

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

REDACTED

ID #6189

RESOLUTION E-4046

December 14, 2006

R E S O L U T I O N

Resolution E-4046. Pacific Gas and Electric Company (PG&E) requests approval of Geysers Power Company renewable procurement contract. This advice letter is approved with modifications.

By Advice Letter 2915-E filed on October 16, 2006, Supplemental Advice Letter 2915-E-A filed on November 2, 2006, and Substitute Sheet filed on November 6, 2006.

SUMMARY

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

PG&E filed Advice Letter (AL) 2915-E on October 16, 2006, requesting Commission review and approval of a power purchase agreement (PPA) executed with the Geysers Power Company, LLC (Geysers). The energy acquired from this contract will count towards PG&E's RPS requirements. The Agreement between Calpine and PG&E replaces the final year (2007) of an existing contract between the two parties, and continues for five subsequent years, for a total of a six-year contract. Deliveries from this PPA are reasonably priced because the price includes competitive market costs for Energy, Environmental Attributes and Resource Adequacy. This PPA is not eligible for supplemental energy payments (SEPs) from the California Energy Commission (CEC).

Generating Facility	Type	Term Years	MW	GWh	Online Date	Location
Geysers	Geo	6	200	1,752	1/07	Sonoma, CA

The contract price is fully recoverable in rates over the life of the contract, subject to Commission review of PG&E's administration of the contracts. However, PG&E's request for a non-bypassable charge is denied.

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 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

Commission issued guidelines and procedures for implementation of the Renewable Portfolio Standard (RPS) program.

Senate Bill (SB) 1078, chaptered on September 12, 2002¹, established the California Renewable Portfolio Standard Program, which required an electrical corporation to increase its use of eligible renewable energy resources² to 20 percent of total retail sales no later than December 31, 2017³.

In D.03-06-071, issued on June 19, 2003, the Commission took the first steps toward implementing the RPS program by establishing a process to determine the market price of electricity, and adopting flexible rules for compliance in case of excess or inadequate annual procurement.

The State's Energy Action Plan (EAP) called for acceleration of the RPS goal to reach 20 percent by 2010. The Commission adopted this accelerated goal in the Order Instituting Rulemaking (R.04-04-026) issued on April 28, 2004.⁴ On September 26, 2006, Governor Schwarzenegger signed Senate Bill 107 (SB 107, Chapter 464, Statutes of 2006), which officially accelerates the State's RPS targets to 20 percent by 2010. SB 107 also establishes new

¹ Statutes of 2002, Chapter 516

² Defined in PU Code section 399.12(a)

³ PU Code Section 399.15(b)(1)

⁴ http://www.cpuc.ca.gov/Published/Final_decision/36206.htm

rules regarding the approval of short-term (less than 10 years in duration) and bilateral contracts. The bill takes 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 target⁵ (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.

Commission established bilateral procurement guidelines for the RPS Program

The Commission has issued a series of decisions that established 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 methodology⁶ 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.03-06-071⁷ allows a utility and a generator to enter into

⁵IPT - 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

⁶ D.04-06-015, http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/37383.htm

⁷ http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/27360.htm

bilateral contracts outside of the competitive solicitation process. According to D.03-06-071, bilateral contracts will only be allowed if they do not require Public Goods Charge (PGC) funds.⁸

In D.06-10-019⁹, the Commission clarified D.03-06-071, stating that while bilaterals are not eligible for SEPs funds via the Market Price Referent (MPR) evaluation process, the contracts must be deemed reasonable. D.06-10-019 also stated that the Commission may develop a price evaluation tool for evaluating the reasonableness of utilities' bilateral RPS contracts. However, in the interim, utilities' bilateral contracts can be evaluated prior to establishing formal evaluation criteria.

Commission and California Energy Commission (CEC) have established guidelines for RPS contracts less than 10 years in term.

