

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
ENERGY DIVISION
I. D. # 6190
RESOLUTION E-4047
December 14, 2006

REDACTED

RESOLUTION

Resolution E-4047. Pacific Gas & Electric (PG&E) Company requests approval of the amended Global Common renewable resource procurement contracts. These contracts are approved with modifications.

By Advice Letter 2865-E filed on July 28, 2006 and Supplemental Advice Letter 2865-EA filed on November 13, 2006.

SUMMARY

PG&E's renewable contracts comply with the Renewable Portfolio Standard (RPS) procurement guidelines and are approved with modifications

PG&E's request for approval of the renewable resource procurement contracts is granted. The energy acquired from these contracts will count towards PG&E's Renewable Portfolio Standard (RPS) requirements. In addition, the price for the contracts has been deemed by the Commission to be reasonable and fully recoverable in rates over the life of the contracts, subject to Commission review of PG&E's administration of the contracts. However, the Commission does not grant PG&E's request for a non-bypassable charge.

Generating facility	Type	Term Years	MW Capacity	GWh Energy	Online Date	Location
El Nido	Biomass	15	9 MW	72 GWh	9/30/07	Fresno, CA
Chowchilla	Biomass	15	9 MW	72 GWh	12/31/07	Fresno, CA

Confidential information about the contract should remain confidential

This resolution finds that certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583, General Order (G.O.) 66-C and Decision (D.)06-06-066 should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations.

BACKGROUND

The RPS Program requires each utility to increase the amount of renewable energy in its portfolio

The California Renewables Portfolio Standard (RPS) Program was established by Senate Bill 1078, effective January 1, 2003. It requires that a retail seller of electricity such as PG&E purchase a certain percentage of electricity generated by Eligible Renewable Energy Resources (ERR). The RPS program is set out at Public Utilities Code Section 399.11, et seq. Each utility is required to increase its total procurement of ERRs by at least 1% of annual retail sales per year so that 20% of its retail sales are supplied by ERRs by 2017.

The State's Energy Action Plan (EAP) called for acceleration of this RPS goal to reach 20 percent by 2010. This was reiterated again in the Order Instituting Rulemaking (R.04-04-026) issued on April 28, 2004¹, which encouraged the utilities to procure cost-effective renewable generation in excess of their RPS annual procurement targets² (APTs), in order to make progress towards the goal expressed in the EAP.³ On September 26, 2006, Governor Schwarzenegger signed SB 107, which officially accelerates the State's RPS targets to 20 percent by 2010. The bill will take effect on January 1, 2007.

In addition, the Commission has established an annual procurement target APT for each utility, which consists of two separate components: the baseline, representing the amount of renewable generation a utility must retain in its portfolio to continue to satisfy its obligations under the RPS targets of previous years; and the incremental procurement target⁴ (IPT), defined as at least one percent of the previous year's total retail electrical sales, including power sold to a utility's customers from its DWR contracts.

¹ http://www.cpuc.ca.gov/Published/Final_decision/36206.htm

² APT - An LSE's APT for a given year is the amount of renewable generation an LSE must procure in order to meet the statutory requirement that it increase its total eligible renewable procurement by at least 1% of retail sales per year.

³ Most recently reaffirmed in D.06-05-039

⁴ IPT - The incremental procurement target (IPT) represents the amount of RPS-eligible procurement that the LSE must purchase, in a given year, over and above the total amount the LSE was required to procure in the prior year. An LSE's IPT equals at least 1% of the previous year's total retail electrical sales, including power sold to a utility's customers from its DWR contracts

The Commission has established bilateral procurement guidelines for the RPS Program

The Commission has issued a series of decisions that establish the regulatory and transactional parameters of the utility renewables procurement program. On June 19, 2003, the Commission issued its "Order Initiating Implementation of the Senate Bill 1078 Renewable Portfolio Standard Program," D.03-06-071.

On June 9, 2004, the Commission adopted its Market Price Referent methodology⁵ for determining the Utility's share of the RPS seller's bid price, as defined in Public Utilities Code Sections 399.14(a)(2)(A) and 399.15(c). On the same day the Commission adopted Standard Terms and Conditions for RPS power purchase agreements in D.04-06-014 as required by Public Utilities Code Section 399.14(a)(2)(D). Instructions for evaluating the value of each offer to sell products requested in a RPS solicitation were provided in D.04-07-029.

