PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Item #39
ID #9592

ENERGY DIVISION **RESOLUTION E-4350**
August 12, 2010

REDACTED

R E S O L U T I O N

Resolution E-4350. Pacific Gas and Electric Company (PG&E) requests approval of three renewable power purchase agreements for solar photovoltaic generation from three facilities: Avenal Park, LLC, Sun City Project, LLC, and Sand Drag, LLC (all subsidiaries of Eurus Energy America Corporation).

PROPOSED OUTCOME: This Resolution approves cost recovery for PG&E's renewable energy power purchase agreements with Avenal Park, LLC, Sun City Project, LLC, and Sand Drag, LLC for solar photovoltaic generation. The PPAs are approved with modification.

ESTIMATED COST: Actual costs are confidential at this time.

By Advice Letter 3610-E filed on February 1, 2010.

SUMMARY

PG&E's renewable power purchase agreements (PPAs) with the Eurus Subsidiaries comply with the Renewables Portfolio Standard (RPS) procurement guidelines and are approved.

PG&E filed Advice Letter (AL) 3610-E on February 1, 2010, requesting California Public Utilities Commission (Commission) review and approval of three PPAs to procure solar photovoltaic (PV) power from three facilities, which are all subsidiaries of Eurus Energy America Corporation (Eurus America): Avenal Park, LLC, Sun City Project, LLC, and Sand Drag, LLC (together "Eurus Subsidiaries"). PG&E's request is granted with modification. PG&E shall modify

the PPAs to eliminate all provisions allowing a delay in commercial online date beyond December 31, 2011, other than force majeure provisions.

The proposed PPAs are consistent with PG&E's 2009 RPS Procurement Plan. Deliveries from the PPAs, with modifications to ensure timely development, are reasonably priced and fully recoverable in rates over the life of the PPAs, subject to Commission review of PG&E's administration of the PPAs. The Eurus Subsidiary PPAs are approved with modifications.

The following tables summarize the Eurus Subsidiary PPAs:

Generating Facility	Tech	Contract Term	Capacity (MW)	Expected Deliveries (GWh/yr)	Operation Date	Project Location
Avenal Park	Solar PV	20 years	9 MW	14.4 GWh /yr	June 2011	Avenal, CA
Sun City Project	Solar PV	20 years	20 MW	32 GWh/yr	May 2011	Avenal, CA
Sand Drag	Solar PV	20 years	19 MW	30.4 GWh/yr	May 2011	Avenal, CA

BACKGROUND

Overview of RPS Program

The California RPS Program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107 and SB 1036.[1] The RPS program is codified in Public Utilities Code Sections 399.11-399.20.[2] The RPS program administered by the Commission requires each utility to increase its total

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

[2] All further references to sections refer to Public Utilities (Pub. Util.) Code unless otherwise specified.

procurement of eligible renewable energy resources by at least one percent of retail sales per year so that 20 percent of the utility's retail sales are procured from eligible renewable energy resources no later than December 31, 2010.[3]

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm and http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm.

NOTICE

Notice of AL 3610-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

On February 22, 2010, the Division of Ratepayer Advocates (DRA) protested AL 3610-E. PG&E responded to the DRA protest on March 1, 2010. No other protests were filed.

DISCUSSION

PG&E requests Commission approval of three new renewable energy contracts

On February 1, 2010, PG&E filed AL 3610-E requesting Commission approval of three renewable procurement contracts with the Eurus Subsidiaries Avenal Park, LLC, Sun City Project, LLC, and Sand Drag, LLC for solar PV generation. Generation from the facilities is expected to contribute an average of 77 gigawatt-hours (GWh) annually towards PG&E's Annual Procurement Target (APT) beginning in 2011.

The PPAs were bilaterally negotiated, and their negotiation overlapped with PG&E's 2009 RPS Solicitation. All three projects will be located on the eastern boundary of the town of Avenal, near Fresno, California.

[3] *See* § 399.15(b)(1).

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

1. Approves the PPAs in their entirety, including payments to be made by PG&E pursuant to the PPAs, subject to the Commission's review of PG&E's administration of the PPAs.

