Decision _____________

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U39E) for Expedited Approval of the Power Purchase Agreement with Nevada Irrigation District and for Authority to Recover the Costs of the Agreement In Rates.	Application 12-06-014 (Filed June 20, 2012)

DECISION APPROVING APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY FOR APPROVAL OF ITS POWER PURCHASE AGREEMENT WITH NEVADA IRRIGATION DISTRICT AND FOR AUTHORITY TO RECOVER THE COSTS OF THE AGREEMENT IN RATES

1. Summary

Today's decision approves a Power Purchase Agreement between Pacific Gas and Electric Company (PG&E) and Nevada Irrigation District, grants PG&E authority to recover the costs of the agreement in rates, and provides for confidential treatment of certain documents that support the application.

2. Background

On June 20, 2012, Pacific Gas and Electric Company (PG&E) filed an Application for approval of the Power Purchase Agreement (PPA) it entered into with Nevada Irrigation District (NID) and for authority to recover the costs of the agreement in rates (Application). No protests were filed and the application is unopposed.

The PPA provides for PG&E's purchase of generation and capacity from four hydroelectric powerhouses for a 20-year term. Specifically, the PPA procures energy, capacity, capacity attributes, ancillary services (from Chicago Park and Dutch Flat Powerhouse No. 2), and green attributes (from Bowman, Rollins and Dutch Flat Powerhouse No.2) in the California Independent System Operator (CAISO) defined capacity-deficient South of Palermo sub-area within the Sierra Local area. The renewable generation procured from the Renewables Portfolio Standard (RPS) eligible facilities under the 20-year contract would be particularly valuable if, as intended, it falls into the RPS portfolio content category for which the target is the highest.[1] PG&E requests approval of the PPA by application, rather than the advice letter process provided for RPS PPAs, because approximately half of the resource is RPS-eligible[2] and the other half is large hydro, and because two RPS non-modifiable terms have been modified.

The four powerhouses above are part of NID's Yuba-Bear Hydroelectric Project (YB Project). The YB Project is hydrologically linked to PG&E's 190 Megawatt (MW) Drum-Spaulding (DS) Project, which is comprised, in part, of 12 powerhouses located both upstream and downstream of the NID powerhouses. PG&E asserts that it and NID's personnel have established working relationships and a mutual understanding of both of their respective systems and their integration. PG&E currently receives power from the YB Project under two long-term agreements with NID. The first agreement is the Yuba-Bear Consolidated Contract between PG&E and NID which governs procurement from the Chicago Park, Dutch Flat No. 2 and Rollins Powerhouses

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[1] *See* Pub. Util. Code § 399.16(b),(c). All statutory citations are to the California Public Utilities Code unless otherwise stated.

[2] The California Energy Commission determines the RPS eligibility of generation facilities.

and expires in July 2013.[3] The second is a 30-year Qualifying Facility Standard Offer 4 (SO 4) contract for the Bowman Powerhouse that expires in December 2016. The output of all four powerhouses within the YB Project will be covered by the new PPA. PG&E anticipates that the current Yuba-Bear Water Operations Contract, which coordinates the operations of and water conveyance through the YB Project and the DS Project will be replaced upon its expiration by a Coordinated Operations and Water Conveyance Agreement. PG&E further states that it and NID are currently negotiating the terms and conditions of such an agreement with the goal of coordinating the planning and operation of the two projects as needed, to manage the supply of water for generation by the two hydroelectric systems and to meet NID's consumptive demands.

3. Discussion

3.1. Project Description

As noted above, there are four powerhouses within the YB Project owned and operated by NID. NID is licensed by the Federal Energy Regulatory Commission (FERC) to operate each powerhouse under the terms of a 50-year agreement. The current agreement is scheduled to expire on April 30, 2013.[4] The output of all four powerhouses within the YB Project will be covered by the new PPA.

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[3] The Yuba-Bear Consolidate Contract is a two-part contract consisting of the Yuba-Bear Project Power Purchase Contract, which is Part I, and the Yuba-Bear Water Operation Contract, which is Part II. The Water Operation Contract governs the coordinated operations of and water conveyance between the YB Project and PG&E's Drum-Spaulding Project.