While the focus of the RPS program is procurement through competitive solicitations, D.03-06-071⁶ allows for a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process. Specifically, D.03-06-071 states that bilateral contracts will only be allowed if they do not require Public Goods Charge (PGC) funds.⁷

In D.06-10-019, the Commission interprets D.03-06-071, stating that bilaterals are not eligible for Supplemental Energy Payments (SEPs), and that bilateral contracts must be deemed reasonable. Going forward, D.06-10-019 states that the Commission will look further at evaluation criteria for bilateral RPS contracts, including the issue of whether some RPS bilateral contracts should be eligible for SEPs, as SB 107 may allow⁸. However, in the interim, utilities' bilateral contracts can be evaluated prior to establishing formal evaluation criteria.

PG&E requests approval of two amended renewable energy contracts

⁵ D.04-06-015, http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/37383.htm

⁶ http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/27360.htm

⁷ SB 107 confirms that bilateral contracts can not receive PGC funds, establishing the criteria that to receive the PGC awards, the project must have resulted from a competitive solicitation.

⁸ D.06-10-019 pp. 31-32.

PG&E executed the original bilateral PPAs with Global Common and filed AL 2718-E on September 28, 2005 for Commission approval. After filing AL 2718-E, Global Common subsequently notified PG&E that the intended financier for the project had withdrawn, and it was unable to proceed with the project at the original price, and filed an amended PPA with a higher price on July 28, 2006.

On November 13, 2006, PG&E filed Supplemental Advice Letter (AL) 2865-EA, bringing the PPA terms and conditions into compliance with D.04-06-014.

The PPAs result from bilateral negotiations and will contribute energy deliveries towards PG&E's 20 percent renewable procurement goal required by California's RPS statute.⁹ With the approval of the two PPAs¹⁰, PG&E will have contracted for deliveries of up to 144 GWh towards that target, or slightly more than 12 percent of its adjusted 2005 IPT.¹¹

PG&E requests final "CPUC Approval" of PPAs

PG&E requests the Commission to issue a resolution containing the findings required by the definition of "CPUC Approval" in Appendix A of D.04-06-014. In addition, PG&E requests that the Commission issue a resolution that:

1. Approves each PPA in its entirety, including payments to be made by PG&E, subject to CPUC review of PG&E's administration of the Agreement.
2. Finds that any procurement pursuant to these Agreements constitutes procurement from eligible renewable energy resources for purposes of determining PG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law;

⁹ California Public Utilities Code section 399.11 et seq., as interpreted by D.03-07-061, the "Order Initiating Implementation of the Senate Bill 1078 Renewables Portfolio Standard Program", and subsequent CPUC decisions in Rulemaking (R.) 04-04-026.

¹⁰ The California Energy Commission is responsible for determining the RPS-eligibility of a renewable generator. See Public Utilities Code Sect. 399.12 and D.04-06-014.

¹¹ See August 1, 2006 Compliance Filing of Pacific Gas and Electric, p. 2.

3. Finds that any procurement pursuant to these Agreements constitutes incremental procurement or procurement for baseline replenishment by PG&E from eligible renewable energy resources for purposes of determining PG&E's compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the California Renewables Portfolio Standard, Decision 03-06-071, or other applicable law;
4. Finds that any indirect costs of renewables procurement identified in Section 399.15 (a)(2) shall be recovered in rates.
5. Finds that the costs associated with these contracts are eligible for recovery through a non-bypassable charge over the life of the contracts consistent with the provisions of D.04-12-048.

PG&E's Procurement Review Group participated in review of the contracts

In D.02-08-071, the Commission required each utility to establish a "Procurement Review Group" (PRG) whose members, subject to an appropriate non-disclosure agreement, would have the right to consult with the utilities and review the details of:

1. Overall transitional procurement strategy;
2. Proposed procurement processes including, but not limited to, RFO; and
3. Proposed procurement contracts before any of the contracts are submitted to the Commission for expedited review.

The PRG for PG&E consists of: California Department of Water Resources (DWR), California Energy Commission (CEC), the Commission's Energy Division, Natural Resources Defense Council (NRDC), Union of Concerned Scientists (UCS), Office of Ratepayer Advocates (ORA), and The Utility Reform Network (TURN).

PG&E provided its PRG with reports on the progress of negotiations with Global Common on several occasions. On June 27, 2005, PG&E described the process by which it evaluated the Chowchilla and El Nido projects and provided a comparison with shortlisted projects from the 2004 solicitation. On October 27, 2005, the PRG was informed via e-mail that Global Common had notified PG&E that the project was uneconomic at the original contract price. Subsequently,

Global Common's proposed price increase was discussed at the January 12, 2006 meeting. The PRG has expressed general approval with the resulting PPAs.

Although Energy Division is a member of the PRG, it reserved its judgment on the contracts until the resolution process. Energy Division reviewed the transactions independent of the PRG, and allowed for a full protest period before concluding its analysis.

