PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Item #16
ID #10234

ENERGY DIVISION **RESOLUTION E-4393**
April 14, 2011

REDACTED

R E S O L U T I O N

Resolution E-4393. Pacific Gas and Electric Company requests approval of a power purchase agreement with SGS-1, LLC, a wholly owned subsidiary of Sempra Generation.

PROPOSED OUTCOME: This Resolution approves cost recovery for Pacific Gas and Electric Company's renewable power purchase agreement with SGS-1, LLC. The power purchase agreement is approved with conditions.

ESTIMATED COST: Actual costs are confidential at this time.

By Advice Letter 3741-E filed on October 12, 2010.

SUMMARY

PG&E's renewable contract complies with the Renewables Portfolio Standard (RPS) procurement guidelines and is approved with conditions

Pacific Gas & Electric (PG&E) filed Advice Letter (AL) 3741-E on October 12, 2010, requesting the California Public Utilities Commission's (Commission) approval of a renewable purchase power agreement (PPA) with a new solar photovoltaic (PV) facility being developed by SGS-1, LLC (SGS-1), a subsidiary of Sempra Generation. For the purpose of meeting its RPS targets, PG&E executed a 20 year contract with SGS-1, LLC through bilateral negotiations.

The 150 megawatt (MW) Mesquite Solar PV facility (Mesquite Solar or Project) will be developed in Maricopa County, Arizona. The PPA requires that the Project's first point of interconnection will be with the California Independent System Operator Balancing Authority Area (CAISO BAA), or that the energy will be dynamically transferred to the CAISO BAA. The Project will start delivering energy during a 2012-2014 phase-in period. Under the terms of the PPA, the Mesquite Solar project must energize 75 MW of capacity 18 months after Commission approval of the PPA and 150 MW of capacity 36 months after Commission approval of the PPA.

This resolution approves the SGS-1, LLC contract with conditions. PG&E's execution of this contract is consistent with PG&E's 2009 RPS Procurement Plan, including its resource need, which the Commission approved in Decision(D.)09-06-018. Provided that the Project's first point of interconnection is with the CAISO BAA or the energy from the Project is dynamically transferred into the CAISO BAA, the contract with SGS-1 will be considered "bundled" for RPS compliance purposes pursuant to D.10-03-021, as modified by D.11-01-025.

The California Energy Commission (CEC) has determined that the proposed delivery pathways that SGS-1, LLC is seeking with the CAISO would meet the RPS delivery requirements according to the Renewables Portfolio Standard Eligibility Guidebook (CEC-300-2010-007-CMF, January 2011).

RPS-eligible deliveries from the PPA are reasonably priced and fully recoverable in rates over the life of the contract, subject to Commission review of PG&E's administration of the contract. This resolution requires that PG&E amend its contract with SGS-1 so that the PPA conforms with the Commission's standard terms and conditions for RPS contracts.

The following table summarizes the Project-specific features of the agreement:

Generating Facility	Type	Term Years	MW Capacity	Annual Deliveries	Online Date	Project Location
Mesquite Solar	Solar PV, fixed tilt, non-tracking	20	150 MW	305 GWh	2012	Maricopa County, AZ

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 Advice Letter 3741-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

Advice Letter 3741-E was not protested.

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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 12, 2010, Pacific Gas & Electric (PG&E) filed Advice Letter 3741-E requesting Commission approval of a renewable procurement contract with SGS-1, LLC for generation from its proposed Mesquite Solar photovoltaic (PV) facility (Mesquite Solar or [this is what you have in the Summary] Project). Generation from the 150 megawatt (MW) Project is expected to contribute an average of 305 gigawatt-hours (GWh) annually towards PG&E's annual procurement target, pursuant to the Commission's renewables portfolio standard (RPS) program. Under the terms of the bilaterally negotiated purchase power agreement (PPA), the Project must energize 75 MW of capacity within 18 months after Commission approval of the PPA and 150 MW of capacity within 36 months after Commission approval of the PPA. There is a project development phase–in period under which initial energy deliveries are expected to begin in 2012 with full commercial operational delivery expected to begin in 2014.

The Project will be located in Maricopa County, Arizona. The project will be interconnected within the Western Electricity Coordinating Council (WECC) transmission system, and energy from the Project will be scheduled directly with the California Independent System Operator (CAISO). The Project's first point of interconnection will be with the California Independent System Operator Balancing Authority Area (CAISO BAA), or the Project's energy will be dynamically transferred to the CAISO BAA. See Confidential Appendix C for a discussion on the various interconnection options that SGS-1 is pursuing.