2. Finds that any procurement pursuant to the PPAs is procurement from an eligible renewable energy resource for purposes of determining PG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.) ("RPS"), Decision ("D.") 03-06-071 and D.06-10-050, or other applicable law.

3. Finds that all procurement and administrative costs, as provided by Public Utilities Code section 399.14(g), associated with the PPAs shall be recovered in rates.

4. Adopts the following finding of fact and conclusion of law in support of CPUC Approval:

    a. The PPAs are consistent with PG&E's 2009 RPS procurement plan.

    b. The terms of the PPAs, 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 PPAs:

    a. The utility's costs under the PPAs shall be recovered through PG&E's Energy Resource Recovery Account.

    b. Any stranded costs that may arise from the PPAs are subject to the provisions of D.04-12-048 that authorize recovery of stranded

renewables procurement costs over the life of the contract. The implementation of the D.04-12-048 stranded cost recovery mechanism is addressed in D.08-09-012.

6. Adopts the following findings with respect to resource compliance with the Emissions Performance Standard ("EPS") adopted in R.06-04-009:

    a. The PPAs are not a covered procurement subject to the EPS because the generating facilities have a forecast capacity factor of less than 60% each and therefore are not baseload generation under paragraphs 1(a)(ii) and 3(2)(a) of the Adopted Interim EPS Rules.

Energy Division reviewed the proposed bilateral PPAs on multiple grounds

In D.09-06-050, the Commission determined that bilateral contracts should be reviewed according to the same processes and standards as contracts that are the result of a competitive solicitation.[4] Accordingly, Energy Division reviewed the bilaterally negotiated Eurus Subsidiary PPAs using the same standards used to review PPAs resulting from an annual solicitation. <u>The PPAs are consistent with the bilateral contracting guidelines established in D.09-06-050.</u>

- Consistency with PG&E's 2009 RPS Procurement Plan
- Comparison to the results of PG&E's 2009 RPS Solicitation
- Consistency with least-cost best-fit methodology identified in PG&E's RPS Procurement Plan
- Procurement Review Group participation
- Consistency with RPS standard terms and conditions
- Contribution to minimum quantity requirements

[4] The current process set forth for seeking Commission approval for an RPS contract is that RPS contracts, of any length greater than one month in duration, must be submitted for approval by advice letter, unless special conditions warrant filing an application (for example, if the PPA does not include the required standard terms and conditions).

- Compliance with the Interim Emissions Performance Standard
- Cost containment
- Project viability
- Independent Evaluator review
- Cost reasonableness evaluation

Consistency with PG&E's 2009 RPS Procurement Plan

California's RPS statute requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.[5] PG&E's 2009 RPS procurement plan (Plan) was approved by D.09-06-018 on June 8, 2009.[6] Pursuant to statute, PG&E's Plan includes an assessment of supply and demand to determine the optimal mix of renewable generation resources, consideration of flexible compliance mechanisms established by the Commission, and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.[7]

The stated goal of PG&E's 2009 Plan was to procure approximately 1-2 percent of retail sales volume or between 800 and 1,600 GWh per year of renewable energy. PG&E noted a preference for projects capable of providing near-term deliveries to help meet its 20% goal. The PPAs are consistent with PG&E's stated procurement goals and preferences. If approved, the total of 48 MW of renewable generation is expected to contribute towards PG&E's RPS requirement starting in 2011.

<u>The Eurus Subsidiary PPAs are consistent with PG&E's 2009 RPS Procurement Plan approved by D. 09-06-018.</u>

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

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[5] *See* §399.14.

[6] D.09-06-018 is available at : http://docs.cpuc.ca.gov/published/FINAL_DECISION/102099.htm.

[7] *See* §399.14(a)(3).

The LCBF decision directs the utilities to use certain criteria in their bid ranking.[8] The decision offers guidance regarding the process by which the utility ranks bids in order to select or "shortlist" the bids with which it will commence negotiations. PG&E's bid evaluation includes a quantitative and qualitative analysis, which focuses on four primary areas: 1) determination of a bid's market value; 2) calculation of transmission adders and integration costs; 3) evaluation of portfolio fit; and 4) consideration of non-price factors. The LCBF evaluation is generally used to establish a shortlist of proposals from PG&E's solicitation with whom PG&E will engage in contract negotiations. PG&E's 2009 RPS solicitation protocol included an explanation of its LCBF methodology.

