

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

Item #17
ID #9225
RESOLUTION E-4315
March 11, 2010

REDACTED

R E S O L U T I O N

Resolution E-4315. Pacific Gas and Electric Company (PG&E)

PROPOSED OUTCOME: This Resolution approves cost recovery for a power purchase agreement resulting from PG&E's 2008 Renewables Portfolio Standard (RPS) solicitation between PG&E and AV Solar Ranch 1, LLC., pursuant to California's RPS program.

ESTIMATED COST: Actual costs are confidential at this time.

By Advice Letter 3469-E filed on June 4, 2009 and Supplemental Advice Letter 3469-E-A filed on December 4, 2009.

SUMMARY

PG&E's renewable contract complies with the Renewables Portfolio Standard (RPS) procurement guidelines and is approved.

PG&E filed Advice Letter (AL) 3469-E on June 4, 2009, requesting California Public Utilities Commission (Commission) review and approval of a renewable power purchase agreement (PPA) with AV Solar Ranch 1, LLC (AVSR1 or Project) for generation from a new solar photovoltaic (PV) project. On December 4, 2009, PG&E submitted Supplemental AL 3469-E-A to modify the pricing terms of the proposed agreement.

The proposed PPA is consistent with PG&E's 2008 RPS Procurement Plan. RPS-eligible deliveries under the PPA are reasonably priced and fully recoverable in rates over the life of the contract, subject to Commission review of PG&E's administration of the contract.

The following tables summarize the Project specific features of the agreement:

Generating Facility	Resource Type	Contract Term (Years)	Capacity (MW)	Expected Deliveries (GWh/yr)	Commercial Operation Date	Project Location
AVSR1	Solar PV	25	230	592	12/31/2013	Antelope Valley, CA

NOTICE

Notice of AL 3469-E and AL 3469-E-A was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section IV of General Order 96-B.

PROTESTS

AL 3469-E and Supplemental AL 3469-E-A were not protested.

BACKGROUND

Overview of RPS Program

The California RPS Program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107 and SB 1036.¹ The RPS program is codified in Public Utilities Code Sections 399.11-399.20.² The RPS program administered by the Commission requires each utility to increase its total procurement of eligible renewable energy resources by at least one percent of retail sales per year so that 20 percent of the utility's retail sales are procured from eligible renewable energy resources no later than December 31, 2010.³

¹ SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007)

² All further references to sections refer to Public Utilities Code unless otherwise specified.

³ See § 399.15(b)(1).

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/PUC/energy/Renewables/overview.htm> and <http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm>.

DISCUSSION

PG&E requests Commission approval of a new renewable energy contract

On June 4, 2009, PG&E filed Advice Letter (AL) 3469-E requesting California Public Utilities Commission (Commission) review and approval of a renewable power purchase agreement (PPA) with AV Solar Ranch 1, LLC (AVSR1) for generation from a new solar photovoltaic (PV) project. Generation from the 230 megawatt (MW) AVSR1 project is expected to contribute an average of approximately 600 gigawatt-hours (GWh) annually towards PG&E's RPS annual procurement target beginning in 2014. This equates to approximately 0.8 percent of PG&E's annual retail sales. The Project will be developed in phases beginning in August 2011, and therefore, PG&E may accept deliveries before the contractual 2014 commercial online date.

The AVSR1 project was bid into PG&E's 2008 RPS solicitation, PG&E shortlisted AVSR1 and the parties subsequently negotiated the 25-year PPA that is considered herein. AVSR1 will be developed on 2,100 acres of land in Antelope Valley, California; the land was previously used for agriculture. AVSR1 owns the project site. In the advice letter, PG&E explains that the AVSR1 will construct a gen-tie to interconnect the Project to the planned Whirlwind substation in Southern California Edison Company's service territory. On December 4, 2009, PG&E submitted Supplemental AL 3469-E-A to modify the pricing terms of the proposed agreement.

PG&E requests that the Commission issue a resolution containing the following findings:

1. Approves the PPA in its entirety, including payments to be made by PG&E pursuant to the PPA, subject to the Commission's review of PG&E's administration of the PPA.
2. Finds that any procurement pursuant to the PPA is procurement from an eligible renewable energy resource 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 Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.) ("RPS"), Decision ("D.") 03-06-071 and D.06-10-050, or other applicable law.

