PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ID #9318
RESOLUTION E-4321
April 22, 2010

REDACTED

R E S O L U T I O N

Resolution E-4321. Pacific Gas and Electric Company (PG&E) requests approval of a renewable energy power purchase agreement, a firming and shaping strategy, and a firming and shaping agreement.

PROPOSED OUTCOME: This Resolution approves cost recovery for a power purchase agreement (PPA) resulting from PG&E's 2008 Renewables Portfolio Standard (RPS) solicitation between PG&E and Vantage Wind Energy, LLC., PG&E's firming and shaping strategy, and a firming and shaping agreement with Powerex Corporation. The PPA and associated firming and shaping strategy are approved with modification.

ESTIMATED COST: Costs of the power purchase agreement, firming and shaping strategy, and firming and shaping agreement are confidential at this time.

By Advice Letter 3525-E filed on September 16, 2009 and Supplemental Advice Letter 3525-E-A filed on December 1, 2009.

SUMMARY

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

PG&E filed Advice Letter (AL) 3525-E on September 16, 2009, requesting California Public Utilities Commission (Commission) review and approval of: 1) a renewable power purchase agreement (PPA) with Vantage Wind Energy, LLC (Vantage or Project) for generation from a new wind project, and 2) an associated firming and shaping strategy. On December 1, 2009, PG&E submitted

Supplemental AL 3525-E-A to include a firming and shaping agreement with Powerex Corporation (Powerex) that was executed as part of PG&E's firming and shaping strategy.

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

Generating Facility	Resource Type	Contract Term (Years)	Capacity (MW)	Expected Deliveries (GWh/yr)	Commercial Operation Date	Project Location
Vantage	Wind, new	15	90	277	9 months after CPUC approval	Kittitas County, WA

PG&E shall modify the PPA to include the relevant non-modifiable standard terms and conditions required for REC-only contracts. The proposed PPA, when modified as directed herein, is consistent with PG&E's RPS Procurement Plan. RPS-eligible deliveries under the PPA, as modified, 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 contracts.

NOTICE

Notice of AL 3525-E and AL 3525-E-A was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

PROTESTS

AL 3525-E was not protested. Supplemental AL 3525-E-A was timely protested on December 21, 2009 by Division of Ratepayer Advocates. PG&E responded to the protest of DRA on December 29, 2009.

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.

DISCUSSION

PG&E requests Commission approval of a new renewable energy contract, an associated firming and shaping strategy, and a firming and shaping agreement

On September 16, 2009, PG&E filed Advice Letter (AL) 3525-E requesting Commission review and approval of a renewable PPA with Vantage for generation from a new wind project. The Vantage project was bid into PG&E's 2008 RPS solicitation, PG&E shortlisted Vantage, and the parties subsequently negotiated the 15-year PPA that is considered herein. Generation from the 90 megawatt (MW) Vantage wind facility is expected to contribute an average of approximately 277 gigawatt-hours (GWh) annually towards PG&E's RPS annual procurement target beginning in 2011. Vantage will be developed in Kittitas County, Washington.

In AL 3525-E, PG&E also requested approval of their firming and shaping strategy. Under PG&E's firming and shaping strategy, PG&E plans to contract

[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).

with a separate entity to firm and shape the energy that PG&E receives at the busbar from the Vantage facility for the duration of the Vantage PPA term. However, if PG&E is unable to find a third-party, then PG&E intends to manage the busbar energy positions itself and firm, shape, and import the energy itself into California.

Additionally, on December 1, 2009, PG&E submitted Supplemental AL 3525-E-A to include a 10-year firming and shaping agreement with Powerex. As planned in PG&E's firming and shaping strategy, Powerex will firm and shape the Vantage output, which PG&E purchases pursuant to its PPA with Vantage, and deliver energy to a California Independent System Operator (CAISO) intertie. With some exceptions depending upon the online date of the Vantage facility, the firming and shaping agreement will commence with operation of the Vantage facility and continue for 10 years. If PG&E executes an additional third-party firming and shaping agreement for the remaining term of the Vantage PPA, PG&E will file such an agreement for Commission approval in a future advice letter filing.

