PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Item #7
ID #9611

ENERGY DIVISION **RESOLUTION E-4343**
August 12, 2010

REDACTED

R E S O L U T I O N

Resolution E-4343. Pacific Gas and Electric Company (PG&E)

PROPOSED OUTCOME: This Resolution approves PG&E's request for approval of cost recovery for a power purchase agreement (PPA) resulting from PG&E's 2007 Renewables Portfolio Standard (RPS) solicitation between PG&E and Genesis Solar, LLC., pursuant to California's RPS program. The PPA is approved.

ESTIMATED COST: Actual costs are confidential at this time.

By Advice Letter 3546-E filed on October 26, 2009 and Supplemental Advice Letter filed 3546-E-A on June 14, 2010.

SUMMARY

Pacific Gas and Electric Company's renewable power purchase agreement complies with the Renewables Portfolio Standard procurement guidelines and is approved.

Pacific Gas and Electric Company (PG&E) filed Advice Letter (AL) 3546-E on October 26, 2009, requesting California Public Utilities Commission (Commission) approval of a renewable power purchase agreement (PPA) with Genesis Solar, LLC (Genesis Solar), an affiliate of NextEra Energy Resources, LLC, which is a subsidiary of FPL Group.

Under the proposed 25-year PPA, PG&E would procure renewable energy from the planned 250 megawatt Genesis Solar solar thermal parabolic trough facility to be located in Riverside County, California. The Genesis Solar PPA resulted from PG&E's 2007 Renewables Portfolio Standard (RPS) solicitation.

On June 14, 2010, PG&E filed supplemental AL 3546-E-A to amend the proposed PPA. Specifically, the amendment reduces the contract price if certain events occur and removes several contract price adjustment provisions. Supplement AL 3546-E-A also included a letter agreement clarifying Genesis Solar's efforts to obtain its application for certification for use of wet-cooling technology for the Project (vs. dry-cooling, which is also allowed pursuant to the PPA), and related terms and conditions in the PPA.

This resolution approves the PPA between PG&E and Genesis Solar because the PPA is consistent with PG&E's 2007 RPS Procurement Plan approved in Decision 07-02-011 and because the costs are reasonable with the contract prices approved here. The Commission approves specific contract prices set forth in the proposed PPA that are reasonable and will ensure that the Genesis Solar project provides the greatest value for PG&E's ratepayers. With the contract prices approved here, deliveries under the PPA are fully recoverable in rates over the life of the contract, subject to Commission review of PG&E's administration of the PPA.

The following tables summarize the Project specific features of the agreement:

Generating Facility	Genesis Solar
Technology	Solar Thermal (Trough)
Capacity	250 megawatts (MW)
Expected Deliveries	524 GWh/yr (assumes project is dry-cooled)
Contract Term	25 years
Commercial Operation Date	Unit 1(125 MW): 11/30/2013 Unit 2 (125 MW): 11/30/2014
Project Location	Riverside County, 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 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 3546-E and supplemental AL 3546-E-A 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 IV of General Order 96-B.

PROTESTS

On November 23, 2009, the Division of Ratepayer Advocates (DRA) submitted a late-filed protest with the Commission. DRA's protest to AL 3546-E was submitted as confidential and was fully redacted. Energy Division accepted DRA's late-filed protest. Accordingly, PG&E submitted a confidential response with the Commission on December 4, 2009.

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[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 Code unless otherwise specified.

[3] *See* § 399.15(b)(1).

DISCUSSION

PG&E Requests Commission Approval of a New Renewable Energy Contract

On October 26, 2009, PG&E filed Advice Letter (AL) 3546-E requesting California Public Utilities Commission (Commission) review and approval of a renewable power purchase agreement (PPA) with Genesis Solar, LLC, (Genesis Solar or Project), an affiliate of NextEra Energy Resources, LLC, (NextEra) which is a subsidiary of the FPL Group. The Genesis Solar PPA resulted from PG&E's 2007 Renewables Portfolio Standard solicitation. Beginning in November 2013, generation from the 250 megawatt (MW) Genesis Solar project is expected to contribute an average of 524 gigawatt-hours (GWh) towards PG&E's Renewables Portfolio Standard (RPS) requirement.