3. Finds that all procurement and administrative costs, as provided by Public Utilities Code section 399.14(g), associated with the PPA shall be recovered in rates.
4. Adopts the following finding of fact and conclusion of law in support of CPUC Approval:
 - a. The PPA is consistent with PG&E's approved 2008 RPS procurement plan.
 - b. The terms of the PPA, including the price of delivered energy, are reasonable.
5. Adopts the following finding of fact and conclusion of law in support of cost recovery for the PPA:
 - a. The utility's cost of procurement under the PPA shall be recovered through PG&E's Energy Resource Recovery Account.
 - b. Any stranded costs that may arise from the PPA are subject to the provisions of D.04-12-048 that authorize recovery of stranded renewables procurement costs over the life of the contract. The implementation of the D.04-12-048 stranded cost recovery mechanism is addressed in D.08-09-012.
6. Adopts the following findings with respect to resource compliance with the Emissions Performance Standard ("EPS") adopted in R.06-04-009:
 - a. The PPA is a covered procurement subject to the EPS because it is a new contract commitment for a term of 5 or more years with a baseload facility. However, because this facility would not generate power through the combustion of fossil fuels and would not produce any greenhouse gas as a direct byproduct of its conversion of solar energy into grid-ready renewable electricity, the facility meets the EPS.

- b. PG&E has provided the notice of procurement required by D.07-01-039 in its Advice Letter filing.⁴

Energy Division examined the proposed PPA on multiple grounds:

- Consistency with PG&E's 2008 RPS Procurement Plan
- Consistency with PG&E's least-cost, best-fit methodology
- Consistency with RPS standard terms and conditions
- Project viability
- Compliance with the minimum quantity requirement for long-term/new facility contracts
- Consistency with the Interim Emissions Performance Standard
- Procurement Review Group concerns
- Cost Reasonableness

Consistency with PG&E's 2008 RPS Procurement Plan

California's RPS statute requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.⁵ PG&E's 2008 RPS procurement plan (Plan) was approved by D.08-02-008 on February 14, 2008. Pursuant to statute, PG&E's Plan includes an assessment of supply and demand to determine the optimal mix of renewable generation resources, consideration of flexible compliance mechanisms established by the Commission, and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.⁶

PG&E states that the generation from the PPAs will meet the resource needs identified in its Plan. In its Plan, PG&E's goal was to procure approximately 800 to 1,600 GWh per year.

⁴ PG&E's advice letter 3469-E contained a typo where PG&E mistakenly references the EPS decision, D.07-01-039, as D.06-01-038.

⁵ Pub. Util. Code, § 399.14

⁶ Pub. Util. Code, § 399.14(a)(3)

The PPA is consistent with PG&E's 2008 RPS Procurement Plan, including PG&E's RPS resource needs, approved by D.08-02-008.

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

The LCBF decision directs the utilities to use certain criteria in their bid ranking.⁷ 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. PG&E's bid evaluation includes a quantitative and qualitative analysis, which focuses on four primary areas: 1) determination of a bid's market value; 2) calculation of transmission adders and integration costs; 3) evaluation of portfolio fit; and 4) consideration of non-price factors. The LCBF evaluation is generally used to establish a shortlist of proposals from PG&E's solicitation with whom PG&E will engage in contract negotiations. PG&E's 2008 RPS solicitation protocol included an explanation of its LCBF methodology. The independent evaluator (IE) oversaw the bid evaluation process and concluded in its report that the LCBF evaluation methodology was generally employed consistently and the process was conducted fairly.

The IE has verified that the PPA is consistent with PG&E's objectives set forth in its 2008 RPS Plan. The IE supports PG&E's decision to execute the agreement discussed herein and concurs with PG&E that the PPA merits CPUC Approval.⁸

PPA selection is consistent with PG&E's 2008 RPS solicitation least-cost, best-fit cost protocols.

Consistency with RPS standard terms and conditions

The proposed PPA is based on PG&E's 2008 RPS pro forma which complies with D.08-04-009, as modified by D.08-08-028. As a result, the PPA contains the required non-modifiable standard terms and conditions.

The PPA includes the Commission adopted RPS "non modifiable" standard terms and conditions.

⁷ D.04-07-029

⁸ Second Advice Letter Report of the Independent Evaluator on the Bid Evaluation and Selection Process. (AL 3469-E, Appendix I, page 52.)

Project viability assessment and development status

PG&E believes the Project is viable and will be developed according to the terms and conditions in the PPA. PG&E's project viability assessment included key criteria for renewable project development.

Project milestones

The PPA identifies agreed upon project milestones, including the construction start date and commercial operation date. The seller's obligations to meet these milestones are supported by performance assurance securities. PG&E believes that the AVSR1 project development plan allows for all milestones to be achieved.