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 PG&E's strategy for managing the renewable energy it receives at the Project busbar under the PPA and delivering RPS-eligible energy into California is reasonable. Costs that PG&E may incur if it provides firming and shaping services in connection with the PPA are recoverable in rates.

4. 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.

5. Adopts the following finding of fact and conclusion of law in support of CPUC Approval:
    a. The PPA is consistent with PG&E's 2008 RPS procurement plan.
    b. The terms of the PPA, including the price of delivered energy, are reasonable.

6. 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 and incurred if it provides firming and shaping services in connection with 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.

7. Finds that based on PG&E's representation of how intermittent wind energy received under the PPA will be firmed and shaped, the PPA is compliant with the EPS adopted in R.06-04-009, subject to PG&E's administration of the PPA.

Energy Division examined the proposed PPA on multiple grounds:

- Consistency with PG&E's 2008 RPS Procurement Plan (Plan)
- Consistency with the resource needs identified in PG&E's Plan
- Consistency with PG&E's least-cost, best-fit methodology
- Consistency with tradable renewable energy credit (TREC) rules
- Consistency with RPS standard terms and conditions (STC)
- Consistency with RPS delivery rules

- Project viability
- Consistency with the Interim Emissions Performance Standard
- Procurement Review Group participation
- Independent Evaluator review
- Cost Reasonableness

Consistency with PG&E's 2008 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 2008 RPS Plan was approved by D.08-02-008 on February 14, 2008. 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]

<u>The PPA, as modified, is consistent with PG&E's 2008 RPS Procurement Plan, as approved by D.08-02-008.</u>

Consistency with the Resource Needs Identified In PG&E's Plan

PG&E states that the generation from the PPA will meet the resource needs identified in its Plan. In its Plan, PG&E's goal was to procure approximately 800 to 1,600 GWh per year. PG&E's Plan also noted that near-term deliveries were more valuable to PG&E. The Vantage facility will annually generate 277 GWhs in the near term. The deliveries from the facility will contribute to PG&E's 20 percent goal under the current flexible compliance rules.

<u>The PPA, as modified, is consistent with the resource needs identified in PG&E's 2008 Procurement Plan.</u>

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[4] Pub. Util. Code, § 399.14.

[5] Pub. Util. Code, § 399.14(a)(3).

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

The LCBF decision, D.04-07-029, directs the utilities to use certain criteria in their bid ranking. The decision offers guidance regarding the process by which the utility ranks bids in order to select or "shortlist" the bids with which it will commence negotiations. PG&E's bid evaluation includes a quantitative and qualitative analysis, which focuses on four primary areas: 1) determination of a bid's market value; 2) calculation of transmission adders and integration costs; 3) evaluation of portfolio fit; and 4) consideration of non-price factors.

The LCBF evaluation is generally used to establish a shortlist of proposals from PG&E's solicitation with whom PG&E will engage in contract negotiations. PG&E's 2008 RPS solicitation protocol included an explanation of its LCBF methodology. The independent evaluator (IE) oversaw the bid evaluation process and concluded in its report that the LCBF evaluation methodology was generally employed consistently and the process was conducted fairly.

The IE has verified that the PPA is consistent with PG&E's objectives set forth in its 2008 RPS Plan. The IE supports PG&E's decision to execute the agreement discussed herein and concurs with PG&E that the PPA merits CPUC Approval.[6]

PPA selection is consistent with PG&E's 2008 RPS solicitation least-cost, best-fit cost protocols.

Consistency with Commission rules governing the use of TRECs for RPS compliance

Pursuant to the proposed Vantage PPA, PG&E will procure energy from an RPS-eligible facility that does not have its first point of interconnection with the Western Electricity Coordinating Council interconnected system with a California balancing authority, nor will the energy from the transaction be dynamically transferred to a California balancing authority. Thus, as defined by D.10-03-021, the Vantage PPA is a REC-only transaction for purposes of RPS compliance.

