

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4164
April 24, 2008

REDACTED

R E S O L U T I O N

Resolution E-4164. Pacific Gas and Electric Company (PG&E) requests approval of a renewable procurement contract, which concerns consolidation of existing capacity, contract extensions, added capacity and a hedging plan. This contract is approved without modification.

By Advice Letter 3211-E filed on February 15, 2008, and Advice Letter 3211-E-A filed on March 21, 2008.

SUMMARY

PG&E’s renewable contract is consistent with PG&E’s 2007 Renewable Portfolio Standard (RPS) procurement plan and is approved with modification

PG&E filed Advice Letter (AL) 3211-E on February 15, 2008, requesting Commission review and approval of a power purchase agreement (PPA) executed with the Geysers Power Company, LLC (Geysers) and an associated hedging plan (collectively, the Transaction). The Transaction between PG&E and the Geysers replaces six existing qualifying facility contracts (QF) between the two parties, and continues until December 31, 2014, for a total of six years and 11 months. PG&E’s request is granted without modification.

Generating Facility	Type	Term	Capacity (MW)	Annual (GWh)	Online	Location
Geysers	Geo	6 years, 11 months	<ul style="list-style-type: none"> • 57 MW additional capacity • 118 MW renegotiated QF • 175 MW total 	<ul style="list-style-type: none"> • 500 GWh additional, • 1,533 GWh total 	02/16/08	Sonoma and Lake Counties, CA

Confidential information about the contract should remain confidential

This resolution finds that certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583, General Order (G.O.) 66-C, and D.06-06-066 should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations.

BACKGROUND

The California Renewables Portfolio Standard (RPS) Program was established by Senate Bill 1078¹ and codified by California Pub. Util. Code Section 399.11, et seq. The statute required that a retail seller of electricity such as PG&E purchase a certain percentage of electricity generated by Eligible Renewable Energy Resources (ERR). Originally, each utility was required to increase its total procurement of ERRs by at least 1 percent of annual retail sales per year until 20 percent is reached, subject to the Commission's rules on flexible compliance, no later than 2017.

The State's Energy Action Plan (EAP) called for acceleration of this RPS goal to reach 20 percent by 2010.² This was reiterated again in the Order Instituting Rulemaking (R.04-04-026) issued on April 28, 2004,³ which encouraged the utilities to procure cost-effective renewable generation in excess of their RPS annual procurement targets (APTs)⁴, in order to make progress towards the goal expressed in the EAP. On September 26, 2006, Governor Schwarzenegger signed Senate Bill (SB) 107,⁵ which officially accelerates the State's RPS targets to 20 percent by 2010, subject to the Commission's rules on flexible compliance.⁶

¹ Chapter 516, statutes of 2002, effective January 1, 2003 (SB 1078)

² The Energy Action Plan was jointly adopted by the Commission, the California Energy Resources Conservation and Development Commission (CEC) and the California Power Authority (CPA). The Commission adopted the EAP on May 8, 2003.

³ http://www.cpuc.ca.gov/Published/Final_decision/36206.htm

⁴ APT - An LSE's APT for a given year is the amount of renewable generation an LSE must procure in order to meet the statutory requirement that it increase its total eligible renewable procurement by at least 1% of retail sales per year.

⁵ Chapter 464, Statutes of 2006 (SB 107)

⁶ Pub. Util. Code Section 399.14(a)(2)(C)

CPUC has established procurement guidelines for the RPS Program

The Commission has issued a series of decisions that establish the regulatory and transactional parameters of the utility renewables procurement program. On June 19, 2003, the Commission issued its "Order Initiating Implementation of the Senate Bill 1078 Renewable Portfolio Standard Program," D.03-06-071. On June 9, 2004, the Commission adopted its Market Price Referent (MPR) methodology⁷ for determining the Utility's share of the RPS seller's bid price, as defined in Pub. Util. Code Sections 399.14(a)(2)(A) and 399.15(c). On the same day the Commission adopted standard terms and conditions for RPS power purchase agreements in D.04-06-014 as required by Pub. Util. Code Section 399.14(a)(2)(D). Instructions for evaluating the value of each offer to sell products requested in a RPS solicitation were provided in D.04-07-029.

More recently, on December 15, 2005, the Commission adopted D.05-12-042 which refined the MPR methodology for the 2005 RPS Solicitation.⁸ Subsequent resolutions adopted MPR values for the 2005, 2006 and 2007 RPS Solicitations.⁹ In addition, D.06-10-050, as modified by D.07-03-046, further refined the RPS reporting and compliance methodologies.¹⁰ In this decision, the Commission established methodologies to calculate an LSE's initial baseline procurement amount, annual procurement target (APT) and incremental procurement amount (IPT).¹¹

⁷ D.04-07-015

⁸ http://www.cpuc.ca.gov/word_pdf/FINAL_DECISION/52178.pdf

⁹ Respectively, Resolution E-3980:

http://www.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/55465.DOC,
Resolution E-4049:

http://www.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/63132.doc, Resolution E-4118: http://www.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/73594.pdf

¹⁰ D.06-10-050, Attachment A,

http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/61025.PDF) as modified by D.07-03-046

(http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/65833.PDF).

