

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ID #10814
RESOLUTION E-4430
December 15, 2011

REDACTED

R E S O L U T I O N

Resolution E-4430. Pacific Gas and Electric Company requests approval to amend two power purchase and sale agreements, as previously amended, with Global Ampersand, LLC.

PROPOSED OUTCOME: This Resolution approves cost recovery for the two amended long-term renewable power purchase agreements between Pacific Gas and Electric Company and Global Ampersand, LLC.

ESTIMATED COST: Costs of the power purchase agreements are confidential at this time.

By Advice Letter 3837-E filed on May 3, 2011.

SUMMARY

Pacific Gas and Electric Company's two amended renewable energy power purchase agreements with Global Ampersand, LLC comply with the Renewables Portfolio Standard procurement guidelines and are approved without modification.

Pacific Gas and Electric Company (PG&E) filed Advice Letter 3837-E on May 3, 2011, requesting the California Public Utilities Commission (Commission) approve two amended power purchase agreements (Amended PPAs) with Global Ampersand, LLC. The Amended PPAs were previously approved by Resolution E-4047 on December 14, 2006 and Resolution E-4110 on September 6, 2007.

The Amended PPAs concern two biomass facilities, El Nido and Chowchilla (Facilities), located in PG&E's service territory and each facility has a contract

capacity of up to 9 megawatts (MW). Cumulatively the Facilities are expected to generate approximately 130 gigawatt-hours of RPS-eligible energy annually throughout the 20-year contract term. After having ceased operations in June 2010, the Facilities restarted operations in May 2011.

This resolution approves the Amended PPAs without modification. PG&E's execution of this PPA is consistent with PG&E's 2009 RPS Procurement Plan, including its resource need, which the Commission approved in Decision 11-04-030. Approving the Amended PPAs will provide sufficient revenues for the Facilities to continue operation and will retain existing RPS-eligible capacity in PG&E's portfolio. Approving the amendments will allow use of existing biomass facilities which is consistent with Executive Order S-06-06 which encourages bioenergy development.

Deliveries under the Amended PPAs are reasonably priced and fully recoverable in rates over the life of the contracts, subject to Commission review of PG&E's administration of contracts. Upon Commission approval of the Amended PPA's, PG&E will pay Global Ampersand, LLC the difference between the previously approved contract price and the amended contract price approved by this resolution for deliveries from the Facilities received after May 2011.

The following table provides a summary of the Global Amended PPAs:

Generating facility	Type	Term Years	MW Capacity	GWh Energy	Online Date	Location
Global Ampersand Chowchilla and El Nido	Biomass	20 Starting 2/8/2011	9 MW per facility (18MW Total)	65.5 GWh per facility (131 GWh Total)	Restart May 2011	Chowchilla and Merced, 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 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 3837-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

Advice Letter 3837-E was not protested.

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.

⁴ SB 2 (1x), § 399.15(b)(2)(B).

DISCUSSION

Pacific Gas & Electric Company requests approval to amend two renewable energy power purchase agreements.⁵

On May 3, 2011, Pacific Gas and Electric Company (PG&E) filed Advice Letter (AL) 3837-E requesting California Public Utilities Commission (Commission) approval to amend two long-term power purchase agreements (Amended PPAs) with Global Ampersand, LLC, (Global).

The Amended PPAs provide for the following modifications to the Commission approved PPAs.

1. Increase in contract prices;
2. Increase in delivery term security;
3. Extended delivery term;
4. Increase in minimum required energy deliveries;
5. Imposition of minimum project deliveries prior to Commission approval;
6. Revised contract terms and conditions consistent with PG&E's 2009 RPS pro forma, including new RPS standard terms and conditions.
7. Global Ampersand had also agreed to provide PG&E with monthly progress reports so that PG&E may track Global Ampersand's progress in placing both Facilities in service by May 2011.

History of Contracts and Amendments

The original bilateral PPAs between PG&E and Global Common were executed in 2005. After submitting the contract for Commission approval (AL 2718-E) Global Common's intended financier withdrew from the project. Global was

⁵ Original counterparty of the original PPAs was Global Common, LLC. Global Ampersand is the successor in interest, and counterparty to the previously amended PPAs.

