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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company for Approval of Three Power Purchase Agreement Amendments with Existing Qualifying Facilities and Associated Cost Recovery (U39E).

Application 11-01-023  
(Filed January 28, 2011)

**SCOPING MEMO AND RULING OF ASSIGNED  
COMMISSIONER AND ADMINISTRATIVE LAW JUDGE**

Pursuant to Rule 7.3(a) of the Commission's Rules of Practice and Procedure, and following a prehearing conference (PHC) held on April 6, 2011, this ruling sets forth the category, need for hearing, issues to be addressed and schedule of the proceeding.

**Background**

On January 28, 2011, Pacific Gas and Electric Company (PG&E) filed Application (A.) 11-01-023 seeking Commission approval of three power purchase agreement amendments (Amendments) between PG&E and three existing qualifying facilities (QFs). The Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN) timely filed a protest and response, respectively, on March 4, 2011. PG&E filed a reply on March 14, 2011. On March 21, 2011, PG&E filed an amended application revising down the anticipated customer savings over the ten remaining years of the contracts from \$26 million (or \$2.6 million per year) to \$14 million (or \$1.4 million per year). A PHC was held on April 6, 2011, during which parties agreed to continue working

together to address outstanding concerns and provide a status update to the assigned Administrative Law Judge (ALJ) on April 13, 2011. On April 13, 2011, DRA timely filed a status report stating that all issues of concern had been sufficiently addressed through the discovery process and concurrently withdrawing its protest. As of April 13, 2011, TURN had not filed a status report. TURN has not formally raised any issue in protest to this proceeding. As of the date of this Scoping Memo, A.11-01-023 is uncontested.

The three QF facilities for which PG&E requests amendment approvals are Yuba City Cogen and Greenleaf 1, both located in Yuba City, California, and KES Kingsburg, which is located in Kingsburg, California. The Yuba City Cogen facility is a 49 megawatt (MW) natural gas fired facility currently operating under an existing interim Standard Offer 4 (ISO4) QF contract that was executed on April 16, 1985 and expires on April 16, 2021. Yuba City Cogen provides 46 MW of firm capacity, and the owner is paid energy prices at Commission determined short-run avoided cost<sup>1</sup> (SRAC) as well as Commission determined firm and as-delivered capacity payments.

The Greenleaf 1 facility is a 49.5 MW natural gas fired facility currently operating under an existing ISO4 contract that was executed on December 12, 1984 and expires on March 10, 2019. The Greenleaf 1 facility provides 49.2 MW of firm capacity, and the owner is paid SRAC energy prices and firm capacity payments.

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<sup>1</sup> See Decision (D.) 07-09-040 and Resolution E-4246 for a description of current SRAC prices. Modified SRAC prices will go into effect upon the effective date of the Qualifying Facility/Combined Heat and Power (QF/CHP) Settlement approved in D.10-12-035.

The KES Kingsburg facility is a 34.5 MW natural gas fired facility currently operating under an existing Standard Offer 2 contract that was executed on October 26, 1987 and expires on April 7, 2021. The KES Kingsburg facility provides 34.5 MW of firm capacity, and the owner is paid SRAC energy prices and firm capacity payments.

PG&E asserts that the Amendments are just and reasonable, in large part, because they provide PG&E with the contractual right to schedule these facilities as needed, rather than being required to accept energy at times that it may not be needed or cost-effective.<sup>2</sup> Both the Yuba City and KES Kingsburg facilities typically operate during the Peak and Partial Peak hours of the month while the Greenleaf 1 facility typically operates in a baseload manner Monday through Friday. PG&E currently does not have scheduling rights under the existing contracts and is required to take and pay for energy that is delivered, regardless of need or cost. Furthermore, PG&E receives limited scheduling information from these facilities, which makes scheduling into the California Independent System Operator markets difficult. PG&E anticipates significant customer savings resulting from the right to schedule the above facilities (\$14 million over the remaining terms of the contracts). Furthermore, PG&E asserts that these amendments are consistent with the QF/CHP Settlement Agreement approved in D.10-12-035<sup>3</sup> and will provide customer benefits including operational benefits

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<sup>2</sup> Absent these amendments, the three QF generation facilities would remain must-take resources pursuant to the Public Utilities Regulatory Policy Act of 1978. Approval of these amendments would result in the facilities operating as "Utility Prescheduled Facilities" as defined in § 4.8 of the Settlement.

<sup>3</sup> Rehearing Applications were timely filed by the City and County of San Francisco (CCSF), the California Municipal Utilities Association, and jointly filed by the Marin

*Footnote continued on next page*

and possible greenhouse gas (GHG) emissions reductions towards the GHG targets under the QF/CHP Settlement<sup>4</sup> by allowing PG&E to consider GHG emissions and costs when making dispatch decisions.