[4] NID is currently in the process of obtaining a successor license from FERC which is expected to have a term of at least 30 years. NID's obtaining a successor license is a condition precedent to the Agreement.

3.2. PPA Terms

PG&E currently procures the output from the YB Project under the YB Project Power Purchase Contract and the Bowman Powerhouse SO 4 contract.[5] The PPA consolidates the purchase of power under these two contracts into a single new agreement between PG&E and NID.

As part of its application, PG&E provides a description of the major terms of the PPA.[6] In addition to force majeure, termination, and default provisions the PPA provides the following terms:

- The PPA is a "hybrid" contract for dispatch rights and output from the capacity from three RPS-eligible resources and one non-RPS eligible hydro resource.
- PG&E will purchase all Products from the YB Project. Product includes all of the following and similar attributes – energy, capacity, capacity attributes, ancillary services from Chicago Park and Dutch Flat Powerhouse No. 2, and green attributes from Bowman, Rollins and Dutch Flat Powerhouse No.2.
- The PPA will become effective after California Public Utilities Commission (Commission) approval and the Initial Energy Delivery Date is July 1, 2013, subject to the satisfaction of all Conditions Precedent.
- Initial Energy Delivery Data for Chicago Park, Dutch Flat No. 2 and Rollins Powerhouse is July 1, 2013.[7] The Conversion Date,

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[5] These two power purchase agreements will expire in 2012 and 2016 respectively.

[6] The terms that PG&E claims are market-sensitive and/or proprietary are described in Confidential Appendix A of the Application.

[7] Deliveries from the Chicago Park, Dutch Flat, and Rollins Powerhouses under the PPA will begin in 2013 upon the expiration of the YB Project Power Purchase Contract, subject to the satisfaction of all the conditions precedent as required in the PPA.

i.e. the "Start of Delivery Term for Bowman Powerhouse" is January 1, 2017.[8]

- NID will pay for interconnection, obtain and comply with the requirements of the CAISO Large Generator Interconnection Plan or other such agreement with the Participating Transmission Operator, execute a CAISO Participating Generator Agreement, and cause interconnection and metering facilities to be maintained throughout the Delivery Term.
- PG&E is the Scheduling Coordinator (SC) for the YB Project; PG&E also has the option to designate a third-party SC, but must give prior notice to NID of such designation.
- The delivery term is 20 Contract Years from the Initial Energy Delivery Date.
- NID must perform an Initial Capacity Test and an Initial Efficiency Test prior to the Initial energy Delivery Date. PG&E has the option to require NID to perform Capacity and Efficiency Testing during the Delivery Term. Adjustments to payments and contract capacity can result depending on the results of these tests.
- Losses due to congestion from the delivery point to load center are born by PG&E. If NID is exempted from or receives any refunds, credits or benefits from CAISO for congestion charges or Congestion Revenue Rights, NID must pass on those reductions to PG&E.
- As SC, PG&E is responsible for securing CAISO approval of outages for NID. Seller is required to provide PG&E with notification sufficiently in advance to comply with CAISO requirements for forced and planned outages. Non-compliance may result in adjustments to payment and contract capacity.
- NID must reduce powerhouse output during any system emergency Curtailment Period per CAISO or participating Transmission Owner instructions.

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[8] Deliveries from the Bowman Powerhouse under the PPA are expected to begin in 2016 upon the expiration of the SO 4 contract.

- NID will ensure that all Western Renewable Energy Generation Information System Certificates associated with Delivered Energy from the aforementioned powerhouse resources are transferred to PG&E to satisfy RPS requirements.
- If at any time after the execution date the conditions of NID's new long-term FERC license decrease the YB Project's expected generation by more than a pre-established threshold, then PG&E can calculate an appropriate reduction in payment.
- If a new powerhouse is completed during the delivery term, NID must convey to PG&E NID's first offer to sell all Products from the new powerhouse under the same terms and conditions as the PPA, except for contract price, which must be quoted by Seller in the first offer. The parties then have ninety days to enter into a PPA or amend the existing PPA to include the new powerhouse, subject to Commission approval. If PG&E refuses Seller's first offer, NID may offer the output of the new powerhouse to a third party, provided that the material terms and conditions of any agreement with a third party are no more favorable to NID compared to its first offer to PG&E.
- The delivery term may be extended for another ten years at the parties option provided that NID has requested the extension at least two years before the end of the contract terms, parties agree to the subsequent price and delivery term within six months of the request, and the amended PPA is approved by the Commission.