While the Eurus Subsidiary PPAs resulted from bilateral negotiations and therefore did not compete directly with other RPS projects, PG&E explained that it examined the reasonableness of the agreement using the same LCBF protocols it employed for developing its 2009 RPS solicitation shortlist. PG&E asserts that the PPAs are competitive relative to other offers PG&E received in its 2009 RPS solicitation and with other RPS procurement opportunities recently executed and under negotiation.

The Commission requires the use of an Independent Evaluator (IE) to ensure that the solicitation process is undertaken in a fair, consistent, and objective manner so that projects put on shortlists and resulting in contracts are chosen based on reasonable and consistent choices. Specifically, the IE's role is to review bid evaluation, monitor negotiations, and review the resulting PPA. PG&E retained Arroyo Seco Consulting (Arroyo) as IE for PG&E's 2009 RPS Solicitation. Also, as required, PG&E submitted an IE Report prepared by Arroyo with AL 3610-E.

According to the IE Report, Arroyo performed its duties reviewing the solicitation, monitored PPA negotiations, and has reviewed the proposed bilateral PPAs in comparison with the bids in PG&E's 2009 RPS Solicitation. In the IE Report for the Eurus Subsidiary PPAs, Arroyo noted:

"Whether these contracts… deserve Commission approval depends on one's relative emphasis on or weighting of two key ratepayer objectives: securing renewable power from highly viable projects that offer a strong likelihood of

[8] D.04-07-029

delivering on schedule, and contracting for power at prices that are competitive when assessed against available alternatives."[9]

PG&E asserts that its decision to execute the Eurus Subsidiary PPAs is consistent with PG&E's 2009 RPS solicitation least-cost, best-fit cost protocols.

Procurement Review Group (PRG) participation

The Procurement Review Group (PRG) was initially established in D.02-08-071 as an advisory group to review and assess the details of the IOUs' overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission as an interim mechanism for procurement review.[10] PG&E initially informed its PRG of the Eurus Subsidiaries' offers on June 12, 2009. Subsequent discussions on the status of PPA negotiations were held on August 14, 2009 and September 11, 2009.

Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the Eurus Subsidiary PPAs.

Consistency with RPS standard terms and conditions (STCs)

The Commission set forth standard terms and conditions to be incorporated into contracts for the purchase of electricity from eligible renewable energy resources in D.04-06-014, D.07-02-011 as modified by D.07-05-057, and D.07-11-025. These terms and conditions were compiled and published in D.08-04-009. Additionally, the non-modifiable term related to Green Attributes was finalized in D.08-08-028.

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[9] Arroyo Seco Consulting, "Advice Letter Report of the Independent Evaluator on Three Proposed Contrast with Eurus Energy America Corp." P. I-56.

[10] The PRG for PG&E includes representatives of the California Department of Water Resources, the Commission's Energy Division and Division of Ratepayer Advocates, Union of Concerned Scientists, The Utility Reform Network, the California Utility Employees, and Jan Reid, as a PG&E ratepayer.

The PPAs include the Commission adopted RPS standard terms and conditions, including those deemed "non modifiable".

Contribution to RPS Minimum Quantity Requirements for Short-term Contracts with Existing Facilities

D.07-05-028 established a "minimum quantity" condition on the ability of utilities to count an eligible short-term contract with an existing facility for compliance with the RPS program.[11] In the calendar year that a short-term contract with an existing facility is executed, the utility must also enter into long-term contract(s) or contract(s) with new facilities equivalent to at least 0.25% of the utility's previous year's retail sales.

These PPAs are considered long term contracts because they are for more than 10 years in length, and the facilities that are to deliver energy pursuant to the PPAs are considered new because they will begin commercial operation after January 1, 2005. Therefore, the Eurus Subsidiary PPAs will contribute to PG&E's minimum quantity requirement established in D.07-05-028.