The Commission's approval of the contract will authorize PG&E to accept future RPS-eligible generation that will contribute towards PG&E's 20% RPS mandate, and the 20-year contract will contribute to PG&E's long-term RPS goals.

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 RPS (Public Utilities Code Section 399.11 et seq.), 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 2009 RPS procurement plan.
   b. The terms of the PPA, including the price of delivered energy, are reasonable.
5. Adopts the following finding of fact and conclusion of law in support of cost recovery for the PPA:
   a. The utility's costs 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 covered procurement subject to the EPS because the generating facility has a forecast capacity factor of less than 60 percent and, therefore, is not baseload generation under paragraphs 1(a)(ii) and 3(2)(a) of the Adopted Interim EPS Rules.
   b. PG&E has provided the notice of procurement required by D.06-01-038 in its Advice Letter filing.

Energy Division Evaluated the SGS-1 Contract on These Grounds:

- Consistency with Commission guidelines for bilateral contracting
- Consistency with PG&E's 2009 RPS Procurement Plan
- Consistency with PG&E's Least-Cost, Best-Fit requirements
- Independent Evaluator review
- Consistency with RPS standard terms and conditions
- Consistency with TREC Rules
- Cost reasonableness
- Cost containment
- Project viability assessment and development status
- Consistency with RPS Eligibility Delivery Rules
- Compliance with the minimum quantity condition
- Consistency with the Emissions Performance Standard
- Procurement Review Group participation

Consistency with Commission Guidelines for Bilateral Contracting

According to PG&E, the parties pursued bilateral negotiations because the timeline of the 2009 RPS solicitation would have delayed SGS-1's project development.

In D.06-10-019, the Commission established rules pursuant to which the IOUs could enter into bilateral RPS contracts. PG&E adhered to these bilateral contracting rules because the contract is longer than one month in duration, the contract was filed by advice letter, the above market costs will not be applied to PG&E's RPS cost limitation and the contracts are reasonably priced, as discussed in more detail below.

In D.09-06-050, this Commission determined that bilateral contracts should be reviewed according to the same processes and standards as contracts that come through a solicitation. Accordingly, the SGS-1 contract was compared to other RPS contracts received in PG&E's 2009 RPS solicitation, the proposed agreement was reviewed by PG&E's Procurement Review Group and an independent evaluator oversaw the contract evaluation and negotiation.

<u>The SGS-1 contract is consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.</u>

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.[4] PG&E's 2009 RPS Procurement Plan (Plan) was conditionally approved by D.09-06-018. 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.[5]

PG&E states that the generation procured under the PPA will meet the resource needs identified in its Plan. In its Plan, PG&E's goal was to procure approximately one to two percent of its retail sales volume, or between 800 to 1,600 GWh per year. The Project is expected to deliver approximately 305 GWh per year for a term of 20 years with full commercial operation commencing in 2014. Deliveries from the Project meet the criteria for renewables procurement contained in PG&E's 2009 Plan and will contribute to PG&E's 20 percent RPS goal under the current flexible compliance rules.

<u>The PPA is consistent with PG&E's 2009 RPS Procurement Plan, including PG&E's RPS resource needs, approved by D.09-06-018.</u>

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

The LCBF decision directs the utilities to use certain criteria in their bid ranking.[6] 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

[4] Pub. Util. Code, § 399.14

[5] Pub. Util. Code, §399.14(a)(3)

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

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.

In the case of a bilateral contract, the investor-owned utility would evaluate the offer using the same LCBF criteria employed for evaluating competitively bid offers and compare the results to offers under negotiation from recent solicitations. PG&E's 2009 RPS solicitation protocol included an explanation of its LCBF methodology which includes; (1) determination of market value of bid; (2) calculation of transmission adders and integration costs; (3) evaluation of portfolio fit; and (4) consideration of non-price factors.

PG&E examined the reasonableness of the SGS-1 offer using the same LCBF evaluation methodology it uses for RPS offers received for the 2009 RPS Solicitation. PG&E also examined the reasonableness of the SGS-1 offer against other bilaterals that were offered to PG&E. PG&E asserts that the contract is competitive compared to offers PG&E received in its 2009 RPS solicitation. Refer to Confidential Appendix B for a comparison of the SGS-1 off to contracts bid in the 2009 RPS solicitation.