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 AL 2865-E-A, bringing the PPA terms and conditions into compliance with D.04-06-014. Resolution E-4047 approved both AL 2865-E and supplemental AL 2865-E-A on December 14, 2006.

On April 30, 2007, PG&E filed AL 3044-E, for a third PPA amendment to its Commission approved PPAs with Global Ampersand, LLC (successor in interest to Global Common, LLC). The third amendment clarified the contracts' pricing terms to facilitate project financing and was approved by Resolution E-4110.

The fourth amendment to the El Nido PPA involved changes to the project's contractual commercial operation date and performance penalties. These amendments were made through PG&E's contract administration process. Similarly, for Chowchilla the fourth and fifth amendments to that PPA addressed the same issues and were noticed in PG&E's Q4 2008 Quarterly Contract Review.

The Global Facilities ceased operations June 2010 as a result of operational and financial difficulties. PG&E executed new amendments to provide the seller a higher price that is sufficient to allow the Facilities to recommence operations and to be viable over the length of the contract term. The new amended contracts is for a term of 20 years beginning February 2011. Continued operations of the Facilities should preserve over 35 local California jobs.⁶

PG&E requests that the Commission issue a resolution that:

1. Approves the Amended PPAs in their entirety, including payments to be made by PG&E pursuant to the Amendments, subject to the Commission's review of PG&E's administration of the Amended PPAs.
2. Finds that any procurement pursuant to the Amended PPAs 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

⁶ AL 3837-E, p.2

- 399.11 et seq.) (“RPS”), Decision (“D.”) 03-06-071 and D.06-10-050, or other applicable law.
3. Finds that all procurement and administrative costs, as provided by Public Utilities Code section 399.14(g), associated with the Amended PPAs as amended by the Amendments shall be recovered in rates.
 4. Adopts the following finding of fact and conclusion of law in support of CPUC Approval:
 - a. The Amended PPAs, as amended by the Amendments, are consistent with PG&E’s 2009 RPS procurement plan.
 - b. The terms of the Amended PPAs, as amended by the Amendments, 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 Amended PPAs as amended by the Amendments:
 - a. The utility’s costs under the Amended PPAs as amended by the Amendments shall be recovered through PG&E’s Energy Resource Recovery Account.
 - b. Any stranded costs that may arise from the Amended PPAs as amended by the Amendments 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 Amended PPAs are in compliance with the EPS adopted in D.07-01-039 because the Facilities are generating facilities using biomass that would otherwise be disposed of utilizing open burning, forest accumulation, landfill, spreading or composting, which is pre-approved as compliant with the EPS.

Energy Division Evaluated the Global Amended PPAs on the following criteria:

- Consistency with bilateral contracting rules
- Consistency with PG&E's 2009 RPS Procurement Plan
- Assessment of PG&E's need for the Global Ampersand, LLC projects
- Consistency with PG&E's Least-Cost, Best-Fit requirements
- Consistency with RPS standard terms and conditions
- Independent Evaluator review
- Cost reasonableness
- Cost containment
- Project viability assessment and development status
- Compliance with the Interim Greenhouse Gas Emissions Performance Standard
- Procurement Review Group participation

Consistency with Bilateral Contracting Rules

In its advice letter, PG&E explains that PG&E and Global negotiated the Amended PPAs bilaterally in order to secure reasonable, market-competitive prices, and the fact that the facilities are existing (though were not operating at that time) resources which can provide deliveries of RPS-eligible energy starting within 120 days of when PG&E filed the advice letter seeking approval of the amended Global PPAs. During the time the parties were negotiating the amendments, between November 2009 and February 2011, there was no RPS solicitation scheduled.

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

In D.09-06-050, the Commission determined that bilateral agreements should be reviewed according to the same processes and standards as projects that come

through a solicitation. Accordingly, as described below, the Amended PPAs were compared to other RPS offers received in PG&E's 2009 RPS solicitation, bilateral negotiations, and recently executed agreements; the proposed agreement was reviewed by PG&E's Procurement Review Group; and an independent evaluator oversaw the project evaluation and PPA negotiation.

The Amended PPAs are consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.