¹¹ The IPT represents the amount of RPS-eligible procurement that the LSE must purchase, in a given year, over and above the total amount the LSE was required to procure in the prior year. An LSE's IPT equals at least 1% of the previous year's total

Pursuant to legislation, the process for above-market cost recovery has been modified

Pursuant to SB 1078 and SB 107, the California Energy Commission (CEC) was authorized to “allocate and award supplemental energy payments” to cover above-market costs¹² of long-term RPS-eligible contracts executed through a competitive solicitation.¹³ The CEC required that developers seeking above-market costs apply to the CEC for supplemental energy payments (SEPs); however, the legislature determined that it was inefficient for developers to apply to the CEC for above-market costs while the CPUC reviewed RPS contracts for approval. Additionally, SEPs proved difficult to finance and therefore, SEPs became an impediment to project viability.

Consequently, on October 14, 2007, Governor Schwarzenegger signed SB 1036,¹⁴ which authorizes the CPUC to provide above-market cost recovery through rates. The legislative intent of SB 1036 was to limit the RPS procurement costs above the MPR, beyond which the utilities cannot be required to procure. The cost limitation is equal to the amount of funds currently accrued in the CEC’s New Renewable Resources Account, and the portion of funds which would have been collected through January 1, 2012. Once implemented by the CPUC, it is expected that SB 1036 will further streamline RPS contract approval and facilitate financing for projects with above-market costs.

Pursuant to SB 1036, Pub. Util. Code § 399.15(d)(2) provides that:

The above-market costs of a contract selected by an electrical corporation may be counted toward the cost limitation if all of the following conditions are satisfied:

(A) The contract has been approved by the commission and was selected through a competitive solicitation pursuant to the requirements of subdivision(d) of Section 399.14.

retail electrical sales, including power sold to a utility’s customers from its DWR contracts.

¹² Note: “above-market costs” refers to the portion of the contract price that is greater than the appropriate market price referent (MPR).

¹³ Pub. Util. Code 399.15(d)

¹⁴ Chapter 685, Statutes of 2007 (SB 1036)

- (B) The contract covers a duration of no less than 10 years.
- (C) The contracted project is a new or repowered facility commencing commercial operations on or after January 1, 2005.
- (D) No purchases of renewable energy credits may be eligible for consideration as an above-market cost.
- (E) 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.

Prior to the CPUC's full implementation of SB 1036, the Commission may approve eligible contracts with above-market costs and cost recovery will be approved through rates.

The Commission has established bilateral procurement guidelines for the RPS Program

While the focus of the RPS program is procurement through competitive solicitations, D.03-06-071¹⁵ allows for a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process. Specifically, D.03-06-071 states that bilateral contracts will only be allowed if they do not require Public Goods Charge (PGC) funds.

In D.06-10-019, the Commission interprets D.03-06-071, stating that bilaterals are not eligible for Supplemental Energy Payments (SEPs), and that bilateral contracts must be deemed reasonable.¹⁶ Going forward, D.06-10-019 states that the Commission will look further at evaluation criteria for bilateral RPS contracts. However, in the interim, utilities' bilateral contracts can be evaluated on a case-by-case basis prior to the CPUC formally adopting evaluation criteria.¹⁷

¹⁵ http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/27360.htm

¹⁶ While SB 1036 (2007) reformed the SEP process, the restriction that eligible contracts must result from a competitive solicitation remains, see §399.15(d)(2)(A).

¹⁷ Rulings on May 10, 2007 and September 4, 2007 in R.06-02-012 requested comments and proposals on three subject areas; 1) short-term MPR methodology, 2) reasonableness criteria for IOU bilateral contracts and reasonableness criteria for energy service providers and community choice aggregators requests for public funds to cover above market costs, and 3) comments on draft guidelines for CPUC review and process for all RPS contract types. Parties' responses to the rulings will inform a Commission decision on reasonableness criteria.

The Commission has approved a decision setting minimum quotas of RPS contracting from long-term contract or contracts with new facilities

Pub. Util. Code 399.14(b)(2) states that before the Commission may approve an RPS contract of less than ten years' duration, the Commission must establish "for each retail seller, minimum quantities of eligible renewable energy resources to be procured either through contracts of at least 10 years' duration or from new facilities commencing commercial operations on or after January 1, 2005." On May 3, 2007, the Commission approved D.07-05-028,¹⁸ which established a minimum percentage of the prior year's retail sales that must be contracted with contracts of at least 10 years' duration or from new facilities commencing commercial operations on or after January 1, 2005. The Commission is thereby permitted to authorize renewable contracts of less than 10 years' duration. The use of CPUC Approved short-term contract for RPS compliance purposes is predicated on successfully demonstrating in RPS compliance filings that the minimum long-term and/or new contract quota has been met.