<u>PG&E's decision to execute the SGS-1 contract is consistent with PG&E's RPS Least-Cost, Best-Fit cost protocols.</u>

Independent Evaluator Review

PG&E retained independent evaluator (IE) Lewis Hashimoto of Arroyo Seco Consulting to oversee PG&E's bilateral negotiations with SGS-1 and to evaluate overall merits for Commission approval of the contract. AL-3741-E included a public and confidential Independent Evaluator's report.[7] The IE in its report

[7] AL 3741-E included an IE report concerning the negotiation of the SGS-1 PPA and the value of the contract based on a price comparison with other renewable energy projects, portfolio fit, project viability, and compliance with PG&E's RPS goals.

determined that negotiations between PG&E and SGS-1 were fair and that SGS-1 was not given preferential treatment over sellers participating in the RPS solicitation. The IE considers the project's viability to be moderate to high, ranks the contract price moderate to high in the context of today's market for long-term renewable energy contracts. The IE concludes that the contract merits Commission approval. Refer to Confidential Appendix D for the Independent Evaluator's contract specific assessment.

<u>Consistent with D.06-05-039, an independent evaluator oversaw PG&E's negotiations with SGS-1. The IE concurs with PG&E's decision to execute the agreement and finds that the SGS-1 contract merits Commission approval.</u>

Consistency with RPS Standard Terms and Conditions

The Commission adopted a set of standard terms and conditions (STCs) required in RPS contracts, four of which are considered "non-modifiable." The STCs were compiled in D.08-04-009 and subsequently amended in D.08-08-028. More recently in D.10-03-021, as modified by D.11-01-025, the Commission further refined these STCs.

While the terms and conditions of the PPA conform to the Commission's decisions requiring RPS standard terms and conditions at the time the SGS-1 PPA was executed and filed for approval, the PPA does not include the revised "non-modifiable standard terms and conditions" established in D.10-03-021, as modified by D.11-01-025, for bundled RPS contracts.

Therefore, <u>Commission approval of the SGS-1 PPA is conditioned upon PG&E and SGS-1 modifying the SGS-1 PPA to include the new non-modifiable standard terms and conditions as required in D.10-03-021, as modified in D.11-01-025. Within 30 days from the effective date of this Resolution, PG&E shall file a Tier 1 advice letter compliance filing demonstrating that the SGS-1 PPA includes all of the relevant non-modifiable standard terms and conditions.</u>

Consistency with TREC Rules

In D.10-03-021, as modified by D.11-01-025, the Commission established rules pursuant to which tradable renewable energy credits (TRECS) can be used for RPS compliance. In this decision, the Commission determined that transactions should be considered bundled procurement for RPS compliance purposes for the following two delivery options; (1) RECs and energy that are procured from RPS-eligible generators for which the first point of interconnection with the WECC interconnected transmission system is in a California balancing authority area, or (2) transactions using dynamic transfer arrangements with a California balancing authority. According to the decision, all other RPS procurement arrangements should be considered REC-only transactions at this time.

D.10-03-021 authorizes staff to develop methods, in consultation with the parties, the CAISO, and other balancing authority areas, for reviewing and evaluating RPS procurement contracts in which a dynamic transfer is an element of the contract. Until such methods for review are adopted, Energy Division staff is authorized to use any and all current methods for review of RPS procurement contracts to review and evaluate contracts and to classify them as REC-only or bundled contracts, as appropriate.[8]

PG&E states that the PPA requires the Project's first point of interconnection to be with the CAISO or for the energy to be dynamically transferred to the CAISO. SGS-1 is pursuing several options to ensure that generation from its facility, which will be located outside of the CAISO BAA, will be treated as a bundled procurement for RPS compliance purposes pursuant to D.10-03-021, as modified by D.11-01-025. However, at this time, the Project has not finalized its Participating Generator Agreement with the CAISO. A Participating Generator Agreement is an agreement (including a Pseudo Participating Generator Agreement) between the generator and the CAISO which allows the generator to schedule and deliver energy as it is generated to the CAISO as an in-area resource. Therefore the Commission cannot make a determination that this is a bundled contract.

Because of the uncertainty resulting from the pending Participating Generator Agreement, the Commission requires that PG&E make a compliance filing to demonstrate that SGS-1 has obtained a Participating Generator Agreement with the CAISO that satisfies the requirements for a bundled transaction established in D10-03-021, as modified by D.11-01-025. PG&E shall file a tier 1 advice letter compliance filing with the Commission within 30 days following a final Participating Generator Agreement between SGS-1 and the CAISO.