Genesis Solar proposes to develop two 125 MW solar thermal parabolic trough facilities comprised of a field of single-axis tracking parabolically-curved mirrors to concentrate solar radiation onto a receiver tube located along the focal line of the trough-shaped mirrors. A heat transfer fluid flows through the receiver tube and absorbs the thermal energy to generate steam and produce electricity utilizing a standard Rankine cycle turbine-generator. According to AL 3546-E, Genesis Solar intends to use wet cooling for the project, but the PPA also includes pricing terms and conditions for dry cooling if permitting warrants it.[4]

On August 31, 2009, Genesis Solar filed an Application for Certification[5] (AFC) with the California Energy Commission (CEC).[6] Specifically, Genesis Solar requests authority to construct its Project on federal land managed by the Bureau of Land Management (BLM).[7] The CEC's AFC process, in conjunction with the BLM, and other agencies as necessary, will consider Best Management Practices

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[4] A wet-cooled facility utilizes water to cool steam in order to maximize generation efficiency. Dry-cooled systems use approximately 90% less water than wet-cooled ones, but perform less efficiently.

[5] The Genesis Solar AFC filed with the CEC is available at: http://www.energy.ca.gov/sitingcases/genesis_solar/index.html

[6] The California Energy Commission is the lead agency (for licensing thermal power plants 50 megawatts and larger) under the California Environmental Quality Act (CEQA) and has a certified regulatory program under CEQA.

[7] Because the Project would be located on BLM administered land, the Project must also be compliant with the National Environmental Policy Act (NEPA).

that have been developed for solar energy projects in order to minimize or mitigate negative impacts on natural resources.[8]

On June 14, 2010, PG&E filed supplemental AL 3546-E-A to amend contract price terms and conditions. Specifically, the amendment reduces the contract price if certain events occur and removes several contract price adjustment provisions. The amendments result in lower expected costs to ratepayers. Supplement AL 3546-E-A also included a letter agreement between PG&E and Genesis Solar to clarify the parties' obligation under the PPA related to the permitting conditions set forth for the project as a wet- or dry-cooled facility. On July 12, during its power plant licensing hearing at the CEC, Genesis Solar formally announced that it would proceed with the AFC process as a dry-cooled facility.

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

1. Approves the PPA in its entirety, including payments to be made by PG&E pursuant to the PPA, subject to the Commission's review of PG&E's administration of the PPA.
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 procurement and administrative costs, as provided by Public Utilities Code section 399.14(g), associated with 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 is consistent with PG&E's 2008 RPS procurement plan.

[8] The CEC's Best Management Practices are available at: http://www.energy.ca.gov/2009publications/CEC-700-2009-016/CEC-700-2009-016-SD-REV.PDF

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:

   a. The utility's cost of procurement under the PPA 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 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 PPA is not a covered procurement subject to the EPS because the generating facility has a forecast capacity factor of less than 60% and therefore is not baseload generation under paragraphs 1(a)(ii) and 3(2)(a) of the Adopted Interim EPS Rules.

Energy Division evaluated the proposed PPA on the following grounds:

- Consistency with PG&E's 2007 RPS Procurement Plan
- Consistency with Least-Cost, Best-Fit requirements and Independent Evaluator review
- Procurement Review Group participation
- Consistency with RPS standard terms and conditions
- Cost reasonableness
- Cost containment
- Project viability
- Compliance with the minimum quantity requirement for long-term/new facility contracts
- Compliance with the Interim Emissions Performance Standard

Consistency with PG&E's 2007 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.[9] PG&E's 2007 RPS procurement plan (Plan) was approved by D.07-02-011 on February 15, 2007. Pursuant to statute, PG&E's Plan included 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.[10] The stated goal of PG&E's 2007 RPS Plan was to procure approximately 1-2 percent of PG&E's retail sales volume or between 750 and 1,500 GWh per year.

PG&E states that the Genesis Solar PPA is consistent with its 2007 Plan because it was solicited, negotiated and executed according to PG&E's solicitation protocols.

The Genesis Solar project will not contribute to PG&E's 2010 20% RPS target due to the project's expected fourth quarter, 2013 online date. However, the project is valuable for maintaining PG&E's RPS target in subsequent years, particularly given the projected increase in PG&E's load and expiration of shorter-term RPS contracts. Therefore, the Genesis Solar project fits PG&E's identified renewable resource needs because it will contribute to maintaining PG&E's long-term RPS goal.

