

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of Pacific Gas and Electric Company (U39E) for Approval of Renewable Energy Credit Purchase Agreements with SPI Corporation and TransAlta Corporation and for Authority to Recover Costs of the Agreements in Rates.

Application 09-10-035
(Filed October 29, 2009)

**MOTION TO DISMISS OF
THE DIVISION OF RATEPAYER ADVOCATES**

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I. INTRODUCTION

Pursuant to Rule 11.2 of Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the Division of Ratepayer Advocates (“DRA”) files this motion respectfully requesting that the Commission dismiss Pacific Gas and Electric’s (“PG&E”) Application for approval of renewable energy credit purchase agreements and for authority to recover costs of the agreements in rates.

On October 29, 2009, PG&E filed Application (“A.”) 09-10-035 with the Commission seeking approval of two separate renewable energy credit (“REC”) purchase and sale agreements (“PSAs”) executed with Sierra Pacific Industries Corporation (“SPI”) of California and TransAlta Corporation of Canada (“TransAlta”). Per the contract structure PG&E will receive only the unbundled or REC-only attributes from the renewable facilities.

The Commission currently does not permit the use of REC-only or unbundled REC transactions for Renewable Portfolio Standard (“RPS”)

compliance, but is actively considering the issue in Rulemaking (“R”) 06-02-012.¹ The Commission has not issued a final decision in R.06-02-012 allowing the use of unbundled RECs for RPS compliance or finalizing the rules to govern unbundled REC transactions. Therefore, DRA respectfully requests that the Commission dismiss the application without prejudice, or in the alternative, hold it in abeyance, pending a final Commission decision in R.06-02-012 on the issue. DRA is also filing a concurrent protest in the event the Commission allows the application to move forward.

II. BACKGROUND

On October 29, 2009, PG&E filed A.09-10-035, seeking Commission approval of two separate REC PSAs executed with SPI and TransAlta. Per the contract structure, PG&E will receive only the unbundled or REC-only attributes from the renewable facilities.

Under the SPI contract, PG&E will obtain RECs derived from the energy produced from four biomass facilities located in California and used to power on-site sawmills. Starting in 2010, PG&E will receive 100 gigawatt hours (GW/h) worth of RECs² per year (the equivalent of 100,000 RECs) for five years and will apply these RECs toward its 20% RPS program compliance goals.³

Similarly, under the TransAlta PSA, PG&E will receive unbundled RECs from 22 three-megawatt wind turbines located in Alberta, Canada. Per the terms and conditions of the contract PG&E will be credited 175 GW/h worth of RECs per year (equal to 175,000 RECs) for five years beginning in 2010 and will apply these RECs to its 20% RPS program compliance goals. PG&E is seeking Commission approval of the application no later than May 20, 2010.

¹ D.06-10-019, Ordering Paragraph 23.

² One REC equals one megawatt hour of renewable energy produced.

³ A.09-10-035 (public version), p. 10.

III. ARGUMENT

A. The Commission Currently does not Allow the Use of Unbundled RECs for RPS Compliance

Current Commission policy does **not** allow the use of REC-only or unbundled REC transactions for RPS compliance. In Decision (“D.”) 06-10-019, the Commission explicitly disallowed the use of unbundled RECs for RPS compliance, stating:

Transactions using unbundled renewable energy credits, as defined in today’s decision, for RPS compliance **shall not be allowed** at this time.⁴

The Commission has maintained this policy in recent decisions. In D.09-06-018, the decision conditionally accepting the 2009 RPS Procurement Plans of the Investor Owned Utilities (IOU), the Commission stated:

Plans **should not include** use of TRECs to meet RPS Program targets (even subject to conditions) until the Commission has actually authorized the use of TRECs and clarified the conditions upon which TRECs may or may not be used.⁵

The Commission’s discussion of TRECs in the above decision clearly states that although progress has been made on the issue, the analysis of TRECs for RPS compliance is not complete and thus a ruling on the issue should not be made prematurely before all the issues have been properly vetted.

Similarly, Resolution E-4275, issued by the Commission on October 15, 2009, approved with modifications PG&E’s purchase power agreement (“PPA”) with Big Valley Power, LLC, an existing biomass facility located in California. PG&E’s Advice Letter sought approval of an RPS PPA with Big Valley to replace its current Qualifying Facility (“QF”) contract with the facility. The Resolution

⁴ D.06-10-019 Ordering Paragraph No. 23 (emphasis added).