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

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

D.07-01-039 adopted an interim EPS that establishes an emission rate for obligated facilities at levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine power plant. The EPS applies to all energy contracts for baseload generation that are at least five years in duration.[12]

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[11] For purposes of D.07-05-028, contracts of less than 10 years duration are considered "short-term," and facilities that commenced commercial operations on or after January 1, 2005 are considered "new."

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

PG&E asserts that the Eurus Subsidiary PPAs are not covered procurement subject to the EPS because the generating facilities have forecast annualized capacity factors of less than 60% and therefore are not baseload generation under paragraphs 1(a)(ii) and 3(2)(a) of the Adopted Interim EPS Rules.

We agree with PG&E that the Eurus Subsidiary PPAs meet the condition for EPS compliance established in D.07-01-039 because the generating facilities have forecast annualized capacity factors of 20% and therefore are not considered baseload generation.

Cost containment

While the actual prices under the PPAs are confidential, the prices exceed the 20-year 2009 MPR for projects with a 2011 commercial online date.[13]

Contracts that meet certain criteria are eligible for above-MPR funds (AMFs).[14] The proposed PPAs were bilaterally negotiated, and therefore do not meet the eligibility criteria for AMFs. Additionally, on May 28, 2009, the Director of the Energy Division notified PG&E that it had exhausted its AMF account, meaning PG&E is no longer required to sign contracts for power priced above the MPR, but may voluntarily choose to do so.

PG&E will voluntarily procure energy pursuant to the PPAs at an above-MPR price.

Project viability assessment and development status

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[13] *See* Resolution E-4298.

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

PG&E believes the Eurus projects are viable and will be developed according to the terms and conditions in the PPAs. PG&E evaluated the viability of the projects using the Commission approved project viability calculator, which uses standardized criteria to quantify a project's strengths and weaknesses in key areas of renewable project development. The confidential work papers for AL 3610-E included a comparison of the project viability scores relative to all bids PG&E received in its 2009 RPS solicitation and all shortlisted projects.

The Eurus Subsidiary PPAs identify agreed-upon project milestones, including the construction start date and commercial operation date. The seller's obligations to meet these milestones are supported by performance assurance securities. PG&E asserts that the project development plans allow for all milestones to be achieved. PG&E provided the following information about the Project's developer and development status:

Site Control

PG&E represents that the developer's progress on site control is sufficient to ensure that the projects are developed in a timely manner.

Resource and/or Availability of Fuel

PG&E represents that an in-depth solar resource analysis has been performed by an outside consultant to support the conclusion that there are adequate solar resources at the site. The projects do not require supplemental gas powered electrical generation facilities as backup.

Transmission

The projects are located in PG&E's service territory, and the delivery points are at the projects' busbars. PG&E will be the Scheduling Coordinator and manage imbalance risk for the projects. Further transmission issues are discussed in Confidential Appendix B.

Technology Type and Level of Technology Maturity

The projects will employ commercially proven PV panels and fixed-tilt, non-tracking solar arrays.

Permitting

The projects require permits from Kings County, California, and PG&E represents that there has been significant progress in the county permitting process.

Developer Experience

PG&E represents that Eurus America is a California-based subsidiary of Eurus Energy Holdings a global company with extensive experience in developing, financing, owning, and operating utility-scale renewable and natural gas-fired electric generation facilities, including wind and solar renewable energy facilities with more than 1,800 megawatts of generation capacity worldwide. Within the past 20 years, Eurus America has placed in service 45 independent power projects providing an aggregate of 500 MW of electric generation facilities.

Financing Plan

PG&E represents that Eurus America has a long-term track record of procuring financing for utility-scale renewable energy projects.

Production Tax Credit/Investment Tax Credit

PG&E represents that Eurus America has informed PG&E that the projects are eligible to receive investment tax credits.

Equipment Procurement

Information concerning the stage of procurement of major components is included in Confidential Appendix B.

Based on the above information and the additional project viability information provided in Confidential Appendix B, we conclude that the Eurus Subsidiary PPAs are highly viable.

Cost reasonableness evaluation

The Commission evaluates the reasonableness of each proposed RPS PPA price by comparing the proposed PPA price to a variety of factors including RPS solicitation results and other proposed RPS projects. Using this analysis, and as

discussed further below, the PPAs, with modifications adopted by this resolution, are reasonably priced given the projects' high viability and near-term delivery dates. Confidential Appendix B includes a detailed discussion of pricing terms.