NOTICE

Notices of AL 2865-EA and AL 2865-E were made by publication in the Commission's Daily Calendar. PG&E states that copies of the Advice Letter were mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

PG&E's Advice Letter AL 2856-E was timely protested by Modesto Irrigation District ("Modesto") on August 17, 2006. PG&E responded to the Modesto protest on August 24, 2006.

While Modesto did not object to the PPAs themselves, it objected to PG&E's request for approval of a non-bypassable charge (NBC) for the uneconomic costs over the life of the contracts. Modesto argued that the PPAs are not eligible for the cost recovery mechanisms outlined in D.04-12-048 because the PPAs were not the result of a competitive solicitation.

In its response to Modesto's protest, PG&E argued that bilateral renewables contracts are entitled to the same ratemaking protection as competitively negotiated contracts, that CPUC made no exception to its cost recovery rules in D.04-12-048, and that D.04-12-048 authorizes utilities to receive their net stranded costs through the use of an NBC.

DISCUSSION

Description of the projects

The following table summarizes the substantive features of the PPAs. See confidential Appendix A for a detailed discussion of contract prices, terms, and conditions:

Generating facility	Type	Term Years	MW Capacity	GWh Energy	Online Date	Location
El Nido	Biomass	15	9 MW	72 GWh	9/30/07	Fresno, CA
Chowchilla	Biomass	15	9 MW	72 GWh	12/31/07	Fresno, CA

Energy Division has reviewed the proposed Agreements based upon multiple grounds:

- Consistency with PG&E’s 2005 RPS procurement plan
- Compliance with RPS bilateral guidelines
- Consistency with RPS Standard Terms and Conditions (STC)
- Reasonableness of the levelized PPA price
- Project viability of Global Common facilities
- California Biomass Executive order
- Protest by Modesto

PPAs are consistent with PG&E’s 2005 RPS Procurement Plan

California’s RPS statute requires the Commission to review renewable energy contracts submitted for approval by a utility. The Commission will then accept or reject proposed PPAs based on their consistency with the utility’s approved renewable procurement plan.¹² PG&E’s 2005 RPS plan was approved by D.05-07-039 on July 21, 2005. As required by statute, it includes an assessment of supply and demand to determine the optimal mix of renewable generation resources, consideration of compliance flexibility mechanisms established by the Commission, and a bid solicitation setting forth the need for renewable generation of various operational characteristics.¹³

The PPAs fit with identified renewable resource needs

In its approved 2005 RPS Plan, PG&E’s portfolio assessment showed a “medium” need for baseload resources beginning in 2007. In order to meet the 20 percent renewable energy target by 2010, PG&E requires incremental energy deliveries from newly contracted resources at an average rate of approximately 700 to 1,400 GWh per year. The PPAs under consideration are expected to contribute toward PG&E’s 2010 RPS target. See confidential Appendix B for more details.

¹² Pub. Util. Code section 399.14 subsec. (c).

¹³ Pub. Util. Code sec. 399.14 subsec.(a)(3).

PPAs are consistent with RPS bilateral contracting guidelines

The proposed PPAs are consistent with Commission decisions regarding RPS bilateral contracts¹⁴ for the following reasons:

The PPAs are not seeking Supplemental Energy Payment (SEP) funds. They are ineligible for such awards because (1) they did not result from a competitive solicitation¹⁵ and (2) they are preexisting facilities. Specifically, the facilities were in operation prior to 2002 and their prime generating equipment will not be replaced when the units are brought back online.¹⁶

Pursuant to D.06-10-019, the PPAs were submitted by advice letter. The Commission intends to include more explicit standards and criteria for the reasonableness of RPS bilateral contracts in a decision in the near future. Until such decision is approved, the Commission will continue to consider the approval of RPS bilateral contracts on a case-by-case basis.

The PPAs are Consistent with Adopted Standard Terms and Conditions

¹⁴ “[The CPUC]...will allow prudent bilateral contracts only when such contracts do not require any PGC funds” (D.03-06-071 p. 59, CoL 31, OP 29).

“For now, utilities’ bilateral RPS contracts, of any length, must be submitted for approval by advice letter. Such contracts are not subject to the MPR, which applies to solicitations, but they must be reasonable (D.03-06-017, *mimeo.*, p. 59)... No bilateral contracts are currently eligible for SEPs.” (D.06-10-019, pp.31-32)

¹⁵ “[The CPUC]...will allow prudent bilateral contracts only when such contracts do not require any PGC funds” (D.03-06-071 p. 59).