3.3. Ratepayer Benefits

According to PG&E, assuming average hydrological conditions over the term of the agreement, the cost on a dollar per megawatt hour (MWh) basis would equate to a price below the current 2011 Market Price Referent (MPR).[9] PG&E goes on to assert that approval of the contract will produce additional

[9] Because the Commission's current RPS decision making uses the Least Cost, Best Fit (LCBF) analysis, the cost-reasonableness determination herein is based on the LCBF rather than the MPR analysis.

non-monetary benefits as well. In particular, PG&E notes that because it will retain the right to capacity and generation from the YB Project (rather than allowing a third party to schedule energy deliveries), PG&E can plan, optimize, and schedule water usage so that the cost benefits of the two hydro systems are maximized. PG&E further asserts that because the YB Project is located in an area that has been identified by the CAISO as capacity deficient to meet the North American Electric Corporation reliability standards, the project is uniquely qualified to support local reliability needs. Next, PG&E points out that the Chicago Park and Dutch Flat No.2 Powerhouses, over which the PPA gives PG&E scheduling rights, can provide spinning and non-spinning reserves and have relatively high ramp rates that can be used to respond to dispatch instructions as needed. Finally, because the project provides generation from eligible renewable resources, RPS-eligible project deliveries should count toward PG&E's present and future RPS obligations.[10]

3.4. Prior Authority

3.4.1. Commission Decisions

PG&E states that it intends to credit generation from the RPS-eligible powerhouses toward its RPS target on claims that the PPA satisfies all of the criteria used by the Commission to conclude that utility procurement of a renewable energy resource is reasonable.[11] PG&E argues that the project satisfies the market valuation and portfolio fit criteria of the least-cost, best-fit model adopted in Decision (D.) 04-07-029. With regard to market valuation, PG&E

[10] Nothing in this decision should be read to allow generation from a resource that is not RPS-eligible to count toward PG&E's RPS compliance obligations.

[11] PG&E's RPS methodology is set forth in § 399.15(a).

compares the present value of the contract payment stream with the present value of the product's market value to determine the benefit (positive or negative) from the procurement of the resource and a net market value for the transaction. According to PG&E, the specific values of the YB Project constitute market-sensitive information. PG&E has provided us this information as well a more detailed analysis of the net market value of the PPA in a confidential exhibit. Based on this information, we conclude that the project satisfies the least-cost, best-fit criteria set forth in D.04-07-029.

PG&E also contends that the PPA provides a good match to its portfolio because deliveries from the YB Project are already integrated into PG&E's portfolio, are dispatchable, provide ancillary services, and occur in a capacity-deficient local area. We find these arguments persuasive, especially when taken in conjunction with the analysis of the YB Project's portfolio fit which PG&E provides in its Confidential Appendix A.

3.4.2. PG&E's Adopted RPS Procurement Plan

PG&E's 2011 RPS Procurement Plan was filed on May 4, 2011, in compliance with D.11-04-030 which was approved on April 14, 2011.[12] One goal of PG&E's 2011 RPS Plan is to procure deliveries from eligible renewable energy resources totaling approximately one to two percent of PG&E's annual retail sales volume, or 800 to 1,600 Gigawatt-hours (GWh) per year. Procurement from the three smaller powerhouses (133.3 GWh per year) is procurement from an RPS-eligible renewable energy resource.[13]

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[12] The Commission authorized PG&E to procure additional RPS resources in D.12-11-016, which approved PG&E's 2012 RPS Procurement Plan.

[13] Procurement from the three smaller powerhouses totals less than 30 MW.