[6] Second Advice Letter Report of the Independent Evaluator on the Bid Evaluation and Selection Process, AL 3469-E, Appendix I, page 52.

D.10-03-021 established a temporary price cap of $50/TREC.[7] For REC-only contracts that provide a combined price for both RECs and energy, a REC price must be calculated to compare to the TREC price cap to determine if the REC may be used for RPS compliance. D.10-03-021 authorized the Director of Energy Division to develop and apply a method for inferring the price of RECs in combined transactions for both RECs and energy in which no separate price for the RECs is identified. While the details were not specified, the decision suggests that the most transparent methodology for inferring a REC price is to subtract the market value of the energy over the life of the contract from the total projected cost of the contract. The net price would be the REC price. The decision also states that Energy Division staff may use present methods, and make any adaptations as necessary to review REC-only contracts. Based on this guidance, the REC price was calculated by taking the total contract price, including firming and shaping costs, and subtracting the forward market value of both the energy and the capacity value of the contract. While this methodology is a reasonable estimate of the Vantage transaction REC price at this time, it is not precedent setting. Based on this calculation, the Vantage REC price is below the price cap. See Confidential Appendix B for a detailed discussion on the calculation of the Vantage REC price.

D.10-03-021 also established a temporary cap on the amount of TRECs that load serving entities may use towards RPS compliance.[8] Specifically, PG&E may meet no more than 25% of its annual procurement target (APT) with TRECs. PG&E may count the generation from the Vantage facility towards its RPS compliance in any year PG&E has not already met or exceeded its TREC usage limit. PG&E shall file a Tier 1 advice letter filing to bring the advice letter filing into compliance with D.10-03-021. Specifically, PG&E shall identify its expected percentage of RECs with and without this proposed contract for the year(s) this contract delivers and shall include the information required in REC-only advice letter filings set forth in Ordering Paragraph 32 of D.10-03-021.

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[7] The TREC price cap will sunset December 31, 2011 unless the Commission acts to extend it. See D.10-03-021, Ordering Paragraph 21.

[8] The TREC usage limit cap will sunset December 31, 2011 unless the Commission acts to extend it.

Consistency with RPS standard terms and conditions

The proposed PPA is based on PG&E's 2008 RPS pro forma which complies with D.08-04-009, as modified by D.08-08-028. On March 11, 2010 the Commission approved D.10-03-021 which established new and revised standard terms and conditions for REC-only contracts. The PPA was executed and filed before D.10-03-021 was approved, as a result, the PPA does not include the Commission adopted RPS "non modifiable standard terms and conditions" for REC-only contracts.

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

Consistency with RPS Delivery Rules

Where an advice letter requests Commission approval of a PPA with a facility that does not have its first point of connection with the California transmission network for delivery of electricity to an in-state location, the California Energy Commission (CEC) provides a written determination to the Commission addressing whether the proposed delivery structure meets the RPS delivery requirements set forth in the CEC's RPS Eligibility Guidebook.[9]

Appendix A to this resolution contains a letter from CEC Staff determining that the delivery structure contained in the proposed PPA meets the CEC's RPS delivery requirements as set forth in the CEC's RPS Eligibility Guidebook.

[9] Renewables Portfolio Standard Eligibility Guidebook, 3rd Edition, publication # CEC-300-2007-006-ED3-CMF (January 2008), *available at* http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF

Project viability assessment and development status

PG&E believes the Vantage project is viable and will be developed according to the terms and conditions in the PPA. PG&E's project viability assessment included key criteria for renewable project development.

Project milestones

The PPA identifies agreed upon project milestones, including the construction start date and commercial operation date. The seller's obligations to meet these milestones are supported by performance assurance securities. PG&E believes that the Vantage project development plan allows for all milestones to be achieved.

Developer experience and creditworthiness

Invenergy, the parent company to Vantage, is an experience wind developer, having completed development and construction of more than 18 wind projects.

Technology

Vantage will employ General Electric 1.5 MW SLE wind turbines which are commercially proven and in operation worldwide.[10]

Site control and permitting status

Vantage has full site control. Permitting for the Vantage project is complete.

