

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of Amendments of its Hanford, Henrietta, and Tracy Power Purchase and Sale Agreements with GWF Energy, LLC and for Authority to Recover the Costs of the Amended Agreement in Rates (U39E)

Application 13-12-006
(Filed December 12, 2013)

DECISION GRANTING APPROVAL OF AMENDMENTS TO PACIFIC GAS AND ELECTRIC COMPANY'S HANFORD, HENRIETTA, AND TRACY POWER PURCHASE AND SALE AGREEMENTS WITH GWF ENERGY, LLC

1. Summary

This decision approves Pacific Gas and Electric Company's amendments to its Hanford, Henrietta, and Tracy Power Purchase and Sale Agreements with GWF Energy, LLC, authorizes the costs of the amended agreements to be recovered in rates through the utility's Energy Resource Recovery Account and closes the proceeding.

2. Background

On December 12, 2013, Pacific Gas and Electric Company (PG&E) filed an application requesting the Commission's approval of its proposed amendments (Amendments) to three Power Purchase and Sale Agreements (PPAs) between PG&E and GWF Energy, LLC (GWF). GWF delivers energy and capacity from its

Hanford and Henrietta facilities, which are located in Hanford and Lemoore, California, respectively, to PG&E pursuant to the Hanford and Henrietta PPAs.¹ Both of those PPAs are dated July 20, 2011, have ten-year terms, and were approved by Commission Decision (D.) 12-02-037. GWF also delivers energy and capacity to PG&E from its Tracy facility located near Tracy, California. The Tracy PPA² is an existing ten-year agreement which resulted from PG&E's novation of its pre-existing procurement of generation under a Department of Water Resources agreement. The novation was approved by D.10-07-042.

Office of Ratepayer Advocates (ORA) filed a response to this application noting that "ORA supports PG&E's request and recommends that the Commission approve PG&E's request."³ ORA further noted, that upon its review of all of the PG&E's filings in this proceeding, including the confidential filings, ORA believes the amended PPAs do not appear to "increase customer costs, and would likely lower ratepayer risk by clarifying Assembly Bill (AB) 32 compliance cost requirements."⁴ No party filed a protest to this application.

PG&E simultaneously filed a Motion for Leave to File Confidential Material Under Seal in order to preserve the confidentiality of the Amendments and other market sensitive information in them, including the original PPAs and the Amendments.

¹ The Hanford and Henrietta PPAs were approved in February of 2012, and both facilities began deliveries under the PPAs on January 1, 2013.

² The Tracy PPA was approved in July of 2010, and GWF began deliveries under its Tracy PPA on November 1, 2012.

³ ORA Response dated January 15, 2014 at 4.

⁴ *Id.* at 3.

3. Issues Before the Commission

The following issues are considered in this proceeding:

- a. Whether the Amendments proposed in this Application are reasonable and in the best interest of PG&E's customers and thus should be approved by the Commission; and
- b. Whether PG&E should be authorized to recover costs incurred pursuant to the Amended PPAs in its Energy Resource Recovery Account (ERRA).

4. Discussion and Analysis**4.1. Reasonableness of the Amendments**

PG&E requests approval of the Amendments to the PPAs between PG&E and GWF for the Hanford, Henrietta and Tracy facilities. The original PPAs for those facilities contain some provisions that allocate the costs and responsibilities associated with AB 32 compliance between the parties but do not include provisions that specifically set forth the equations or identify source data to be used to determine AB 32 compliance cost compensation. Therefore, PG&E contends the clarifying Amendments to the PPAs are needed to eliminate certain ambiguity and to prevent future disputes regarding the PPAs.

The Amendments and the PPAs have been filed as confidential appendices to the application. As such, the specific terms of the Amendments are confidential but are described in greater detail in the application.⁵ The application and all of its appendices have been reviewed. In general, the Amendments clarify the AB 32-related calculations, list sources of data inputs, add detail to the methodology for determining AB 32-related compensation, and specify the process for paying these costs. As further discussed below, we find

⁵ Application, Confidential Appendix A.1.

these Amendments reasonable and in the public interest, and conclude that they should be adopted.

The Commission encourages the utilities and third-party generators to allocate and otherwise clearly address AB 32 compliance costs and risks through bilateral agreements wherever feasible to minimize or avoid future disputes. For instance, in D.12-04-046, the Commission specifically directed “the utilities to renegotiate the contracts at issue so that they reasonably address the allocation of AB 32 compliance costs.”⁶ In D.11-04-007, the Commission directed the utilities to file applications seeking approval of contract amendments for non-Renewable Portfolio Standard (RPS)-eligible contracts.⁷

Consistent with those policies and prior directives, the Commission recently issued several decisions approving amendments to other PPAs that clarified the parties’ responsibilities for AB 32 compliance costs⁸ to avoid any related future disputes.⁹

⁶ *Id.* at 61.

⁷ *Id.* at 7-8.

⁸ D.13-01-003 and D.13-05-005.

⁹ *See, e.g.*, D.13-01-003 (approving an amendment to PPA which reflected the parties’ agreement that PG&E would provide compensation to the third-party generator for certain defined CO2 costs in exchange for a contract price reduction); D.13-05-005 (approving an amendment to PPA which reflected the parties’ agreement that PG&E would provide compensation to the third-party generator toward its AB 32 compliance costs in exchange for reduced capacity payments); and D.13-08-009 (approving an amendment to PPA which reflected additional provisions addressing previously omitted equations and source data required to determine compliance cost compensation and designed solely to clarify original provisions concerning AB 32 compliance costs.)