PG&E requests expedited approval of renewable energy contract

On February 15, 2008, PG&E filed AL 3211-E requesting expedited Commission approval of a renewable procurement contract. The PPA results from bilateral negotiations with the Geysers Power Company, LLC (Geysers). On March 21, 2008, PG&E filed AL 3211-E-A, bringing the PPA into compliance with Attachment A of D.07-11-025, which outlines standard terms and conditions for RPS contracts.

If approved, PG&E is authorized to accept future deliveries of incremental supplies of renewable resources and contribute towards the 20 percent renewables procurement goal required by California's RPS statute.¹⁹

PG&E requests final "CPUC Approval" of PPA

¹⁸ http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/67490.PDF

¹⁹ California Public Utilities Code section 399.11 et seq., and CPUC decisions in R.04-04-026, R.06-02-012, R.06-05-027 and subsequent proceedings.

PG&E requests that Commission approve a resolution containing the findings required by the definition of "CPUC Approval" in Appendix A of D.04-06-014. In addition, PG&E requests that the Commission issue a resolution which:

1. Approves the PPA and its associated hedging plan in their entirety, including payments to be made by PG&E pursuant to the PPA and hedging plan, subject to the Commission's review of PG&E's administration of the PPA and hedging plan.
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 indirect costs associated with procurement under 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 and the hedging plan are consistent with PG&E's approved 2007 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 and hedging plan:
 - a. The utility's cost of procurement under the PPA and hedging plan 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 being addressed in Rulemaking ("R.") 06-02-013.
6. Adopts the following findings with respect to resource compliance with the Emissions Performance Standard ("EPS") adopted in R.06-04-009:

- a. PG&E has requested pre-approval of RPS-eligible procurement covered by SB 1368 as required by D.07-01-039.
- b. The generating facility employs geothermal technology.
- c. The renewable resource is pre-approved as compliant with the Interim EPS adopted by D.07-01-039.

In D.02-08-071, the Commission required each utility to establish a Procurement Review Group (PRG).

The members of a PRG, subject to an appropriate non-disclosure agreement, have the right to consult with the utilities and review the details of each utility's:

1. Overall transitional procurement needs and strategy;
2. Proposed procurement processes including, but not limited to, the requests for offers (RFOs); and
3. Proposed procurement contracts before any of the contracts are submitted to the Commission for expedited review and approval.

PG&E informed the PRG of the proposed transaction on August 24, 2007, October 24, 2007, November 30, 2007, and January 9, 2008. None of the PRG members objected to this PPA.

Although Energy Division is a member of the PRG, it reserved judgment on the contracts until the advice letter was filed. Energy Division reviewed the transaction independently of the PRG, and allowed for a full protest period before concluding its analysis.

NOTICE

Notice of AL 3211-E and AL 3211-E-A was made by publication in the Commission's Daily Calendar. Pacific Gas and Electric states that copies of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

This AL was not protested.

DISCUSSION

Description of the project

The following table summarizes the substantive features of the PPA. See confidential Appendix A for a discussion of terms and conditions, and confidential Appendix B for details on the pricing plan:

Generating Facility	Type	Term	Capacity (MW)	Annual (GWh)	Online	Location
Geysers	Geo	6 years, 11 months	<ul style="list-style-type: none"> • 57 MW additional capacity • 118 MW renegotiated QF • 175 MW total 	<ul style="list-style-type: none"> • 500 GWh additional, • 1,533 GWh total 	02/16/08	Sonoma and Lake Counties, CA

PG&E’s proposed PPA consolidates and extends the terms of six qualifying facility (QF) contracts, which are set to expire between September 2008 and March 2014. The PPA also provides for 57 MW of additional capacity and additional local resource adequacy. Throughout this resolution, “incremental generation” refers to deliveries from the additional 57 MW of capacity and deliveries which result from extending the original QF contract terms, i.e., RPS deliveries that PG&E would not otherwise receive pursuant to its existing QF contracts.