<u>The PPA is consistent with PG&E's 2007 RPS Procurement Plan, including PG&E's RPS resource needs, approved by D.07-02-011.</u>

Consistency with PG&E's Least-Cost, Best-Fit (LCBF) requirements and Independent Evaluator review

The Commission's least-cost, best-fit (LCBF) decision directs the utilities to use certain criteria in their bid ranking.[11] 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 2007 RPS solicitation protocol included an explanation of its LCBF methodology, which includes

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[9] Pub. Util. Code, § 399.14

[10] Pub. Util. Code, § 399.14(a)(3)

[11] *See* D.04-07-029

quantitative and qualitative analysis focusing 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 such as project viability.

Fundamentally, the decision to shortlist a project is based on its net market value (contract price plus any adder for future transmission costs, less resource adequacy value and the forward energy price for a comparable quantity of energy) and project viability. For example a project is shortlisted if the project's net market value is above some threshold, such as the fourth quartile of all bids. Because shortlisting provides the utility with an opportunity to negotiate a more competitive price, in some cases it may be prudent for a utility to shortlist a relatively high-priced project that demonstrates high indicia of viability.

PG&E employed an independent evaluator (IE) to oversee its 2007 RPS solicitation, as required by the Commission.[12] AL 3546-E included an IE report which in part noted that PG&E was inclusive in developing its 2007 RPS shortlist, adding projects that were evaluated as highly viable that would not have otherwise been shortlisted due to low market valuation (high price).

Consistent with D.06-05-039, an independent evaluator oversaw PG&E's 2007 RPS solicitation and subsequent negotiations with Genesis Solar.

The IE verified that PG&E's decision to shortlist Genesis Solar was consistent with PG&E's solicitation protocols, including its least cost, best fit methodology set forth in its 2007 RPS Plan and the IE supported PG&E's decision to shortlist the Genesis Solar project.[13]

Procurement Review Group 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.[14]

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[12] *See* D.06-05-039

[13] AL 3546-E, Appendix I.

[14] The PRG for PG&E includes representatives of the California Department of Water Resources, the Commission's Energy Division and Division of Ratepayer Advocates,

Footnote continued on next page

PG&E provided its PRG updates on the Genesis Solar negotiations on May 15, 2009, June 12, 2009, and August 14, 2009.

Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the Genesis Solar PPA.

Consistency with RPS standard terms and conditions

The Genesis Solar PPA is based on PG&E's 2008 RPS pro forma contract and complies with D.08-04-009, as modified by D.08-08-028.[15] As a result, the PPA contains the required non-modifiable standard terms and conditions.

The Genesis Solar PPA includes the Commission adopted RPS "non-modifiable" standard terms and conditions.

Cost Reasonableness

In AL 3546-E, PG&E determined that the costs of the Genesis Solar PPA were reasonable compared to proposals received in response to PG&E's 2008 solicitation (the most recent market data at the time AL 3546-E was filed). PG&E filed work papers with AL 3546-E illustrating how the Genesis Solar PPA compared to bids received in PG&E's 2008 RPS solicitation and PG&E's 2008 shortlist. The Commission's reasonableness review for RPS PPA costs also includes a comparison to other proposed RPS projects from PG&E's 2009 RPS solicitation, as well as recent Commission-approved projects. Because of the challenges facing renewable project development, in addition to price, Energy Division considers project viability when comparing the costs of RPS contracts.

In its protest to AL 3546-E, DRA noted particular concern over the costs of the Genesis Solar PPA. PG&E in its reply to DRA's protest asserted that the price of the Genesis Solar PPA is reasonable given its technology and the high viability of the project.

Union of Concerned Scientists, The Utility Reform Network, the California Utility Employees, and Jan Reid, as a PG&E ratepayer.

[15] While the Genesis Solar PPA resulted from PG&E's 2007 RPS solicitation, PG&E based the Genesis Solar PPA on its 2008 RPS pro forma because it reflected the most recent Commission required standard terms and conditions and included other refinements accepted by the Commission.

The Commission recognizes that the costs of complying with the RPS program are not insignificant and moreover that the instant advice letter concerning the Genesis Solar PPA will impose a long-term commitment on PG&E's ratepayers. The Commission will only approve a PPA if it is necessary and if the costs are reasonable. While PG&E has entered into numerous RPS contracts, many of these projects will require new transmission infrastructure and may face challenges obtaining permits and/or financing. In light of this, it is a common assumption that some of the renewable generation under contract will be delayed. Therefore, it is imperative that the utilities continue to build and diversify their renewable portfolios with viable projects that may be contracted for at reasonable costs. For this reason, the Commission directed the utilities and Energy Division staff to develop tools to ensure that projects which demonstrate high viability are given appropriate weight in the procurement selection process.[16] Approval of the Genesis Solar PPA will add a highly viable solar thermal project to PG&E's RPS portfolio.