In D.06-10-019, the Commission states that all RPS-obligated LSEs are free to enter into bilateral contracts of any length with RPS-eligible generators, as long as the contracts are at least one month in duration, to enable the CEC to verify RPS procurement claims.¹⁰

However, SB 107 prescribes a prerequisite for the approval of short term contracts (less than 10 years). This prerequisite requires the CPUC to establish minimum quantities of eligible renewable energy resources to be procured either through contracts of at least 10 years' duration or from new facilities commencing commercial operations on or after January 1, 2005. SB 107 affirms that this quantity must be developed before the Commission authorizes *any* contract of less than 10 year's duration. Additionally, D.06-10-019 recognizes that the CPUC needs a more robust method of evaluating the price of utilities' contracts of less than 10 years, since the existing MPR calculation is not an appropriate yardstick.

⁸ 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.

⁹ http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/60585.htm

¹⁰ Additionally, D.06-03-016 affirmed that utilities may accept counteroffered contracts for less than 10 years' duration, even though the statutory requirement is that utilities must offer contracts of at least 10 years in their RPS solicitations. (http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/54125.htm)

Since SB 107 will not be in effect until January 1, 2007, D.06-10-019 provides interim guidance on the CPUC evaluation process for short-term contracts. This decision finds that the CPUC may approve bilateral contracts of any length prior to January 1, 2007 before completing the above noted tasks. For approval, the short-term contracts must be deemed reasonable by the CPUC.

The Geysers facility is preexisting¹¹ and resulted from bilateral negotiations¹² – two reasons why it is not eligible for SEPs. In addition, once SB107 goes into effect, contracts less than 10 years will not be eligible for SEPs¹³.

PG&E requests approval of renegotiated renewable energy contract

On October 16, 2006, PG&E filed AL 2915-E requesting Commission approval of a renewable procurement contract negotiated with the Geysers Power Company (Geysers). PG&E filed a Supplemental Advice Letter on November 2, 2006 to amend certain terms and conditions in the PPA to conform with the “May not be Modified” Standard Contract Terms and Conditions defined in the CPUC D. 04-06-014, Appendix A.

The PPA results from bilateral negotiations as part of an integrated Bankruptcy settlement with Calpine Corporation. The Commission’s approval of the PPAs will authorize PG&E to accept future deliveries of incremental supplies of renewable resources and contribute towards the 20 percent renewables procurement goal required by California’s RPS

¹¹ CEC RPS Eligibility Guidebook, April 2006, pp. 17. “A facility that is eligible for the RPS may also be eligible for SEPs. To qualify as eligible for SEPs, ... a facility is either a “new,” meaning the facility first commences commercial operations on or after January 1, 2002...or “repowered”...”

¹² “[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).

¹³ Section 16 of SB 107 amends §399.14. This restriction is found in new §399.14(b)(1).

statute.¹⁴ On September 26, 2006, PG&E reported a 2007 incremental procurement target of 750 GWh¹⁵. With the approval of this new PPA¹⁶, PG&E will have contracted for deliveries of up to 1,000 GWh towards that target, or approximately 133% percent of its 2007 IPT.

PG&E requests final “CPUC Approval” of PPA

PG&E requests that Commission approve 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 which:

1. Approves the PPA and its associated hedging plan in its entirety, including payments to be made by PG&E during the entire term of the agreement, subject to CPUC review of PG&E’s administration of the Agreement;
2. Finds that procurement pursuant to the PPA is procurement from an eligible renewable energy resource for purposes of determining PG&E’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision (D.)03-06-071, or other applicable law;
3. Finds that at least 832 GWh¹⁷ of the annual procurement pursuant to the PPA constitutes incremental procurement by PG&E from an eligible renewable energy resource 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 (Public

¹⁴ 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.

¹⁵ Pacific Gas and Electric Company Renewable Portfolio Standard 2007 Renewable Energy Procurement Plan, September 26, 2006, pg. 6.

