

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

I.D. #7890
RESOLUTION E-4193
October 2, 2008

REDACTED

R E S O L U T I O N

Resolution E-4193. Pacific Gas and Electric Company (PG&E) requests approval of amendments to a renewable procurement contract, which has previously received Commission approval. The amended contract is approved without modification.

By Advice Letter 3132-E filed on October 9, 2007.

SUMMARY

PG&E’s amended renewable contract, which relates to biogas injected into a natural gas pipeline, complies with the Renewable Portfolio Standard (RPS) procurement guidelines and is approved without modification

PG&E filed Advice Letter (AL) 3132-E on October 9, 2007, requesting Commission review and approval of amendments to an existing agreement between Microgy and PG&E (Parties). The amendments will allow PG&E to take delivery of biogas at PG&E Topock and lowers the contract price for these deliveries. PG&E’s request is granted without modification

Seller	Fuel Type	Term Years	Daily Deliveries (MMBtus)	Annual Generation ¹ (MWh)	Online Date	Facility Locations
Microgy	Digester Gas	10	≤ 8000	≤ 389,000	8/2010	California and Texas

¹ The calculation for annual deliveries in MWhs is: 8,000 MMBtu/day at assumed Heat Rate of 7,500 Btu/kWh = [(365 days/year)*(8,000 MMBtu)*(1,000,000 Btu/MMBtu)]/[(7,500 Btu/kWh)/(1,000,000 kWh/GWh)] = 389 GWh/year. Heat rate measures generator efficiency, and is defined as the number of BTUs required to produce a kilowatt-hour of energy.

The Commission approved AL 2996-E, the Parties original agreement for 10 years of digester gas (biogas) production and delivery, by Resolution E-4083 on August 23, 2007. The contract concerns the purchase of biogas and not electricity. Deliveries from this amended contract are reasonably priced, and the amended contract price is fully recoverable in rates over the life of the contract, subject to Commission review of PG&E's administration of the amended contract.

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 1078² 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 2010.³ This was reiterated again in the Order Instituting Rulemaking (R.04-04-026) issued on April 28, 2004,⁴ which encouraged the utilities to procure cost-effective renewable generation in excess of their RPS annual procurement targets (APTs)⁵, in order to make progress towards the goal

² Chapter 516, statutes of 2002, effective January 1, 2003 (SB 1078)

³ 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.

⁴ http://www.cpuc.ca.gov/Published/Final_decision/36206.htm

⁵ 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.

expressed in the EAP. On September 26, 2006, Governor Schwarzenegger signed Senate Bill (SB) 107,⁶ which officially accelerates the State's RPS targets to 20 percent by 2010, subject to the Commission's rules on flexible compliance.⁷

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.03-06-071.⁸ On June 9, 2004, the Commission adopted its Market Price Referent (MPR) methodology⁹ 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.04-07-029.¹⁰

On December 15, 2005, the Commission adopted D.05-12-042 which refined the MPR methodology for the 2005 RPS Solicitation.¹¹ Subsequent resolutions adopted MPR values for the 2005, 2006 and 2007 RPS Solicitations.¹² In addition, D.06-10-050, as modified by D.07-03-046, and D.08-05-029¹³ further refined the RPS reporting and compliance methodologies.¹⁴ In this decision, the

⁶ Chapter 464, Statutes of 2006 (SB 107)

⁷ Pub. Util. Code Section 399.14(a)(2)(C)

⁸ http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/27360.PDF

⁹ D.04-06-015; http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/37383.pdf

¹⁰ http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/38287.PDF

¹¹ http://www.cpuc.ca.gov/word_pdf/FINAL_DECISION/52178.pdf

¹² 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

¹³ D.08-05-029 adopted RPS rules specific for small and multi-jurisdictional utilities.
http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/83534.PDF

Commission established methodologies to calculate an LSE's initial baseline procurement amount, annual procurement target (APT) and incremental procurement amount (IPT).¹⁵

More recently, the Commission has implemented Pub. Util. Code 399.14(b)(2), which states that before the Commission can 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 (long-term contracts) or from new facilities commencing commercial operations on or after January 1, 2005." On May 3, 2007, the Commission approved D.07-05-028, which established a minimum percentage of the prior year's retail sales (0.25%) that must be procured with contracts of at least 10 years' duration or from new facilities in order for short-term contracts to be used towards RPS compliance.

PG&E requests approval of contract amendments

On October 9, 2007, PG&E filed AL 3132-E requesting Commission approval of amendments to a Commission approved renewable procurement contract. The original contract between PG&E and Microgy was approved on August 23, 2007 by resolution E-4083. The amendments modify the contract's definition for delivery point and reduce the contract price. If the amendments are approved, PG&E is authorized to accept a portion of the total contract capacity from biogas produced at a facility located in Texas. Approval of the amendments will not result in an increase in the contract price or quantity. Approval will provide incremental supplies of renewable resources and contribute towards the 20 percent renewables procurement goal required by California's RPS statute.¹⁶

¹⁴ 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.