The Amendments are conditioned on (1) Commission approval of the Amendments; and (2) the Settlement becoming effective. In determining the scope and schedule of this proceeding, we have considered the application, the protest of DRA, the response of TURN, the PHC conducted on April 6, 2011, and DRA's status update and concurrent protest withdrawal.

### **Issues**

The overarching issues to be addressed in this proceeding are: (1) Whether the Amendments are just and reasonable, and (2) Whether PG&E should recover the costs associated with the Amendments in the Electric Revenue Recovery Account. In addition, PG&E requests a finding from the Commission establishing that the Amendments count toward the GHG Emissions Reduction Targets in the QF/CHP Settlement.

In order to be satisfied that the Amendments are just and reasonable, DRA identified four elements that should be considered in our review of the application: (1) the reasonableness of PG&E's method for calculating customer savings, (2) the cost effectiveness of the proposed amendments given the higher

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Energy Authority, the Alliance for Retail Energy Market, and the Direct Access Customer Coalition. On March 24, 2011, the Commission issued the Order Modifying Decision (D.) 10-12-035 and Denying Rehearing of D.10-12-035.

<sup>4</sup> See Settlement § 4.8.1.3 for GHG targets. GHG emissions reductions will ultimately be determined using the methodology described in § 7.3.1.3 for Utility Prescheduled Facilities. GHG costs will not be incurred by buyer or seller until Assembly Bill (AB) 32 is fully implemented.

energy price for less energy that PG&E customers will receive, (3) the actual savings that will be achieved by the proposed amendments given the higher heat rate, and (4) the reasonableness for PG&E to execute these amendments outside the QF/CHP Settlement approved in D.10-12-035. PG&E, in its reply, stated that the methodology used by PG&E to calculate customer benefits was found to be reasonable in the decision approving the results of PG&E's 2008 Long-Term Request for Offers,<sup>5</sup> and that the ability to economically dispatch the generators ensures customer savings because PG&E will refrain from dispatching the generators if lower-priced market options are available.<sup>6</sup> During the PHC, TURN stated that it wanted to explore the issue of cost recovery of above-market costs, and would work with PG&E to address that issue.

In its April 13, 2011 status update, DRA stated that the four issues raised in its protest had been satisfactorily addressed. As such, DRA withdrew its protest to the application. As of the date of this Scoping Memo, TURN has not formally protested PG&E's application.

Accordingly, the following issues are within the scope of the proceeding:

1. Are the Amendments just and reasonable? In deciding this overarching issue, we will consider the following factors:
  - a. Will the Amendments reduce customer costs by providing better market value?
  - b. Will the negotiated heat rate result in customer savings?
  - c. Will the Amendments provide operational benefits?

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<sup>5</sup> D.10-07-045 at 16-19.

<sup>6</sup> PG&E Reply Comments at 3.

2. Should GHG emissions resulting from the Amendments count towards PG&E's GHG Emissions Reduction Target in the QF/CHP Settlement?
3. Should PG&E be authorized to recover the costs of the Amendments through the Electric Revenue Recovery Account and allocate stranded costs, if any, consistent with Section 13.1 of the QF/CHP Settlement Term Sheet?

### **Schedule**

As discussed below, we determine that hearings may not be needed at this juncture. Furthermore, any remaining issues among parties, if they exist, do not appear to be legal in nature; therefore, briefs are not needed.

We establish the following schedule for this proceeding:

PHC	April 6, 2011
Party Status Report	April 13, 2011
ALJ Proposed Decision	July 2011

It is anticipated that this proceeding will conclude as set forth above. However, the assigned ALJ may modify the schedule and scope as required to promote the efficient and fair resolution of the matter. In any event, the proceeding should be resolved within 18 months of this scoping memo as provided by Pub. Util. Code § 1701.5.

### **Category of Proceeding, Need for Hearing and Ex Parte Rules**

This ruling confirms the Commission's preliminary determination that this is a ratesetting proceeding (Resolution ALJ 176-3269, February 24, 2011) and preliminarily determines that hearings may not be needed. There appears to be no disputed issues of material fact requiring evidentiary hearing; however, we decline to make a final determination on the need for hearings at this juncture.

*Ex parte* communications continue to be governed by Article 8 of the Commission's Rules of Practice and Procedure.

