

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of Amendment to its Power Purchase Agreement with Rio Bravo Poso and for Authority to Recover the Costs of the Amendment In Rates (U39E).

Application 14-10-002
(Filed October 1, 2014)

DECISION GRANTING AMENDMENT TO PACIFIC GAS AND ELECTRIC COMPANY AMENDED POWER PURCHASE AGREEMENT WITH RIO BRAVO POSO

Summary

This decision approves the Termination Agreement which will amend the Power Purchase Agreement between Pacific Gas and Electric Company (PG&E) and Rio Bravo Poso Cogeneration Company, and authorizes PG&E to recover in rates the costs of any purchases made pursuant to the Termination Agreement.

This decision also authorizes PG&E to count, subject to verification by the Commission’s Energy Division, the 98,146 metric tons carbon dioxide equivalent of greenhouse gas emissions (GHG) reductions resulting from the Termination Agreement toward PG&E’s Combined Heat and Power Procurement (CHP) GHG emissions reduction targets pursuant to the Qualifying Facilities/CHP Settlement Agreement approved by the Commission in Decision 10-12-035.

This proceeding is closed.

1. Background

1.1 The Application

On October 1, 2014, Pacific Gas and Electric Company (PG&E) filed Application (A.) 14-10-002 for approval of the Rio Bravo Poso Termination Agreement (Termination Agreement). The Termination Agreement amends the Standard Offer 4 (SO 4) qualifying facility (QF) Power Purchase Agreement (PPA) between PG&E and Rio Bravo Poso Cogeneration Company (RBP), whose 37 megawatt coal-burning combined heat and power facility (RBP Facility) provides the Poso Creek oil field with steam for enhanced oil recovery and PG&E with electricity, by terminating the PPA no later than February 28, 2015, instead of March 4, 2020, which was the original PPA expiration date.¹

Pursuant to the Termination Agreement, RBP will relinquish its right to deliver and receive payments for electricity from PG&E, and will cease using coal or petroleum coke as fuel at the RBP Facility. In exchange, PG&E will make a payment to RBP.²

PG&E asserts that the Termination Agreement is reasonable and should be approved because early termination of the PPA will result in significant customer savings; avoid environmental degradation from the combustion of coal and/or petroleum coke; and decrease the amount of non-dispatchable baseload generation in PG&E's portfolio.³ PG&E asserts that the RBP Facility's shutdown will provide PG&E with 98,146 metric tons (MT) of greenhouse gas (GHG) emission reduction credits, which is a 12% reduction in PG&E's unmet GHG

¹ Application, at 1.

² *Id.*, at 2.

³ *Id.*

emissions reduction target that was established by the QF/CHP Settlement approved in Decision (D.) 10-12-035.⁴

PG&E also seeks authority to recover the costs, in rates, of any purchases made pursuant to the Termination Agreement.

On October 21, 2014, PG&E filed an amendment to its application and substituted the Corrected Declaration of Harold J. Pestana in Support of Rio Bravo Poso Termination Agreement in place of the original declaration filed as Appendix B to the application.

1.2. Response and Protest

On November 3, 2014, the Office of Ratepayer Advocates (ORA)⁵ filed a response to the application indicating that it did not protest the application and did not plan on offering any testimony.⁶

On November 3, 2014, the Cogeneration Association of California and the Energy Producers and Users Coalition (CAC/EPUC) filed a protest that was limited solely to the determination of the eligible GHG emission's reduction credit that PG&E was claiming in its application.⁷

On November 13, 2014, PG&E filed its reply to the CAC/EPUC protest and claimed that it had correctly applied the GHG Credit counting rules from the Qualifying Facilities/CHP Settlement Agreement (QF/CHP Settlement Agreement). Specifically, PG&E argued that the GHG emissions accounting

⁴ *Id.*

⁵ The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013: public resources), which was approved by the Governor on September 26, 2013.

⁶ ORA Response at 2.

⁷ CAC/EPUC's Protest at 1.

methodology for the shutdown of an inefficient existing CHP facility with a continuing electric and thermal usage was established by the QF/CHP Settlement's Term Sheet Section 7.3 entitled "Detailed GHG Accounting Methodology to Measure Progress Toward the IOU's GHG Emissions Reduction Targets," specifically Section 7.3.1.4.⁸

1.3. The Prehearing Conference (PHC)

The PHC was held on December 22, 2014. While only PG&E filed a PHC statement, representatives from RPB and CAC/EPUC also attended the PHC.