Consistency with PG&E's 2009 RPS Procurement Plan

California's RPS statute requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.⁷ PG&E's 2009 RPS Procurement Plan (Plan) was conditionally approved by D.09-06-018. Pursuant to statute, PG&E's Plan includes an assessment of supply and demand to determine the optimal mix of renewable generation resources, consideration of flexible compliance mechanisms established by the Commission, and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.⁸

PG&E states that the generation procured under the PPA will meet the resource needs identified in its Plan. In its Plan, PG&E's goal was to procure approximately one to two percent of its retail sales volume, or between 800 to 1,600 GWh per year. The Project is expected to deliver approximately 131 GWh per year for a term of 20 years. Deliveries from the Project meet the criteria for renewables procurement contained in PG&E's 2009 Plan and will contribute to PG&E's 20 percent RPS goal under the current flexible compliance rules.

The Amended PPAs are consistent with PG&E's 2009 RPS Procurement Plan, including PG&E's RPS resource needs, approved by D.09-06-018.

⁷ Pub. Util. Code, § 399.14

⁸ Pub. Util. Code, §399.14(a)(3)

Assessment of PG&E's need for the Global Ampersand, LLC projects

Future RPS compliance obligations are generally⁹ defined in SB 2 (1x) as follows: PG&E must procure RPS-eligible resources equivalent to an average of 20 percent of retail sales for 2011-2013; 25 percent of retail sales by the end of 2016; and 33 percent of retail sales by 2020 and for each year thereafter. With this clarity over the near and longer-term RPS targets, the Commission's ability to assess PG&E's RPS procurement needs has improved.

To assess PG&E's need for the Amended PPAs, our analysis focused on the first compliance period since the Facilities restarted commercial operation in May 2011. The information provided by PG&E's August 2011 Compliance Report demonstrates that when applying a reasonably conservative forecast of the future, PG&E has a need for the Global Amended PPAs for the first compliance period. Also, based on PG&E's August 2011 Compliance Report, PG&E was short in RPS-eligible generation in 2010 on a delivered basis.

PG&E has demonstrated that it has an incremental need for RPS-eligible generation in the first compliance period which the Global Amended PPAs will contribute to.

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.¹⁰ 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 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

⁹ The Commission opened Rulemaking (R.) 11-05-005 to implement the new 33% RPS law, SB 2 (1X).

¹⁰ See §399.14(a)(2)(B)

4. Consideration of non-price factors.

PG&E negotiated the Amended PPAs bilaterally and therefore it did not compete directly with other RPS projects. In AL 3837-E, PG&E explains that it examined the reasonableness of the PPA using the same LCBF methodology used to evaluate the 2009 RPS Solicitation and with other bilateral contracts offered to PG&E during the same time period that the Amended PPAs were executed. Additionally, as part of a project viability assessment, PG&E examined such factors as ownership experience, Operations & Maintenance experience, and technological feasibility.

The Amended PPAs were evaluated consistent with the PG&E's LCBF methodology.

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 PPAs include 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.

Independent Evaluator Review

PG&E retained independent evaluator (IE) Merrimack Energy Group, Inc to evaluate the Amended PPAs, oversee PG&E's bilateral negotiations with Global, and to evaluate the overall merits for CPUC approval of the Amended PPAs. AL 3837-E included a public and confidential independent evaluator's report.¹¹

The IE finds in its report that the Amended PPAs are "reasonably competitive." See attached Confidential Appendix C for the IE's report.

¹¹ AL 3837-E, IE Report: Appendix C (Confidential), Appendix H (Public)

Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw PG&E's negotiations with Global and recommends the contract be approved.

Cost Reasonableness

Resolution E-4199 set forth eligibility criteria and guidelines for when IOUs request approval of contract amendments for RPS contracts with above-market costs.

As required by E-4199, PG&E performed due diligence regarding the requested PPA price adjustment when PG&E and Global negotiated the Amended PPAs. PG&E reviewed the Facilities cash flow models, including key cost assumptions and supporting information provided by Global. PG&E concluded that the PPA price adjustments are justified.

The IE reviewed the Amended PPAs and financial pro formas for the Facilities provided by Global and determined that the price increase provided by the amendments is justified from a cost perspective. (Relevant excerpts from the IE report are included in Confidential Appendix C).