Developer experience and creditworthiness

Nextlight, the developer under the AVSR1 project, is a wholly-owned subsidiary of Energy Capital Partners with financing experience in energy generation projects.⁹ PG&E explains that Nextlight's project development team has in-depth experience in the electric industry, including transmission, siting, technical and regulatory matters.¹⁰

Technology

The Project will use commercially proven solar PV technology with single-axis tracking.

Site control and permitting status

AVSR1 has full site control. Permitting for the AVSR1 project is underway and PG&E expects the Project to obtain all necessary permits to achieve commercial operation in a timely matter.

Interconnection and transmission

In AL 3469-E, PG&E explains that the Project is dependent on the construction of SCE's Whirlwind substation, which is scheduled for completion in August 2011.¹¹

⁹ See <http://www.ecpartners.com>; <http://www.nextlight.com>

¹⁰ AL 3469-E at 11.

¹¹ The Commission authorized SCE to build the Whirlwind substation in D.09-12-044.

Contribution to minimum quantity requirement for long-term/new facility contracts

D.07-05-028 established a “minimum quantity” condition on the ability of utilities to count an eligible contract of less than 10 years duration for compliance with the RPS program.¹² In the calendar year that a short-term contract with an existing facility is executed, the utility must also enter into long-term contracts or contracts with new facilities equivalent to at least 0.25% of the utility’s previous year’s retail sales.

As a new facility, delivering pursuant to a long-term contract, the PPA will contribute to PG&E’s minimum quantity requirement established in D.07-05-028.

Compliance with the Interim Greenhouse Gas Emissions Performance Standard (EPS)

California Pub. Utils. Code §§ 8340 and 8341 require that the Commission consider emissions costs associated with new long-term (five years or greater) power contracts procured on behalf of California ratepayers.

D.07-01-039 adopted an interim EPS that establishes an emission rate quota for obligated facilities to levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine powerplant. The EPS applies to all energy contracts for baseload generation that are at least five years in duration.¹³

Renewable energy contracts are deemed compliant with the EPS except in cases where intermittent renewable energy is firmed and shaped with generation from non-renewable resources.

The PPA is exempt from the EPS because it concerns an in-state RPS-eligible facility with a capacity factor less than 60 percent.

¹² For purposes of D.07-05-028, contracts of less than 10 years duration are considered “short-term” contracts and facilities that commenced commercial operations prior to January 1, 2005 are considered “existing”.

¹³ “Baseload generation” is electricity generation at a power plant “designed and intended to provide electricity at an annualized plant capacity factor of at least 60%.” Pub. Utils. Code § 8340 (a).

Procurement Review Group (PRG) concerns

PG&E's PRG consists of: the California Department of Water Resources, the Union of Concerned Scientists, the Division of Ratepayer Advocates, the Coalition of California Utility Employees, The Utility Reform Network, Jan Reid as a PG&E ratepayer, and the Commission's Energy Division.

PG&E initially informed its PRG of the AVSR1 negotiations on June 28, 2008 and provided updates on October 17, 2008, January 9, 2009 and March 23, 2009. Although Energy Division is a member of the PRG, it reserved judgment on the contract until the AL was filed. Energy Division reviewed the transaction independently of the PRG, and allowed for a full protest period before concluding its analysis.

Pursuant to D.02-08-071, PG&E's Procurement Review Group (PRG) participated in the review of the PPA. The PRG feedback, as described in the confidential information provided with the AL, did not provide a basis for disapproval of the PPA.

Cost Reasonableness

PG&E determined that the PPA compared favorably to proposals received in response to PG&E's 2008 solicitation because the PPA's market valuation is reasonable relative to other bids. The Commission's reasonableness review for RPS PPA prices also includes a comparison of the proposed PPAs to other proposed RPS projects from recent RPS solicitations, as well as, Commission approved projects. Using this analysis, and the confidential analysis provided by PG&E in AL 3469-E and AL 3469-E-A, we determine that the PPA price is reasonable. Confidential Appendix A includes a detailed discussion of the contractual pricing terms, including PG&E estimates of the total contract costs under the PPA.

The PPA compares favorably to the results of PG&E's 2008 solicitation. The total all-in costs of the PPA are reasonable based on their relation to bids received in response to PG&E's 2008 solicitation and other comparable PPAs.

Provided the generation is from an eligible renewable energy resource, or is otherwise compliant with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009 and included in this PPA, payments made by PG&E under the PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E's administration of the PPA.

