

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

AGENDA ID: 17222
RESOLUTION E-4970
March 14, 2019

REDACTED
RESOLUTION

Pacific Gas and Electric Company (PG&E) requests approval from the California Public Utilities Commission of the Second Amendment to each of four Power Purchase Agreements between PG&E and CED California Holdings, LLC.

PROPOSED OUTCOME:

- This Resolution approves amendments to existing Power Purchase Agreements (PPAs) between Pacific Gas and Electric Company (PG&E) and Alpaugh 50, LLC, Alpaugh North, LLC, CED Corcoran Solar, LLC, and CED White River Solar, LLC. The amendments are approved without modification.

SAFETY CONSIDERATIONS:

- The amendments to the PPAs do not appear to result in any adverse safety impacts on the facilities or operations of PG&E. The amendments require the sellers of the generation to continue to comply with all applicable safety requirements relating to the project.

ESTIMATED COST:

- The estimated remaining energy cost of the power purchase agreements, as amended, are estimated to be \$284,218,000¹. For each of the projects, Alpaugh 50, Alpaugh North, Corcoran, and White River, the estimated remaining energy costs are, respectively, \$128,590,000, \$51,435,000, \$52,467,000, and \$51,911,000. The amendment is confidential at this time and will become publicly available per D.06-06-066.

By Advice Letter 5366-E, filed on August 24, 2018.

¹ Determined as the rounded product of Amended Delivered Energy (MWh) and Amended Levelized Post-TOD Energy Cost (\$/MWh). Estimates are within .002% of the original value of remaining costs determined by the product of Original PPA Delivered Energy (MWh) and Original PPA Levelized Post-TOD Energy Cost.

SUMMARY

PG&E's renewable energy power purchase agreements, as amended, with four subsidiaries of CED California Holdings, LLC (CED), complies with the Renewables Portfolio Standard (RPS) procurement guidelines and is approved without modification.

PG&E filed Advice Letter ("AL") 5366-E on August 24, 2018, requesting the California Public Utilities Commission ("CPUC" or "Commission") to review and approve Amended and Restated Power Purchase Agreements ("Second Amendments" or "Amended PPAs") to four existing, long-term Renewables Portfolio Standard (RPS) Power Purchase Agreements ("Original PPAs") between PG&E and four separate projects.² The Original PPAs were 25-year contracts for generation from four separate generating facilities: Alpaugh 50, LLC in Tulare County; Alpaugh North, LLC in Tulare County; CED Corcoran Solar, LLC in Kings County; and CED White River Solar, LLC in Tulare County (collectively, "the Projects"). The Original PPAs were executed throughout 2008 and began commercial operation between March 8, 2013 and August 4, 2013³. The Amended PPAs resulted from bilateral negotiations between PG&E and CED and they were executed on July 16, 2018.⁴

Changes to the Original PPAs pursuant to the Amended PPAs would:

1. Provide PG&E with the right to offer increased curtailment into the California Independent System Operator (CAISO) market when production would be uneconomic.
2. Reduce the collateral held for each project as currently required by the Original PPAs by seventy-five percent.

The amendments to the PPAs do not affect contract price, interconnection point, or the length of the contract. In AL 5366-E, PG&E asserts that the Total Net Market Value (NMV) of the Amended PPAs will increase over the lifetime of the remaining contract, and the ability to offer curtailment may slightly reduce the cost for ratepayers.

² AL 5366-E refers to the four projects, collectively as "Con Edison" or "CED." Each of the projects is a subsidiary of CED California Holdings, LLC a subsidiary of Consolidated Edison, Inc. and Sempra Energy.

³ The Original PPAs were approved by Resolution E-4377 on November 19, 2010. Approval was sought via AL 3613-E filed on February 10, 2010.

⁴ AL 5366-E p. 2

The Second Amendments are a component of a settlement agreement resulting from negotiations between CED and PG&E that was initiated by a May 12, 2016 formal dispute resolution as provided for under the Original PPAs. The dispute resolution was entered because CED claimed they were being curtailed in excess of the 50-hour down limits in the PPAs, and that participating transmission owner-related outages were the main cause of the outages.⁵

PG&E asserts that the Second Amendments are preferred to the original PPAs because an expansion from reliability-only curtailment rights to full economic dispatch rights is beneficial to customers. Under reliability-only curtailment terms, PG&E may be required to pay the CAISO to take the energy, which is a cost that customers would not bear if PG&E had the ability to economically bid the resources. Additionally, increasing curtailment options address PG&E's and the CAISO's desire to increase curtailment options to improve grid stability by increasing grid flexibility.

