

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**09-28-10
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September 28, 2010

Agenda ID #9805
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 10-05-010

This is the proposed decision of Administrative Law Judge (ALJ) Mattson. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Mattson at bwm@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTONKaren V. Clopton, Chief
Administrative Law Judge

KVC:jt2

Attachment

Decision PROPOSED DECISION OF ALJ MATTSON (Mailed 9/28/2010)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Modification of Resolution E-4291, Resolution E-4302, Resolution E-4309, Resolution E-4310, Resolution E-4314, Resolution E-4315, Resolution E-4320, and Resolution E-4321. (U39E)

Application 10-05-010
(Filed May 4, 2010)

DECISION ON MODIFICATION OF RESOLUTIONS RELATIVE TO THE RENEWABLES PORTFOLIO STANDARD CONTRACT COST RECOVERY

1. Summary

Pacific Gas and Electric Company (PG&E) applies for modification of several resolutions. The requested modifications are with respect to conditions under which costs are recoverable by the utility for electricity bought from sellers pursuant to the renewables portfolio standard (RPS) program. PG&E asserts that the resolutions unduly limit cost recovery and incorrectly describe the utility's obligation to enforce the contracts.

We grant the application in part by modifying the language and findings to revert to those employed in prior resolutions. We also clarify our expectations for utility administration of RPS contracts. The result is equivalent to the relief provided Southern California Edison Company in Decision 10-06-004 regarding similar issues. This proceeding is closed.

2. Background

Between December 7, 2009 and April 27, 2010, the Commission issued the resolutions that are the subject of this application. The resolutions, with a brief

description, are listed in Appendix A. Each resolution approves a power purchase agreement (PPA), or PPA amendment, between Pacific Gas and Electric Company (PG&E) and a seller of electricity pursuant to the renewables portfolio standard (RPS) program, and authorizes cost recovery by PG&E.

On May 4, 2010, PG&E filed this application seeking modification of these resolutions. PG&E asserts that the Commission, in approving more than 45 of PG&E's renewable contracts through decisions and resolutions, has repeatedly found that payments to be made by PG&E under these contracts fully recoverable in rates over the life of the contracts, subject to Commission review of PG&E's contract administration. PG&E says the recent resolutions potentially limit PG&E's recovery of contract payments. In addition, PG&E claims the resolutions incorrectly describe PG&E's obligations to enforce the contracts.

On June 7, 2010, the Commission issued Decision (D.) 10-06-004 in Application (A.) 10-03-009.¹ That decision largely grants a similar application by Southern California Edison Company (SCE) by reverting to language and findings employed in prior resolutions approving RPS PPAs.

On June 10, 2010, the Commission's Division of Ratepayer Advocates (DRA) filed a response to PG&E's application. DRA contends that the issues raised by PG&E are identical to the issues identified by SCE and decided in D.10-06-004. DRA recommends that the issues in this application be resolved in a manner consistent with the disposition in D.10-06-004.

¹ An error in D.10-06-004 (regarding the number of resolutions addressed by the order) was corrected by D.10-07-020.

3. Discussion

The issues raised by SCE and decided in D.10-06-004 are identical to those presented here by PG&E. No party recommends a different outcome between utilities, and we agree with DRA that the remedies should be the same. We do so by adopting the same or similar language as that adopted for SCE. The changes to the resolutions are stated in Appendix B.

We also clarify our expectations with respect to contract administration. We do so in a manner equivalent to our prior decision, in particular with respect to Standard Term and Condition 6 (STC 6). STC 6 balances competing interests by limiting a seller's efforts to maintain certain project status to those that are commercially reasonable. Because of its special importance, we repeat our expectations:

[W]e expect utility contract administration to include active monitoring of each seller's compliance with STC 6. Utilities seek recovery of RPS procurement costs in an annual Energy Resource Recovery Account (ERRA) filing, or a filing in another appropriate cost-recovery proceeding. To meet its burden of proof, each utility should make an affirmative showing in each ERRA (or other appropriate) proceeding of its active monitoring of RPS sellers' compliance with STC 6, and the results of that active monitoring. Disallowance of a utility's requested rate recovery is appropriate when the utility's ERRA (or other appropriate) showing fails to establish that the utility's contract administration, including active monitoring of STC 6 and related terms, is reasonable through clear and convincing evidence. [Footnote deleted.] (D.10-06-004 at 9.)