¹⁶ The California Energy Commission is responsible for determining the RPS-eligibility of a renewable generator. See Public Utilities Code Section 399.12 and CPUC D.04-06-014.

¹⁷ See footnote 2.

- Utilities Code Section 399.11 et seq.), D.03-06-071, or other applicable law;
4. Finds that payments made under the PPA and 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 the PPA and its associated hedging plan are eligible for recovery through a non-bypassable charge over the life of the contracts consistent with the provisions of D.04-12-048.
 6. Makes CPUC approval of this PPA contingent on the approval of the related RA PPAs and FERC approval of the settlement between Calpine and PG&E regarding past, current, and limited future Reliability Must Run (RMR) issues.

In D.02-08-071, the Commission required each utility to establish a Procurement Review Group (PRG).

The members of a PRG, subject to an appropriate non-disclosure agreement, have the right to consult with the utilities and review the details of each utility's:

1. Overall transitional procurement needs and strategy;
2. Proposed procurement processes including, but not limited to, the requests for offers (RFOs); and
3. Proposed procurement contracts before any of the contracts are submitted to the Commission for expedited review and approval.

PG&E's PRG participated on several occasions in discussions of the Calpine Geysers contract proposed in AL 2915-E. The first briefing occurred on August 28, 2006, and provided an overview of the settlement with Calpine. The PRG members were updated on the progress of the settlement negotiations again on September 25, 2006. None of the PRG members objected to this PPA.

Although Energy Division is a member of the PRG, it reserved judgment on the contracts until the advice letter was filed. Energy Division reviewed the transaction independently of the PRG, and allowed for a full protest period before concluding its analysis.

NOTICE

Notice of AL 2915-E and AL 2915-E-A was made by publication in the Commission’s Daily Calendar. Pacific Gas and Electric states that a copy of the Advice Letter and Supplemental Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

Merced Irrigation District and Modesto Irrigation District filed a protest against AL 2915-E

On November 6, 2007, Merced Irrigation District and Modesto Irrigation District (the Districts) filed a joint protest against Advice Letter 2915-E. While the parties did not object to the Geysers PPA itself, both parties objected to PG&E’s request for approval of a non-bypassable charge (NBC) for the costs over the life of the contract. They argued that the Geysers PPA is not eligible for the cost recovery mechanisms (including the NBC) outlined in D. 04-12-048 because the PPA was not a result of a competitive solicitation.

On November 9, 2006, PG&E responded to the Districts’ protest by stating that the Districts’ narrow reading of D.04-12-048 is not contextually appropriate. Rather, they claim that nowhere in that decision does the Commission actually adopt a policy that contracts resulting from bilateral negotiations are prohibited. PG&E substantiates their argument by pointing to instances of Commission approved non-bypassable charges for resources not procured through competitive solicitations.

DISCUSSION

Description of the project

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

Generating Facility	Type	Term	MW	GWh	Online	Location
Geysers	Geo	6	200	1,752	1/07	Sonoma, CA

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

- Consistency with PG&E's 2006 RPS procurement plan
- Compliance with RPS bilateral guidelines
- Consistency with RPS Standard Terms and Conditions (STC)
- Contribution to PG&E's 20% by 2010 RPS procurement goal
- Implications of outcome of FERC settlement and approval of Resource Adequacy PPA
- Reasonableness of the levelized PPA price
- Project viability of Geysers facility
- Protest by Modesto and Merced

PPA is consistent with PG&E's 2006 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.¹⁸ PG&E's 2006 RPS plan was approved by D.06-05-039 on May 25, 2006. 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.¹⁹

The PPA fits with identified renewable resource needs

In its approved 2006 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 800 GWh per year. Projects capable of providing actual deliveries with only a short or no delay are especially

¹⁸ Pub. Util. Code Section 399.14(c).