⁵ D.09-06-018, Decision Conditionally Accepting 2009 Renewables Portfolio Standard Procurement Plans and Integrated Resource Plan Supplements, p. 77 (emphasis added).

ordered PG&E to file an amended PPA “eliminating the provisions conveying unbundled renewable energy credits to PG&E.”⁶ The Commission further stated:

Because PG&E would only receive the Green Attributes [RECs] associated with this generation, while the underlying energy is used onsite or at the saw mill, this constitutes an unbundled REC transaction. Under the current RPS rules [footnote references D.06-10-019, Ordering Paragraph 23], **PG&E is not authorized to enter into an unbundled REC transaction for the purposes of RPS compliance.**⁷

Despite recent Commission decisions maintaining the current policy not allowing the use of unbundled RECs for RPS compliance (including the denial of an earlier request by PG&E itself) PG&E argues that the application should move ahead because “ ... the Legislature and the Commission have repeatedly expressed interesting the use of REC transactions for RPS compliance purpose.”⁸ However, “interest” by the Commission or the Legislature does not equate to an affirmative policy allowing the use of unbundled RECs for RPS compliance.

The Commission is presently considering the use of unbundled RECs for RPS compliance in R.06-02-012, but has not issued a final decision on the issue. Since the use of unbundled RECs for RPS compliance is not allowed at this time, DRA respectfully requests that the Commission dismiss PG&E’s application without prejudice, or in the alternative, hold it in abeyance, pending a final Commission decision on the issue in R.06-02-012. Once the Commission has issued such a decision, PG&E can seek approval of the SPI and TransAlta contracts.

⁶ Resolution E-4275, p. 1.

⁷ Id., p. 9 (emphasis added).

⁸ Id. at 2.

B. PG&E's Application is Premature

PG&E's application is premature because the Commission is actively considering the issue of unbundled RECs for RPS compliance in R.06-02-012. In addition to evaluating the permissibility of using unbundled RECs for RPS compliance in R.06-02-012, the Commission has also considered various relevant implementation issues including: (1) whether to impose limits on the use of tradable RECs, (2) price caps, (3) market considerations, (4) cost control and recovery, (5) compliance, and (6) reporting.²

Furthermore, R.06-02-012 is also considering relevant legislation passed since the issuance of D.06-10-019. The California Legislature amended portions of the RPS statute and expressly authorized the CPUC to allow use of unbundled RECs for RPS compliance in 2006, subject to some limitations on their use.¹⁰ Additionally, assigned Administrative Law Judge (ALJ) Simon released a revised proposed decision on March 26, 2009.¹¹ The Commission has yet to adopt the proposed decision.

Allowing PG&E to move forward with its application in the absence of a final decision regarding the use of unbundled RECs for RPS compliance would encourage the circumvention of Commission process and open the floodgates to similar applications from the other IOUs.

No party should preempt the Commission's deliberation regarding the use of unbundled RECs for RPS compliance by filing an application or any other request for approval of unbundled REC transactions. PG&E's intention may be to preserve the transactions it believes to be beneficial to customers, but filing an

² See generally, R.06-02-012, Proposed Decision Authorizing Use of Renewable Energy Credits for Compliance with the California Renewables Portfolio Standard, p. 3, (March 26, 2009).

¹⁰ See SB 107 (Sher); Stats, 2006, ch. 464 (chaptered September 26, 2006, effective January 1, 2007).

¹¹ R.06-02-012, Proposed Decision Authorizing Use of Renewable Energy Credits for Compliance with the California Renewables Portfolio Standard, p. 3, (March 26, 2009).

application prior to a Commission decision on the use of unbundled TRECs for RPS compliance is not an appropriate action.

R.06-02-012 is the appropriate proceeding for the Commission to render **any** decision on unbundled REC transactions, in order to ensure that the rules governing the usage of unbundled RECs are equitably applied to all REC transactions and for all regulated entities. Accordingly, DRA respectfully requests that the Commission dismiss the application without prejudice, or in the alternative, hold it in abeyance, pending a final Commission decision in R.06-02-012 as to the use of unbundled RECs for RPS compliance.

V. CONCLUSION

Although the Commission is presently considering the use of unbundled RECs for RPS compliance in R.06-02-012, it has not issued a final decision on the issue or finalized the rules to govern such unbundled REC transactions. Therefore, PG&E's application is premature and requests relief that is not currently allowed by the Commission. Accordingly, DRA respectfully requests that the Commission dismiss the application without prejudice, or in the alternative, hold it in abeyance, pending a final Commission decision in R.06-02-012 as to the use of unbundled RECs for RPS compliance.

Respectfully submitted,

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December 7, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**MOTION TO DISMISS OF THE DIVISION OF RATEPAYER ADVOCATES**” to each party of record on the official service list in **A.09-10-035** via electronic mail.

Parties who did not provide an electronic mail address, were served by U.S. mail with postage prepaid listed on the official service list.

Executed on December 7, 2009 at San Francisco, California.

/s/ ROSCELLA V. GONZALEZ
Roscella V. Gonzalez

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A.09-10-035

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