Just as we said before, we state here that:

[U]tility contract enforcement activities will be reviewed pursuant to the Commission's authority to review contract administration. We expect utility contract administration to be active, and require an affirmative showing in ERRA filings that meets the utility's burden of proof by presentation of clear and convincing evidence. This

responsibility applies to all contract terms, as necessary for the utility to carry its burden of proof. We specifically clarify this responsibility with respect to STC 6. We are serious about utility contract administration sufficiently assuring that energy purchased pursuant to RPS contracts is RPS-eligible electricity (subject only to limited cases which may occur due to a change in law). (D.10-06-004 at 15.)

These directions apply to all electric utilities under Commission jurisdiction with respect to the RPS program, including PG&E, as ordered in Ordering Paragraph 3 of D.10-06-004. We repeat the ordering paragraph here for clarity and convenience, but do not duplicate it in the orders below since it is already applicable and effective.

3. Each electric utility under the Commission's jurisdiction, pursuant to the renewables portfolio standard program, shall (a) devise a method to actively monitor each seller's compliance with Standard Term and Condition 6 and related contract terms, (b) administer that active monitoring, and (c) make an affirmative showing in each Energy Resource Recover Account (or other appropriate cost-recovery) proceeding of its method for active monitoring and the results of that monitoring. This shall be part of each electric utility's showing of reasonable contract administration of all contract terms, inclusive of obligations both before and after the project's commercial operation date, as appropriate. The Executive Director shall serve a copy of this order on the service list in Rulemaking 08-08-009, thereby performing service on each Commission-regulated electric utility with a renewables portfolio standard program obligation. These utilities are Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas & Electric Company, PacifiCorp, Sierra Pacific Power Company, Bear Valley Electric Service Division (a division of Golden State Water Company), and Mountain Utilities. (D.10-06-004, Ordering Paragraph 3.)

4. Categorization and Need for Hearing

On May 20, 2010, the Commission preliminarily categorized this proceeding as ratesetting with no need for hearing.² No party opposed the preliminary categorization or determination that no hearing would be needed. We affirm the categorization of the proceeding as ratesetting and that hearings are not needed.

5. Comments on Proposed Decision

On September 28, 2010, the proposed decision of ALJ Burton W. Mattson in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3. Comments were filed on _____ by _____. Reply comments were filed on _____ by _____.

6. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Burton W. Mattson is the assigned ALJ in this proceeding.

Findings of Fact

1. The relief requested by PG&E is the same as that requested by SCE in A.10-03-009 and granted in D.10-06-004.
2. No party presents any reasons to adopt a different remedy for PG&E than already granted for SCE.
3. The preliminary categorization of this proceeding was ratesetting, and the finding that hearings are not necessary, are affirmed.
4. No hearing is necessary.

² Resolution ALJ 176-3254.

Conclusions of Law

1. PG&E's application to modify several resolutions should be granted in part by reverting to simpler, more direct language used in similar prior resolutions, equivalent to the changes adopted in D.10-06-004 for SCE; and the application should be denied in all other respects.

2. This decision should be effective immediately so that PG&E may proceed with the affected contracts with increased certainty and without delay.

O R D E R

IT IS ORDERED that:

1. The application is granted in part and denied in all other respects. The resolutions are modified as stated in Appendix B.