PG&E also asserts that the Amended PPAs are reasonable when compared to contracts resulting from PG&E's 2009 RPS Solicitation and when compared to other bilaterals being offered to PG&E during the time when the Amended PPA were executed and advice letter 3837-E was filed with the Commission.

The Commission also compared the Amended PPAs to recently executed contracts and biomass projects shortlisted in the 2011 RPS Solicitation. While the price of the Amended PPAs are slightly higher and the Net Market Value slightly lower than the comparables, the Commission finds the cost of contracts are reasonable. First we have assurance from the cash flow models that have been provided to PG&E and evaluated by the IE that the prices are justified.

We also note that supporting these Facilities is consistent with Executive Order S-06-06¹² which encourages bioenergy development in California stating that "sustained biomass development offers strategic energy, economic, social and

¹² <http://www.dot.ca.gov/hq/energy/Exec%20Order%20S-06-06.pdf>

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.”

Consistent with the Executive Order, Global represents an opportunity for the Commission to promote near-term biomass development in California.

Payments made by PG&E under the Amended PPAs 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 whether a proposed PPA has above-market costs.¹³ The MPR is used by the Commission to assess the above-market costs of RPS contracts. There is a statutory limit on above-MPR costs, which serves as a cost containment mechanism for the RPS program.¹⁴ Contracts that meet certain criteria are eligible for above-MPR funds (AMFs).¹⁵ PG&E has exhausted its AMFs provided by statute;¹⁶ thus, PG&E is not required to procure RPS-eligible generation at above-MPR costs but may voluntarily choose to do so.¹⁷

¹³ See Pub. Util. Code § 399.15(c).

¹⁴ See Pub. Utils. Code §399.15.

¹⁵ Under Resolution E-4199, a PPA between a utility and a developer must meet the following requirements for the utility to achieve AMFs eligibility: (1) the PPA must have Commission approval and be selected through a competitive solicitation, (2) it must cover a duration of at least 10 years; (3) it must develop a new or repowered facility commencing operations on or after January 1, 2005; (4) it must not be a purchase of renewable energy credits; and (5) it must not include any indirect expenses as set forth in the statute.

¹⁶ On May 28, 2009, the Director of the Energy Division notified SDG&E that it had exhausted its AMFs account.

¹⁷ See Pub. Util. Code § 399.15(d).

Based on a May 2011 commercial online date for the Amended PPAs, the 20-year PPA is above the 2009 MPR. However, the Amended PPAs do not meet the eligibility criteria for AMFs because it is the result of bilateral negotiations.

Since PG&E has exhausted its AMFs, it is voluntarily entering into the PPA at a price that exceed the applicable market price referent as permitted by Public Utilities Code § 399.15(d).

Project Viability Assessment and Development Status

The Facilities are operational having been restarted in May 2011. Akeida Capital¹⁸ recently acquired the Facilities. PG&E asserts that Akeida Capital has the necessary financial resources to effectively manage the projects and the development team has experience permitting, financing, constructing and operating power plants in California and throughout the United States.

Technology/Fuel

The facilities use fluidized bed boilers, which are a mature combustion technology. Fluidized boilers have the ability to handle a large variety of fuels as well as lower NOx emissions from lower operating temperatures.

The fuel used consists of almond tree prunings, rice straw, wheat straw, cotton stalks, vineyard prunings, a wide variety of other agricultural waste products available in the region, along with demolition urban wood wastes.¹⁹ Global diversifies by supply source, contracting both urban fuel and agricultural waste.

PG&E has also demonstrated that Global has appropriately hedged for rising fuel pricing and through the use of multi-year fuel purchase agreements with multiple vendors.

PG&E asserts that the Amended PPAs will support the ongoing viability of the projects.

¹⁸ <http://www.akeidacapital.com>

¹⁹ <http://www.energyproducts.com/Chowchilla.htm>

Compliance with the Interim Greenhouse Gas Emissions Performance Standard

California Pub. Utils. Code §§ 8340 and 8341 require that the Commission consider emissions associated with new long-term (five years or greater) baseload power contracts procured on behalf of California ratepayers.²⁰

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.²¹

Generating facilities using certain renewable resources are deemed compliant with the EPS. Because the Facilities will be fueled by biomass that would otherwise be disposed of by open burning, forest accumulation, landfill, spreading or composting, the PPA meets the conditions for EPS compliance established in D.07-01-039.²²

The PPA complies with the EPS because it meets the conditions established in D.07-01-039.