Cost Containment

Pursuant to statute, the Commission calculates a market price referent (MPR) to assess above-market costs of individual RPS contracts and the RPS program in general.¹⁴ Contracts that meet certain criteria are eligible for above-MPR funds (AMF).¹⁵ Based on a 2014 guaranteed commercial online date for the Project, the 25-year PPA may exceed the 2008 MPR¹⁶ and therefore may have above-market costs associated with it.¹⁷

The PPA meets the eligibility criteria for AMFs. However, while the PPA is eligible for AMFs, PG&E has exhausted its AMFs provided by statute. Therefore, PG&E will voluntarily incur the above-MPR costs of the PPA.¹⁸

Because there may be above-MPR costs associated with this contract, which is subject to the cost limitation of Pub. Utils. Code § 399.15(d), and PG&E has exhausted its above-market funds, PG&E is voluntarily entering into this RPS power purchase agreement as permitted under the Pub. Utils. Code.

RPS ELIGIBILITY AND CPUC APPROVAL

Pursuant to Pub. Utils. 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

¹⁴ See § 399.15(c)

¹⁵ SB 1036 codified in § 399.15(d)(2) the following criteria: the contract was selected through a competitive solicitation, the contract covers a duration of no less than 10 years, the contracted project is a new facility that will commence commercial operations after January 1, 2005, the contract is not for renewable energy credits, and the above-market costs of a contract do not include any indirect expenses including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades.

¹⁶ See Resolution E-4214.

¹⁷ The \$/MWh portion of the contract price that exceeds the MPR, multiplied by the expected generation throughout the contract term, represents the total “above-market costs” for a given PPA.

¹⁸ On May 28, 2009, the Director of the Energy Division notified PG&E that it had exhausted its AMF account.

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 delivered to the buyer qualifies under the requirements of the California RPS, and that the seller use commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.¹⁹

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.”²⁰

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, nor can the Commission 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 a seller from its obligation to obtain CEC certification or absolve the purchasing utility of its obligation to enforce compliance with the Standard Term and Condition 6, set forth in Appendix A of D.08-04-009, and included in the PPA. Such contract enforcement activities shall be reviewed pursuant to the Commission’s authority to review the administration of such contracts.

¹⁹ See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

²⁰ See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

CONFIDENTIAL INFORMATION

The Commission, in implementing Pub. Utils. 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 at this time.

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 and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on February 9, 2010.

Timely comments were filed by PG&E and Nextlight on March 1, 2010. Southern California Edison Company filed timely reply comments on March 8, 2010.

We carefully considered all comments and reply comments and made appropriate changes to the draft resolution where necessary.

FINDINGS

1. The PPA is consistent with PG&E's 2008 RPS Procurement Plan, approved by D.08-02-008.
2. The PPA is consistent with the resource needs identified in PG&E's 2008 Procurement Plan.

3. The PPA includes the Commission adopted RPS “non modifiable” standard terms and conditions.
4. The PPA will contribute to PG&E’s minimum quantity requirement established in D.07-05-028.
5. The PPA is exempt from the EPS because it concerns an in-state RPS-eligible facility with a capacity factor less than 60 percent.
6. Pursuant to D.02-08-071, PG&E’s Procurement Review Group (PRG) participated in the review of the PPA.
7. The PRG feedback, as described in the confidential information provided with the advice letter, did not provide a basis for disapproval of the PPA.
8. The PPA compares favorably to the results of PG&E’s 2008 solicitation
9. The total expected costs of the PPA are reasonable based on their relation to bids received in response to PG&E’s 2008 solicitation and other comparable PPAs.
10. Provided the generation is from an eligible renewable energy resource, or is otherwise compliant with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009, and included in the PPA, payments made by PG&E under the PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E’s administration of the PPA.
11. Because there may be above-market costs associated with this contract, which is subject to the cost limitation of Public. Utilities Code § 399.15(d), and PG&E has exhausted its above-market funds, PG&E is voluntarily entering into this RPS power purchase agreement as permitted under the Public. Utilities Code.
12. Procurement pursuant to the PPA 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 Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.03-06-071 and D.06-10-050, or other applicable law.
13. The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource under the PPA to count towards an RPS compliance obligation. Nor shall that finding absolve PG&E of its obligation to enforce compliance with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009, and included in the PPA.

14. 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 at this time.
15. AL 3469-E as supplemented by AL 3469-E-A should be approved effective today without modifications.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company's Advice Letter 3469-E, requesting Commission review and approval of power purchase agreements with AV Solar Ranch 1, LLC, as supplemented by Advice Letter 3469-E-A, is approved without modification.
2. 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 11, 2010; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Confidential Appendix A

Summary of PPA terms and conditions

[REDACTED]