While DRA's makes a valid argument that the Genesis Solar project is a relatively high-priced project, the IE report offers some comfort concerning the reasonableness of the costs. Specifically, the IE noted that PG&E and Genesis Solar have negotiated the Genesis Solar project under various contract structures, including a joint ownership proposal. Because of this, the IE stated that PG&E was afforded significant access to project cost information and that, "PG&E should be comfortable with the costs of the project and related development activities."[17]

Moreover, on June 14, 2010, PG&E submitted supplemental AL 3546-E-A which included a reduction in the contract price if certain events occur. Therefore, while the Genesis Solar PPA may be a relatively high priced PPA, on balance the Commission finds that the costs of the Genesis Solar PPA, as amended by supplemental AL 3546-E, are reasonable in light of the specified contract prices approved by this resolution, the project's benefits and comments from the IE discussed above. As set forth in Confidential Appendix B, we only approve specified contract prices to ensure that PG&E and Genesis Solar are sufficiently motivated to cause the project to be developed in a manner that provides the

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[16] *See* February 3, 2009, Assigned Commission's Ruling R.08-08-009.

[17] AL 3546-E, Appendix I at 30.

greatest value for PG&E's ratepayers. Confidential Appendix B includes a detailed discussion of the contractual pricing terms, including PG&E's estimate of the total contract costs under the PPA and the approved contract prices for the Genesis Solar PPA.

With the prices approved by this resolution, the costs of the approved Genesis Solar PPA are reasonable compared to PG&E's 2009 solicitation and other comparable PPAs.

With the prices approved by this resolution, payments made by PG&E under the PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E's administration of the PPA.

Cost Containment

Pursuant to statute, the Commission calculates a market price referent (MPR) to assess above-market costs of individual RPS contracts and the RPS program in general.[18] Contracts that meet certain criteria are eligible for above-MPR funds (AMF).[19] Based on a 2014 guaranteed commercial online date for the Project, the 25-year PPA exceeds the 2008 MPR[20] and therefore has above-market costs associated with it.[21]

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[18] *See* § 399.15(c)

[19] 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.

[20] *See* Resolution E-4214.

[21] The $/MWh portion of the contract price that exceeds the MPR, multiplied by the expected generation throughout the contract term, represents the total "above-market costs" for a given PPA.

The PPA meets the eligibility criteria for AMFs. However, PG&E has exhausted its AMFs provided by statute.[22] Therefore, PG&E will voluntarily incur the above-MPR costs of the PPA.

Because there are above-market costs associated with this contract, which is subject to the cost limitation of Pub. Utils. Code § 399.15(d), and PG&E has exhausted its above-MPR funds, PG&E is voluntarily entering into the Genesis Solar PPA as permitted under the Pub. Util. Code.

Project viability assessment and development status

PG&E believes that the Genesis Solar project is viable and will be developed according to the terms and conditions in the PPA. PG&E's project viability assessment includes key criteria for renewable project development such as developer experience, commercialization of the technology, site control and permitting status and access to transmission.

Energy Division staff reviewed the project development information provided in the advice letter and concurs with PG&E that the Genesis Solar project is viable relative to other RPS projects. The viability of the Genesis Solar project is reasonable compared to other projects offered to PG&E.

Developer experience and creditworthiness

The Genesis Solar project is being developed by NextEra, a subsidiary of the FPL Group. Through its subsidiaries, NextEra, operates more than 17,000 MW nationwide and is the largest seller in North America of solar and wind generated energy, including a 310 MW solar thermal plant in California's Mojave Desert.

Technology

PG&E explains that the Genesis Solar project will utilize "standard" solar thermal parabolic trough technology that been commercially demonstrated for over 20 years at the Solar Energy Generating Systems (SEGS) operating in California's Mojave Desert. This technology is the most widely commercially deployed type of utility-scale solar thermal technology.

[22] On May 28, 2009, the Director of the Energy Division notified PG&E that it had exhausted its AMF account.

Site control and permitting status

As discussed above, the Genesis Solar project is pursuing its AFC from the CEC and site control from the BLM. The Genesis Solar project has been identified by the BLM as a "fast-track" project.[23] Fast-track designated projects are considered advanced enough in the permitting process that they could obtain approval by December 2010, therefore making them eligible for economic stimulus funding under the American Recovery and Reinvestment Act of 2009.

