ALTERNATE DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Item #39a
ID #10717

ENERGY DIVISION **RESOLUTION E-4436**
October 20, 2011

REDACTED

R E S O L U T I O N

Resolution E-4436. Pacific Gas and Electric Company requests approval of a power purchase agreement with North Star Solar, LLC.

PROPOSED OUTCOME: This Resolution approves cost recovery for the long-term renewable energy power purchase agreement between Pacific Gas and Electric Company and North Star Solar, LLC.

ESTIMATED COST: Actual costs are confidential at this time.

By Advice Letter 3759-E filed on November 12, 2010 and supplemental Advice Letter 3759-E-A filed on July 27, 2011.

SUMMARY

Pacific Gas and Electric Company's renewable energy power purchase agreement with North Star Solar, LLC is approved without modifications.

Pacific Gas and Electric (PG&E) filed Advice Letter (AL) 3759-E on November 12, 2010 and supplemental AL 3759-E-A on July 27, 2011, requesting approval of a 20 year Power Purchase Agreement (PPA) with North Star Solar, LLC (North Star), which resulted from the 2009 RPS Solicitation.

North Star proposes that the 60 megawatt (MW) photovoltaic facility be developed in the Westlands Water District near Mendota, California. PG&E states that the Project will be located in a known solar resource area and will deliver approximately 136 gigawatt-hours (GWh) per year of as-available RPS-eligible energy with a commercial operation date (COD) of June 30, 2013. The first point of interconnection for the Project will be into the California

Independent System Operator balancing authority area, which PG&E states is likely to be the Mendota substation.
The Commission approves the amended PPA despite the contract not being cost competitive with similar projects that were negotiated and executed in the same timeframe that the amended PPA was negotiated and executed. However, the Commission finds that North Star and PG&E re-negotiated the contract price in good faith to account for the disparity in pricing with similar projects.

This resolution approves the amended PPA without modification. PG&E's execution of this power purchase agreement is consistent with PG&E's 2009 and 2011 RPS Procurement Plan, including its resource need, which the Commission approved in Decisions 09-06-018 and 11-04-030. Deliveries under the amended PPA are fully recoverable in rates over the life of the contract, subject to Commission review of PG&E's administration of the power purchase agreement.

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

Generating Facility	Type	Term Years	MW Capacity	Annual Deliveries	Online Date	Project Location
North Star Solar	Solar PV	20	60	136 GWh	June 30, 2013	Fresno County, CA

BACKGROUND

Overview of the Renewables Portfolio Standard (RPS) Program

The California RPS Program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036 and SB 2 (1x).[1] The RPS program is codified in Public Utilities Code Sections 399.11-399.20.[2] Under SB 2 (1x),[3] the

[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); SB 2 (1x) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session).

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

[3] SB 2 (1x) becomes effective on December 10, 2011; 90 days after the close of the Legislatures 2011 Extraordinary Session.

RPS program administered by the Commission requires each retail seller to increase its total procurement of eligible renewable energy resources so that 33 percent of retail sales are served by eligible renewable energy resources no later than December 31, 2020.[4]

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 3759-E-A was made by publication in the Commission's Daily Calendar. Pacific Gas and Electric Company 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 3759-E-A was not protested.

DISCUSSION

PG&E requests Commission approval of a new renewable energy contract with North Star Solar, LLC.

On November 12, 2010, Pacific Gas and Electric (PG&E) filed Advice Letter (AL) 3759-E. In AL 3759-E, PG&E requested Commission approval of a renewable energy contract with North Star Solar, LLC (North Star or Project) for generation from its proposed photovoltaic facility. The Project is the result of PG&E's 2009 RPS solicitation.

On June 9, 2011, the California Public Utilities Commission (Commission) issued draft resolution E-4405 which recommended rejecting, without prejudice, the original North Star agreement (Original PPA) "because the Project is not price competitive with projects that are currently being offered to PG&E." On June 9

[4] *See* SB 2 (1x), § 399.15(b)(2)(B).

and June 13, 2011, Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN), Pacific Gas & Electric (PG&E), Independent Energy Producers (IEP), Large-Scale Solar Association (LSA), North Star's legal counsel Wilson Sonsini Goodrich & Rosaiti (WSGR), The International Brotherhood of Electrical Workers Local 100, the Building & Construction Trades Council, and the City of Mendota filed timely comments on the draft resolution E-4405.