“Applicants for eligible renewable facilities must compete for NRFP funding [otherwise known as SEPs] by participating in competitive RPS solicitations held by PG&E, SCE and SDG&E.” p. 3, CEC’s New Renewable Facilities Program Guidebook, April 2006.

¹⁶ CEC RPS Eligibility Guidebook, April 2006, pp. 8-9. “Repowered generators will be eligible for SEPs if they replace their prime generating equipment... Please note that, in some cases, the criteria for RPS-eligibility depends on the date that commercial operations commence. If a facility shuts down and later recommences operations, it is subject to the eligibility requirements that apply to the original operation date... The generation from a biomass facility that commenced commercial operations prior to January 1, 2002, is eligible for the California RPS [but not for SEPs] if the facility is located in-state or satisfies the out-of-state eligibility requirements.”

In D.04-06-014 the Commission set forth standard terms and conditions to be incorporated into RPS agreements, including bilateral contracts. During the course of negotiations, the parties identified a need to modify some of the modifiable standard terms in order to reach agreement. See confidential Appendix A for a description of modifiable terms that were modified.

The PPAs filed on July 28, 2006 included modified non-modifiable standard terms and conditions. Energy Division requested that PG&E conform the non-modifiable PPA terms with D.04-06-014. On November 13, 2006, PG&E filed Supplemental AL-2865-EA that conforms the PPAs to all non-modifiable Contract Terms and Conditions as defined in D.04-06-014, Appendix A.

The PPAs' levelized price is reasonable

The PPAs are reasonably priced, based on a comparison with other biomass contracts bid to PG&E in 2004 and 2005 - see confidential Appendix A for price comparison. Bilateral contracts are not currently subject to the MPR, pursuant to D.06-10-019.¹⁷

The PPAs are viable projects

PG&E believes that the projects are viable because:

Project Milestones

The PPAs identify the agreed upon project milestones, including, interconnection agreement, project financing, construction start and commercial operation deadlines.

Maturity of Technology and Fuel Availability

¹⁷ "For now, utilities' bilateral RPS contracts, of any length, must be submitted for approval by advice letter. Such contracts are not subject to the MPR, which applies to solicitations, but they must be reasonable (D.03-06-017, *mimeo.*, p. 59)... No bilateral contracts are currently eligible for SEPs." (D.06-10-019, pp.31-32)

Biomass is a proven technology. The project has completed fuel studies adequate to demonstrate access to adequate fuel supplies consisting of urban wood waste and agricultural waste.

No Transmission Upgrades Needed

Global Common has completed a system interconnection study for each facility and the Generator Interconnection Agreements are currently pending FERC approval. No major transmission upgrades are required to interconnect to the system.

Financeability of resource

PG&E believes that the projects selected have a reasonable likelihood of being financed and completed as required by the PPAs and will be available to deliver energy by the guaranteed commercial operation date.

Production Tax Credit

The PPAs are not contingent upon the extension of federal production tax credits as provided in Section 45 of the Internal Revenue Code of 1986, as amended.

Sponsor's creditworthiness and experience

The bidders were required to provide credit-related information as part of their bid. PG&E has reviewed this information and is satisfied that the seller possesses the necessary credit and experience to perform as required by the party's PPAs.

Governor Schwarzenegger's Executive Order encourages bioenergy development

Governor Schwarzenegger's Executive Order S-06-06 encourages bioenergy development in California, stating that "sustained biomass development offers strategic energy, economic, social and environmental benefits to California, creating jobs through increased private investment within the state." The executive order encourages the Commission to "initiate a new proceeding or build upon an existing proceeding to encourage sustainable use of biomass and other renewable resources." The Global Common PPAs represent an opportunity for the Commission to promote near-term biomass development in California.

Non-bypassable charges (NBCs) will not be authorized for this Agreement

In its protest, Modesto makes the argument that PG&E's proposed non-bypassable charge is not consistent with D.04-12-048 because the El Nido and

Chowchilla PPAs were not the result of a competitive solicitation. They further state that under current Commission decisions, all resources must participate in a competitive solicitation.

After reviewing the decisions cited by Modesto, the Commission has determined that Modesto has incorrectly interpreted the Commission's decisions because all RPS-obligated load serving entities are allowed to use CPUC-approved bilateral contracts for RPS compliance purposes. The Commission specifically addresses the eligibility of bilateral contracts in D. 06-10-019¹⁸. Further, while D. 04-12-048¹⁹ does state that the Commission should adopt a policy that all resources participate in solicitations, the decision does not order the Commission to do so. Instead, the Commission has a strong preference, but does not mandate, that all contracts be selected through a competitive solicitation.