3.4.3. RPS Standard Terms and Conditions

Contracts for the purchase of electricity from eligible renewable energy resources must include the standard terms and conditions (STCs) set forth in D.08-04-009, and revised in D.08-08-028 and D.11-01-025. Generally, the purpose of the non-modifiable terms is to ensure that the conditions for counting the purchased power toward the buyer's RPS obligation are met. Here two standard terms and conditions have been modified.[14] PG&E claims this modification was made so as to avoid any mischaracterization of the Chicago Park Powerhouse facility as a renewable energy resource. The PPA procures generation from the Chicago Park Powerhouse, a large hydro facility, as well as RPS-eligible small hydro facilities. So as to explain that the output of the Chicago Park Powerhouse is not being procured for compliance with PG&E's RPS obligations, or that the Chicago Park Powerhouse is not an eligible renewable resource, PG&E modified two standard terms and conditions.

The first affected term is STC 1 which includes a finding that any procurement under the PPA will meet the Buyer's RPS procurement obligation. Since the Chicago Park Powerhouse is not RPS-eligible, the sentence, "[t]o the extent procurement pursuant to this Agreement is from the Chicago Park Powerhouse, subsection (b) above shall not apply" has been inserted at the end of the non-modifiable term. The second affected term is STC 6, under which "Seller" warrants that the "Project" qualifies and is certified by the California Energy Commission as an Eligible Renewable Energy Resource, and that the "Project's" output delivered to Buyer qualifies under the requirements of the

[14] The modifiable and non-modifiable standard terms for RPS contracts are highlighted in the version of the PPA provided in Confidential Appendix B.

RPS.[15] The Chicago Park Powerhouse falls under the term "Project" in the PPA. According to PG&E, using some other term to distinguish this facility from the other three powerhouses would have caused confusion for plant operators and others who commonly refer to both the operating agreement and the PPA. The parties' agreed-upon solution was for the seller to warrant only that the Eligible Renewable Resource Powerhouse resources (which do not include the Chicago Powerhouse resources) are RPS-eligible for the term of the PPA.

While we are reluctant to excuse a party's non-compliance with the STCs, we do not favor form over function. Here, PG&E wisely provides a justification for its deviation from the STCs and allows for a more thorough review by proffering the modified terms as part of an application rather than an advice letter. Based on our review it appears deviation from the STCs was made so as to clarify which parts of the project were appropriately within our RPS rules. While we believe more careful drafting of the initial contract could have produced a document that complies with the STC language we require and makes clear which portions of the project are (not) RPS eligible, we will not require the parties to go back to the drawing board to achieve this result, in this instance. We will therefore permit deviation from the STCs in this instance.

3.4.4. Bilateral RPS Contract Rules

As set forth in D.09-06-050:

> [L]ong-term bilateral contracts should be reviewed according to the same processes and standards as contracts that come through a solicitation." This includes review by the utility's Procurement Review Group and its Independent Evaluator. This requires only one adaptation to the current

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[15] This term appears in § 10.2(b) of the PPA.

> process. The MPR by its terms applies only to long-term contracts that come through a solicitation. It makes no sense, however, to develop an independent price evaluation tool for long-term bilateral contracts that are otherwise the same as long-term contracts that are the result of a solicitation. The MPR should therefore be used as a price benchmark for the evaluation of long-term bilateral contracts. In all other respects, including evaluation of price reasonableness, Energy Division's contract review processes should apply equally to bilateral contracts and contracts from a solicitation.

PG&E asserts that the cost of power procured under the PPA is confidential, market-sensitive information which is protected from public disclosure by agreement of the parties. In addition to providing complete PPA cost information in Confidential Appendix A to the application, PG&E notes that the PPA cost on a $/MWh basis is below that 2011 MPR established by Commission Resolution E-4442.[16]

3.4.5. Interim Emissions Performance Standard

D.07-01-039 implemented the California Emission Performance Standard (EPS). As set forth in D.07-01-039, "[t]he EPS applies to every electrical corporation, electric service provider, or community choice aggregator serving end-use customers in California."[17] The EPS applies to baseload generation, and the requirement to comply with the EPS is triggered only if there is a long-term financial commitment by a load serving entity. PG&E correctly notes that baseload generation means electricity generation from a power plant with an

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[16] This assumes average year hydrological conditions.