[8] Ordering paragraph 15 of D.10-03-021, as modified by D.11-01-025.

Cost Reasonableness

The Commission's reasonableness review for RPS PPA prices includes a comparison of the proposed contract price(s) to other RPS offers received in recent RPS solicitations and contracts that have recently received CPUC approval. Using this analysis, and the confidential analysis provided by PG&E in AL 3741-E, the Commission determines that the cost of the SGS-1 contract is reasonable. The Commission is reviewing the SGS-1 contract as a bundled PPA since it requires the seller to pursue a Participating Generator Agreement. Confidential Appendix B includes a detailed discussion of the contractual pricing terms.

<u>The SGS-1, LLC contract compares favorably to the results of PG&E's 2009 solicitation and other comparable contracts.</u>

<u>Payments made by PG&E under the SGS-1 contract are fully recoverable in rates over the life of the contract, subject to Commission review of PG&E's administration of the contract.</u>

Cost Containment

Pursuant to statute, the Commission calculates a market price referent (MPR) to assess whether a proposed RPS contract has above-market costs.[9] <u>Based on the SGS-1 project's 2014 full commercial operation date, PG&E estimates that the price of the contract exceeds the applicable 2009 MPR.</u>[10]

Contracts that meet certain criteria are eligible for above-MPR funds (AMFs).[11] The SGS-1 contract was bilaterally negotiated, and therefore does not meet the

[9] *See* Pub. Util. Code § 399.15(c).

[10] *See* Resolution E-4298.

[11] 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.

eligibility criteria for AMFs.[12] Public Utilities Code §399.15 (d)(4) states that an investor-owned utility can voluntarily procure contracts at above-MPR prices that are not counted toward the cost limitation.

PG&E voluntarily entered into the SGS-1 contract, which PG&E estimates will exceed the applicable 2009 MPR on an all-in levelized cost basis.

Project Viability Assessment and Development Status

PG&E asserts that the SGS-1 project is viable and will be developed according to the terms and conditions in the PPA. PG&E evaluated the viability of the SGS-1 project 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 3741-E include a comparison of SGS-1's project viability score relative to all bids PG&E received in its 2009 RPS solicitation and all shortlisted projects. Refer to Confidential Appendix B for the viability comparison of SGS-1 with contracts bid in the 2009 RPS solicitation. Based on this analysis, the viability of the SGS-1 project is reasonable compared to other recent projects offered to PG&E.

The following information about the project's developer and development status was provided by PG&E in AL 3741-E.

Company/Development Team

SGS-1, LLC is a subsidiary of Sempra Generation and its parent company Sempra Energy. Sempra Generation has experience in developing and obtaining project financing for renewable and non-renewable generation facilities. Sempra's development team has successfully built one solar PV project under contract to PG&E, a 10 MW facility called El Dorado Solar[13] in Boulder City, NV,

[12] 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.

[13] *See* Resolution E-4240

and is currently building a 48 MW solar PV project in Boulder City, NV called Copper Mountain[14] that is also under contract to PG&E.

Technology Type and Level of Maturity

The SGS-1 project will use commercially proven fixed-tilt thin-film PV panels. This technology is used extensively in solar power plants and on rooftops throughout the world.

Quality of Renewable Resource

The SGS-1 project will be located in a well-known and highly predicable solar resource area as documented by National Renewable Energy Laboratory data.[15]

Site Control and Permitting Status

SGS-1 has full site control. The Project will be sited 40 miles west of Phoenix in Maricopa County, Arizona. PG&E asserts that permitting has been approved for the Project.

Interconnection and Transmission

SGS-1 is pursuing several options to ensure that generation from its facility, which is located outside of the CAISO BAA, will be treated as a bundled procurement for RPS compliance purposes pursuant to D10-03-021, as modified by D.11-01-025. PG&E states in AL 3741-E that the PPA requires the Project's first point of interconnection will either be with the CAISO or the energy will be dynamically transferred to the CAISO. If the CAISO determines that energy from the project will be dynamically transferred, SGS-1 avoids having to schedule deliveries with the Salt River Project Balancing Authority and/or the need to construct transmission to deliver energy into the CAISO control area.[16] See Confidential Appendix C for a discussion of the interconnection options that SGS-1 is pursuing.

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[14] *See* Resolution E-4302

[15] AL 3741-E at 13.