1.4. The Scope of the Issues

Rather than issue a separate scoping memo, this decision identifies the issues for resolution as follows and addresses those issues in this decision:

Whether the Termination Agreement is reasonable and in the best interest of PG&E's customers;

Whether the Termination Agreement is consistent with prior Commission decisions;

Whether PG&E should count 98,146 MT of GHG emission reduction credits arising from the Termination Agreement; and

Whether PG&E should be authorized to recover its costs incurred pursuant to the Termination Agreement in rates that PG&E has proposed.

⁸ PG&E's Reply at 2, 4-6.

2. Discussion and Analysis

2.1. The Termination Agreement is Reasonable because it is in the best interest of PG&E's customers

In D.88-10-032,⁹ the Commission opined that the modification of a QF contract “should only be agreed to if commensurate concessions are made to the benefit of ratepayers.”¹⁰ While there has been some divergence in prior Commission decisions as to how the ratepayer benefit should be measured,¹¹ the financial impact on the ratepayer is a prime consideration for determining if a contract amendment should be deemed reasonable.

Currently, PG&E customers pay above-market prices for power under the current SO 4 PPA. That is because the SO 4 PPA is based on one of the four standard offers adopted by the Commission in D.83-09-054 to encourage utilities to procure electricity from QFs as part of its implementation of the Public Utility Regulatory Policies Act of 1978.¹² The contracts include Commission-approved prices for energy and capacity that are deemed reasonable.¹³ RBP's energy payments are set by the Optional C-3 Energy Price Amendment that was available in 2011 to QFs under contracts pursuant to the QF/CHP Settlement Agreement. Yet, payments for firm capacity under the SO 4 contracts are fixed at

⁹ *QF Contract Administration Guidelines Decision*.

¹⁰ *Id.*, at Conclusion of Law 3; and D.99-02-085 (*Opinion on Qualifying Facility Contract Modification Issues*).

¹¹ See discussion in D.99-02-085.

¹² *Interim Opinion Establishing Guidelines and Procedures for Developing Standard Offer Contracts for the Purchase and Sale of Electricity from Qualifying Cogenerations and Small Power Production Facilities, Replacing Short-Term Avoided Costs with Long-Term Avoided Costs as the Basis for Pricing, and Including Three Different Payment Options, OP 1*.

¹³ *Id.*

rates forecasted in the 1980s that are above today's electricity prices. The annual cost of firm capacity under the PPA is \$196 per kilowatt (kW). Thus, the Termination Agreement will result in net savings to PG&E customers (that PG&E estimates in the millions of dollars) by eliminating PG&E's obligation to purchase power under the PPA at above-market rates.

We agree with this assessment that the Termination Agreement will result in financial savings to PG&E's customers. In reaching this conclusion, we have reviewed the Declaration of Harold J. Pestana, Senior Manager within the Portfolio Management group of PG&E's Energy Supply Management. Mr. Pestana explained his opinion by utilizing a "mark-to-market analysis" to establish the net value of early termination. Mark-to-market analysis calculates the present value of the contract payment stream compared with the present value of the contract's market value to determine the benefit (positive or negative) of procuring the resource. Based on this analysis, Mr. Pestana estimates that if the Termination Agreement is approved, PG&E customers' costs are likely to be reduced by several million dollars.¹⁴ Thus, the Commission finds that there will be a ratepayer benefit to the adoption of the Termination Agreement.

2.2. The Termination Agreement has Environmental Benefits

2.2.1 GHG Emissions Reduction Strategy and contribution toward PG&E's GHG Target

With the passage of the Global Warming Solutions Act of 2006 (Assembly Bill 32) California became a state leader in the promotion of GHG reduction. As part of its Long Term Procurement Plan proceedings, the Commission requires

¹⁴ Pestana Declaration, at 6-8.

utilities to demonstrate how each application for fossil generation fits within each investor-owned utility's GHG reduction strategy. The Commission has also found that GHG emission reduction targets that provide incentives for the retirement of inefficient CHP facilities is a public interest benefit.¹⁵ PG&E has documented that at least by the effective date of the Termination Agreement, the RBP Facility will cease operations and PG&E will stop accepting energy or capacity from RBP, which it estimates will generate 98,146 MT of GHG emission reduction credits for PG&E to count toward its GHG emissions reduction target under the QF/CHP Settlement Agreement. PG&E's remaining GHG emissions reduction target is approximately 826,363 MT. The Termination Agreement will meet 12% of that outstanding amount and reduce PG&E's unmet GHG target to 730,216 MT.