The Second Amendments ameliorate operational challenges such as over generation and negative market prices that occur due, in part, to the substantial increase of renewable resources. The primary reason for amending the PPAs is to allow the Projects to be bid into the CAISO Real-Time Market and create dispatch flexibility that can respond to market signals. PG&E claims the Amended PPAs' curtailment provisions will result in more flexibility and avoidance of deliveries, imbalances charges, and volatile ancillary services prices during negative market price episodes. PG&E's execution of the Amendments are consistent with PG&E's 2017 RPS Procurement Plan, approved in Decision 17-12-007. This resolution approves the Amended PPAs without modification.

Table 1 provides a summary of the Amended PPAs between PG&E and the Projects.

⁵Prepared Testimony of PG&E in Application for Compliance Review of: Utility-Owned Generation Operations; Electric Energy Resource Recovery Account Entities; Contract Administration; Economic Dispatch of Electric Resources; Utility-Retained Generation Fuel Procurement; and Other Activities for the Period January 1 through December 31, 2017, Ch. 8, pp. 8-14:16 to 8-15:2 (served on February 28, 2018); in A.18-02-015.

Table 1: Summary of the CED Second Amendments

| Generating Facility | Technology Type | Delivery Term (Years) | Capacity (MW) | COD | Location |
|----------------------------|-----------------|-----------------------|---------------|-----------|-------------------|
| Alpaugh 50, LLC | Solar PV | 25 | 50 | 3/8/2013 | Tulare County, CA |
| Alpaugh North, LLC | Solar PV | 25 | 20 | 3/8/2013 | Tulare County, CA |
| CED Corcoran Solar, LLC | Solar PV | 25 | 20 | 8/4/2013 | Kings County, CA |
| CED White River Solar, LLC | Solar PV | 25 | 20 | 6/27/2013 | Tulare County, CA |

BACKGROUND

Overview of the Renewables Portfolio Standard (RPS) Program

The California RPS program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036, SB 2 (1X), SB 350, and SB 100.⁶ The RPS program is codified in Public Utilities Code Sections 399.11-399.32.⁷

The RPS program administered by the Commission requires each retail seller to procure eligible renewable energy resources so that the amount of electricity generated from eligible renewable resources be 33 percent of retail sales by December 31, 2020.⁸ On October 7, 2015, SB 350⁹ made further changes to Pub. Util. Code Sections 399.11, et seq. SB 350 requires that the amount of electricity generated and sold to retail customers from eligible renewable energy resources

⁶ SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session); SB 350 (de León, Chapter 547, Statutes of 2015); SB 100 (de León, Chapter 312 Statutes of 2018).

⁷ All further statutory references are to the Public Utilities Code unless otherwise specified.

⁸ D.11-12-020 established a methodology to calculate procurement requirement quantities for the three different compliance periods covered in SB 2 (1X) (2011-2013, 2014-2016, and 2017-2020). Note it is 33% of a Load Serving Entity’s annual retail sales for 2020 and each year thereafter.

⁹ SB 350 (De León, Chapter 547, Statutes of 2015) effective on January 1, 2016.

be increased to 50% by December 31, 2030.¹⁰ On September 10, 2018, SB 100¹¹ amended Pub. Util. Code Sections 399.11 to state that the goal of the program is to achieve 50% renewable resources by December 31, 2026, and 60% by December 31, 2030.

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at http://www.cpuc.ca.gov/RPS_Overview/ and http://www.cpuc.ca.gov/RPS_Decisions_Proceedings/.

NOTICE

Notice of AL 5366-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed to the R.15-02-020 service list in accordance with Section 4 of General Order 96-B.

PROTESTS

AL 5366-E was timely protested on September 13, 2018 by the Public Advocates Office at the California Public Utilities Commission (CA PAO). PG&E responded to the protest of CA PAO on September 20, 2018.

DISCUSSION

Pacific Gas and Electric Company requests approval of amendments to four existing power purchase agreements with Con Edison Development.