[16] The CAISO defines dynamic transfers as a service that transfers "…all, or a portion of, actual output of a specific generator to another Balancing Authority in real-time". The CAISO is considering tariff changes to formally accommodate dynamic transfers. http://www.caiso.com/2476/24768d0a2efd0.html

Consistency with RPS Eligibility Delivery Rules

The California Energy Commission (CEC) determines RPS eligibility and delivery requirements for RPS facilities and generation, including for facilities that do not have their first point of interconnection to the transmission network within the state of California. The CEC, through its Renewables Portfolio Standard Eligibility Guidebook (Guidebook), has adopted guidelines for pre-certifying and certifying RPS eligible facilities located both in California and out-of-state. The CEC has also established delivery requirements for facilities interconnected outside the state, pursuant to the provisions in Public Resources Code Section 25741, Subdivision (a). For RPS contracts that require CPUC approval, the CEC provides written documentation addressing whether a proposed contract delivery structure would be eligible for the RPS. Throughout the term of the contract, eligibility and delivery is verified and tracked through the Western Renewable Energy Generating Information System (WREGIS).

The CEC has determined that the SGS-1 contract meets the CEC's delivery requirements for RPS eligibility assuming that all eligibility requirements for the RPS are met, including the energy delivered into California from a generator located outside California. See Appendix A: CEC Letter Regarding Eligibility of the SGS-1 Contract's Delivery Structure.

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 a contract of less than 10 years duration with an existing facility for compliance with the RPS program.[17] 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 SGS-1 PPA will contribute to PG&E's minimum quantity requirement established in D.07-05-028.

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[17] 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 Greenhouse Gas Emissions Performance Standard

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 Emissions Performance Standard (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 that are at least five years in duration for baseload generation, which is defined as a facility with a capacity factor greater than 60 percent. In most cases, generating facilities using eligible renewable resources are deemed compliant with the EPS.

<u>The SGS-1 PPA is not subject to the EPS under D.07-01-039 as the Mesquite Solar facility will generate intermittent energy using solar PV technology at an estimated capacity factor less than 60 percent.</u>

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 investor owned utilities' (IOU) overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission.[18] PG&E asserts that it informed its PRG of the Project on December 15, 2009 and February 12, 2010.[19]

<u>Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the SGS-1 PPA.</u>

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[18] PG&E's PRG includes representatives of the Union of Concerned Scientists, the Coalition of California Utility Employees, The Utility Reform Network, the California Public Utility Commission's Energy Division and Division of Ratepayer Advocates, and PG&E ratepayer Jan Reid.

[19] AL 3741-E at 12.

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.[20]

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."[21]

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, neither 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 finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract. Such contract

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

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

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.

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 or reduced. Accordingly, this draft resolution was mailed to parties for comments on March 15, 2011.

No comments were received.

FINDINGS AND CONCLUSIONS

1. Pacific Gas and Electric Company's contract with SGS-1, LLC is consistent with the bilateral contracting guidelines established in Decision 06-10-019 and Decision 09-06-050.

2. Pacific Gas and Electric Company's contract with SGS-1, LLC is consistent with Pacific Gas & Electric Company's 2009 Renewables Portfolio Standard (RPS) Procurement Plan, approved by Decision 09-06-018.

3. Pacific Gas and Electric Company's decision to execute a contract with SGS-1, LLC is consistent with Pacific Gas & Electric Company's least-cost, best-fit protocols.

4. Pacific Gas and Electric pursued bilateral negotiations so as to not delay SGS-1's project development. The Project is expected to deliver approximately 305 gigawatt-hours per year with full commercial operation commencing in 2014.

5. Consistent with Decision 06-05-039 and Decision 09-06-050, an independent evaluator oversaw Pacific Gas and Electric Company's negotiation of the SGS-1, LLC contract.

6. Pacific Gas and Electric Company's contract with SGS-1, LLC must be amended to conform with the Commission's standard terms and conditions required for contracts executed pursuant to the renewables portfolio standard program.

7. At this time, pursuant to Decision 10-03-021, as modified by Decision 11-01-025, the Commission cannot determine that Pacific Gas and Electric Company's contract with SGS-1, LLC constitutes a bundled transaction for the purposes of compliance with the renewable portfolio standard program.

8. The total all-in costs of the proposed contract are reasonable based on their relation to bids received in response to Pacific Gas and Electric Company's 2009 solicitation for renewable resources and recent bilateral offers.