Energy Division has reviewed the proposed PPA on multiple grounds:

- Consistency with PG&E’s 2007 RPS procurement plan
- Compliance with RPS bilateral guidelines
- Consistency with RPS legislation
- Consistency with RPS Standard Terms and Conditions (STC)
- Reasonableness of the levelized all-in price for incremental generation
- Project viability of Geysers facility

PPA is consistent with PG&E’s 2007 RPS Procurement Plan

California’s RPS statute requires the Commission to review renewable energy contracts submitted for approval by a utility. The Commission will then accept or reject proposed PPAs based on their consistency with the utility’s approved

renewable procurement plan.²⁰ PG&E's 2007 RPS plan was conditionally approved by D.07-02-011 on February 15, 2007.²¹ As required by statute, it includes an assessment of supply and demand to determine the optimal mix of renewable generation resources, consideration of compliance flexibility mechanisms established by the Commission, and a bid solicitation setting forth the need for renewable generation of various operational characteristics.²²

The PPA fits with identified renewable resource needs

Pursuant to §399.15(b)(1), PG&E is required to increase its annual procurement of renewable energy by a minimum of 1 percent of retail sales or approximately 750 GWh per year. In addition, projects that are already online and provide baseload generation are especially valuable to PG&E. The PPA accounts for total capacity of 175 MW, 57 MW of which are incremental and estimated to deliver an additional 500 GWh annually, which represents approximately 65 percent of PG&E's 2007 incremental procurement target (IPT).²³

PPA meets CPUC's guidelines for RPS bilateral contracts

Because there is no pre-established process for determining the reasonableness standard for a bilateral contract, D.06-10-019 authorizes Staff to evaluate reasonableness of bilaterals on a case-by-case basis.²⁴ Having said that, the proposed PPA is generally consistent with Commission decisions regarding RPS

²⁰ Pub. Util. Code Section 399.14 (c).

²¹ http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/64640.PDF

²² Pub. Util. Code Sec. 399.14 (a)(3).

²³ In its 2007 Renewable Portfolio Standard Solicitation Protocol, filed on March 12, 2007, page 5, PG&E state that it seeks RPS-eligible deliveries between 750 - 1500 GWh, or between 1-2% of its retail sales.

²⁴ "[The CPUC]...will allow prudent bilateral contracts only when such contracts do not require any PGC funds" (D.03-06-071 p. 59, CoL 31, OP 29). "For now, utilities' bilateral RPS contracts, of any length, must be submitted for approval by advice letter. Such contracts are not subject to the MPR, which applies to solicitations, but they must be reasonable (D.03-06-017, *mimeo.*, p. 59)... No bilateral contracts are currently eligible for SEPs." (D.06-10-019, pp.31-32) Our direction in D.06-10-019 that bilateral contracts be submitted by advice letter did not address the possibility that such contracts would exceed the MPR. Since these PPAs demonstrate that utilities are negotiating bilateral contracts that exceed the MPR, we will reconsider our process in this regard.

bilateral contracts because the PPA was filed by advice letter and PG&E is not seeking AMF funds, formerly SEPs, to cover the portion of the contract price that may exceed than the MPR. The PPA is ineligible for such awards because it did not result from a competitive solicitation.

The Commission intends to include more explicit standards for evaluating the reasonableness of short-term and bilateral RPS contracts in a decision in the near future. Until such a decision is approved, the Commission will continue to consider the approval of RPS short-term bilateral contracts only on a case-by-case basis. This resolution does not set a precedent for evaluating bilateral contracts.

Consistency with Adopted Standard Terms and Conditions

The Commission set forth standard terms and conditions to be incorporated into RPS agreements, including bilateral contracts, in D.04-06-014, D.07-02-011 as modified by D.07-05-057,²⁵ and D.07-11-025²⁶. Standard Terms and Conditions (STC) were identified in confidential Appendix B of D.04-06-014 as “may not be modified”. On November 16, 2007, the Commission adopted D.07-11-025, which reduced the number of non-modifiable terms from nine to four, and refined the language of some of these terms in response to an amended petition for modification of D.04-06-014.²⁷ The remaining non-modifiable STCs include “CPUC Approval”, “RECs and Green Attributes”, “Eligibility” and “Applicable law”.

On March 21, 2008, PG&E filed Supplemental AL 3211-E-A, which brought the PPA into compliance with Attachment A of D.07-11-025.

“May Not be Modified” Terms

The PPA does not deviate from the non-modifiable terms and conditions.

²⁵ D.07-05-057 Order Modifying Decision 07-02-011 Regarding Definition of Green Attributes http://www.cpuc.ca.gov/word_pdf/FINAL_DECISION/68383.pdf

²⁶ D.07-11-025, Attachment A
http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/75354.PDF

²⁷ On February 1, 2007, PG&E and SCE jointly filed a petition for modification of D.04-06-014. On May 22, 2007, a PD was filed and served. Prior to the PD being voted on by the Commission, PG&E and SCE filed an amended petition for modification of D.04-06-014.

“May be Modified” Terms

During the course of negotiations, the parties identified a need to modify some of the modifiable standard terms in order to reach agreement. These terms had all been designated as subject to modification upon request of the bidder in Appendix A of D.04-06-014 and in D.07-11-025.