¹⁵ 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 retail electrical sales, including power sold to a utility's customers from its DWR contracts.

¹⁶ California Public Utilities Code section 399.11 et seq., as interpreted by D.03-07-061, the "Order Initiating Implementation of the Senate Bill 1078 Renewables Portfolio Standard Program", and subsequent CPUC decisions in Rulemaking (R.) 04-04-026.

PG&E requests final “CPUC Approval” of contract amendments

PG&E requests that Commission approve a resolution which:

1. The parties have agreed to amend the Agreement for Sale and Purchase of Gas, approved by CPUC Resolution E-4083, via the Second Amendment.
2. The Second Amendment will have no effect upon the RPS-eligibility of the biogas.
3. The terms of the Second Amendment are reasonable, and the Second Amendment should be approved.

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.

The PRG for PG&E consists of: California Department of Water Resources (DWR), the Commission’s Energy Division, Union of Concerned Scientists (UCS), Division of Ratepayer Advocates (DRA), Coalition of California Utility Employees (CUE) and The Utility Reform Network (TURN).

On October 3, 2007, PG&E informed its PRG of the proposed amendments. None of the PRG members expressed concerns with the proposed amendments or the resulting contract.

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 3132-E 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 IV of General Order 96-B.

PROTESTS

This AL was not protested.

DISCUSSION

Description of the amended contract

The following table summarizes the substantive features of the contract and contract amendments. See confidential Appendix A for a discussion of price and contract terms and conditions.

Seller	Fuel Type	Term Years	Daily Deliveries (MMBtus)	Annual Generation (MWh)	Online Date	Facility Locations
Microgy	Digester Gas	10	≤ 8000	≤ 389,000	8/2010	California and Texas

The proposed second amendment (Amended Contract) results in a change to the contract’s definition of delivery point and the price PG&E will pay for a portion of the biogas delivered under the Amended Contract. Specifically, PG&E is authorized to accept delivery of biogas from Huckabay Ridge, a biogas facility in Texas.¹⁷ The quantity of biogas PG&E may receive from Huckabay Ridge is limited to 2,000 MMBtu/day, which represents one quarter of the daily maximum volume provided for in the contract. Pursuant to the amendments, PG&E will accept delivery of the biogas at PG&E Topock.¹⁸ PG&E will then transport the biogas from PG&E Topock through its gas transmission system; the biogas is nominated for delivery to Humboldt Bay generating facility, which has received RPS certification from the CEC.

Additionally, the contract is amended such that PG&E will pay a lower price for biogas produced in Texas to counter any additional gas transportation cost. The

¹⁷<http://www.environmentalpower.com/companies/microgy/factsheets/Environmental%20Power%20-%20huckabay%20ridge%205.29.08.pdf>

¹⁸ http://www.dtsc-topock.com/images/home/Location_map.pdf

original contract, which was approved on August 23, 2007 by Resolution E-4083, is otherwise unchanged.

Amended Contract complies with California Energy Commission's eligibility requirements

The California Energy Commission (CEC), in its Renewables Portfolio Standard (RPS) Eligibility Guidebook adopted December 19, 2007, determined that biogas, derived from digester gas, is an RPS eligible renewable energy resource.¹⁹ Also, PG&E's proposal complies with the CEC's delivery requirements:²⁰

- The gas must be injected into a natural gas pipeline system that is either within the WECC region or interconnected to a natural gas pipeline system in the WECC region that delivers gas into California.
- The gas must be used at a facility that has been certified as RPS-eligible. As part of the application for certification, the applicant must attest that the RPS-eligible gas will be nominated to that facility or nominated to the LSE-owned pipeline serving the designated facility.
- When applying for RPS pre-certification, certification, or renewal, the application must include the following: 1) an attestation from the multi-fuel facility operator of its intent to procure biogas fuel that meets RPS eligibility criteria, and 2) an attestation from the fuel supplier that the fuel meets eligibility requirements.

The CEC is responsible for determining RPS eligibility and compliance with RPS delivery requirements. Based on the information provided in AL 3132-E, it appears PG&E's amended contract with Microgy would comply with the CEC's requirements. Specifically, the Huckabay Ridge facility is connected by a gas distribution pipeline to the El Paso natural gas pipeline system, which is located in the Western Electricity Coordinating Council (WECC).²¹ PG&E has received certification from the CEC that its Humboldt Bay Power Plant is an RPS eligible facility for the purposes of generating electricity with biogas.

¹⁹ <http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF>

²⁰ Ibid, pp. 20-21

²¹ <http://www.wecc.biz/>

Amended contract price is reasonable

Pursuant to the amendments, the contract price is reduced for biogas produced at the Huckabay Ridge facility to counter any additional gas delivery cost that may be incurred by PG&E to transport the biogas from PG&E Topock, which is farther than was previously arranged in the contract. The Amendments are not expected to increase the total price of the contract; therefore, because the Commission previously determined that the contract price was reasonable when it approved the original contract, the amended contract price is reasonable.²² See confidential Appendix A for a detailed discussion of contract price.