Interconnection and transmission

PG&E will take delivery of the project at the busbar. The energy will then be firmed and shaped for delivery to a CAISO grid intertie point.

[10] Vantage Wind Power Application for Development Agreement/Development Permit – Attachment A.

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

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

D.07-01-039 adopted an interim EPS that establishes an emission rate quota for obligated facilities to levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine powerplant. The EPS applies to all energy contracts for baseload generation that are at least five years in duration.[11] Renewable energy contracts are deemed compliant with the EPS except in cases where intermittent renewable energy is firmed and shaped with generation from non-renewable resources. If the renewable energy contract is firmed and shaped with a specified energy source that is considered baseload generation, then the energy source must individually meet the EPS. If, however, the intermittent energy is firmed and shaped with an unspecified energy source (e.g. system power), then D.07-01-039 specifically defines the following eligibility condition:

> For specified contracts with intermittent renewable resources (defined as solar, wind and run-of-river hydroelectricity), the amount of substitute energy purchases from unspecified resources is limited such that total purchases under the contract (whether from the intermittent renewable resource or from substitute unspecified sources) do not exceed the total expected output of the specified renewable powerplant over the term of the contract. [12]

Powerex will firm and shape the Vantage output using unspecified sources, and energy deliveries by Powerex under the firming and shaping agreement are limited to total expected Vantage output under the PPA.

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[11] "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).

[12] D.07-01-039, Conclusion of Law 40. Note: These compliance rules specifically apply to IOUs, additional compliance rules may apply to other RPS-obligated load serving entities.

The PPA, as modified, and the accompanying firming and shaping agreement are compliant with the EPS because delivered energy pursuant to the firming and shaping agreement will be firmed and shaped with unspecified sources and is limited to the total expected output under the PPA.

Procurement Review Group (PRG) participation

PG&E's PRG consists of: the California Department of Water Resources, the Union of Concerned Scientists, the Division of Ratepayer Advocates, the Coalition of California Utility Employees, The Utility Reform Network, Jan Reid as a PG&E ratepayer, and the Commission's Energy Division.

PG&E informed its PRG of the Vantage negotiations on June 20, October 17, and November 14 of 2008 and January 9, March 23, and June 12, 2009. Although Energy Division is a member of the PRG, it reserved judgment on the contract until the AL was filed. Energy Division reviewed the transaction independently of the PRG, and allowed for a full protest period before concluding its analysis.

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

Independent Evaluator (IE) Review

The Commission requires the use of an IE to ensure that solicitation processes are undertaken in a fair, consistent, unbiased, and objective manner so that projects selected for shortlisting and resulting in executed contracts are chosen based on reasonable and consistent logic. Specifically, the IE's role is to review PG&E's bid evaluation, monitor negotiations, and review the resulting PPA. PG&E retained Arroyo Seco Consulting (Arroyo) as the IE for PG&E's 2008 RPS solicitation. Also, as required, PG&E submitted an IE Report prepared by Arroyo with AL 3525-E.

According to the IE Report submitted with AL 3525-E, Arroyo performed its duties overseeing the 2008 solicitation. In its Independent Evaluator Report, Arroyo concluded that "…the methodology that PG&E employed in evaluating and selecting Offers for its initial short list for the 2008 RPS RFO was fair and reasonable. The administration of the methodology was fair and reasonable." Also, based on the project's valuation, portfolio fit, and viability, Arroyo was of the opinion that the contract merits CPUC approval.

An excerpt from the IE Report's contract-specific evaluation of the Vantage project is attached as confidential Appendix D to this resolution.

Consistent with D.06-05-039, an independent evaluator oversaw PG&E's 2008 RPS solicitation, procurement process, and subsequent negotiation concerning the Vantage PPA.