Energy Division Staff modified the 2007 Market Price Referent (MPR)

Background

In D.04-06-015²⁸, we adopted a methodology to calculate 10, 15 and 20 year MPR, for use in the 2004 renewable power solicitations, as generally set forth in Pub. Util. Code § 399.15. In addition, D.04-06-015 directed staff to prepare the MPR calculation and release it through a joint Assigned Commissioner and Administrative Law Judge (ALJ) ruling. Parties filed comments and reply comments on the staff report releasing the MPR calculation. Staff then prepared a resolution for the adoption of the final MPR for 2004.²⁹ D.04-06-015 also authorized an evaluation process for contracts that do “not conform” to standard MPR terms.

Decision 04-06-015, page 8-9

“Finally, we need to address the possibility that not all bidders may be able to submit bids that conform to the 10-, 15-, or 20-year contract term. A bidder may, for example, submit a 12-year contract bid. The MPR methodology, and associated model, set forth in this decision can be modified to calculate MPRs for different contract terms. If additional MPRs are required for bid evaluation, we authorize Energy Division to generate the necessary MPRs utilizing the same input values used to generate the 10-, 15-, or 20-year MPRs approved by this Commission. Alternatively, we could calculate all intermediate MPRs between years 10 and 20. When the utilities notify the Commission that negotiations with RPS bidders are complete, they should also indicate if the calculation of MPRs for terms other than 10, 15 or 20 years is necessary.

²⁸ http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/37383.DOC

²⁹ 2004 MPR Resolution:
http://www.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/48242.doc

Calculation of 7-year MPR

Energy Division calculated a 7-year MPR using the 2007 MPR model. Pub. Util. Code § 399.15, and D.04-06-014, give the Commission and Energy Division the authority to approve RPS contracts of essentially any term of years, so long as the Commission has established a way to evaluate them.

Resolution E-4118 formally adopted the 2007 MPR values for use during the 2007 RPS solicitation year; the 10-year 2007 MPR for a project with a 2008 online date is \$92.71. The 7-year MPR is \$93.18, approximately 0.5% higher than the 10-year MPR.³⁰

PPA's price and associated hedging plan is reasonable

Under the PPA, PG&E will continue to pay the existing QF contracts pursuant the PG&E/Independent Energy Producers (IEP) settlement agreement approved in D.06-07-032.³¹ That is, for generation that would have been delivered under the remaining value of the six QF contracts the cost to ratepayers is unchanged. PG&E will pay the Geysers an all-in price comprised of energy, green attributes (GA) and local resource adequacy (local RA) for deliveries from the 57 MW of additional (existing) generation and deliveries which result from extending the expiration date of the QF contracts.

As stated above, the Commission has not adopted reasonableness criteria for existing short-term bilateral RPS contracts. Given the limited guidance, on balance, Staff finds this contract is reasonable. To make this determination, Staff weighed the benefits vs. the above-market costs of this contract, specifically: the Geysers capacity is currently in PG&E's portfolio, Geysers provides renewable baseload generation and PG&E is obligated to achieve the aggressive 20 percent by 2010 RPS mandate.

Therefore, even though the price of the PPA will likely exceed the 2007 modified MPR, we determined the PPA is reasonable. This determination does not prejudge the Commission's pending decision on bilateral reasonableness criteria.

Hedging Plan – Fixed-for-Floating swap

³⁰ The 7-year MPR is slightly higher than the 10-year MPR because of natural gas cost curves, which generally decrease in earlier years of the MPR's long-term gas forecast.

³¹ http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/58272.PDF

The pricing in the PPA for incremental generation is based on a hedging plan that will effectively fix the price of the RPS energy over the entire contract term.³² Because the duration of the hedging plan will be longer than five years, according to D.04-12-048 it must be approved by the Commission.³³ While we will approve the hedging plan via advice letter for this Geysers PPA, this will not be precedent setting. See Confidential Appendix B for further price analysis.

Geysers facility is a viable renewable resource facility

The PPA is for an existing facility, so project viability risk is minor. PG&E believes that the project is viable because:

Project milestones

The PPA concerns an existing facility; therefore, only CPUC Approval is necessary for Geysers to deliver under the terms of the PPA.

Technology

Geothermal is a proven resource and the Geysers region in Sonoma and Lake County, California has a long history of delivering renewable generation. The Geysers geothermal resource area supplies approximately 40% of the State's geothermal energy generation.³⁴

Permitting and site control

As an existing and operational facility, permitting and site control are not an issue.

Production tax credit

The PPA is not contingent upon the extension of the federal production tax credits as provided in Section 45 of the Internal Revenue Code of 1986, as amended.

³² The Commission strongly discourages the utilities from entering into RPS contracts that are tied to forward energy prices, which effectively negates the hedging value of renewables. Although PG&E's proposed hedging plan is not the conventional method for fixing a contract price, the hedging plan effectively provides ratepayers a fixed contract price.

³³ D.04-12-048, page 108. See http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/43224.htm

³⁴ http://www1.eere.energy.gov/geothermal/gpw/profile_california.html

Sponsor's creditworthiness and experience

As of January 2008 Geysers parent company, Calpine, emerged from bankruptcy. Calpine has proven operational history with the Geysers.