While we agree that PG&E's assessment appears reasonable and should be approved, the GHG emission reduction credit amount must be verified by the Commission's Energy Division in accordance with Section 8.1.3 of the Term Sheet to the QF/CHP Settlement Agreement which states, in part, that Energy Division is "responsible for verifying the accuracy of the data and collating the data to develop publicly-available reports."

2.2.2. Environmental Benefits not related to GHG Emissions Reductions

PG&E asserts that there are also additional environmental benefits to approving the Termination Agreement that the Commission should take into account. Mr. Pestana states that the RBP Facility is located in Kern County, which is burdened by "numerous nearby power plants and other industrial

¹⁵ See D.10-12-035.

facilities.”¹⁶ Shutting down the RBP Facility would result in the reduction of criteria pollutants by roughly 100 tons annually; the reduction of water use by more than 300 acre feet annually; and the elimination of at least 3,000 diesel truck trips per year required to supply coal for electric generation at the RBP Facility.

We agree with this assessment.

2.3. Compliance with Prior Commission Decisions

As the Commission stated recently in D.14-07-019, in deciding whether to grant an amendment to a power purchase agreement, we must ensure that a utility’s proposal complies with laws and prior decisions relevant to the application.¹⁷ Our review of this application, proposed amendment, and supporting declaration indicates that PG&E has complied with the appropriate law and Commission decisions, as discussed below.

2.3.1. Decisions Regarding the Amendment of QF PPAs

In D.99-02-085, the Commission stated that the modification of a QF contract “should only be agreed to if commensurate concessions are made to the benefit of ratepayers...[and are] justifiable only when accompanied by price or performance concessions commensurate in value with the degree of change in the contract.”¹⁸

PG&E asserts that the Termination Agreement meets the standard adopted in D.99-02-085 as the Termination Payment is accompanied by PPA concessions

¹⁶ Pestana Declaration at 8.

¹⁷ *Decision Granting Amendment to Southern California Edison Company Power Purchase Agreement with Chevron U.S.A., Inc.*

¹⁸ 29 CPUC2d 415, 426.

commensurate in value with the degree of change in the contract. Without the Termination Agreement, it is likely that PG&E customers would continue to pay above-market costs for deliveries for the remaining five years of the existing PPA, and that the facility would continue to burn coal. Mr. Pestana measured the economic benefit of the Termination Agreement to PG&E customers in terms of millions of dollars.

2.3.2. Decision Approving the QF/CHP Settlement Agreement and Establishing GHG Targets

In D.10-12-035, the Commission stated that in considering whether to approve a QF/CHP Settlement Agreement, “reduction of GHG emissions and criteria pollutant emissions from avoided combustion of fossil fuel” was a relevant factor to take into account. According to PG&E, the RBP Facility will shut down while its thermal host at the Poso Oil Field intends to continue operations by using steam from other sources. If the shutdown facility is inefficient, it will result in a GHG credit to reduce PG&E’s unmet GHG target. On the other hand, if the facility is efficient, shutdown will result in a GHG debit that increases PG&E’s unmet GHG target.

CHP facility efficiency for GHG counting is determined by the facility’s performance compared to the “Double Benchmark,” which consists of the Heat Rate of 8,300 British Thermal Unit/kWh Higher Heating Volume and the standard boiler thermal efficiency of 80%.¹⁹ These calculations identify the RBP Facility as an inefficient CHP facility which means that the shutdown will

¹⁹ Pestana Declaration, at 9.

contribute GHG credits toward PG&E's GHG target. The net result of the calculations is 98,146 MT of GHG emissions reductions.²⁰

2.3.3. Decision Requiring Consultation with Procurement Review Group

In D.04-12-048, PG&E was required to seek comment on any proposed long term procurement from its Procurement Review Group.²¹ PG&E states that on July 15, 2014, it shared the proposed Termination Agreement with its Procurement Review Group and did not receive any further questions.²²

We find on the whole that PG&E has provided adequate support in its application and supporting evidence to substantiate its claim that it has complied with the appropriate law and Commission decisions.

2.4. PG&E May Count 98,146 MT of GHG Emission Reduction Credits Arising from the Termination Agreement Subject to Verification by the Commission's Energy Division

PG&E asks that the early termination of the contract with the RBP Facility count toward the GHG emissions reduction target in the QF/CHP Settlement. PG&E and RPB executed the Termination Agreement to amend the PPA on September 26, 2014. As discussed above, PG&E calculated RPB's GHG emissions reduction contributions on that date and determined that, because the project involves the shutdown of an inefficient generating facility, the GHG credit should be calculated by measuring the "Double Benchmark" in place at time of

²⁰ *Id.*, at 10.