Both DRA and TURN supported the draft resolution stating that the price of the Original PPA was high compared to similar projects and unreasonable. Additionally, TURN commented that the Commission in the past has made multiple concessions and has allowed the upward modification of contract prices. TURN believes the principle of symmetry should apply as the costs for renewable energy facilities decline as they have over the past two years.

PG&E did not support the draft resolution, arguing that the Commission was unfairly comparing the Original PPA to projects that were bilaterally negotiated but for which negotiations eventually ended. Furthermore, PG&E, WSGR and the Independent Energy Producers (IEP) argued that the Original PPA was being unfairly compared to shortlisted projects resulting from PG&E's 2011 Solar Photovoltaic (PV) Program Solicitation.

North Star's legal counsel also alleged that the draft resolution contained legal errors in that it improperly applied the standards of review for agreements and amendments, rather than for original agreements as set forth in Resolution E-4199.

The International Brotherhood of Electrical Workers Local 100, the Building & Construction Trades Council, and the City of Mendota all argued that a rejection of the original PPA will deny crucial economic and job benefits.

Lastly, the Large-Scale Solar Association (LSA) commented that the draft resolution injects uncertainty into the renewable energy development sector and that cost containment policies should be addressed in the RPS proceeding rather than through the advice letter process.

PG&E and North Star amended the Power Purchase Agreement (amended PPA) and filed AL 3759-E-A on July 27, 2011. The amended PPA 1) decreases the PPA price over 20%, 2) increases the expected average annual generation from 119 gigawatt hours (GWhs) to 136 GWhs, 3) extends the transmission delay date, 4) extends the date by which Commission approval is needed, and 5) makes changes to terms concerning financing termination rights and development security.

On September 20, 2011, the Commission issued draft resolution E-4436 which recommends rejecting, without prejudice, the Amended PPA. Concurrently, alternate draft resolution E-4436 was issued, which recommends that the Amended PPA be approved without modifications.

On October 10 and October 11, 2011, timely comments were submitted in response to draft resolution E-4436 by DRA, TURN, PG&E, and North Star Solar, LLC. These comments are addressed and disposed of in the Comments section of this resolution.

Under the terms of the Amended PPA, the Project has a commercial operation date (COD) of June 30, 2013 and is expected to deliver bundled energy (i.e. energy plus the underlying green attribute) to PG&E for a term of 20 years.

The Project will be located in Fresno County, CA on leased land from the Westlands Water District. Renewable Energy Corporation ASA, one of the two partners in North Star Solar, LLC, will provide all of the approximately 300,000 solar PV modules for the Project. North Star's first point of interconnection will be with the California Independent System Operator balancing authority area (CAISO BAA).

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") 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.

Energy Division Evaluated the Amended PPA on the Following Grounds:

- Consistency with PG&E's 2009 and 2011 RPS Procurement Plans
- Consistency with PG&E's least-cost best-fit (LCBF) methodology
- Consistency with RPS standard terms and conditions
- Reasonableness of the proposed contract price and the project's value
- Independent Evaluator review
- Cost Containment
- Project viability assessment and development status
- Compliance with the Interim Greenhouse Gas Emissions Performance Standard

- Procurement Review Group participation
- Compliance with the minimum quantity condition

Consistency with PG&E's 2009 and 2011 RPS Procurement Plans

Pursuant to statute, PG&E's RPS procurement plans include 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] California's RPS statute also requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility[6] to ensure the utility conducted its solicitation according to its Commission-approved procurement plan.[7]

Because so much time has lapsed from when the North Star project bid into PG&E's 2009 solicitation and when the contract was finally submitted for Commission approval, staff also evaluated the contract for consistency with PG&E's 2011 RPS Procurement Plan, the most recently adopted plan.

The Amended PPA resulted from PG&E's 2009 RPS solicitation. The Commission finds that PG&E's decision to shortlist the North Star project was consistent with PG&E's approved 2009 RPS procurement plan. With respect to PG&E's 2011 RPS procurement plan, PG&E stated its intent to execute renewable energy contracts with viable counterparties equivalent to 1 to 2 percent of retail sales annually.[8] This goal is intended to facilitate compliance with the existing 20 percent compliance requirement and build a portfolio of renewable resources to comply with the longer-term 33 percent goal. The Commission finds that PG&E's decision to execute the amended PPA is reasonably consistent with PG&E's objective to secure contracts with viable sellers. Also, the PPA includes current terms and conditions.