Transmission

No new transmission facilities or network upgrades are required for PG&E to accept deliveries under the PPA.

Terms and Conditions of Delivery

The delivery point is NP-15, until such time as the CAISO goes to a nodal market. Once a nodal market is in place, the delivery point will be the busbars of the Eligible Units (as defined in the PPA). Because Geysers can deliver from a number of units in the Geysers System under the PPA, the price paid to Geysers under MRTU will be adjusted to the weighted average price of all of the Eligible Units in order to eliminate Geysers' ability to have a "seller's choice" on the delivery point within its system.

Geysers will serve as Scheduling Coordinator (SC) throughout the Delivery Term and is responsible for accurately scheduling the daily generation of each unit. Additionally, by being its own SC, Geysers is responsible for generating its invoices, settling imbalances with the CAISO, and performing in accordance with tariffs.

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 this resolution has been reduced in accordance with the provisions of Rule 14.6 (c)(9). Rule 14.6 (c)(9) provides that the Commission may waive or reduce the comment period for a decision when the Commission determines that public necessity requires reduction or waiver of the 30-day period for public review and comment. For purposes of Rule 14.6 (c)(9), "public necessity" refers to circumstances in which the public interest in the Commission's adopting a decision before expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day

period for review and comment, and includes circumstances where failure to adopt a decision before expiration of the 30-day review and comment period would cause significant harm to public health or welfare.

The public necessity in this case is that the certain contract terms and conditions associated with AL 3211-E require a Commission vote on the draft resolution no later than the April 24, 2008 Commission meeting; the shortened comment period will allow the Parties to amend their PPA pursuant to D.07-11-025, which modified standard terms and conditions required for RPS contracts and will allow Energy Division to perform its review of the AL expeditiously, as requested by PG&E. If approved, the resolution will enable PG&E to receive renewable energy deliveries at the nearest opportunity and ensure that the RPS program moves successfully towards the 20 percent by 2010 goal, and therefore, clearly serves the public interest. Any harm caused by shortening the comment period by seven days is de minimis compared to the benefits of allowing parties' immediate review of the draft resolution.

This matter will be placed on the first Commission agenda 21 days following the mailing of this draft resolution. Comments shall be filed no later than 13 days following the mailing of this draft resolution, reply comments shall be filed no later than 18 days following the mailing of this draft resolution.

Comments were filed in a timely fashion on April 16, 2008 by PG&E, the Utility Reform Network (TURN) and the Division of Ratepayer Advocates (DRA). Reply comments were filed on April 21, 2008 by PG&E, Southern California Edison (SCE) and the Independent Energy Producers (IEP).

We carefully considered comments which focused on factual, legal or technical errors and made appropriate changes to the draft resolution.

Draft resolution inappropriately used the MPR to determine reasonableness

In its comments, PG&E makes the argument that the draft resolution improperly used the MPR to determine price reasonableness and ignores market information provided in the AL that justified the PPA's price.³⁵ IEP agrees with PG&E that the draft resolution erroneously used the MPR to benchmark the market price of renewable energy.³⁶ PG&E's comment about the Commission's application of

³⁵ PG&E comments, p.2-3

³⁶ IEP reply comments, p. 1-2

the MPR is misguided. Nowhere in the draft resolution is it stated or implied that the Commission used the MPR for purposes of determining the market price of renewable generation; the MPR was expressly used to determine to what extent above-market costs would need to be recovered in rates.

SB 1036 standards should not be used for evaluating bilaterals

As discussed in the draft resolution, ED has limited guidance for evaluating existing short-term bilateral contracts that are above the MPR. That said, SB 1036 expressly states that long-term contracts with new facilities, which were executed through a competitive solicitation, are eligible for above-market costs. The draft resolution identified the legislative intent of SB 1036, i.e., a preference for long-term contracts with new facilities, as a reasonable justification for making a determination whether above-market costs for the short-term existing Geysers resource was reasonable.

PG&E³⁷ and SCE state in their comments that SB 1036 does not address standards for bilateral reasonableness. Specifically, SCE states, “The purpose of SB 1036 is not to provide reasonableness standards for the approval of an RPS agreement. The sole purpose of the criteria is to determine whether a contract is eligible for AMF collection.”³⁸

TURN supported the draft resolution’s conclusion that rate recovery should be limited up the MPR, based on the legislative intent of SB 1036.³⁹ DRA generally agreed with the draft resolution and supported its finding that PG&E’s AL lacked reasonable justification of the contract price.⁴⁰

We carefully considered the parties’ positions and agree with SCE that SB 1036 standards should not be used for evaluating bilateral contracts at this time, given the Commission’s pending decision on bilateral reasonableness and implementation of SB 1036. The draft resolution is modified accordingly.