¹⁹ Pub. Util. Code Sec. 399.14 (a)(3).

valuable to PG&E. With a nameplate capacity of 200 MW and the capability of starting deliveries in 2007, the PPA for geothermal-based baseload electricity generation is expected to contribute towards fulfilling PG&E's RPS target.

PPA is consistent with RPS bilateral contracting guidelines

The proposed PPA is consistent with Commission decisions regarding RPS bilateral contracts²⁰ for the following reasons:

1. The PPA is not seeking Supplemental Energy Payment (SEP) funds. The PPA is ineligible for SEPs because (1) it did not result from a competitive solicitation²¹ and (2) it is a preexisting facility²². Specifically, the facility was in operation prior to 2002.
2. Pursuant to D.06-10-019, the PPAs were submitted by advice letter.²³
3. The PPA is at least one month in duration.²⁴
4. The PPA is reasonably priced, based on an assessment the market price of Energy and the comparison the prices for Environmental

²⁰ "[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)

²¹ "[The CPUC]...will allow prudent bilateral contracts only when such contracts do not require any PGC funds" (D.03-06-071 p. 59).

²² CEC RPS Eligibility Guidebook, April 2006, pp. 17. "A facility that is eligible for the RPS may also be eligible for SEPs. To qualify as eligible for SEPs, ... a facility is either a 'new,' meaning the facility first commences commercial operations on or after January 1, 2002...or 'repowered'..."

²³ D.06-10-019, p. 31

²⁴ "All RPS-obligated LSEs are also free to enter into bilateral contracts of any length with RPS-eligible generators, as long as the contracts are at least one month in duration, to enable the CEC to verify RPS procurement claims." (D.06-10-019 p. 29)

Attributes and Resource Adequacy to other RPS contracts. The contract price of bilaterals must be deemed reasonable by the Commission.²⁵

The Commission intends to include more explicit standards for the reasonableness of short-term bilateral RPS contracts in a decision in the near future. Until such decision is approved, the Commission will continue to consider the approval of RPS short-term bilateral contracts only on a case-by-case basis.

The PPAs are Consistent with Adopted Standard Terms and Conditions

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 attempted to modify some of the non-modifiable standard terms in order to reach agreement.

PG&E filed a Supplemental Advice Letter (AL 2915-E-A) on November 2, 2006 to amend certain terms and conditions in the PPA to conform with the "May not be Modified" Standard Contract Terms and Conditions defined in the CPUC Decision (D.) 04-06-014, Appendix A.

PPA will contribute significantly to PG&E's RPS procurement goals

The proposed PPA consists of 17 operational geothermal power plants (200 MW), representing 1,752 GWh of RPS-eligible procurement, 832 GWh is from new renewable resources. Also, this PPA contracts for 1,000 GWh more than the existing Geysers - PG&E bilateral contract, which allows PG&E to reach 133% of its 2007 incremental procurement target (IPT)²⁶.

Approval of PPA is contingent on CPUC approval of related Resource Adequacy PPA and the outcome of the FERC settlement.

In December 2005, Calpine filed for bankruptcy. The proposed contract in AL 2915-E would replace an existing bilateral contract²⁷ with Calpine that

²⁵ D.06-10-019, p. 31

²⁶ PG&E's 2007 IPT is 750 GWh. Pacific Gas and Electric Company Renewable Portfolio Standard 2007 Renewable Energy Procurement Plan, September 26, 2006, pg. 6.

²⁷ PG&E filed the existing Geysers PPA in Advice Letter 2303-E on November 15, 2002. The advice letter was approved by the CPUC with Resolution E-3805.

has been submitted for rejection in Calpine's bankruptcy proceeding, and which will expire at the end of 2007.