Cost Reasonableness

Based on the PPA's market valuation, PG&E determined that the PPA is favorable relative to proposals received in response to PG&E's 2008 RPS solicitation. The Commission's reasonableness review for RPS PPA prices also includes comparisons of proposed PPAs to other proposed RPS projects from recent RPS solicitations and recently approved PPAs. Using this analysis, and the confidential analysis provided by PG&E in AL 3525-E and AL 3525-E-A, we determine that the total project costs are reasonable. Confidential Appendix B includes a detailed discussion of the contractual pricing terms, including PG&E's estimates of the total costs under the PPA, firming and shaping strategy, and the firming and shaping agreement with Powerex.

The Vantage project compares favorably to the results of PG&E's 2008 solicitation. The total all-in costs of the PPA, as modified, firming and shaping strategy, and firming and shaping agreement are reasonable compared to bids received in response to PG&E's 2008 solicitation and other comparable procurement options.

Provided the generation is from an eligible renewable energy resource, or is otherwise compliant with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009 and included in this PPA, payments made by PG&E, under the PPA, as modified, including the costs associated with the firming and shaping agreement between PG&E and Powerex, and costs PG&E may incur for self-managing the intermittent generation from the Vantage project upon the expriation of the Powerex firming and shaping agreement approved herein, up to the total sum of total project costs identified in Table 3 of Confidential Appendix B of this Resolution, are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E's administration of the PPA.

Cost Containment

Pursuant to statute, the Commission calculates a market price referent (MPR) to assess above-market costs of individual RPS contracts and the RPS program.[13] Contracts that meet certain criteria are eligible for above-MPR funds (AMFs).[14] The PPA is a REC-only transaction; thus, it does not meet the eligibility criteria for AMFs. Additionally, PG&E has exhausted its AMFs provided by statute.[15] Therefore, PG&E will voluntarily incur the above-MPR costs of the PPA.

PG&E is voluntarily entering into this RPS power purchase agreement as permitted by statute.

DRA protests this advice letter

On December 21, 2009, DRA filed a confidential protest to AL 3525-E-A. In its protest, DRA made several recommendations to the Commission regarding the total Vantage project price, the filing of the advice letter, and PG&E's analysis of the project. Specifically, based on the project's total price, DRA recommends that the Commission reject AL 3525-E and 3525-E-A. Further, DRA recommends that the Commission order PG&E to file a supplemental Advice Letter to provide updated confidential appendices. DRA also recommends that renewable PPAs that require firming and shaping should not be approved until after the firming and shaping details and costs are known. Last of all, DRA recommends that the Commission not approve RPS PPAs where the submitted project differs from the bid submitted in the RFO so that the solicitation process is not undermined.

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[13] *See* § 399.15(c)

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

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

We deny DRA's protest in its entirety. As stated above, shown in confidential Appendix B of AL 3525-E, and as argued by PG&E in its reply to DRA's protest, the price of the Vantage project is reasonable when compared to PG&E's other procurement options. Additionally, in PG&E's reply, PG&E included an updated version of AL 3525-E's Confidential Appendix A. Further, Advice Letter 3525-E and 3525-E-A provide sufficient information for the Commission to determine the reasonableness of the agreements, including an accurate estimated total maximum price for the project. Finally, the Commission and independent evaluator found that the Vantage bid, as submitted, was properly evaluated and ranked. Thus, approval of the PPA does not undermine the solicitation process.

RPS ELIGIBILITY AND CPUC APPROVAL

Pursuant to Pub. Utils. 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 use 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 (*Public Utilities Code Section 399.11 et seq.*), Decision 03-06-071, or other applicable law."[17]

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

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

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

Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS eligible resource to count towards an RPS compliance obligation. Nor shall such a finding absolve a seller from its obligation to obtain CEC certification or absolve the purchasing utility of its obligation to enforce compliance with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009 and included in the PPA. Such contract enforcement activities shall be reviewed pursuant to the Commission's authority to review the administration of such contracts.