²¹ Finding of Fact 73.

²² Application at 10.

PPA execution compared to the prior two years of operation.²³ PG&E requests authorization to count the GHG credit of 98,146 metric tons carbon dioxide equivalent (CO₂e) towards its GHG emissions reduction target.²⁴

We will grant this request subject to verification by the Commission's Energy Division.

2.5. Cost Recovery Mechanism

PG&E requests Commission authorization to recover costs incurred pursuant to the Amendment through rates, subject only to further review with respect to the reasonableness of PG&E's administration of the Amendment. According to PG&E, the RBP PPA is eligible for ongoing competition transition cost recovery pursuant to Pub. Util. Code § 367(a)(2) which states:

Power purchase contract obligations shall continue for the duration of the contract. Costs associated with any buy-out, buy-down, or renegotiation of the contracts shall continue to be collected for the duration of any agreement governing the buy-out, buy-down, or renegotiated contract; provided, however, no power purchase contract shall be extended as a result of the buy-out, buy-down, or renegotiation.

We find PG&E's request to recover the costs of the Termination Agreement through the Competition Transition Charge (CTC) rates is reasonable and permitted by Pub. Util. Code § 367(a)(2).

2.6. Resolution of CAC/EPUC's Protest

While CAC/EPUC filed a protest, its issue with the application was not its substance, which CAC/EPUC does not oppose, but concerns the verification of

²³ See PG&E Testimony at 6-7.

²⁴ PG&E provided detailed information to validate the amount of GHG reductions in Testimony and Confidential Exhibit B.

the GHG accounting.²⁵ In fact, CAC/EPUC's counsel agreed to PGE's and RBP's request to move the proceeding as quickly as possible provided the GHG accounting is verified.²⁶ Therefore, we address CAC/EPUC's accounting concern in this decision.

CAC/EPUC argues that the calculation of GHG credits for RBP should not be determined solely by Term Sheet Section 7.3.1.4.1. Instead, PG&E should use a different Double Benchmark to account for coal instead of natural gas, and PG&E should have to disclose the contract for the alternative supply of electricity and thermal energy for RBP's host, identify the fuel source for the alternative energy supply to establish the proper calculation under the Double Benchmark; perform a holistic GHG emissions assessment; and net the emissions from the alternative generation from its calculation of GHG credits.²⁷

The Term Sheet Section 7.3 sets forth the rules for counting GHG Credits toward their GHG Targets. Since the RBP Facility was in operation prior to the effective date of the QF/CHP Settlement Agreement and will shut down before November 22, 2015, its GHG reductions will be calculated against the previous two calendar years of data compared to the Double Benchmark required by Term Sheet Section 6.4.2.2. Whether the GHG reductions count as either a credit or debit against PG&E's GHG Target is determined by the language of Term Sheet Section 7.3. As a coal-burning CHP facility, the RBP Facility is "inefficient" for purposes of GHG emissions calculation under Term Sheet Section 7.1.3. PG&E had RBP confirm that after shutdown of the RBP Facility, its thermal host, Poso

²⁵ PHC Reporter's Transcript at 12:7-13.

²⁶ *Id.*

²⁷ CAC/EPUC's protest at 6-7.

Creek, plans to continue its enhanced oil recovery operations using other sources that currently supply steam and power to the oil field. Accordingly, the GHG emissions effects of the Termination Agreement are counted toward PG&E's GHG target in accordance with Term Sheet Section 7.3.1.4. entitled "Existing inefficient CHP Facility shuts down: Counts as a GHG Credit toward the CARB CHP RRM of the IOU that previously contracted with the CHP."²⁸ There is no requirement in the Term Sheet that would require PG&E to consider the GHG emissions of the replacement resource in counting the GHG Credits produced by the shutdown of an inefficient facility.

Furthermore, the Double Benchmark does not depend on the identity of the alternative energy supply. Instead it is based on a fixed industry standard defined in the Term Sheet as a Heat Rate of 8,300 British Thermal Units/kWh and a thermal efficiency of 80%.²⁹ After the Commission approved the QF/CHP Settlement Agreement, the settling parties, including CAC/EPUC representatives, participated in the development of the GHG counting reporting template.³⁰ The parties agreed to use natural gas as the default fuel type for Double Benchmark calculations.³¹

Accordingly, the Commission rejects CAC/EPUC's attempts to modify the calculation of the GHG Credits for RBP. But CAC/EPUC's concerns over the GHG counting will be addressed when the Commission's Energy Division conducts its verification.