[17] *See* D.07-01-039, Attachment 7.

annualized plant capacity factor of at least 60%.[18] Here the facts of record show that the annualized plant capacity factor is less than 60%. Therefore the EPS does not apply.

3.4.6. The Bundled Procurement

The 38 MW capacity of the Chicago Park Powerhouse that is not being procured pursuant to Commission approved Energy Efficiency or Demand Response programs, the RPS program, Combined Heat and Power program or the various distributed generation programs is subject to the "electric capacity procurement limits and ratable rates" in PG&E's Bundled Procurement Plan.[19] According to PG&E, "[t]he non-preferred capacity procurement under the PPA will not cause PG&E to exceed its electric capacity procurement limits in any delivery year associated with procurement that becomes effective in 2013.[20]

3.4.7. The Independent Evaluator

Consistent with D.09-06-050 the PPA was reviewed by an independent evaluator. The Independent Evaluator for PG&E's 2011 RPS Solicitation was Arroyo Seco Consulting. Arroyo Seco Consulting concluded that the negotiations with NID were conducted fairly, and based on the moderate to high valuation, low contract price, high viability, and moderate portfolio fit, the PPA merits Commission approval. Arroyo Seco Consulting's findings are contained in Appendix C and Confidential Appendix C-1.

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[18] Section 1(a) of the Adopted Interim EPS Rules provides that: "*Baseload generation* means electricity generation from a powerplant that is designed and intended to provide electricity at an annualized plant capacity factor of at least 60 percent …."

[19] These rates were adopted in D.12-01-033 and implements by PG&E Advice Letter 4026-E, as supplemented by Advice Letter 4206-E-A on May 20, 2012.

[20] *See* Application at 23.

3.4.8. Conclusion

For the reasons set forth above, we will approve the PPA between PG&E and NID and grant PG&E authority to recover the costs of the agreement in rates, without modification, subject to Commission review of PG&E's administration of the PPA.

4. Request for Confidential Treatment

Concurrent with its application, PG&E filed a separate motion requesting a protective order for what it claims is confidential market sensitive information. In particular, PG&E asks for a protective order that encompasses three appendices. The first is Confidential Appendix A which is a contract summary and analysis evaluating the benefits of the PPA. Next is Confidential Appendix B-1 which is the PPA that contains confidential market-sensitive terms. Finally, there's Confidential Appendix C-1 which is the confidential version of the Independent Evaluator's Report that includes market-sensitive terms concerning the fairness of PG&E's negotiations with NID and the merit of the transaction for Commission Approval.

The Commission, in implementing Public Utilities Code Section 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, including price, is confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their affiliates, which are public.

PG&E asserts that information in Appendix A, Appendix B-1, and Appendix C-1, is confidential market sensitive information. We agree with

PG&E and will place these documents under seal as set forth in the ordering paragraphs below.

5. Categorization and Need for Hearings

In Resolution ALJ 176-3297 dated July 12, 2012, the Commission preliminarily categorized this application as Ratesetting, and preliminarily determined that hearings were necessary. Because no hearings are required as a result to the parties' settlement of all issues in dispute, the hearings determination is changed to state that no evidentiary hearings are necessary.

6. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 311(g)(2) of the Pub. Util. Code and Rule 14(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

7. Assignment of Proceeding

The assigned Commissioner is Michel P. Florio and the assigned Administrative Law Judge is Darwin E. Farrar.

Findings of Fact

1. NID is licensed by the FERC to operate four powerhouses within the YB Project under the terms of a 50-year agreement.
2. NID is currently in the process of obtaining a successor license from FERC which is expected to have a term of at least 30 years.
3. The PPA is a "hybrid" contract for dispatch rights and generic output and resource adequacy from the capacity from three RPS-eligible resources and one non-RPS eligible hydro resource, as well as Renewable Energy credits from the three RPS-eligible resources.

4. The PPA procures RA capacity in the California CAISO - defined capacity-deficient South of Palermo sub-area within the Sierra Local Area.

5. The PPA satisfies the criteria used by the Commission to conclude that utility procurement of a renewable energy resource is reasonable.