The Projects are four solar PV generating facilities. Alpaugh 50, LLC, is a 50 MW plant in Tulare County, CA. Alpaugh North, LLC is a 20 MW plant in Tulare County, CA. CED Corcoran Solar, LLC is a 20 MW plant in Kings County, CA. CED White River Solar, LLC is a 20 MW plant in Tulare County, CA. All the Projects were executed in 2008, began operations in 2013, have a capacity factor of 21 percent and have a delivery term of 25 years.¹²

¹⁰ D.16-12-040 established additional procurement requirement quantities for the three compliance periods established by SB 350: 2021-2024, 2025-2027, 2028-2030.

¹¹ SB 100 (De León), the 100 Percent Clean Energy Act of 2018, includes changes to incremental renewable energy procurement requirements for compliance periods ending in 2024 (44%) and 2027 (52%)

¹² Advice Letter 5366-E, p. 4

In November 2010, the Commission approved Advice Letter 3613-E, which requested approval of the Projects' 25-year PPAs between PG&E and Solar Projects Solutions, LLC¹³. The PPAs were approved by the Commission in Resolution E-4377.

In May of 2016, CED initiated a dispute resolution with PG&E because CED claimed they were being curtailed more than the 50-hour down limits allowed for in the PPAs, and that participating transmission owner-related outages were the main cause of the outages.¹⁴ The parties proceeded to bilateral negotiations to resolve the dispute which resulted in a settlement agreement. Part of that settlement agreement included a proposal to amend the Original PPAs through approval of an advice letter. The Amended PPAs were executed on July 16, 2018. On August 24, 2018, PG&E filed AL 5366-E requesting Commission approval of the Amended PPAs with CED. PG&E asserts in AL 5366-E that the purpose of the proposed amendments are to provide PG&E the right to curtail the Projects when production would be uneconomic and to allow PG&E to ensure that CED will be able to fully participate in the California Independent System Operator (CAISO) market going forward.

The amendment modifies the Original PPAs as follows:

1. Provides PG&E with the right to offer increased curtailment into the CAISO market when production would be uneconomic.
2. Reduces the collateral PG&E will hold for each project as currently required by the PPAs by 75 percent.
3. Adds language related to technical modifications required for curtailment instruction communication.
4. Revises language related to the Failure to Comply provision regarding curtailment requirements.

The Amended PPAs do not affect contract price, interconnection point, or the length of the contracts. In AL 5366-E, PG&E claims that the Total Net Market Value (NMV) of the Amended PPAs will increase over the lifetime of the

¹³ When the Original PPAs were approved, each of the projects were wholly-owned subsidiaries of Solar Projects Solutions, LLC ("SPS"), per AL 3613-E. In AL 5366-E, the project owner is no longer SPS, but four of the project counterparties (Alpaugh 50, Alpaugh North, White River, Corcoran) remain the same.

¹⁴CA PAO Protest of PGE AL 5366-E, p. 2-3

remaining contract because of the increased flexibility provided by the curtailment provisions.

PG&E requests that the Commission issue a resolution that:

1. Approves the Second Amendments in their entirety, including payments to be made by PG&E pursuant to the Second Amendments, subject to the Commission's review of PG&E's administration of the Second Amendments.
2. Finds that any procurement pursuant to the Second Amendments is procurement from eligible renewable energy resources for purposes of determining PG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California RPS (Public Utilities Code Section 399.11 et seq.), D.11-12-020 and D.11-12-052, or other applicable law.
3. Finds that all procurement and administrative costs, as provided by Public Utilities Code section 399.13(g), associated with the Second Amendments shall be recovered in rates.
4. Adopts the following finding of fact and conclusion of law in support of CPUC Approval:
 - a. The Second Amendments are consistent with PG&E's 2017 RPS procurement plan.
 - b. The terms of the Second Amendments, including the prices of delivered energy and deemed delivered energy, are reasonable in comparison to the Original PPAs.
5. Finds that PG&E's entry into the Second Amendments is reasonable, and that PG&E's payments to Alpaugh 50, LLC, Alpaugh North, LLC, CED Corcoran Solar, LLC, and CED White River Solar, LLC under the PPAs as amended by the Second Amendments are reasonable and shall be recovered through PG&E's Energy Resource Recovery Account
6. Adopts the following findings with respect to resource compliance with the EPS adopted in R.06-04-009:
 - a. The Second Amendments are not covered procurement subject to the EPS because the generating facilities have a forecast capacity factor less than 60 percent and, therefore, are not baseload