---

[5] Pub. Util. Code, Section §399.14(a)(3).

[6] Pub. Util. Code, Section §399.14.

[7] PG&E's 2007 RPS Procurement Plan was approved by D.07-02-011.

[8] PG&E's 2011 RPS Procurement Plan was approved by D.11-04-030.

The Amended PPA is consistent with PG&E's 2009 and 2011 RPS procurement plans.

Consistency with PG&E's least-cost best-fit (LCBF) methodology

In D.04-07-029, the Commission directs the utilities to use certain criteria in their LCBF selection of renewable resources.[9] 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. As described in its 2009 and 2011 RPS Procurement Plan, PG&E's approved process for identifying LCBF renewable resources focuses on four primary areas:

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.

The Commission finds that the Amended PPA is higher in price, lower in value, and lower in viability than comparable projects that were being offered to PG&E during the time that the Amended PPA was being negotiated and executed. Therefore, the Amended PPA was not evaluated consistent with the LCBF methodology identified in PG&E's 2009 and 2011 RPS Procurement Plan. See Confidential Appendix A for a comparison of North Star's price, viability and value to other comparable projects.

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.

The Amended PPA includes the Commission-adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.

---

[9] *See* §399.14(a)(2)(B)

Reasonableness of the Amended PPA Price and Value

The Commission's reasonableness review for PPAs eligible for RPS compliance includes a comparison of the proposed contract to all currently available market data. The objective of the Commission is to determine whether a proposed contract's price and value are reasonable compared to other contracts that are being offered in the marketplace. Therefore, the Commission will evaluate all relevant market data which may include, a) shortlisted projects from the applicable solicitation, b) bilateral offers at the time the contracts were executed, c) contracts recently approved, d) contracts pending Commission approval, e) recently executed contracts, f) recent bilateral offers, and g) recent solicitation data.

The Commission evaluated the Amended PPA, as filed in supplemental AL 3759-E-A on July 27, 2011, and compared it against 1) recently executed bilateral contracts, and 2) shortlisted bids from PG&E's 2011 RPS solicitation. PG&E provided a list of recently executed bilateral contracts in the confidential section of AL 3759-E-A. Furthermore, PG&E's 2011 RPS Solicitation closed for bid submissions on July 11, 2011, or sixteen days before the mailing of AL 3759-E-A. Therefore, these two sets of market data provide the most relevant information at the time that the Amended PPA was being negotiated and executed.

<u>Recently Executed Bilateral Contracts</u>

The Amended PPA was compared against recently executed bilateral contracts. These contracts are PPAs that PG&E negotiated and signed during the period that the Amended PPA was being negotiated up until supplemental AL 3759-E-A was filed on July 27, 2011. A comparison of the Amended PPA against recently executed bilateral contracts provides a fair assessment of the market conditions that existed when the Amended PPA was being negotiated. Furthermore, Energy Division compared the Amended PPA to only executed bilateral offers, as opposed to all bilateral offers that were brought to PG&E during the time the Amended PPA was being negotiated. Recognizing that the Amended PPA is fully negotiated with firm pricing, the contract was compared fairly against only recently executed bilateral contracts for which negotiations have resulted in signed and firm agreements with PG&E.

AL 3759-E-A amended a number of terms in the Original PPA including the contract price. PG&E and North Star Solar, LLC agreed to decrease the contract price by over 20% from the initial agreement which was filed in AL 3759-E on November 12, 2010. Despite the decrease in contract price, the Amended PPA still compares unfavorably to the bilateral contracts that were executed by PG&E during the time that the Amended PPA was being negotiated and executed.

The Commission also compared the net market value (NMV) of the Amended PPA against the NMV of recently executed bilateral contracts. The Amended PPA compared unfavorably to PG&E's recently executed bilateral contracts. A comparison of the NMV is a standard of review that the Commission performs for all contracts, and it is the fundamental metric utilized in PG&E's selection process when it evaluates projects using its LCBF methodology. See Confidential Appendix A for a discussion on the Amended PPA's net market value.