CONFIDENTIAL INFORMATION

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

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

FINDINGS

1. The PPA, as modified, is consistent with PG&E's 2008 RPS Procurement Plan, approved by D.08-02-008.
2. The PPA, as modified, is consistent with the resource needs identified in PG&E's 2008 Procurement Plan.
3. PPA selection is consistent with PG&E's 2008 RPS solicitation least-cost, best-fit cost protocols.
4. Pursuant to D.10-03-021, the PPA is a REC-only transaction.
5. The Vantage REC price is below the TREC price cap set forth in D.10-03-021.
6. PG&E may count the generation from the Vantage facility towards its RPS compliance in any year PG&E has not already met or exceeded its TREC usage limit.
7. The PPA does not include all of the Commission-adopted "non modifiable" standard terms and conditions for REC-only contracts.
8. Appendix A to this resolution contains a letter from CEC Staff determining that the delivery structure contained in the proposed PPA meets the CEC's RPS delivery requirements as set forth in the CEC's RPS Eligibility Guidebook.
9. The PPA, as modified, and the accompanying firming and shaping agreement is compliant with the EPS because delivered energy pursuant to the firming and shaping agreement will be firmed and shaped with unspecified sources and is limited to total expected output under the PPA.
10. Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the PPA.
11. Consistent with D.06-05-039, an independent evaluator oversaw PG&E's 2008 RPS solicitation, procurement process, and subsequent negotiation concerning the Vantage PPA.
12. The Vantage project compares favorably to the results of PG&E's 2008 solicitation. The total all-in costs of the PPA, as modified, firming and

shaping strategy, and firming and shaping agreement are reasonable compared to bids received in response to PG&E's 2008 solicitation and other comparable procurement options.

13. Provided the generation is from an eligible renewable energy resource, or is otherwise compliant with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009 and included in this PPA, payments made by PG&E, under the PPA, as modified, including the costs associated with the firming and shaping agreement between PG&E and Powerex, and costs PG&E may incur for self-managing the intermittent generation from the Vantage project upon the expiration of the Powerex firming and shaping agreement approved herein, up to the total sum of total project costs identified in Table 3 of Confidential Appendix B of this Resolution, are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E's administration of the PPA.
14. PG&E is voluntarily entering into this RPS power purchase agreement as permitted by statute.
15. The DRA protest is denied.
16. Procurement pursuant to the PPA, as modified, is procurement from eligible renewable energy resources for purposes of determining PG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.03-06-071 and D.06-10-050, or other applicable law.
17. The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource under the PPA to count towards an RPS compliance obligation. Nor shall that finding absolve PG&E of its obligation to enforce compliance with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009, and included in the PPA, as modified.
18. 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.
19. AL 3525-E as supplemented by AL 3525-E-A should be approved with modification.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company's Advice Letter 3525-E, requesting Commission review and approval of a power purchase agreement with Vantage Wind Energy, LLC and a firming and shaping strategy, as supplemented by Advice Letter 3525-E-A to include a firming and shaping agreement with Powerex Corporation, is approved with modification.
2. If Pacific Gas and Electric Company executes an additional third-party firming and shaping agreement to take effect upon expiration of the Powerex firming and shaping agreement that is at or below the costs approved in this Resolution, as identified in Table 3 of Confidential Appendix B of this Resolution, then Pacific Gas and Electric Company shall file the agreement with the Commission in a Tier 1 advice letter filing within 30 days from the execution date of the agreement. If the additional third-party firming and shaping agreement is above the costs of a firming and shaping agreement as approved in this Resolution and as identified in Table 3 of Confidential Appendix B of this Resolution, then Pacific Gas and Electric Company shall file the agreement with the Commission in a Tier 3 advice letter filing within 30 days from the execution date of the agreement.
3. Within 30 days of the effective date of this Resolution, Pacific Gas and Electric Company shall file a Tier 1 advice letter containing:
    a. The sum of all delivered and expected tradable renewable energy credits purchased through contracts executed by Pacific Gas and Electric Company to date and how this compares to any applicable annual limit on the use of tradable renewable energy credits for compliance with the California renewables portfolio standard;
    b. The sum of all delivered and expected tradable renewable energy credits purchased by Pacific Gas and Electric Company through contracts for the procurement of renewable energy credits only with facilities that are or were already online as of the execution date of their associated contract for procurement of tradable renewable energy credits, and how this compares to the applicable annual limit on the use of tradable renewable energy credits for compliance with the California renewables portfolio standard;
    c. The sum of all delivered and expected tradable renewable energy credits purchased by Pacific Gas and Electric Company through contracts for the procurement of renewable energy credits only with