- generation under Paragraphs 1(a)(ii) and 3(2)(a) of the Adopted Interim EPS Rules¹⁵;
- b. PG&E has provided the notice of procurement required by D.07-01-039 in this Advice Letter submittal.
7. Adopts a finding of fact and conclusion of law that deliveries under the Amended PPAs shall be categorized as grandfathered procurement pursuant to California Public Utilities Code Section 399.16(d), subject to the Commission's after-the-fact verification that all applicable criteria have been met.

Energy Division evaluated Amended PPAs based on the following criteria:

- Consistency with PG&E's 2017 RPS Procurement Plan;
- Consistency with Bilateral Contracting Rules
- Consistency with PG&E's Least-Cost, Best-Fit methodology (LCBF);
- Net Market Value and Cost Reasonableness;
- Procurement Review Group Participation;
- Public Safety.

Consistency with PG&E's 2017 RPS Procurement Plan

Pursuant to statute, PG&E's 2017 RPS Procurement Plan (2017 RPS Plan) includes an assessment of RPS supply and demand to determine the optimal mix of renewable generation resources; description of existing RPS portfolio; description of potential RPS compliance delays; status update of projects within its RPS portfolio; an assessment of the project failure and delay risk within its RPS portfolio; and bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.¹⁶ California's RPS statute also requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.¹⁷ The Commission reviews the

¹⁵ The emission performance standard (EPS) is applicable for baseload generation, as defined in SB 1368 (Stats. 2006, ch. 598) enacted in 2006. "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%. The Projects all have capacity factors less than 60% (AL 5366-E, p. 4), exempting the Projects from being categorized as "baseload generation."

¹⁶ Pub. Util. Code § 399.13(a)(5).

¹⁷ Pub. Util. Code § 399.13(d).

results to verify that the utility conducted its solicitation according to its Commission-approved procurement plan.¹⁸

In PG&E's 2017 RPS Plan, PG&E asserts that it is well positioned to meet the current 33% RPS by 2020 target, as well as meet its RPS compliance requirements for the third (2017-2020), fourth (2021-2024) and fifth (2025-2027) compliance periods. Based on that assessment, PG&E stated that it will not have an incremental RPS physical need until after 2030.

As Commission-approved PPAs, the Projects were assumed in D.17-12-007 as facilities that would contribute to RPS supply in PG&E's portfolio. In AL 5366-E, PG&E explains that the Amended PPAs will not increase the size of PG&E's bank of surplus RPS procurement since it does not increase deliveries from the Projects and the Original PPAs would continue in effect if the Amended PPAs were not executed. The Second Amendments were negotiated through bilateral efforts because PG&E took the dispute with Con Edison¹⁹ as an opportunity to negotiate for improvements to the original PPAs.²⁰ PG&E believed that negotiating amendments to the Original PPAs would result in concrete actions to address grid stability in a more direct and effective manner than issuing a solicitation, particularly where the Amended PPAs, as here, contains terms that are consistent with the Original PPAs. Also, PG&E received Commission approval to not hold an RPS solicitation in the 2017 cycle.

The Second Amendments provide increased buyer curtailment rights. Additionally, based on PG&E's assessment of RPS portfolio supplies and demand outlined in its 2017 RPS Plan, the Second Amendments do not change the amount of RPS supply in any significant way.²¹

Therefore, the Amended PPAs are consistent with PG&E's RPS portfolio needs in its 2017 RPS Procurement Plan, as approved by D.17-12-007.

Consistency with Bilateral Contracting Rules

¹⁸ PG&E's 2017 Draft RPS Procurement Plan was approved by D.17-12-007 on December 14, 2017.

¹⁹ CED is a subsidiary of Consolidated Edison, Inc. (Con Edison) and Sempra Energy, as of the filing of AL 5366-E.

²⁰ PG&E's Reply to CA POA protest, p. 3.

²¹ Confidential Appendix B in AL 5366-E, p. D2 describes individual projects' contribution to RPS procurement targets.