In addition to the RPS procurement PPA, PG&E and Calpine have negotiated a Resource Adequacy PPA and a FERC settlement. Together these agreements represent an integrated bankruptcy settlement agreement that must be approved or rejected all together. The FERC settlement agreement was filed on October 19, 2006 and will determine whether Calpine will receive its desired or necessary approvals from its Creditors' Committee and/or Bankruptcy Court to perform its obligations under the Agreement. The RA Agreement was filed in a separate advice letter on October 23, 2006, requesting the approval of two PPAs for RA from the Los Medanos and Metcalf Energy Centers.

PPA price and hedging plan are reasonable

Because the proposed PPA is a six-year bilateral contract, the reasonableness of the price can not be directly evaluated by the Market Price Referent (MPR) because (1) the Energy Division only calculates the MPR for contracts 10 years or longer and (2) D. 06-10-019 specifically states that bilateral contracts are not subject to the MPR. Because there is no pre-established process for determining the reasonableness standard for a bilateral contract, D. 06-10-019 provides an interim authority allowing the Commission to approve contracts based on a reasonableness standard determined at its own discretion. In the case of the Geysers PPA, the reasonableness of the price is compared to the market price for energy at NP-15 and the prices for Environmental Attributes and Resource Adequacy in similar RPS contracts.

The pricing in this contract is based on a hedging plan that will effectively fix the price of the RPS energy over the entire contract term.²⁸ This price includes the values for Energy, Environmental Attributes (EA) and Resource Adequacy (RA). The Commission finds the levelized price reasonable because the prices for the energy and for the adders (EA and RA) are competitive and comparable to prices for similar products on the market.

²⁸ The Commission has stated a strong preference against RPS contract prices which fluctuate with the price of natural gas. Although PG&E's proposed hedging plan is not the conventional method for fixing a contract price, in the end, it accomplishes this goal.

Lastly, the Agreement between Calpine and PG&E replaces the final year (2007) of an existing contract between the two parties, and continues for five subsequent years, for a total of a six-year contract. Confidential Appendix B provides a cost-benefit analysis of replacing the final year of the existing PPA with a new 6-year bilateral agreement. The analysis demonstrates that the increased notional cost of terminating the contract is small relative to the value of the proposed Geysers contract, which 1) is part of an integrated Bankruptcy settlement package, 2) contracts for reasonably priced local Resource Adequacy, 3) contributes significantly to PG&E's RPS procurement goals, and 4) brings existing baseload generation online in early 2007.

Geysers facility is a viable project

PG&E believes that the projects are viable because:

Project milestones

The PPA concerns an existing facility; there is no development prior to delivery or any associated milestones

Financeability of resource

The PPA is for an existing facility, so viability issues are minor

Production tax credit

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

Sponsor's creditworthiness and experience

Geysers parent company, Calpine is in bankruptcy. To mitigate the risk that the seller will not perform as required by the PPA or default following the commencement date, Geysers is required to post performance security. The amount of security is equivalent to the amount of six months of what PG&E terms "the revenues at risk", namely, the Environmental and Resource Adequacy adders.

The protest by Merced Irrigation District and Modesto Irrigation District is misguided.

The Districts' protest argues that the proposed non-bypassable charge is not consistent with D.04-12-048 because the Geysers PPA was not the result of a competitive solicitation. They further state that under current Commission decisions, all resources must participate in a competitive solicitation.

The Parties to the protest have interpreted the Commission's decisions incorrectly because all RPS-obligated load serving entities *are* able to enter into bilateral contracts. The Commission specifically addresses the eligibility of bilateral contracts in D. 06-10-019. Further, while D. 04-12-048 does state in Conclusion of Law 33 that the Commission *should* adopt a policy that all resources participate in solicitations, this Decision does not order the Commission to do so. Instead, the Commission expressed a strong preference, but did not a mandate, that all contracts be selected through a competitive solicitation.

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

Contrary to PG&E's claim, Commission Decision 04-12-048²⁹ does not explicitly 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. Moreover, the Commission did not consider by what mechanism, if any, it would allow a utility to recover stranded costs for RPS contracts if deemed appropriate.