Upon review, we find that PG&E has complied with Commission's policies and prior directives by pursuing and negotiating modifications to its Hanford, Henrietta, and Tracy PPAs with GWF.¹⁰ The instant Amendments are comparable to AB 32-related provisions in other PPAs we recently approved and found reasonable and in the public interest.¹¹ We also find the narrow scope, purpose and effect of the instant Amendments lead to no measureable change in the PPAs in terms of costs or benefits to ratepayers. Instead, we find the clarity added by these Amendments will likely reduce potential for future litigation concerning those terms and would trickle down to the ratepayers as benefits in the form of avoided litigation costs.

For all these reasons, we find these Amendments reasonable and in the public interest. The requested Amendments therefore should be approved.

4.2. Cost Recovery

PG&E requests that the Commission authorize PG&E to recover costs incurred pursuant to the Amendments through a debit to its ERRA, subject only to the Commission's review of the reasonableness of PG&E's administration of the amended PPAs. The Commission recently examined the propriety of PG&E's recovery of costs incurred pursuant to its PPAs (approved by the Commission) in ERRA and concluded that PG&E should recover those costs through PG&E's

¹⁰ As part of its pre-application filing diligence, PG&E states that it informed the Commission's Procurement Review Group (PRG) of the Amendments through an email, requesting written comments or questions. PG&E claims that no member of the PRG responded.

¹¹ See Application of PG&E for Approval of an Amendment of a PPA with Starwood Power-Midway Application (A.) 12-09-016.

ERRA.¹² We find no reason to deny the same treatment to PG&E's request for recovery of costs incurred pursuant to the Amendments and Amended PPAs. We therefore find PG&E's request for recovery of costs incurred pursuant to the Amendments and Amended PPAs to be reasonable and should be granted.

5. Conclusion

We approve the request by PG&E and approve the requested Amendments to its Hanford, Henrietta, and Tracy PPAs with GWF. We grant PG&E's request to recover the costs of the Amendments through the PG&E ERRA.

6. Request for Confidential Treatment

Concurrent with the filing of this Application, PG&E filed a separate *Motion for Leave to File Confidential Material Under Seal* ("Motion") to protect from public disclosure confidential market sensitive information and other proprietary business information contained in the appendices to this Application. A description and analysis of the Amendments is presented in Appendix A, the Amendments are provided as Appendix B, and the original PPAs are provided in Appendix C.

Appendix A has been partially redacted to remove from the public version confidential market sensitive information. Appendices B and C have been redacted in their entirety because they consist of the actual Amendments and original PPAs. As explained in more detail in PG&E's Motion, in accordance with D.06-06-066 and D.08-04-023, PG&E requests the Commission to preserve

¹² D.10-07-045 at 44, Findings of Fact 15 and 16, Conclusion of Law 10, and Ordering Paragraph 7.

the confidentiality of the Amendments, the original PPAs, and other market sensitive information.

There is no opposition to the motion. The motion is granted.

The confidential, unredacted version of this information shall remain under seal for three years following the date of initial deliveries under the PPAs, and shall not be made accessible or disclosed to anyone other than the Commission and its staff except on the further order or ruling of the Commission, the assigned Commissioner or the assigned ALJ.

7. Categorization and Need for Hearing

In Resolution ALJ 176-3328 dated December 19, 2013, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were necessary. No protests have been received. There is no apparent reason why the application should not be granted. Upon review of the application, we find that a public hearing is not necessary.

8. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Pub. Util. Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

9. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Kimberly H. Kim is the assigned ALJ in this proceeding.

Findings of Fact

1. PG&E's requested Amendments in this proceeding are narrowly focused on clarifying AB 32 compliance cost requirements.

2. The narrow nature of the Amendments lead to no measureable change in the PPAs in terms of costs or benefits to ratepayers but may increase the efficiency of the administration of the PPA.

3. The proposed Amendments are comparable to AB 32-related provisions in other PPAs.

4. D.12-04-046 stated that parties should renegotiate contracts such that the contracts are consistent with current Commission policy.

5. D.12-04-046 directed utilities to renegotiate contracts at issue so that they reasonably address the allocation of AB 32 compliance costs.

6. PG&E complied with Commission policies and directions by entering into negotiations and reaching an agreement with GWF to clarify the obligations of PG&E and GWF with regard to AB 32 compliance cost requirements.

7. The Commission recently examined the propriety of PG&E's recovery of costs incurred pursuant to its PPAs (approved by the Commission) in ERRA and concluded that PG&E should recover those costs through PG&E's ERRA.

8. There is nothing in the record of this proceeding that would lead us to deny the same cost recovery methodology for the PPA amendments as was approved for the original PPA.

9. An evidentiary hearing is not necessary.

Conclusions of Law

1. PG&E's requested Amendments to its PPAs with GWF are reasonable, in the public interest, and should be adopted.

2. PG&E's request to recover the costs of the Amendments to its PPAs with GWF through the PG&E's ERRA account is reasonable and should be granted.

3. The preliminary categorization of ratesetting should be confirmed.

4. A.13-12-006 should be closed.

O R D E R

IT IS ORDERED that:

1. The request by Pacific Gas and Electric Company to approve its Amendments to its Hanford, Henrietta and Tracy Power Purchase and Sale Agreements with GWF Energy, LLC is approved, in its entirety.
2. Pacific Gas and Electric Company may recover the costs of the approved Amendments to its Hanford, Henrietta and Tracy Power Purchase and Sale Agreement with GWF Energy, LLC, LLC through its Energy Resource Recovery Account.
3. The confidential, unredacted version of the material placed under seal shall remain under seal for three years from the initial deliveries under the amended Power Purchase Agreement, and shall not be made accessible or disclosed to anyone other than the Commission and its staff, except on the further order or ruling of the Commission, the assigned Commissioner or the assigned Administrative Law Judge.
4. Hearings are not necessary.
5. Application 13-12-006 is closed.

This order is effective today.

Dated _____, at San Francisco, California.