**Motion for Leave to File Confidential Material Under Seal**

Concurrent with the filing of A.11-01-023 and pursuant to Rule 11.4 of this Commission's Rules of Practice and Procedure and D.06-06-066 and D.08-04-023, PG&E submitted its Motion of Pacific Gas and Electric Company for Leave to File Confidential Material under Seal in Support of its Application for Approval of Three Power Purchase Agreement Amendments with Existing Qualifying Facilities (Motion). Specifically, PG&E requested confidential treatment of (1) Appendix A - the Declaration of Hugh Merriam, which describes the terms of the proposed Power Purchase Agreements between PG&E and Yuba City Cogen Partners L.P., KES-Kingsburg L.P., and Calpine Greenleaf Inc., and the specific quantification of customer benefits associated with the aforementioned power purchase agreements; (2) Appendix B - the PPA amendment between PG&E and Yuba City Cogen Partners L.P.; (3) Appendix C - the PPA amendment between PG&E and KES-Kingsburg L.P.; and (4) Appendix D - the PPA amendment between PG&E and Calpine Greenleaf Inc. Concurrent with the filing of its amended Application, PG&E filed a second Motion for Leave to File Confidential Material under Seal pertaining to the amended Appendix A - Declaration of Hugh Merriam. The Commission received no objections to PG&E's motions, and PG&E's motions were orally granted at the April 6, 2011 PHC. The affirmative ruling, as modified, is memorialized in the ruling paragraphs of this Scoping Memo.

**Assignment of Proceeding and Designation of Presiding Officer**

Catherine J.K. Sandoval is the assigned Commissioner and Melissa K. Semcer is the assigned ALJ in this proceeding. Pursuant to Rule 13.2(b), Melissa K. Semcer is the assigned Presiding Officer in this proceeding.

### **Intervenor Compensation**

A party who intends to seek an award of compensation pursuant to Pub. Util. Code §§ 1801-1812 should file and serve a notice of intent to claim compensation no later than 30 days after the April 6, 2011 PHC (May 6, 2011). (Pub. Util. Code § 1804(a)(1)).

Parties intending to seek an award of intervenor compensation must maintain daily record keeping for all hours charged and a sufficient description for each time of entry. Sufficient means more detail than just “review correspondence” or “research” or “attend meeting.” In addition, intervenors must classify time by issues. When submitting requests for compensation, the hourly data should be presented in an Excel spreadsheet.

### **Filing, Service and Service List**

Parties who provide an e-mail address for the official service list may serve documents by e-mail in accordance with Rule 1.10 (and must nevertheless serve a paper copy of all documents on the assigned ALJ pursuant to Rule 1.10(e)), and are deemed to consent to e-mail service by other parties.

Parties are encouraged to electronically file pleadings pursuant to Rule 1.13(b) as it speeds their processing and allows them to be posted on the Commission’s website. More information about electronic filing is available at [www.cpuc.ca.gov/puc/efiling](http://www.cpuc.ca.gov/puc/efiling).

Any person interested in participating in this proceeding who is unfamiliar with the Commission’s procedures or who has questions about the electronic filing procedures should contact the commission’s Public Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

**IT IS RULED** that:

1. The assigned Commissioner is Catherine J.K. Sandoval.
2. The assigned Administrative Law Judge (ALJ), Melissa K. Semcer, is the presiding officer.
3. The scope and schedule of the proceeding are set forth herein.
4. The category is ratesetting.
5. Hearings may not be needed. A final determination of the need for hearings will be included in the ALJ's proposed decision or by ruling at an earlier date.
6. Parties shall comply with the ex parte rules set forth in Rules 8.4(b).
7. Pacific Gas and Electric Company's (PG&E) motion for leave to file confidential information under seal is granted as set forth below:
  - a. The confidential information placed under seal pursuant to this ruling shall remain under seal for three years as provided in Decision (D.) 06-06-066, Appendix 1, Item VII.B. During this period, the confidential information shall not be made accessible or be disclosed to anyone except on the further order or ruling of the Commission, the assigned Commissioner, the assigned ALJ, or the ALJ then designated as Law and Motion Judge, which order shall be entered only after notice to PG&E and an opportunity to be heard.
  - b. The confidential information is: (1) Appendix A - the original and amended Declaration of Hugh Merriam (see exceptions below), (2) Appendix B - the PPA amendment between PG&E and Yuba City Cogen Partners L.P.; (3) Appendix C - the PPA amendment between PG&E and KES-Kingsburg L.P.; and (4) Appendix D - the PPA amendment between PG&E and Calpine Greenleaf Inc.
  - c. The following items included in the original and amended Appendix A - Declaration of Hugh Merriam are not granted confidential treatment: items 1, 2, 3 (only information regarding the conditions precedent) and 13. These items are discussed in the public portion of PG&E's application or are general in nature and do not require protection under the Commission's confidentially rules.

8. Parties shall comply with Rules 1.9 and 1.10 regarding service and provide the assigned ALJ with a hard copy, and an electronic copy to the extent practical pursuant to Rule 1.13(e).

9. Parties who intend to seek an award of compensation pursuant to Pub. Util. Code §§ 1801-1812 should file and serve a notice of intent to claim compensation no later than 30 days after the April 6, 2011 prehearing conference.

Dated April 21, 2011, at San Francisco, California.

/s/ CATHERINE J.K. SANDOVAL

Catherine J.K. Sandoval  
Assigned Commissioner

/s/ JANET A. ECONOME for

Melissa K. Semcer  
Administrative Law Judge