PG&E and CED negotiated the Amended PPAs on a bilateral basis. A bilateral negotiation of existing contracts was chosen as PG&E's approach for increasing curtailment capabilities across its portfolio.

The Commission developed guidelines pursuant to which utilities may enter into bilateral RPS contracts. In D.03-06-071, the Commission authorized entry into bilateral RPS contracts. In D.06-10-019, the Commission further established rules pursuant to which the IOUs could enter into bilateral RPS contracts. PG&E adhered to these bilateral contracting rules because the Amended PPAs are longer than one month in duration, the Amended PPAs were filed by advice letter, and the contracts are reasonably priced, as discussed in more detail below.

In D.09-06-050, the Commission determined that bilateral agreements should be reviewed according to the same processes and standards as projects that come through a solicitation. Accordingly, as described below, the Amended PPAs were reviewed for cost reasonableness and the proposed agreement was reviewed by PG&E's Procurement Review Group.

The Amended PPAs are consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050 and Resolution E-4199.

Consistency with PG&E's Least-Cost, Best-Fit Methodology (LCBF)

In D.04-07-029, the Commission directs the utilities to use certain criteria in their LCBF selection of renewable resources.²² The decision offers guidance regarding the process by which the utility ranks bids in order to select or "shortlist" the bids with which it will commence negotiations. As described in its RPS Procurement Plan, PG&E's LCBF bid evaluation includes a quantitative analysis and qualitative criteria. PG&E's quantitative analysis or market valuation includes evaluation of price, transmission costs, congestion costs, and resource adequacy. PG&E's qualitative analysis focuses on comparing similar bids across numerous factors, such as location, benefits to minority and low-income areas, and resource diversity.

²² See § 399.14(a)(2)(B).

PG&E and CED negotiated the Second Amendments bilaterally; therefore, the Amended PPAs did not compete directly with other RPS projects. However, the Amended PPAs underwent a Net Market Value and Cost Reasonableness review.

The Amended PPAs were compared against the Original PPAs on a LCBF basis, therefore, the Amended PPAs were evaluated consistent with the least-cost best-fit methodology identified in PG&E's 2017 RPS Procurement Plan.

Cost Reasonableness and Net Market Value

The Commission's reasonableness review for an RPS PPA includes a comparison of the proposed PPA's price and net market value (the result of the LCBF calculation) relative to other RPS offers received in recent RPS solicitations. As Advice Letter 5366-E seeks amendments to existing contracts that were executed throughout 2008, the reasonableness of the proposed amendments are compared relative to the Original PPAs. Deliveries from the Projects to PG&E will continue to be priced at \$122.90/MWh, per the Contract Price Schedule, before adjustments by time-of-delivery factors. The Commission found this contract price to be reasonable when approving the Original PPAs.

While the Second Amendments did not modify the contract prices of the Original PPAs, it did result in a higher total NMV due to an estimated increase of curtailed deliveries during negative price periods. PG&E claims this increased curtailment allowance results in a net increase of Total Net Market Value after accounting for changes to estimated delivered energy and NMV Criteria including energy value, capacity value and integration cost.²³

PG&E states that, the Second Amendments provide additional value to PG&E customers as compared to the Original PPAs. PG&E claims that total energy benefits are expected to increase as energy deliveries will be curtailed when their value to PG&E and ratepayers drop below zero due to negative pricing events. The total value of the Projects is expected to increase slightly as costs are unchanged and energy benefits are expected to increase. PG&E claims the Amended PPAs will likely reduce the sum of payments to be made by PG&E and

²³ AL 5366-E, Appendix A, p. A2

its customers to the projects.²⁴ See Confidential Appendix A for a more detailed discussion of the contractual pricing terms and net market value analysis.

The Second Amendments compare reasonably to the net market values of the Original PPAs, which would remain in effect in the absence of the Amended PPAs.

Payments made by PG&E under the CED PPAs, as amended, are fully recoverable in rates over the life of the Amended PPAs, subject to Commission review of PG&E's administration of the Amended PPAs.

Procurement Review Group Participation

The Procurement Review Group (PRG) was initially established in D.02-08-071 as an advisory group to review and assess the details of the IOUs' overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission.²⁵ PG&E asserts that the proposed Second Amendments were presented to the PRG via e-mail on June 14, 2018. PG&E consulted with the PRG and provided their rationale for executing the Amendments.

Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the proposed amendments to the Second Amendments.

RPS Eligibility and CPUC Approval

Pursuant to Pub. Util. Code § 399.13, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS contract, the Commission has required standard and non-modifiable "eligibility" language in all RPS contracts. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an "Eligible Renewable Energy Resource," that the project's output

²⁴ The reduction in PG&E's ratepayer payments come from PG&E's right to offer curtailment of the Projects into the CAISO market when production would be uneconomic.

²⁵ PG&E's PRG includes representatives from the Commission's Energy Division and the California Public Advocates Office (formerly, Office of Ratepayer Advocates), Coalition of California Utility Employees ("CUE"), Coast Economic Consulting, Earth Justice, The Utility Reform Network ("TURN"), and the Union of Concerned Scientists.

delivered to the buyer qualifies under the requirements of the California RPS, and that the seller uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.²⁶

The Commission requires a standard and non-modifiable clause in all RPS contracts that requires “CPUC Approval” of a PPA to include an explicit finding that:

“Any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (*Public Utilities Code Section 399.11 et seq.*), Decision 03-06-071, or other applicable law.”²⁷

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource. In addition the Commission cannot determine prior to final CEC certification of a project that “any procurement” pursuant to a specific contract will be “procurement from an eligible renewable energy resource.”

Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS-eligible resource to count towards an RPS compliance obligation. Nor shall such a finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract. Such contract enforcement activities shall be reviewed pursuant to the Commission’s authority to review the utilities’ administration of contracts.

The Projects have already received certification by the CEC as Eligible Renewable Energy Resources. Each facility must continue to maintain its RPS-certification as required by the standard and non-modifiable “eligibility” language of the Original PPAs.

CA PAO protest of AL 5366-E

²⁶ See, e.g. D.08-04-009 at Appendix A, STC 6, Eligibility.

²⁷ See, e.g. D.08-04-009 at Appendix A, STC 1, CPUC Approval.

On September 13, 2018, the Public Advocates Office at the California Public Utilities Commission filed a protest recommending that the Commission resolve PG&E's Advice Letter 5366-E contingent upon approval of PG&E's and CED's settlement agreement in PG&E's Energy Resource Recovery Account (ERRA) Compliance Application for 2018.

The CA PAO asserts that PG&E has provided no evidence to the Commission showing the outcome of their dispute resolution with Con Edison nor Commission determination of reasonableness of the dispute resolution. Thus, CA PAO suggests that the ERRA Compliance Application for record year 2018 is the appropriate place to consider the reasonableness of all aspects of the results of PG&E and Con Edison's dispute resolution, including the PPA amendments that being considered, herein.²⁸

PG&E Reply to CA PAO protests of AL 5366-E

PG&E argues that the Commission may approve the contract amendments through resolution of Advice Letter 5366-E and can subsequently consider the reasonableness of the Settlement Agreement in the ERRA compliance proceeding.

PG&E claims that "The Commission should not wait to approve AL 5366-E because parties such as the Public Advocates Office at the CPUC still retain the ability to seek review of the reasonableness of the settlement agreement as a whole, independent from the Commission's review of this Advice Letter."²⁹

PG&E argues that a delay is unwarranted because the Second Amendments are consistent with PG&E's contract management practices and result in immediate economic benefits to customers and reliability benefits to CAISO.³⁰

Additionally, PG&E claims that waiting for the resolution of the ERRA Compliance proceeding presents issues for the settlement agreement because the settlement agreement is contingent upon approval of Advice Letter 5366-E. The contingency is included to ensure that PG&E and its customers receive the

²⁸ CA PAO Protest of PGE AL 5366-E, p. 3

²⁹ PG&E Reply to Protest of Advice Letter 5366-E, p. 1-2

³⁰ PG&E Reply to Protest of Advice Letter 5366-E, p. 2

benefits of their negotiated agreement and to allow PG&E to renegotiate its terms should the Second Amendments not be approved by the Commission.³¹

The Commission disagrees with CA PAO and denies its protest. Contingencies can exist in settlement agreements and contracts between parties and is a reasonable business practice. Furthermore, Commission approval of the Second Amendments does not prevent the Commission and parties from providing a formal review of the settlement agreement in PG&E's ERRA Compliance Application.