Given the policy preference for viable renewable capacity that can be developed in the short-term,[15] the importance of developing smaller-scale renewable resources, and the projects' high viability, the Eurus PPAs merit Commission approval, conditional on a timely commercial online date (a discussion of the requirement to modify the PPAs to require a 2011 commercial online date is discussed in the comments section below). The total all-in costs of the PPAs, as modified, are reasonable based on their relation to bids received in response to PG&E's 2009 RPS Solicitation and other bilateral contracts.

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

DRA protests AL 3610-E

On February 22, 2010, DRA filed a protest to AL 3610-E with the Commission on the basis of price, stating in part: "DRA does not contest that the projects appear to be highly viable and can likely be built and come online quickly… Even assuming the Eurus Projects are 100% viable, their prices make them noncompetitive and their value is too low to justify the expense for ratepayers."

DRA also argued that the contracts, while they were negotiated according to Commission direction for bilateral contracting, were not fairly compared to the bids in PG&E's 2009 solicitation and should be required to compete in the 2010 solicitation. DRA's protest is addressed more fully in Confidential Appendix A.

On March 1, 2010, PG&E responded to DRA's protest stating that the PPAs' prices are balanced by favorable attributes not provided by other recent bids, including high viability, developer experience, site control and an early online date of 2011. The Eurus Subsidiary PPAs offer a relatively unique opportunity for near-term deliveries from new, in-state renewable capacity. Moreover, as

[15] *See, e.g.,* Executive Order S-21-09 and D. 10-04-052.

discussed above, the Commission finds that PPAs are reasonably priced given the projects' high viability and near-term delivery dates.

Regarding the process for evaluating bilateral contracts, D.09-06-050 provides that Energy Division staff shall apply the same process and review standards to bilateral contracts as for reviewing projects that are bid into a competitive solicitation. Accordingly, PG&E involved an IE in the Eurus PPA negotiations and Staff evaluated the Eurus Subsidiary PPAs relative to other RPS procurement opportunities to ensure that the bilaterally negotiated contracts are reasonable relative to projects participating in the competitive solicitation. As a result, we do not see any benefit in rejecting the contract and requiring the developer to bid into the 2010 solicitation, thereby likely delaying project online dates.

The price of the PPAs is reasonable, conditional on a timely online date, and because these bilateral contracts were evaluated relative to contracts in PG&E's 2009 RPS solicitation. Accordingly, we deny DRA's protest. However, we affirmatively state here that the competitive solicitation process is preferred and should be the primary vehicle for RPS procurement.

RPS Eligibility and CPUC Approval

Pursuant to Pub. Util. Code § 399.13, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS contract, the Commission has required standard and non-modifiable "eligibility" language in all RPS contracts. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an "Eligible Renewable Energy Resource," that the project's output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.[16]

The Commission requires a standard and non-modifiable clause in all RPS contracts that requires "CPUC Approval" of a PPA to include an explicit finding that "any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's

[16] *See, e.g.* D. 08-04-009 at Appendix A, STC 6, Eligibility.

compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (*Public Utilities Code Section 399.11 et seq.*), Decision 03-06-071, or other applicable law."[17]

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, nor can the Commission determine prior to final CEC certification of a project, that "any procurement" pursuant to a specific contract will be "procurement from an eligible renewable energy resource."

Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS eligible resource to count towards an RPS compliance obligation. Nor shall such a finding absolve the seller of its obligation to obtain CEC certification or the utility to pursue remedies for breach of contract. Contract enforcement activities shall be reviewed pursuant to the Commission's authority to review the utilities' administration of contracts.

Confidential information

The Commission, in implementing Pub. Util. Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, such as price, is confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their affiliates, which are public.

The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

[17] *See, e.g.* D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

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, the draft resolution was mailed to parties for comment on June 25, 2010.

DRA filed timely comments on July 15, 2010. We carefully considered DRA's comments and made appropriate changes to the draft resolution.