facilities that are not or were not online as of the execution dates of their associated contracts, and how this compares to the applicable annual limit on the use of tradable renewable energy credits for compliance with the California renewables portfolio standard;

d. A comparison of the price of the renewable energy credits in the contract that is the subject of the advice letter and the price of renewable energy credits from all contracts for the procurement of renewable energy credits only with facilities that were online as of the execution date of their associated contracts; and

e. A comparison of the price of the renewable energy credits in the contract that is the subject of the advice letter and the prices of renewable energy credits from all contracts for the procurement of renewable energy credits only with facilities that were not yet online as of the execution date of their associated contracts.

4. Within 30 days of the effective date of this Resolution, Pacific Gas and Electric Company shall file a Tier 1 advice letter containing a modified power purchase agreement executed by the buyer and seller that includes all of the non-modifiable required standard terms and conditions required for REC-only contracts.

5. 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 22, 2010; the following Commissioners voting favorably thereon:

_____
PAUL CLANON
Executive Director

Appendix A

CEC Letter Regarding Eligibility of Vantage PPA's Proposed Delivery Structures

STATE OF CALIFORNIA – THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, Governor

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

February 22, 2010

The California Energy Commission, through its staff, has reviewed the proposed contracting structure between Vantage Wind Energy, LLC and PG&E, as described and illustrated in the excerpts from pages 2 and 4 of Advice Letter #3525-E, provided in "Attachment A-Vantage Wind Energy/PG&E" and shown in the schematic design titled, "Attachment B-Vantage Wind Energy/PG&E Delivery Structure."

Assuming that all eligibility requirements for the Renewables Portfolio Standard (RPS) are met, including that the firm 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-300-2007-006-ED3-CMF, January 2008).

Tony Gonçalves
Manager, Renewable Energy Office
California Energy Commission

Attachments

ATTACHMENT A

VANTAGE WIND ENERGY LLC/PG&E

Under the Agreement, Powerex will firm and shape the output of the Project which PG&E purchases from Vantage pursuant to the PPA. As detailed in the Advice Letter, PG&E will purchase RPS-eligible energy from Vantage's Project at the busbar, and under the Agreement Powerex will provide firming and shaping of the output and deliver energy to a California Independent System Operator ("CAISO") intertie.

The Agreement contains the following components:

1. PG&E will deliver as-available intermittent energy from the PPA without the associated renewable energy credits and green attributes to Powerex as it is generated at the Project and delivered at the busbar, and Powerex shall perform the firming and shaping with respect to such energy.
2. Powerex will be responsible for transmission planning, wind generation forecasting, outage coordination, and scheduling for generation from the Project.
3. Powerex will deliver fixed blocks of energy to PG&E at the Cascade (or agreed-upon alternative CAISO intertie). The annual quantity of fixed blocks of energy sold at Cascade will reflect the expected annual output from the Project.
4. Powerex and PG&E will financially reconcile and settle any difference between the actual quantities of the deliveries from the Project to Powerex and from Powerex to PG&E on an annual basis to account for any such difference.

ATTACHMENT B

VANTAGE WIND ENERGY LLC/PG&E DELIVERY STRUCTURE

Diagram of Delivery Structure for Vantage Project: Shaping Agreement

Confidential Appendix B

Project Summary

[Redacted]

Confidential Appendix C

Project Viability of Vantage Wind Facility

[Redacted]

Confidential Appendix D

Excerpt from the Independent Evaluator Project-Specific Report[18]

[Redacted]

[18] Pages A-12 – A21, "Confidential Appendix A – Offer Description and Economic Evaluation Results" of "Fourth Advice Letter Report of the Independent Evaluator on the Bid Evaluation and Selection Process" (September 2009) Arroyo Seco Consulting, submitted with PG&E AL 3525-E on September 16, 2009.