2. Application 10-05-010 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A**LIST OF RESOLUTIONS**

LINE NO	RESOLUTION NO	ISSUE DATE	COUNTERPARTY	CONTRACT TERM (years)	TYPE
1	E-4291	12/7/09	Shell Energy a) White Creek b) Big Horn	a) 3 b) 2	a) Wind b) Wind
2	E-4302	12/21/09	El Dorado Energy	20	Solar PV
3	E-4309	2/5/10	Mt. Poso Cogeneration	15	Biomass
4	E-4310	1/26/10	Woodland Biomass Power	10	Biomass
5	E-4314	2/26/10	Topaz Solar Farms	25	Solar PV
6	E-4315	3/16/10	AV Solar Ranch 1	25	Solar PV
7	E-4320	4/12/10	Big Creek Water Works	20	Small Hydro
8	E-4321	4/27/10	Vantage Wind Energy and Powerex	15	Wind

(END OF APPENDIX A)

APPENDIX B
MODIFICATIONS TO RESOLUTIONS

Language and findings in the resolutions named below are changed as follows. Similar changes are grouped to minimize repetition.

1. Resolution E-4291 at 10 and Finding 13:

From:

Provided the generation is from an eligible renewable energy resource, payments made by PG&E under the PPAs and hedging strategy are fully recoverable in rates over the life of the PPAs, subject to Commission review of PG&E's administration of the PPAs.

To:

Payments made by PG&E under the PPAs and hedging strategy are fully recoverable in rates over the life of the PPAs, subject to Commission review of PG&E's administration of the PPAs.

2. Resolution E-4302 at Finding 10:

From:

Provided the generation is from an eligible renewable energy resource, 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.

To:

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.

3. Resolution E-4309 at 8 and Finding 7:

From:

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

To:

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

4. Resolution E-4314 at 7 and Finding 3:

From:

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

To:

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

5. The following three Resolutions:

- Resolution E-4310 at 10 and Finding 11
- Resolution E-4315 at 9 and Finding 10

- Resolution E-4320 at 9 and Finding 11

From:

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 [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.

To:

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.

6. Resolution E-4321 at 13:

From:

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, as modified, including the costs associated with the firming and shaping agreement between PG&E and Powerex, and costs PG&E may incur for self-managing the intermittent generation from the Vantage project upon the expiration of the Powerex firming and shaping agreement approved herein, up to the total sum of total project costs identified in Table 3 of Confidential Appendix B of this Resolution, are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E's administration of the PPA.

To:

Payments made by PG&E, under the PPA, as modified, including the costs associated with the firming and shaping agreement between PG&E and Powerex, and costs PG&E may incur for self-managing the intermittent generation from the Vantage project upon the expiration of the Powerex firming and shaping agreement approved herein, up to the total sum of

total project costs identified in Table 3 of Confidential Appendix B of this Resolution, are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E's administration of the PPA.

7. Resolution E-4321 at Finding 13:

From:

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, as modified, including the costs associated with the firming and shaping agreement between PG&E and Powerex, up to the total sum of total project costs identified in Table 3 of Confidential Appendix B of this Resolution, and costs PG&E may incur for self-managing the intermittent generation from the Vantage project upon the expiration of the Powerex firming and shaping agreement approved herein, are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E's administration of the PPA.

To:

Payments made by PG&E, under the PPA, as modified, including the costs associated with the firming and shaping agreement between PG&E and Powerex, up to the total sum of total project costs identified in Table 3 of Confidential Appendix B of this Resolution, and costs PG&E may incur for self-managing the intermittent generation from the Vantage project upon the expiration of the Powerex firming and shaping agreement approved herein, are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E's administration of the PPA.

8. The following five Resolutions:

- Resolution E-4291 at 12
- Resolution E-4302 at 12
- Resolution E-4309 at 15
- Resolution E-4310 at 11

- Resolution E-4314 at 10

From:

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 any contracting party of its obligation to obtain CEC certification and/or to pursue remedies for breach of contract to ensure that only RPS-eligible generation is delivered and paid for under a Commission-approved contract. Such contract enforcement activities shall be reviewed pursuant to the Commission's authority to review the administration of such contracts.

To:

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 administration of such contracts.

9. The following three Resolutions:

- Resolution E-4315 at 9
- Resolution E-4320 at 10
- Resolution E-4321 at 16

From:

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.

To:

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 administration of such contracts.

(END OF APPENDIX B)