9. Pacific Gas and Electric Company estimated that the levelized all-in costs for the SGS-1, LLC contract will exceed the applicable 2009 market price referent.

10. Pursuant to Public Utilities Code § 399.15(d), Pacific Gas and Electric Company voluntarily enters into the contract with SGS-1, LLC.

11. The viability of the SGS-1, LLC project is reasonable compared to other projects offered to Pacific Gas and Electric Company.

12. The SGS-1 contract is not subject to the Emissions Performance Standard under Decision 07-01-039 as the Mesquite Solar facility will generate intermittent energy using solar PV technology at an estimated capacity factor less than 60 percent.

13. Pursuant to Decision 02-08-071, Pacific Gas and Electric Company's Procurement Review Group participated in the review of the SGS-1, LLC contract.

14. Procurement pursuant to the SGS-1, LLC contract 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 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. Payments made by Pacific Gas and Electric Company under the SGS-1, LLC contract are fully recoverable in rates over the life of the contract, subject to Commission review of Pacific Gas and Electric Company's administration of the contract.

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. Advice Letter 3741-E should be approved with conditions.

<u>THEREFORE IT IS ORDERED THAT:</u>

1. Pacific Gas and Electric Company's contract with SGS-1, LLC filed in Advice Letter 3741-E is approved with conditions.

2. Within 30 days from the effective date of this Resolution, Pacific Gas and Electric Company shall file a Tier 1 Advice Letter compliance filing to demonstrate that the SGS-1, LLC contract has been amended to include all relevant non-modifiable standard terms and conditions currently required by the Commission.

3. Pacific Gas and Electric Company shall file a Tier 1 Advice Letter compliance filing within 30 days following a final Participating Generator Agreement between SGS-1 and the CAISO to demonstrate that the requirements for classifying procurement under the SGS-1, LLC contract as

a bundled transaction, pursuant to Decision 10-03-021, as modified by Decision 11-01-025, have been satisfied.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on April 14, 2011; the following Commissioners voting favorably thereon:

____
PAUL CLANON
Executive Director

Appendix A

Letter Regarding Eligibility of the SGS-1 Contract's Delivery Structure

STATE OF CALIFORNIA – NATURAL RESOURCES AGENCY EDMUND G. BROWN JR., Governor

CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov

March 1, 2011

The California Energy Commission, through its staff, has reviewed the proposed contracting structure between SGS-1 Project and Pacific Gas and Electric Company, as described on pages 1 through 5 of Advice Letter #3741-E, filed by Pacific Gas and Electric Company; excerpted sections from the Advice Letter are provided as an attachment.

Assuming that all eligibility requirements for the Renewables Portfolio Standard (RPS) are met, including that the energy delivered to California is from a generator located outside California, the Energy Commission staff has determined that this structure would meet the RPS delivery requirements according to the *Renewables Portfolio Standard Eligibility Guidebook* (CEC-300-2010-007-CMF, January 2011).

Energy Commission staff based its decision on the direct transfer of electricity and Renewable Energy Credits (RECs) from SGS-1, LLC to Pacific Gas and Electric. Staff did not verify the accuracy of the claim that "the Project's first point of interconnection will be with the CAISO, or the energy will be dynamically transferred to the CAISO,"[1] as these characteristics of the transaction do not constitute compliance with, or opposition to, the energy delivery requirements described in the *RPS Eligibility Guidebook*. In addition, Energy Commission staff notes that a facility classified as out-of-state by the *RPS Eligibility Guidebook* must comply with all energy delivery requirements laid out in the *RPS Eligibility Guidebook*, regardless of its interconnection, or participation in dynamic transfers, to the CAISO, or another California Balancing Authority. These requirements include, but are not limited to, the use of NERC e-Tags to document delivery of electricity from an out-of-state facility into California in a quantity that is not less than the number of RECs being claimed.

Tony Gonçalves
Manager, Renewable Energy Office
California Energy Commission

Attachment- Excerpt from Advice Letter #3741-E, filed by Pacific Gas and Electric Company

[1] Advice Letter 3741-E, p 4, submitted by Pacific Gas and Electric to the CPUC on October 12, 2010.

Confidential Appendix B

Summary of SGS-1 Contract Terms and Conditions

[REDACTED]

Confidential Appendix C

Description of Interconnection Options with Cost and Timing Implications

[REDACTED]

Confidential Appendix D

Independent Evaluator's Contract-Specific Assessment

[REDACTED]