DRA suggests any Commission approval of the Eurus Subsidiary PPAs should be conditional on early online dates

DRA's comments reiterate concern regarding the PPAs' price, urging the Commission to reject the Eurus Subsidiary PPAs. DRA also proposes that if the Commission does approve the PPAs, it should condition its approval upon actual achievement of early online dates, since the projects' viability and likelihood of near-term deliveries are stated as valuable by the Commission.

DRA's proposal to require timely online dates is reasonable and is adopted. In order to ensure that ratepayers receive the benefit of near-term renewable deliveries from the Eurus Subsidiary PPAs, we require that within 30 days of the effective date of this resolution, PG&E file a Tier 1 advice letter containing PPAs for generation from the three Eurus projects modified to eliminate all provisions allowing a delay in commercial online date beyond December 31, 2011, other than force majeure provisions.

FINDINGS AND CONCLUSIONS

1. The Eurus Subsidiary PPAs are consistent with the bilateral contracting guidelines established in D.09-06-050.
2. The Eurus Subsidiary PPAs are consistent with PG&E's 2009 RPS Procurement Plan approved by D. 09-06-018.
3. PG&E asserts that its decision to execute the Eurus Subsidiary PPAs is consistent with PG&E's 2009 RPS solicitation least-cost, best-fit cost protocols.

4. Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the Eurus Subsidiary PPAs.
5. The Eurus Subsidiary PPAs include the Commission adopted RPS standard terms and conditions, including those deemed "non modifiable".
6. The Eurus Subsidiary PPAs will contribute to PG&E's minimum quantity requirement established in D.07-05-028.
7. The Eurus Subsidiary PPAs meet the condition for EPS compliance established in D.07-01-039 because the generating facilities have forecast annualized capacity factors of 20% and therefore are not considered baseload generation.
8. PG&E will voluntarily procure energy pursuant to the Eurus Subsidiary PPAs at an above-MPR price.
9. The Eurus Subsidiary PPAs concern highly viable projects.
10. The total all-in costs of the PPAs, as modified, are reasonable based on their relation to bids received in response to PG&E's 2009 RPS Solicitation and other bilateral contracts.
11. <u>The costs of the</u> Eurus Subsidiary <u>PPAs are reasonable with the condition requiring a timely commercial online date, and because these bilateral contracts were evaluated relative to contracts in PG&E's 2009 RPS solicitation.</u>
12. <u>The Division of Ratepayer Advocates' protest of AL 3610-E is denied</u>.
13. <u>Energy Division staff revised the draft resolution, in part, in response to comments submitted by the Division of Ratepayer Advocates.</u>
14. Payments made by PG&E under the modified PPAs are fully recoverable in rates over the life of the PPAs, subject to Commission review of PG&E's administration of the PPAs.
15. Procurement pursuant to the Eurus Subsidiary PPAs is procurement from eligible renewable energy resources for purposes of determining PG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.03-06-071 and D.06-10-050, or other applicable law.
16. The immediately preceding finding shall not be read to allow generation from a non-RPS-eligible-renewable energy resource under these PPAs to count

towards an RPS compliance obligation. Nor shall that finding absolve PG&E of its obligation to enforce compliance with these PPAs.

17. The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

18. The Eurus Subsidiary PPAs proposed in AL 3610-E should be approved effective today with modification.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company's Advice Letter 3610-E, requesting Commission review and approval of three power purchase agreements with Avenal Park, LLC, Sun City Project, LLC, and Sand Drag, LLC, is approved with modification.

2. Within 30 days of the effective date of this resolution, Pacific Gas & Electric Company should file a Tier 1 advice letter containing PPAs modified to eliminate all provisions allowing a delay in commercial online date beyond December 31, 2011, other than force majeure provisions.

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 August 12, 2010; the following Commissioners voting favorably thereon:

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PAUL CLANON
Executive Director

Confidential Appendix A

Disposition of Confidential Protest and Comments from the Division of Ratepayer Advocates

REDACTED

Confidential Appendix B

Contract Summary

REDACTED

Confidential Appendix C

Excerpt from Confidential IE Report[18]

REDACTED

[18] Arroyo Seco Consulting, "Confidential Appendix to the Advice Letter Report of the Independent Evaluator on Three Proposed Contracts with Eurus Energy America Corp." Pages C-7 – C-15.