the Commission to hold three additional solicitations, two of which PG&E has completed. In addition to the authorities discussed above, this order was conducted to provide program stability and policy certainty to developers to maintain and facilitate a small and medium PV market. Thus, PG&E's arguments regarding the RPS requirements are entirely beside the point.

It would be highly damaging to expectations of program stability and policy certainty to allow PG&E to petition to terminate its PV Program early, transfer remaining MW to the RAM program under the express provision that these MW would be procured under RAM, and then allow PG&E to change its mind again and cancel the remaining solicitations. Specifically, the Commission created a 5-year solar procurement program, at PG&E's request, and then terminated this program three years early. The point of the program was to spur wholesale distributed utility solar by providing a stable 5-year program. The Commission ameliorated the damage from early termination by requiring PG&E to shift the remaining MW into the RAM program. It is now thus doubly damaging for PG&E to be seeking to avoid fulfilling its procurement obligations under RAM.

Lastly, PG&E complains that its customers have been singled out, yet this is also not well founded. In fact, the Commission is both providing consistent treatment to PG&E and its customers as it is with similar entities, as seen in the similar denial of SDG&E's petition to cancel its own RAM procurement obligations,<sup>13</sup> and the Commission provides protection for

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<sup>13</sup> Decision 17-09-020, September 28, 2017

customers within each utility service territory through the Power Charge Indifference Adjustment (PCIA). This ensures that the customers who remain with the utility do not end up taking on the long-term financial obligations the utility incurred on behalf of now-departed customers. Examples of such financial obligations specifically include long-term power purchase contracts with independent power producers.

**iv. PG&E’s argument that procuring the 137.5 MW of solar will cost \$445 million is highly inaccurate**

PG&E argues that the Decision “fails to ensure just and reasonable rates for PG&E’s customers” (p. 11) because of the expected costs of procuring the remaining solar megawatts. PG&E states (p. 12): “Mandating incremental PV procurement will impose an estimated \$445 million in costs, largely on PG&E’s bundled customers, when there is no need for that energy in order to ensure compliance with RPS requirements or to ensure reliability.”

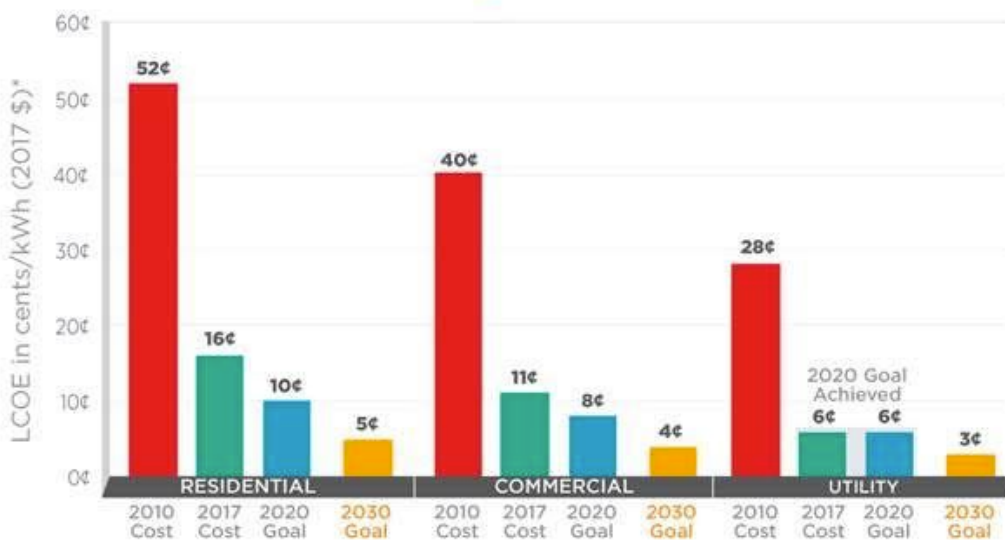
This statement is, however, absurd on its face. The Department of Energy’s SunShot Initiative recently announced<sup>14</sup> that it has achieved, three years early, its goal of utility-scale solar under \$1/watt as an all-in cost, which is less than 1/3 of the cost that PG&E suggests. And this assumes that the RAM projects would be built in 2017, when in actuality they won’t be built until 2020 or later, at which time the all-in costs of solar will be well below \$1/watt. Even assuming 2017 prices, \$1/watt for the remaining 137.5 MW amounts to \$137.5 million = 31% of the suggested \$445 million in procurement costs. This amount translates to levelized costs of electricity at 6 c/kWh and lower, which is far lower than the cost of power from new fossil fuel facilities even at today’s low cost of natural gas (Figure 1).

Figure 1. *SunShot data re solar prices.*

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<sup>14</sup> Online at: <https://www.greentechmedia.com/articles/read/doe-officially-hits-sunshot-1-per-watt-goal-for-utility-scale-solar>.

## SunShot Progress and Goals



\*Levelized cost of electricity (LCOE) progress and targets are calculated based on average U.S. climate and without the ITC or state/local incentives. The residential and commercial goals have been adjusted for inflation from 2010-17.