6. Approximately half of the resource at issue in the Agreement is RPS-eligible and the other half is large hydro.

7. Two RPS non-modifiable terms have been modified.

8. The YB Project is hydrologically linked to PG&E's 190 MW DS Project.

9. The output of all four powerhouses within the YB Project will be covered by the new PPA.

10. PG&E currently procures the output from the YB Project under the YB Project Power Purchase Contract and the Bowman Powerhouse SO 4 contract.

11. Assuming average hydrological conditions over the term of the agreement, the cost of power on a $/MWh basis would equate to a price below the current 2011 MPR.

12. PG&E's 2011 RPS Procurement Plan was filed on May 4, 2011, in compliance with D.11-04-030, and approved on May 11, 2011.

13. One goal of PG&E's 2011 RPS Plan is to procure deliveries from eligible renewable energy resources totaling approximately one to two percent of PG&E's annual retail sales volume, or 800 to 1,600 GWh per year.

Conclusions of Law

1. NID's obtaining a successor license from FERC is a condition precedent to the Agreement.

2. The project's value is reasonable based on the market valuation and portfolio fit criteria set forth in the least-cost, best-fit model adopted in D.04-07-029.

3. RPS eligible project deliveries should count toward PG&E's RPS obligations.

4. Contracts for the purchase of electricity from eligible renewable energy resources must include the STCs set forth in D.08-04-009, and revised in D.08-08-028 and D.11-01-025.

5. We will permit deviation from the STCs here because PG&E provides a justification for its deviation that shows its intention to comply with our rules and policies, and because PG&E provides for a more thorough review by proffering the modified terms as part of an application rather than an advice letter.

6. The PPA is not a form of covered procurement subject to the EPS because the forecast annualized capacity factor of each of the hydroelectric facilities is less than 60%.

7. Other than the 38 MW capacity of the Chicago Park Powerhouse that is not being procured pursuant to Commission approved Energy Efficiency or Demaned Response programs, the RPS program, or the various distributed generation programs, procurement pursuant to the PPA is, subject to verification by the California Energy Commission, procurement from eligible renewable energy resources for purposes of determining PG&E's compliance with any obligation that it may have.

8. Hearings are not necessary.

O R D E R

IT IS ORDERED that:

1. The Power Purchase Agreement between the Pacific Gas and Electric Company and the Nevada Irrigation District is approved.

2. Pacific Gas and Electric Company is granted authority to recover the costs of the agreement in rates, subject to a review of Pacific Gas and Electric Company's administration of the power purchase agreement.

3. No finding of fact or conclusion of law in this decision allows generation from any resource that is not an eligible renewable energy resource under the California renewables portfolio standard (RPS) to be counted toward any obligation of Pacific Gas and Electric Company under the RPS

4. Pacific Gas and Electric Company's request for confidential treatment of Confidential Appendix A (a contract summary and analysis evaluating the benefits of the Power Purchase Agreement (PPA)), Confidential Appendix B-1 (the PPA), and Confidential Appendix C-1 (the confidential version of the Independent Evaluator's Report) is granted. These documents shall remain under seal for three years from the effective date of this order. During that time the documents shall not be made accessible or disclosed to anyone other than Commission staff, except pursuant to an order or on further ruling of the Commission, the assigned Administrative Law Judge, or the Administrative Law Judge then designated as the Law and Motion Judge.

5. The hearing determination is changed – no hearings are necessary.

6. Application 12-06-014 is closed.

The order is effective today.

Dated ____________________________, at San Francisco, California.

Appendix

Term	Acronym
Pacific Gas & Electric Company	PG&E
Power Purchase Agreement	PPA
Nevada Irrigation District	NID
Resource Adequacy	RA
California Independent System Operator	CAISO
Renewables Portfolio Standard	RPS
Yuba-Bear Hydroelectric Project	YB Project
Megawatt	MW
Drum-Spaulding	DS
Qualifying Facility Standard Offer 4	SO4
Federal Energy Regulatory Commission	FERC
California Public Utilities Commission	Commission
Scheduling Coordinator	SC
Megawatt hour	MWh
Market Price Referent	MPR
Decision	D.
Gigawatts	GW
Standard Terms and Conditions	STCs
California Emission Performance Standard	EPS

(END OF APPENDIX)