²⁸ PG&E's Reply to CAC/EPUC's protest, at 5.

²⁹ Pestana Declaration, at 9.

³⁰ PG&E's Reply to CAC/EPUC's protest, at 8, fn. 19.

³¹ *Id.*, fns. 20 and 21.

2.7. Request for Confidential Treatment

On October 1, 2014, PG&E filed a Motion for Leave to File Confidential Material Under Seal Consistent with the Confidentiality Protections of D.08-04-023 and Pub. Util. Code Section 583. PG&E claims that Appendices A (Termination Agreement), B (Declaration of Harold J. Pestana), and D (Amendment to the Tong-Term Energy and Capacity Power Purchase Agreement Between Ultrapower, Incorporated and Pacific Gas and Electric Company) are confidential as they contain confidential market-sensitive information, as defined by Rulemaking 05-06-040. No party opposed PG&E's Motion.

The Motion is granted.

The confidential, un-redacted version of this information shall remain under seal for three years following the date deliveries terminate under the amended PPA, 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 (ALJ).

3. Categorization and Need for Hearing

In Resolution ALJ-176-3344, the Commission preliminarily categorized this application ratesetting, and preliminarily determined that hearings were necessary. But because the application is not opposed save for the question regarding GHG counting which this decision resolves as a matter of law, no hearings are necessary.

The preliminary determination as to the category of this proceeding is confirmed.

4. Waiver of Comment Period

As discussed above, this is a largely uncontested matter in which the decision grants the relief requested. Even the protesting parties, CAC/EPUC, are not opposed to the expedited treatment of this application, and the decision does resolve CAC/EPUC's concern regarding the GHG counting issues. 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.

A second independent reason for waiving the comment period in order to expedite a determination of this application is that RBP needs to know whether the Termination Agreement is effective by the end of February 2015 so it will know if it can avoid undertaking certain commercial commitments for fuel and rail deliveries.³² Thus, there is a positive environmental goal can be gained by the swift resolution of this proceeding.

5. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Robert M. Mason III is the assigned ALJ in this proceeding.

Findings of Fact

1. On October 1, 2014, PG&E filed its application for approval of an amendment (Amendment) to a power purchase agreement with Rio Bravo Poso and for authority to recover the costs of the Amendment through the CTC.
2. Neither ORA nor RBP opposed the application.
3. CAC/EPUC filed a protest that was limited to the GHG counting issue.

³² PG&E's PHC Statement, at 4.

4. CAC/EPUC are not opposed to the expedited treatment of this proceeding.
5. PG&E provides several examples of value-added benefits to customers.
6. PG&E has provided adequate support in its application and testimony to substantiate the claim that it has complied with the appropriate law and Commission decisions.
7. The application raises no concerns that the changes authorized herein would impede or prevent PG&E from ensuring the safety of its patrons, employees or the public.
8. PG&E requested that Appendices A, B, and D to its application be deemed confidential and should be sealed.
9. The Commission has granted similar requests for confidential treatment in the past.

Conclusions of Law

1. The Amendment is reasonable and beneficial to ratepayers.
2. The request by PG&E to recover the costs of the Amendment through rates is reasonable and should be adopted.
3. PG&E should be authorized to count the shutdown of the facility towards its emissions reduction targets in the CHP Settlement.
4. No evidentiary hearings are necessary.
5. The motion to seal the confidential version of Appendices A, B, and D to PG&E's application should be granted.
6. No comment is required.
7. This order should be effective immediately.
8. A.14-10-002 should be closed.

ORDER

IT IS ORDERED that:

1. The request by Pacific Gas and Electric Company to approve its Amendment to its Power Purchase Agreement with Rio Bravo Poso Cogeneration Company is approved in its entirety.
2. Pacific Gas and Electric Company may recover the costs of the approved Amendment to its Power Purchase Agreement with Rio Bravo Poso through the Competition Transition Charge.
3. Subject to verification by the Commission's Energy Division, Pacific Gas and Electric Company is authorized to count 98,146 metric tons associated with the shutdown of the facility as a greenhouse gas credit toward Pacific Gas and Electric Company's Combined Heat and Power Program Settlement greenhouse gas emissions reduction target.
4. The confidential, un-redacted version of the material placed under seal shall remain under seal for three years from the termination of 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.
5. No hearings are needed.
6. Application 14-10-002 is closed.

This order is effective today.

Dated _____, 2015, at San Francisco, California.