Interconnection and transmission

Genesis Solar is pursuing an interconnection agreement with Southern California Edison Company through the California Independent System Operator interconnection process. Transmission upgrade studies for the project are underway and any necessary transmission build-out is expected to be completed in time for the project to deliver under the terms of the PPA.

Contribution to minimum quantity requirement for long-term/new facility contracts

D.07-05-028 established a "minimum quantity" condition on the ability of utilities to count an eligible contract of less than 10 years duration for compliance with the RPS program.[24] In the calendar year that a short-term contract with an existing facility is executed, the utility must also enter into long-term contracts or contracts with new facilities equivalent to at least 0.25% of the utility's previous year's retail sales.

As a new facility, delivering pursuant to a long-term contract, the Genesis Solar PPA will contribute to PG&E's minimum quantity requirement established in D.07-05-028.

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[23] A list of the BLM's renewable energy "fast-track" projects is available at: http://www.blm.gov/wo/st/en/prog/energy/renewable_energy/fast-track_renewable.html

[24] For purposes of D.07-05-028, contracts of less than 10 years duration are considered "short-term" contracts and facilities that commenced commercial operations prior to January 1, 2005 are considered "existing".

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

California Pub. Util. 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 quota for obligated facilities to 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.[25]

Generating facilities using certain renewable resources are deemed compliant with the EPS, although contracts with intermittent resources are subject to the limitation that total purchases under the contract do not exceed the expected output from the facility over the term of the contract.

The PPA complies with the EPS established in D.07-01-039 because it concerns an in-state RPS-eligible facility with a capacity factor less than 60 percent.

DRA filed a confidential protest to PG&E's advice letter

On November 23, 2009, DRA submitted a confidential protest to AL 3546-E with the Commission. Because DRA's protest was submitted to the Commission as confidential the details of DRA's protest cannot be discussed. In general, DRA argues against Commission approval of the PPA for reasons that concern cost and whether PG&E's selection and negotiation of the Genesis Solar PPA followed RPS procurement protocols.

PG&E asserted that it adhered to its RPS solicitation protocols and that the costs of the PPA are reasonable for a highly viable renewable project.

For the reasons discussed above, and with the approved prices, we find that the costs of the Genesis Solar PPA, as amended by supplemental AL 3546-E-A, are reasonable and that the PPA was selected and executed consistent with PG&E's Commission approved 2007 RPS procurement plan. Accordingly, we deny DRA's protest in its entirety. (See Confidential Appendix A for a summary of DRA's protest and PG&E's response.)

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[25] "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).

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.[26]

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 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."[27]

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, <u>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 finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract.</u> Such contract enforcement activities shall be reviewed pursuant to the Commission's authority to review the utilities' administration of contracts.

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

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

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.

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 on July 7, 2010.

On July 27, 2010, timely comments were submitted by DRA and jointly by the Coalition of California Utility Employees and The Utility Reform Network (CUE/TURN).

In its comments, DRA recommends that staff remove discussions regarding wet-cooling since Genesis Solar announced that it is advancing the project at the CEC as a dry-cooled facility. DRA also requests that the Commission require PG&E to notify staff and parties when the contract price is finalized. Staff revised the draft resolution, as necessary, but does not require PG&E to make a specific notice regarding the contract price since this resolution is clear on the approved price for PG&E's PPA with Genesis Solar.

CUE/TURN assert in their comments that PG&E's PPA with Genesis would "cause PG&E to overpay" and CUE/TURN recommend that the Commission reject the PPA. The CUE/TURN comments included detailed analysis and

supporting work papers that were redacted, and therefore the detailed disposition of the comments is addressed in Confidential Appendix D.

Staff independently reviewed the comments and analysis submitted by CUE/TURN and staff issued PG&E a data request to determine if the inputs and assumptions accurately reflected the Genesis project cost data and the Genesis Solar PPA terms and conditions. Based on the information provided, staff determined that the CUE/TURN assertion that the PPA would result in overpayment is mistaken. Specifically, the "overpayment" calculated in the model submitted by CUE/TURN is eliminated when the inputs used rely on actual terms and conditions of the PPA. Accordingly, no changes were made to the draft resolution in response to the CUE/TURN comments.