<u>Shortlisted Projects From PG&E's 2011 RPS Solicitation</u>

The Amended PPA was also compared against PG&E's preliminary shortlisted projects from its 2011 RPS Solicitation. PG&E's 2011 RPS Solicitation was closed for project submissions on July 11, 2011. The Commission was notified of PG&E's preliminary shortlist on August 12, 2011. The amended PPA was fairly compared against projects shortlisted that; a) utilize the same technology, b) have similar online dates, c) are located within the state of California, and d) have similar or higher viability scores. By filtering PG&E's shortlisted projects using these four criteria, the amended PPA was fairly compared only against similar projects to eliminate any technology, timing, location, or quality/viability bias that may exist. After making the above adjustments to PG&E's shortlist, the Amended PPA still compared unfavorably against shortlisted projects that met all of the Commission's criteria.

<u>The Commission finds that the Amended PPA price is high and net market value is low compared to other comparable renewable RPS-eligible projects that have been recently executed by PG&E and offered to PG&E in the 2011 RPS Solicitation. PG&E provides no additional rationale or justification for the contract price or net market value.</u> See Confidential Appendix A for a comparison of North Star's price, viability and value to other comparable projects.

The Commission approves the Amended PPA despite the contract not being cost competitive with similar projects that were negotiated and executed in the same timeframe that the Amended PPA was negotiated and executed. The

Commission approves the Amended PPA for three reasons. The first reason is that the Commission finds that North Star and PG&E re-negotiated the contract price in good faith to account for the disparity in pricing with similar projects. The Amended PPA price was re-negotiated down over 20% and is consistent with PG&E's 2009 and 2011 RPS procurement plans.

Secondly, PG&E took too long to negotiate, execute, and submit the Original PPA to the Commission for review.[10] Specifically, due to PG&E's extended contracting process, the Original PPA ceased to be cost-effective by the time Energy Division staff reviewed the Original PPA because the price for similar projects had declined significantly during PG&E's extended contracting process. Therefore, the Commission finds that it is unfair to penalize North Star for PG&E's extended contracting process, and the associated regulatory approval risk that is a by-product of PG&E's lengthy contracting process. Going forward, PG&E is encouraged to negotiate, execute, and submit contracts to the Commission in a more timely fashion if PG&E wants to ensure that its contracts remain cost-effective relative to the ever evolving renewable market.

Lastly, the Independent Evaluator recommends approval of the contract, but with reservations, which are discussed below.

Independent Evaluator Review

Arroyo Seco Consulting provided a "Statement of Independent Evaluator" for supplemental AL 3759-E-A. The Independent Evaluator participated in the negotiation's material discussions and communications, evaluated the Amended PPA, and concluded that the Amended PPA merits approval, with reservations. Arroyo's concern is that, while the Amended PPA ranks as moderate in net value, it is not fully competitive with alternative sources of RPS-eligible power in the current California market, including alternatives that offer the potential for PG&E to meet its compliance needs at lower prices and with higher project viability than the Amended PPA.

[10] PG&E shortlisted the North Star Project as a result of the 2009 RPS Solicitation. The advice letter for the Original PPA was filed on November 10, 2010, or approximately a year after the Project was shortlisted.

Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw PG&E's negotiations with North Star Solar, LLC and recommends the amended PPA be approved, with reservations. See Confidential Appendices C, D and E for the Independent Evaluator's summary comments on AL 3759-E-A.

Cost Containment

Pursuant to statute, the Commission calculates a market price referent (MPR) to assess whether a proposed RPS contract has above-market costs.[11] Contracts that meet certain are eligible for above-MPR funds (AMF). Based on the North Star project's 2013 commercial operation date, PG&E estimates that the price of the Amended PPA exceeds the applicable 2009 MPR.[12]

Public Utilities Code §399.15 (d)(4) states that an investor-owned utility can voluntarily procure contracts at above-MPR prices.

Because there are above-market costs associated with the Amended PPA, and PG&E has exhausted its above-MPR funds, PG&E voluntarily entered into the Amended PPA as permitted under the Pub. Util. Code.

Project Viability and Development Status

All projects reviewed by the CPUC are assigned a viability score by the utility which is included in the advice letter filing and updated in a confidential semi-annual filing to the CPUC. The viability score takes into consideration important metrics of a project including 1) developer experience, 2) site location, 3) permitting status, 4) resource quality, and 5) interconnection progress. See Confidential Appendix A for a comparison of the North Star project's viability to other comparable projects.

The North Star project viability score ranks lower than comparable projects based on the most recent viability scores submitted to the Commission. See Confidential Appendix A for a comparison of the Project's price, viability and value to other comparable projects. See Confidential Appendix E for the

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

[12] *See* Resolution E-4298.