Draft resolution failed to equally consider the PPA benefits vs. the costs

³⁷ PG&E comments, p. 4-5

³⁸ SCE reply comments, p. 1

³⁹ TURN comments, p. 3

⁴⁰ DRA comments, p. 2

PG&E argues the draft resolution overlooked the benefits of the PPA. Specifically, PG&E highlights the value in retaining its existing QF generation⁴¹ and that the additional 57 MW of capacity could deliver immediately, which is significant given that it generally takes several years for new projects to come online and project viability is a genuine concern.

We disagree with PG&E. In the draft resolution, Staff weighed both the costs and benefits of the PPA and determined that given the legislative intent of SB 1036 and the above-market costs, the PPA 's costs outweighed the benefits. However, as noted above, we agree with SCE that it is inappropriate at this time to use SB 1036 criteria to evaluate the reasonableness of existing short-term bilaterals. So, on balance, the PPA benefits outweigh the above-market costs and we deem this PPA to be reasonable.

Draft resolution failed to recognize the reasonableness of the PPA relative to other bids received in PG&E's 2007 RPS solicitation and other recent bilateral agreements

The draft resolution stated that PG&E's AL failed to demonstrate the reasonableness of its proposed PPA because PG&E compared new long-term contracts (greater than 10 years) to an existing short-term contract. In its comments on the draft resolution, PG&E stated that it provided adequate information for the Commission to determine the PPA was reasonable relative to other renewable contracts.⁴² PG&E argues that if the Commission were to adopt a policy that existing resources should not be paid the market price, "...PG&E will be forced to rely on alternatives that will likely be more expensive, less viable, and less likely to contribute to the 2010 goal."⁴³ IEP supports PG&E on this point.⁴⁴

In its comments, TURN supported the draft resolution. Specifically, TURN stated that paying above-market costs for existing renewable power is not consistent with RPS legislation, which indicates a preference for long-term,

⁴¹ PG&E comments, p. 3

⁴² *Id*

⁴³ PG&E reply comments, p. 3

⁴⁴ IEP reply comments, p.1-3

competitively executed contract for new renewable power projects.⁴⁵

We agree with PG&E and TURN on both points. TURN is correct that it could be argued that paying above-market costs for existing generation is not in alignment with the legislative intent of SB 107. However, we also agree with PG&E that were this PPA not approved, replacement power would likely be more expensive and less likely to achieve commercial operation prior to 2010. On balance, we modified the draft resolution to approve the PPA without modification.

PG&E proposed additional non-substantive changes to the draft resolution unrelated to the evaluation of its PPA and the draft is modified accordingly

FINDINGS OF FACT

1. The RPS Program requires each utility, including PG&E, to increase the amount of renewable energy in its portfolio to 20 percent by 2010, increasing by a minimum of one percent per year.
2. D.04-06-014 and D.07-11-025 set forth standard terms and conditions to be incorporated into each RPS Power Purchase PPA. Those terms and conditions were compiled and published in D.08-04-009.
3. SB 1036 modified the process for above-market cost recovery.
4. Above-market costs of a bilateral contract may not be counted towards the cost limitation pursuant to SB 1036.
5. PG&E filed Advice Letter 3211-E on February 15, 2008 requesting expedited Commission review and approval of a renewable energy resource procurement contract, including its associated hedging plan, between Geysers Power Company, LLC and PG&E.
6. PG&E filed Supplemental Advice Letter 3211-E-A on March 21, 2008 to amend certain terms and conditions in the PPA to conform to Commission decisions on Standard Contract Terms and Conditions for RPS contracts.
7. PG&E briefed its Procurement Review Group regarding the Geysers contract on several occasions during 2007 and on January 9, 2008.
8. The evaluation of this PPA does not prejudice the Commission's pending decision on bilateral reasonableness criteria and implementation of SB 1036.

⁴⁵ TURN comments, p. 2

CONCLUSIONS OF LAW:

1. The RPS Program requires each utility, including PG&E, to increase the amount of renewable energy in its portfolio to 20 percent by 2010, increasing by a minimum of one percent per year.
2. The Commission requires each utility to establish a Procurement Review Group (PRG) to review the utilities' interim procurement needs and strategy, proposed procurement process, and selected contracts.
3. D.03-06-071 allows a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process.
4. The Commission has not yet adopted reasonableness criteria for RPS bilateral contracts.
5. Short-term bilateral contracts must be reasonable.
6. Above-market costs of a bilateral contract may not be counted towards the cost limitation pursuant to SB 1036.
7. 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.
8. The payments made under this contract between PG&E and Geysers Power Company, LLC are reasonable and in the public interest; accordingly, the payments to be made by PG&E are fully recoverable in rates over the life of the project, subject to CPUC review of PG&E's administration of the PPA.
9. Certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C, and considered for possible disclosure, should not be disclosed. Accordingly, the confidential appendices, marked "[REDACTED]" in the redacted copy, should not be made public upon Commission approval of this resolution.
10. The PPA and its hedging plan are reasonable and should be approved.
11. Approval of this advice letter does not constitute a precedent for future renewable procurement contract price structures.
12. Our approval of the hedging plan by advice letter is not precedent setting.