Additionally, CA PAO argued in their protest of AL 5366-E that "PG&E provides no evidence to show that the Commission and parties to PG&E's 2017 ERRA Application proceeding have been notified that PG&E and [CED] resolved their dispute and entered into a dispute resolution." Within AL 5366-E, however, PG&E discloses that the parties to AL 5366-E (PG&E and CED) reached a settlement agreement.³² Therefore, for the reasons stated above, CA PAO's protest is denied.

Public Safety

California Public Utilities Code Section 451 requires that every public utility maintain adequate, efficient, just and reasonable service, instrumentalities, equipment and facilities to ensure the safety, health, and comfort of the public. The original PPAs require the Projects to comply with all applicable laws relating to project safety, including those related to planning, construction, ownership, decommissioning and/or operation of the projects. As these amendments do not change the original PPAs' terms related to safety, there are no incremental safety implications associated with approval of this contract beyond the status quo.

While the Commission is not authorized to administer Occupational Safety & Health Administration (OSHA) workplace safety standards, the Commission reviewed historic OSHA records for the parties related to eligible RPS projects in California. Neither any of the Projects, nor the current operator, CED California Holdings, have had OSHA violations.

³¹ PGE Reply to CA PAO Protest of AL 5366-E, p. 2

³² AL 5366-E p. 2

Confidential Information

The Commission, in implementing Pub. Util. Code § 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, such as 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.

The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review. Please note that comments are due 20 days from the mailing date of this resolution. Section 311(g)(2) provides that this 30-day review period and 20-day comment period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day review and 20-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

FINDINGS

1. The CED California Holdings Power Purchase Agreements, as amended, are consistent with Pacific Gas & Electric's 2017 RPS Procurement Plan, as approved by D.17-12-007.
2. The CED California Holdings Power Purchase Agreements, as amended, are consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.

3. The CED California Holdings Power Purchase Agreements, as amended, were evaluated consistent with the least-cost best-fit methodology identified in Pacific Gas & Electric's 2017 RPS Procurement Plan.
4. The CED California Holdings Power Purchase Agreements, as amended, compare reasonably on a net market value and cost basis relative to the original power purchase agreement.
5. Payments made by Pacific Gas & Electric under the CED California Holdings Power Purchase Agreements, as amended, are fully recoverable in rates over the life of the Second Amendments, subject to Commission review of Pacific Gas & Electric's administration of the Second Amendments and any other conditions contained herein or required by law.
6. Pursuant to D.02-08-071, Pacific Gas & Electric's Procurement Review Group participated in the review of the amendments to the Original PPAs.
7. Procurement pursuant to the CED California Holdings Power Purchase Agreements as amended is procurement from eligible renewable energy resources for purposes of determining Pacific Gas & Electric's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.03-06-071 and D.06-10-050, or other applicable law.
8. The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource under the Amended PPAs to count towards an RPS compliance obligation. Nor shall that finding absolve Pacific Gas & Electric of its obligation to enforce compliance with the Amended PPAs.
9. California Public Advocates Office's protest of Advice Letter 5366-E is denied because Commission approval of Advice Letter 5366-E does not prevent the Commission and parties from providing a formal review of the settlement agreement in PG&E's ERRRA Compliance Application.
10. The confidential appendices marked "[REDACTED]" in the public copy of this Resolution, as well as the confidential portions of Advice Letter 5366-E, should remain confidential.
11. Advice Letter 5366-E should be approved effective today without modification.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company's Advice Letter 5366-E requesting Commission review and approval of amendments to existing renewable power purchase agreements with Alpaugh 50, LLC, Alpaugh North, LLC, CED Corcoran Solar, LLC, and CED White River Solar, LLC is approved without modification.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on March 14, 2019; the following Commissioners voting favorably thereon:

ALICE STEBBINS
Executive Director

Confidential Appendix A

Evaluation Summary of the Second Amendments to the Power Purchase Agreements (“PPA”) for Increased Economic Curtailment Rights (“Second Amendments”) between PG&E and Alpaugh 50, LLC, Alpaugh North, LLC, CED Corcoran Solar, LLC, and CED White River Solar, LLC (collectively, “Con Edison”).

[REDACTED]