Independent Evaluator's summary of its project viability score for the North Star Project as of October 18, 2011.

Compliance with the Interim 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) baseload power contracts procured on behalf of California ratepayers. [13]

D.07-01-039 adopted an interim Emissions Performance Standard (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. Generating facilities using certain renewable resources are deemed compliant with the EPS.[14]

The amended PPA meets the conditions for EPS compliance established in D.07-01-039 because the Project's facility produces electricity at a capacity factor of less than 60 percent and is therefore not a baseload power plant as defined in Pub. Util. Code § 8340(a).

[13] "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).

[14] D.07-01-039, Attachment 7, p. 4

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.[15] PG&E asserts that the original PPA was discussed at PRG meetings in October 21, 2009, April 9, 2010, June 24, 2010, August 13, 2010 and October 8, 2010.

<u>Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the Original PPA. The Procurement Review Group did not participate in the review of the Amended PPA.</u>

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 compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard

---

[15] 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, the California Department of Water Resources and Jan Reid, as a PG&E ratepayer.

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

(*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, 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 enforcement activities shall be reviewed pursuant to the Commission's authority to review the utilities' administration of contracts.

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.[18] 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.

<u>As a new facility, delivering pursuant a contract greater than 10 years in length, the amended PPA will contribute to PG&E's minimum quantity requirement established in D.07-05-028.</u>

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

[18] 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."

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.

<u>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.</u>

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 September 20, 2011.

The Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN) filed timely comments on October 10, 2011 and October 11, 2011 respectively. DRA states that the Amended PPA is not competitively priced and does not merit approval. DRA and TURN argue that the reasoning for approving the Amended PPA, in Alternate Draft Resolution E-4436, is flawed and unfairly serves the interests of renewable developers at the expense of ratepayers' interests. Specifically, TURN states that it does not believe a "good faith" proposal should justify approving an RPS PPA that is not competitive with viable alternatives currently available to PG&E. TURN also states that if the Commission were to approve the contract as submitted, North Star would be able to take advantage of industry-wide cost declines in the solar market without passing on the full savings to PG&E ratepayers. As a result, the changes in market conditions would be primarily used to substantially increase investor returns. TURN also urges that the principle of symmetry be applied to the Amended PPA stating that if it is fair to allow developers to seek price increases when market conditions change, it is also fair to reject a PPA when a developer locks in PPA pricing at the peak of the market and changing market conditions subsequently reveal that the price is artificially high and unreasonable.

The Commission believes that the North Star PPA was negotiated in good faith and that the lower amended price is reflective of North Star Solar LLC's best offer given that its 50% joint venture partner is Renewable Energy Corporation, which will be supplying the modules for the Project and may not be cost competitive with other alternatives in the market. Accordingly, we disagree that TURN's concerns regarding excess margins from the North Star PPA is a factual argument and consequently warranted. The Commission believes that the amended PPA captures a significant price decline and thus ratepayer savings from the original contract that was submitted.

PG&E submitted timely comments on October 11, 2011 stating that Alternate Draft Resolution E-4436 should not compare the amended North Star PPA to projects available after execution of the "original" PPA.

It is unreasonable to compare the "amended" PPA to comparable projects that were available and executed at the time of the "original" PPA. The Commission evaluates the price reasonableness, value, viability and need of a proposed project to comparable projects that are available from the time that the proposed PPA is negotiated to the time the advice letter is filed, and takes into consideration any relevant market data that exists after the advice letter is filed. Given that the supplemental advice letter for the Project was filed on July 27, 2011, and evaluation of the Amended PPA must take into consideration all of the available comparable market data, which in this case includes the shortlist from the 2011 RPS solicitation.

PG&E also states that Alternate Draft Resolution E-4436 should be modified to indicate that the Amended PPA was evaluated consistent with LCBF methodology. PG&E states that the LCBF methodology was correctly applied as the appropriate application of the LCBF methodology was to compare opportunities available at the time the Original PPA was executed.

The Commission denies PG&E's request to modify Alternate Draft Resolution E-4436. The LCBF methodology must also be applied over the entire period that a

PPA is negotiated and executed. It is important to note that the issue at hand is not PG&E's application of LCBF in the 2009 RPS Solicitation. Rather, it is PG&E failure to apply its LCBF methodology to the "amended" PPA. The North Star PPA is higher is price, lower in value and viability than other contracts that were executed and available at the time the "amended" PPA was executed.