13. Approval of this PPA does not prejudice the Commission's pending decision on bilateral reasonableness criteria or implementation of SB 1036.
14. The payments made under the PPA and any indirect costs of renewables procurement identified in Section 399.15(a)(2) shall be recovered in rates.
15. AL 3211-E and AL 3211-E-A should be approved effective February 16, 2008.

THEREFORE IT IS ORDERED THAT:

1. Advice Letter AL 3211-E and AL 3211-E-A are approved without modification.
2. The payments made under this PPA between PG&E and Sellers are reasonable and in the public interest. Accordingly, the payments to be made by PG&E are fully recoverable in rates over the life of the project, subject to CPUC review of PG&E's administration of the PPA.
3. 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 April 24, 2008; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON
PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

[Commissioner Bohn's Concurrence Letter is attached]

REDACTED
Confidential Appendix A

Contract Summary

REDACTED
Confidential Appendix B
Pricing Terms Description

REDACTED
Confidential Appendix C

PPA's Contribution Toward RPS Goals

Res E-4164

Concurrence of Commissioner Bohn

I support this resolution approving PG&E's proposed contract with Calpine for power and energy from the Geysers. The contract was negotiated between a willing buyer and a willing seller. There are presumably other buyers. There is no claim that the price agreed upon is not fully market driven or otherwise market based.

This resolution, however, brings us to a fateful point in California's pursuit of our Renewable Portfolio Standard (RPS) goal. PG&E has brought to us a proposed contract. Everything about it looks good, except for one thing: the price is not the price we would like, i.e., it is not at or below the Market Price Referent (MPR).

The MPR is a useful, but arbitrary measure, designed, in effect, to "cap" the cost which this Commission has considered heretofore as "reasonable" in pursuit of its renewables goals. While the Legislature has approved above-MPR prices for long-term contracts with new renewable resources that are obtained from a competitive solicitation, the MPR has set the ceiling for prices for bilateral and short term contracts and purchases from existing renewable facilities. It seems, however, that the market price for even these types of contracts has risen, and is now higher than the MPR. So, what shall we do?

One response is to say, "We have a goal, written in our policies and in the law. We have to reach that goal, and we must be willing to pay for

doing so.” The other response is to say, “We want renewable energy for our state. But not if the cost is too high.”

I recognize the importance of our renewables goal, and it is clear that the people of California have affirmed that they are willing to pay a price to reach the goal. Yet, how much we must pay, and how much the people of California will be willing to pay once the bills start coming due, is not so clear. The Legislature has set a cap on the above-MPR costs ratepayers must bear for new renewable resources. It is up to us, the Commission to determine how much ratepayers must pay to continue purchasing from existing resources.

For this resolution, the answer is to vote Yes. PG&E and Calpine worked hard to negotiate the proposed contract. It seems clear from the record that both parties negotiated in good faith and brought forth a fair contract proposal. The Energy Division reviewed the contract and was resistant. That is their job, and I thank them for doing it well.

While we approve this contract and now move forward, we must recognize that we are effectively abandoning the MPR as a measure of what the people, through this Commission, have thought a reasonable ceiling on prices. We are moving into uncharted waters that can engulf current limits on ratepayer costs without our customary benchmark. It is argued that we are not abandoning our benchmark, that it is likely to be higher in the future and that we are just being flexible. Are we then simply using today’s MPR as a starting point and projecting there from reasonable expectations? If so, on what basis? The record is silent on this aspect of our decision.

We should also recognize that by not applying our MPR benchmark, we are changing the negotiating dynamics of the marketplace. The utilities must buy, under penalty of fines and other sanctions, from a limited supply. While the MPR had been a ceiling on what companies could seek from utilities in negotiating bilateral contracts, there is now no clear limit on the compensation that can be sought. No small wonder that the price of our renewable objective will rise.

How to proceed in the future is a more difficult question. If we are to cast ourselves adrift from the MPR, we must then focus our inquiry on the fairness of the market environment within which the bilateral negotiations take place, or whether bilateral contracts should even remain as an option rather than requiring competitive solicitations, an inquiry that has been given only limited application in this case. Otherwise, we have set the utilities up for hard bargaining from the suppliers and, therefore, for continual higher prices for our ratepayers.

Times are changing; prices of so many things that we value are rising, including the price of renewable energy. Perhaps we need to reopen the dialogue with the people of California, and among the policymakers in California about how firmly we should hold to important, but nonetheless arbitrary goals, such as the RPS timeline, and how much we can reasonably expect them to pay to reach our goals.

/s/ JOHN BOHN
John A. Bohn
Commissioner