The Huckabay Ridge facility is a viable renewable resource facility

The amendments authorize PG&E to accept deliveries from an out-of-state facility which is fully operational, so the project viability risk is minor. PG&E believes that the project is viable because:

Project milestones

The amendments concern delivery and price from a facility which is online and delivering biogas; therefore, only CPUC approval is necessary for Microgy to deliver under the terms of the contract. The Huckabay Ridge facility achieved full commercial operation in January 2008.

Technology

Microgy's technology uses anaerobic digestion, the biological process in which microbes break down organic material in oxygen-free environment. This process is used to produce methane at municipal wastewater facilities, and more recently has been applied to industrial and agricultural wastes.

Fuel Source

The Huckabay Ridge facility has capacity to produce 2,000 MMBtu/day of natural gas pipeline quality biogas from manure waste and other agricultural wastes. Access to fuel is not anticipated to be a concern.

Permitting and site control

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

²² Filed by advice letter 2996-E on February 28, 2007 and approved by Resolution E-4083 on August 23, 2007.

Production tax credit

The Amended Contract 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.

Sponsor's creditworthiness and experience

Microgy, a subsidiary of Environmental Power Company, has successfully developed and is currently constructing, anaerobic digestion facilities throughout the United States, including in California.

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, and will be placed on the Commission's agenda no earlier than 30 days from today.

FINDINGS

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 Amended Contract concerns the purchase of biogas and not electricity.
3. PG&E filed Advice Letter 3132-E on October 9, 2007 requesting Commission review and approval of amendments to its renewable energy contract with Microgy.
4. The original contract between PG&E and Microgy, with the exception of these amendments, is otherwise unchanged.
5. The California Energy Commission is responsible for certifying the RPS eligibility of the biogas, the nominated gas-fired power plant and verifying generation from nominated plant.

6. The Commission required each utility to establish a Procurement Review Group (PRG) to review the utilities' interim procurement needs and strategy, proposed procurement process, and selected contracts.
7. PG&E briefed its Procurement Review Group on October 3, 2007 on these Amendments.
8. The price reasonableness evaluation discussed in this resolution does not set a precedent for Commission review of RPS eligible biogas contracts.
9. Advice Letter 3132-E was not protested.
10. Procurement pursuant to the Amended Contract 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.
11. The payments made under the Amended Contract between PG&E and Seller 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 Commission review of PG&E's administration of the contract.
12. The payments made under the Amended Contract, including all renewable procurement and administrative costs identified in Section 399.14(g) shall be recovered in rates.
13. 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.
14. The Amended Contract is reasonable and should be approved.
15. Advice Letter 3132-E should be approved effective today.

THEREFORE IT IS ORDERED THAT:

1. Advice Letter 3132-E is approved without modification.
2. The payments made under this Amended Contract between PG&E and Seller 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 Amended Contract.

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 October 2, 2008; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Confidential Appendix A

Contract Summary

[REDACTED]

I.D. #7890

**September 2, 2008
Draft Resolution E-4193**

**October 2 Commission
Meeting**

TO: PARTIES TO DRAFT RESOLUTION E-4193

Enclosed is draft Resolution E-4193 of the Energy Division addressing PG&E's advice letter (AL) 3132-E. It will be on the agenda at the October 2, 2008 Commission meeting. The Commission may then vote on this Resolution or it may postpone a vote until later.

When the Commission votes on a draft Resolution, it may adopt all or part of it as written, amend, modify or set it aside and prepare a different Resolution. Only when the Commission acts does the Resolution become binding on the parties.

Parties may submit comments on the draft Resolution no later than Monday, September 22, 2008.

An original and two copies of the comments, with a certificate of service, should be submitted to:

Honesto Gatchalian
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
fax: 415-703-2200
email: jjn@cpuc.ca.gov

An electronic copy of the comments should be submitted to:

Sean Simon
Energy Division
svn@cpuc.ca.gov

Those submitting comments and reply comments must serve a copy of their comments on 1) the entire service list

attached to the draft Resolution, 2) all Commissioners, and 3) the Director of the Energy Division.

Comments may be submitted electronically.

Comments shall be limited to five pages in length plus a subject index listing the recommended changes to the draft Resolution and an appendix setting forth the proposed findings and ordering paragraphs.

Comments shall focus on factual, legal or technical errors in the proposed draft Resolution. Comments that merely reargue positions taken in the advice letter or protests will be accorded no weight and are not to be submitted.

Reply comments shall be served on parties and Energy Division no later than Monday, September 29, 2008 and may also be submitted electronically.

Late submitted comments or reply comments will not be considered.

Paul Douglas

Project and Program Supervisor

Energy Division

Enclosures:

Certificate of Service

Service List: R.01-10-024 and R.08-08-009

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of Draft Resolution E-4193 on all parties in these filings or their attorneys as shown on the attached list.

Dated September 2, 2008 at San Francisco, California.

Maria Salinas

NOTICE

Parties should notify the Energy Division, Public Utilities Commission, 505 Van Ness Avenue, Room 4002 San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the Resolution number on the service list on which your name appears.