Fundamentally, the issue of NBCs has never been addressed in the RPS proceeding, and the use of one would require input from all parties on whether an NBC should be allowed for all RPS procurement; and if so, how an NBC would be implemented, calculated, and evaluated for approval of different types of RPS contracts. The Advice Letter process used to approve RPS contracts is not the appropriate forum to initiate a cost recovery mechanism for NBCs if deemed appropriate for all RPS contracts. If PG&E wishes to pursue the approval of NBCs for RPS

²⁹ http://www.cpuc.ca.gov/word_pdf/FINAL_DECISION/43224.pdf

contracts, we recommend the issue be addressed through its Long-Term Procurement Plans in R.06-02-013.³⁰

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 2915-E on October 16, 2006 requesting Commission review and approval of a renewable energy resource procurement contract between Geysers Power Company and PG&E.
2. PG&E filed Supplemental Advice Letter 2915-E-A on November 2, 2006 to amend certain terms and conditions in the PPA to conform with the "May not be Modified" Standard Contract Terms and Conditions defined in the CPUC Decision D.04-06-014, Appendix A.
3. A protest to AL-2915-E was filed by the Merced Irrigation District and Modesto Irrigation District on November 6, 2006.
4. PG&E filed Reply Comments to the protest on November 9, 2006.
5. PG&E filed a Supplemental Advice Letter (AL 2915-EA) on November 2, 2006 to amend certain terms and conditions in the PPA to conform

³⁰ On December 11, 2006, the IOUs will be filing their Long-Term Procurement Plans in R.06-02-013. As part of those plans, the IOUs have been instructed to file plans that include procurement implementation plans, including any relevant cost recovery issues (Reference: See R.06-02-013, Phase 2 Scoping Memo, Issued September 25, 2006, Attachment A, Section VII, page 21).

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with the “May not be Modified” Standard Contract Terms and Conditions defined in the CPUC Decision (D.) 04-06-014, Appendix A.

6. PG&E’s briefed its Procurement Review Group regarding the Geysers contract on August 28, 2006, and again on September 25, 2006. The members of PG&E’s PRG either supported or did not oppose the approval of this contract.

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 2010, increasing by a minimum of one percent per year.
2. The Commission requires each utility to establish a Procurement Review Group (PRG) to review the utilities’ interim procurement needs and strategy, proposed procurement process, and selected contracts.
3. D. 03-06-071 allows a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process.
4. D. 06-10-019 allows all RPS-obligated LSEs to enter into bilateral contracts of any length with RPS-eligible generators, as long as the contracts are at least one month in duration, to enable the CEC to verify RPS procurement claims.
5. The pricing plan for short-term bilateral contracts must be reasonable.
6. D.04-06-014 set forth standard terms and conditions to be incorporated into RPS PPAs, including bilateral contracts. Some of the standard terms and conditions are non-modifiable.
7. Because this resolution is dated prior to January 1, 2007, it is not subject to the development of new pre-conditions for short-term bilateral contracts adopted in Senate Bill 107.
8. Subject to CEC verification requirements, 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.

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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. Geothermal energy facilities are RPS-eligible renewable energy resources.
11. The payments made under this contract 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.
12. Certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C, 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.
13. Approval of this advice letter does not constitute a precedent for future renewable contract price structures.
14. The use of non-bypassable charges for this contract is not approved.
15. The payments made under the PPA and any indirect costs of renewables procurement identified in Section 399.15(a)(2) shall be recovered in rates.
16. Advice Letter 2606-E should be approved effective today.

THEREFORE IT IS ORDERED THAT:

1. Advice Letter AL 2915-E is approved with modifications.
2. The payments made under this contract 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. The use of non-bypassable charges for this contract is not approved.

4. 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 Summary: Geysers Power Company

REDACTED

Confidential Appendix B
Projects' Contribution Toward RPS
Goals

REDACTED