North Star Solar, LLC (North Star) submitted timely comments on October 11, 2011 stating that analysis of the North Star PPA in Alternate Draft Resolution E-4436 uses an outdated project viability score that does not consider recent project milestones. North Star provides recommended adjustments to the viability score in its comment letter.

The Commission requested that the Independent Evaluator (IE) provide an updated analysis and recommendation after the supplemental advice letter was filed on July 27, 2011. The IE submitted an updated recommendation to the Commission on September 6, 2011, which can be seen in Confidential Appendix D. The IE's revised analysis also included an update on the viability of the North Star Project based on recent project milestones that have been met since the filing of the original advice letter on November 12, 2010. Furthermore, on October 18, 2011, the IE submitted clarifying comments found in Confidential Appendix E that provides a summary of the changes that the IE made to the viability score and the rationale for the changes. The revised viability score calculated by the IE is significantly lower than the viability scores of comparable projects being offered in the market. Therefore, the project viability score used to evaluate the North Star PPA reflects a non-biased and objective evaluation of the PPA based on the most up-to-date project milestone information.

FINDINGS AND CONCLUSIONS

1. The Amended PPA is consistent with PG&E's 2009 and 2011 RPS procurement plans, with the exception of the application of the LCBF methodology.
2. The Amended PPA was not evaluated consistent with the LCBF methodology identified in PG&E's 2009 and 2011 RPS Procurement Plan.
3. The Amended PPA includes the Commission-adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.

4. The Commission finds that the Amended PPA price is high and net market value is low compared to other comparable renewable RPS-eligible projects that have been recently executed by PG&E and offered to PG&E in the 2011 RPS Solicitation. PG&E provides no additional rationale or justification for the contract price or net market value.
5. The Commission finds that it is unfair to penalize North Star for PG&E's extended contracting process, and the associated regulatory approval risk that is a by-product of PG&E's lengthy contracting process.
6. The Commission finds that North Star and PG&E re-negotiated the Amended PPA contract price in good faith to account for the disparity in pricing with similar projects.
7. Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw PG&E's negotiations with North Star Solar, LLC and recommends the Amended PPA be approved, albeit with reservations related to the Project's price, value and viability compared to other comparable offers.
8. Based on the North Star Project's 2013 commercial operation date, PG&E estimates that the Amended PPA price of the contract exceeds the applicable 2009 MPR.
9. PG&E voluntarily entered into the Amended PPA, which PG&E estimates will exceed the applicable 2009 MPR on an all-in levelized cost basis.
10. The Amended PPA's project viability score ranks lower than comparable projects based on the most recent viability scores submitted to the Commission.
11. The Amended PPA meets the conditions for EPS compliance established in D.07-01-039 because the Project's facility will produce electricity at a capacity factor of less than 60 percent and is therefore not a baseload power plant as defined in Pub. Util. Code § 8340(a).
12. Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the Original PPA. The Procurement Review Group did not participate in the review of the Amended PPA.
13. As a new facility, delivering pursuant a contract greater than 10 years in length, the Amended PPA will contribute to PG&E's minimum quantity requirement established in D.07-05-028.

14. 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.
15. On October 10 and October 11, 2011, timely comments were submitted in response to alternate draft resolution E-4436 by the Division of Ratepayer Advocates, the Utility Reform Network, Pacific Gas and Electric, North Star Solar, LLC. These comments are disposed of in this resolution.
16. Advice letter 3759-E and Supplemental AL 3759-E-A should be approved without modifications.

THEREFORE IT IS ORDERED THAT:

1. The power purchase agreement between Pacific Gas and Electric Company and North Star Solar, LLC proposed in Advice Letter 3759-E and Supplemental AL 3759-E-A is approved without modifications.
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 October 20, 2011; the following Commissioners voting favorably thereon:

____

Paul Clanon
Executive Director

Confidential Appendix A

Comparison of North Star Solar Pricing, Viability and Value

[REDACTED]

Confidential Appendix B

North Star PPA Major Contract Provisions

[REDACTED]

Confidential Appendix C

Independent Evaluator Discussion of Merit for Approval for AL 3759-E-A

[REDACTED]

Confidential Appendix D

Independent Evaluator Amended Comments for AL 3759-E-A

[REDACTED]

Confidential Appendix E

Independent Evaluator Project Viability Summary for the Amended North Star PPA

[REDACTED]