On July 30, 2010, the Independent Energy Producers Association (IEP) submitted late-filed comments to the draft resolution. IEP's comments concerned the jointly submitted CUE/TURN comments on draft resolution E-4343 and not the draft resolution per se. Specifically, IEP commented on the extent of redacting by CUE/TURN in their comments and the Commission's confidentiality rules. Because the Commission's confidentiality rules are outside the scope of the draft resolution to which IEP's comments were submitted, staff does not address IEP's comments here.

FINDINGS AND CONCLUSIONS

1. The Genesis Solar, LLC power purchase agreement is consistent with Pacific Gas and Electric Company's 2007 Renewables Portfolio Standard Procurement Plan and resource needs, approved by Decision 07-02-011.
2. The selection of the Genesis Solar, LLC power purchase agreement is consistent with Pacific Gas and Electric Company's 2007 Renewables Portfolio Standard Procurement solicitation least-cost, best-fit protocols and renewable resource needs, approved by Decision 07-02-011.
3. Consistent with Decision 06-05-039, an independent evaluator oversaw Pacific Gas and Electric Company's negotiations with Genesis Solar, LLC and concurs with Pacific Gas and Electric Company's decision to execute the agreement and that the proposed Genesis Solar, LLC power purchase agreement merits Commission approval.
4. Pursuant to Decision 02-08-071, Pacific Gas and Electric Company's Procurement Review Group participated in the review of the Genesis Solar, LLC power purchase agreement.

5. Pacific Gas and Electric Company submitted a supplemental advice letter to reduce the contract price of the Genesis Solar, LLC power purchase agreement if certain events occur and to remove several contract price adjustment provisions.
6. With the prices approved by this resolution and identified in Confidential Appendix B, the total all-in costs of the Genesis Solar, LLC power purchase agreement, are reasonable based on their relation to contract price and viability of bids received in response to Pacific Gas and Electric Company's 2009 solicitation for renewable resources.
7. All of the prices set forth in the Genesis Solar, LLC power purchase agreement exceed the applicable 2008 market price referent.
8. Pursuant to Public Utilities Code § 399.15(d), PG&E will voluntarily procure energy under the Genesis Solar, LLC power purchase agreement at a price that exceeds the applicable market price referent.
9. Consistent with the prices approved by this resolution and identified in Confidential Appendix B, payments made by Pacific Gas and Electric Company under the Genesis Solar, LLC power purchase agreement are fully recoverable in rates over the life of the agreement, subject to Commission review of Pacific Gas and Electric Company's administration of the agreement.
10. The viability of the Genesis Solar, LLC project is reasonable compared to other projects offered to Pacific Gas and Electric Company.
11. The Genesis Solar, LLC power purchase agreement will contribute to Pacific Gas and Electric Company's minimum quantity requirement established in Decision 07-05-028.
12. The Genesis Solar, LLC power purchase agreement complies with the Emissions Performance Standard because it meets the conditions established in Decision 07-01-039.
13. The Division of Ratepayer Advocate's protest is denied.
14. Procurement pursuant to the Genesis Solar, LLC power purchase agreement is procurement from eligible renewable energy resources for purposes of determining Pacific Gas and Electric Company'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.), Decision 03-06-071 and Decision 06-10-050, or other applicable law.

15. The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource under the power purchase agreement to count towards an RPS compliance obligation. Nor shall that finding absolve Pacific Gas and Electric Company of its obligation to enforce compliance with this agreement.
16. 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. On July 27, 2010, timely comments were submitted by the Division of Ratepayer Advocates and jointly by the Coalition of California Utility Employees and The Utility Reform Network.
18. No changes were made to the draft resolution in response to the CUE/TURN comments.
19. On July 30, 2010, the Independent Energy Producers Association submitted late-filed comments to the draft resolution, which were outside the scope of the draft resolution and not accepted by staff.
20. Advice Letter 3546-E and supplemental Advice Letter 3546-E-A should be approved effective today.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company's Advice Letter 3546-E and supplemental Advice Letter 3546-E-A, requesting Commission approval of a power purchase agreement with Genesis Solar, LLC is approved, consistent with the prices approved by this resolution and identified in Confidential Appendix B.
2. 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:

_____
PAUL CLANON
Executive Director

Confidential Appendix A

Summary of Confidential Protest from the Division of Ratepayer Advocates

[REDACTED]

Confidential Appendix B

Summary of PPA terms and conditions

[REDACTED]

Confidential Appendix C

Excerpt from the Independent Evaluator Report

[REDACTED]

Confidential Appendix D

Comment Disposition

[REDACTED]