Having said that, the Commission denies PG&E's request for Commission approval of non-bypassable charges (NBCs) for the Global PPAs. Specifically, contrary to PG&E's claim, D.04-12-048 does not authorize the use of non-bypassable charges. Rather, Conclusion of Law 16 states, "Stranded costs arising from RPS procurement activities should be collected from all customers, including departing load, over the life of the contract." Non-bypassable charges are neither addressed in the Conclusions of Law nor in the Ordering Paragraph of D.04-12-048. Thus, it is unclear by what mechanism, if any, the Commission would authorize a utility to recover stranded costs for RPS contracts.

Further, the issue of NBCs has yet to be addressed in an RPS proceeding. Before an NBC can be imposed for uneconomic costs from an RPS contract, the Commission would request input from all parties regarding how an NBC should be implemented, calculated, and evaluated for approval for different types of RPS contracts. If PG&E wishes to pursue Commission approval of NBCs for RPS contracts, PG&E should file testimony on this issue in its R.06-02-013 Long-Term Procurement Plans.

Confidential information about the contracts should remain confidential

¹⁸ Pp. 31-32.

¹⁹ Conclusion of Law 33.

Certain contract details were filed by PG&E under confidential seal. Energy Division recommends that certain material filed under seal pursuant to Public Utilities Code Section 583, General Order (G.O.) 66-C and Decision (D.)06-06-066, and considered for possible disclosure, should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations.

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

FINDINGS OF FACT

1. PG&E filed Advice Letter 2865-E on July 28, 2006, requesting Commission review and approval of two amended renewable energy contracts with Global Common's El Nido and Chowchilla facilities.
2. On November 13, 2006, PG&E filed Supplemental Advice Letter (AL) 2865-EA, bringing the PPA terms and conditions into compliance with D.04-06-014.
3. PG&E briefed its Procurement Review Group regarding these amended contracts on October 27, 2005 and January 12, 2006. The members of PG&E's PRG either supported or did not oppose the approval of these contracts.
4. The PPAs are consistent with commission rules regarding bilateral RPS contracts, are reasonably priced and are consistent with adopted standard terms and conditions.

CONCLUSIONS OF LAW

1. The RPS Program requires each utility, including PG&E, to increase the amount of renewable energy in its portfolio to 20 percent by 2017, increasing by a minimum of one percent per year. The Energy Action Plan (EAP) called for acceleration of this goal to reach 20 percent by 2010. The 20% by 2010 target was reaffirmed in D.05-11-025.
2. D.04-06-014 set forth standard terms and conditions to be incorporated into RPS PPAs.
3. The Commission required each utility to establish a Procurement Review Group (PRG) to review the utilities' interim procurement needs and strategy, proposed procurement process, and selected contracts.
4. The Commission has reviewed the proposed contracts and finds them to be consistent with PG&E's approved 2005 renewable procurement plan.
5. The comment period for AL 2865-EA should be waived because it brings the PPA terms and conditions into compliance with D.04-06-014.
6. These Agreements are reasonable and should be approved.
7. The costs of the contracts between PG&E and Sellers are reasonable and in the public interest; accordingly, the payments to be made by PG&E are fully recoverable in rates over the life of the project, subject to CPUC review of PG&E's administration of the PPA.
8. Certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583, General Order (G.O.) 66-C and Decision (D.)06-06-066, and considered for possible disclosure, should not be disclosed. Accordingly, the confidential appendices, marked "[REDACTED]" in the redacted copy, should not be made public upon Commission approval of this resolution.
9. Procurement pursuant to these Agreements constitutes incremental procurement or procurement for baseline replenishment by PG&E from eligible renewable energy resources for purposes of determining PG&E's compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the California Renewables Portfolio Standard, Decision 03-06-071, or other applicable law;
10. Any indirect costs of renewables procurement identified in Section 399.15(a)(2) shall be recovered in rates;
11. AL 2865-EA should be approved with modifications; non-bypassable charges will not be authorized for this agreement.

THEREFORE IT IS ORDERED THAT:

1. Advice Letter AL 2865-EA is approved with modifications.
2. The costs of the contracts between PG&E and Sellers are reasonable and in the public interest; accordingly, the payments to be made by PG&E are fully recoverable in rates over the life of the project, subject to CPUC review of PG&E's administration of the PPA.
3. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on December 14, 2006; the following Commissioners voting favorably thereon:

STEVE LARSON
Executive Director

Confidential Appendix A
Contract Summaries

REDACTED

Confidential Appendix B
Projects' Contribution Toward RPS Goals

REDACTED