Data shows that the 3-20 MW solar segment enjoys much the same costs as solar projects that are much larger, so we can be assured that with future RAM projects coming online no sooner than 2020 that the actual costs of these facilities to ratepayers will be substantially less than \$1/watt, or less than 1/3, in total costs, of the \$445 million that PG&E calculates.

Moreover, PG&E presents no data on net costs in comparison to non-solar generation. The absolute cost of the resource doesn't provide much information. What is important from the perspective of P.U. Code section 451, which PG&E cites as its statutory precedent, is the levelized cost of power with respect to alternatives. Without listing any alternative costs, or the net costs of solar power versus alternatives, the proposed \$445 million – more than three times the actual cost than procuring the new solar capacity – provides no good information to the Commission. Accordingly, PG&E's arguments with respect to projected costs of this procurement should be disregarded in their entirety.

- v. **PG&E's Due Process arguments fail because PG&E has had 7 years to respond to the Commission's justifications for the Decision and PG&E fails to understand the nature of assertions in reply comments.**

PG&E makes two distinct argument that PG&E has been deprived due process in not having an opportunity to respond to the justifications for the PV Program and RAM and in not having to opportunity to respond to corrections made by a party in reply comments to errors made in PG&E's comments. Both fail to understand the nature of the record before the Commission.

First, the rationales in the Decisions are far from new, but have been expressed by the Commission in repeated decisions spanning 7 years. It strains credulity for PG&E to claim it has not had "sufficient notice and an opportunity to be heard regarding the Commission's changed justification for the PV procurement from one rooted in RPS need to one based on statewide GHG reduction goals." As discussed above, starting in 2010, the PV procurement was *never* rooted in the RPS procurement. In fact, in 2014, the Commission expressed that the RAM had several justifications, including "provid[ing] IOUs with a tool to procure *other* Commission authorized renewable procurement, such as, any capacity authorized under the so-called green tariffs pending before the Commission pursuant to SB 43 and other system or local needs."<sup>15</sup> The justification for closing the PV program and rolling the remaining capacity into the RAM (at PG&E's request), was to "provide [] a means of offering this remaining capacity to the market while also increasing efficiency by consolidating the Commission's smaller procurement offering."<sup>16</sup> The justification for meeting GHG needs above and beyond RPS has consistently been proffered by the Commission since at least 2010. PG&E has had years to address these issues had it objected. Furthermore, the rationales were offered in D.10-04-052 (April 28, 2010), D.14-11-042 (November 24, 2014), Also, as cited, the Ruling of May 26, 2017 laid out the same rationales. As PG&E notes, PG&E had two opportunities to comment on the proposed decision of July 24, 2017. Given that these rationales have been in plain sight throughout, one wonders just how much more opportunity PG&E would require to meet these unchanged justifications.

Second, PG&E is not denied due process by not being afforded hearing to rebut an assertion made in reply comments. Here, PG&E complains that it has not had an opportunity to rebut an assertion offered by a party in reply comments to correct an assertion by PG&E. This complaint fails on two counts. First, the purpose of reply comments is to "identifying

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<sup>15</sup> D.14-11-042 at 92

<sup>16</sup> D.14-11-042 at 105.

misrepresentations of...fact... in the comments of the other parties.”<sup>17</sup> Here, SEIA identified what it felt was a misrepresentation by PG&E and pointed to the IRP modeling as support for its assertion. As a decision-making body, the Commission is entitled to give weight to such corrections made by one party of assertions by another, as it did here. In citing to SEIA’s comments in footnote 6 rather than to the model itself, the Decision is expressly relying on SEIA’s assertions, rather than introducing new information itself, and accords such assertions only the weight that party assertions of fact are entitled to. This is the process as specified in the CPUC Rules of Procedure and opening reply comments to further rebuttal would result in an endless stream of assertion and counter assertion far beyond the process envisioned Commission rules.

In any event, the accuracy or lack thereof of the modeling in question does not alter the substantively alter the justification for the decision. Even if the offending sentence were stricken from the Decision, the Decision offers a lengthy discussion of how the RAM furthers goals unaffected by the status of the RPS procurement. Thus, even if PG&E were to successfully show that there is no potential procurement that could recover benefits from the expiring Investment Tax Credit, the remaining justification for the Decision would still stand.

## **II. Conclusion**

For the reasons discussed above, the Clean Coalition respectfully urges the Commission to reject PG&E’s motion.

Sincerely,



Tamlyn Hunt

Consulting attorney for the Clean Coalition

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<sup>17</sup> CPUC Rules of Practice and Procedure 14.3

## VERIFICATION

I, Tamlyn Hunt, am the attorney for the Clean Coalition and am the organization's representative for this proceeding. I am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true of my own knowledge, except for those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I am making this verification on the Clean Coalition's behalf because I have unique personal knowledge of certain facts stated in the foregoing document. I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 12, 2017, at Pahoehoe, Hawaii.

A handwritten signature in black ink, appearing to read 'TH', with a long horizontal flourish extending to the right.

Tamlyn Hunt