The Amended PPAs meet the conditions for EPS compliance established in D.07-01-039 because the Global Facilities are one of the pre-approved renewable energy technologies listed in D.07-01-039 that are deemed EPS compliant.

²⁰ "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).

²¹ D.07-01-039, Attachment 7, p. 4

²² See D.07-01-039, COL 35.

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.²³ PG&E asserts that the Amended PPAs were discussed at a PRG meeting in April 12, 2011.

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

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.²⁴

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

²³ PG&E's PRG includes representatives of the Union of Concerned Scientists, the Coalition of California Utility Employees, The Utility Reform Network, the California Public Utility Commission's Energy Division and Division of Ratepayer Advocates, and the California Department of Water Resources.

²⁴ 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.”²⁵

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.²⁶ In the calendar year that a short-term contract with an existing facility is executed, the utility must also enter into long-term contracts or contracts with new facilities equivalent to at least 0.25% of the utility’s previous year’s retail sales.

As a long term contract, delivering pursuant a contract greater than 10 years in length, the Amended PPAs will contribute to PG&E’s minimum quantity requirement established in D.07-05-028.

²⁵ See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

²⁶ 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.²⁷

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.

²⁷ The Global Common Chowchilla PPA will become public 12/12/2011 and Global Common El Nido PPA will become public 2/21/2012 and will be posted on the Commissions RPS website 1/2012 and 4/2012 respectively under the RPS Project Status Table. <http://www.cpuc.ca.gov/PUC/energy/Renewables/index.htm>

FINDINGS AND CONCLUSIONS

1. The Amended Purchase Power Agreements (PPAs) are consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.
2. The Amended PPAs are consistent with PG&E's 2009 RPS Procurement Plan, including PG&E's RPS resource needs, approved by D.09-06-018.
3. PG&E has demonstrated that it has an incremental need for RPS-eligible generation in the first compliance period which the Global Amended PPAs will contribute to.
4. The Amended PPAs were evaluated consistent with the PG&E's Least Cost Best Fit (LCBF) methodology.
5. The Amended PPAs include 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.
6. Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw PG&E's negotiations with Global and recommends the contract be approved.
7. Executive Order S-06-06 promotes near-term biomass development in California.
8. The Amended PPAs' costs are reasonable.
9. Payments made by PG&E under the Amended PPAs are fully recoverable in rates over the life of the PPAs, subject to Commission review of PG&E's administration of the PPAs.
10. Based on a May 2011 commercial online date for the Amended PPAs, the 20-year PPAs are above the 2009 Market Price Referent (MPR).
11. Since PG&E has exhausted its AMFs, it is voluntarily entering into the PPAs at a price that exceed the applicable market price referent as permitted by Public Utilities Code § 399.15(d).
12. Approval of the Amended PPAs will support the ongoing viability of the projects.
13. The Amended PPAs meet the conditions for Emissions Performance Standard (EPS) compliance established in D.07-01-039 because the biomass facilities are one of the pre-approved renewable energy technologies listed in D.07-01-039 that are deemed EPS compliant.

14. Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the Amended PPAs.
15. Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw PG&E's negotiations with Global and recommends the contract be approved.
16. As a long term contract, delivering pursuant a contract greater than 10 years in length, the Amended PPAs will contribute to PG&E's minimum quantity requirement established in D.07-05-028.
17. The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.
18. AL 3837-E should be approved effective today without modification.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company's Advice Letter 3837-E, requesting Commission review and approval of two amended power purchase agreements with Global Ampersand, LLC, is approved without modifications.

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 15, 2011; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Confidential Appendix A

Contract Summary

[REDACTED]

Confidential Appendix B

Global Ampersand PPA Amendment Major Contract Provisions

[REDACTED]

Confidential Appendix C

Independent Evaluator Discussion of Merit for Approval
for AL 3837-E

[REDACTED]

