

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

I.D. #7461  
RESOLUTION E-4161  
April 10, 2008

REDACTED

R E S O L U T I O N

Resolution E-4161 Pacific Gas and Electric (PG&E) Company requests approval of a renewable resource procurement contract. This contract is approved without modification.

By Advice Letter 3143-E filed on October 29, 2007, and Supplemental Advice Letter 3143-E-A filed on February 8, 2008.

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SUMMARY

**PG&E's renewable contract, which results from bilateral negotiations, complies with the Renewables Portfolio Standard (RPS) procurement guidelines and is approved without modification**

PG&E's renewable contract complies with the Renewables Portfolio Standard (RPS) procurement guidelines and is approved. PG&E's request for approval of a renewable resource procurement contract is granted pursuant to Decision (D.) 06-05-039, which approved PG&E's 2006 procurement plan. The energy acquired from this contract will count towards PG&E's Renewables Portfolio Standard (RPS) requirements.

<b>Generating Facility</b>	<b>Type</b>	<b>Term Years</b>	<b>MW Capacity</b>	<b>Annual Deliveries</b>	<b>Online Date</b>	<b>Project Location</b>
Shiloh II	Wind	20	150 MW	509 GWh	December 31, 2008	Solano County, California

Deliveries from this contract are reasonably priced, and 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 contract.

**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**

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

The California Renewables Portfolio Standard (RPS) Program was established by Senate Bill 1078<sup>1</sup> and codified by California Pub. Util. Code Section 399.11, et seq. The statute required that a retail seller of electricity such as PG&E purchase a certain percentage of electricity generated by Eligible Renewable Energy Resources (ERR). Originally, each utility was required to increase its total procurement of ERRs by at least 1 percent of annual retail sales per year until 20 percent is reached, subject to the Commission's rules on flexible compliance, no later than 2017.

The State's Energy Action Plan (EAP) called for acceleration of this RPS goal to reach 20 percent by 2010.<sup>2</sup> This was reiterated again in the Order Instituting Rulemaking (R.04-04-026) issued on April 28, 2004,<sup>3</sup> which encouraged the utilities to procure cost-effective renewable generation in excess of their RPS annual procurement targets (APTs)<sup>4</sup>, in order to make progress towards the goal expressed in the EAP. On September 26, 2006, Governor Schwarzenegger signed

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<sup>1</sup> Chapter 516, statutes of 2002, effective January 1, 2003 (SB 1078)

<sup>2</sup> The Energy Action Plan was jointly adopted by the Commission, the California Energy Resources Conservation and Development Commission (CEC) and the California Power Authority (CPA). The Commission adopted the EAP on May 8, 2003.

<sup>3</sup> [http://www.cpuc.ca.gov/Published/Final\\_decision/36206.htm](http://www.cpuc.ca.gov/Published/Final_decision/36206.htm)

<sup>4</sup> APT - An LSE's APT for a given year is the amount of renewable generation an LSE must procure in order to meet the statutory requirement that it increase its total eligible renewable procurement by at least 1% of retail sales per year.

Senate Bill (SB) 107,<sup>5</sup> which officially accelerates the State's RPS targets to 20 percent by 2010, subject to the Commission's rules on flexible compliance<sup>6</sup>.

**CPUC has established procurement guidelines for the RPS Program**

The Commission has issued a series of decisions that establish the regulatory and transactional parameters of the utility renewables procurement program. On June 19, 2003, the Commission issued its "Order Initiating Implementation of the Senate Bill 1078 Renewable Portfolio Standard Program," D.03-06-071. On June 9, 2004, the Commission adopted its Market Price Referent (MPR) methodology<sup>7</sup> for determining the Utility's share of the RPS seller's bid price, as defined in Pub. Util. 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 Pub. Util. 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.

More recently, on December 15, 2005, the Commission adopted D.05-12-042 which refined the MPR methodology for the 2005 RPS Solicitation.<sup>8</sup> Subsequent resolutions adopted MPR values for the 2005, 2006 and 2007 RPS Solicitations.<sup>9</sup> In addition, D.06-10-050, as modified by D.07-03-046, further refined the RPS reporting and compliance methodologies.<sup>10</sup> In this decision, the Commission established methodologies to calculate an LSE's initial baseline procurement

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<sup>5</sup> Chapter 464, Statutes of 2006 (SB 107)

<sup>6</sup> Pub. Util. Code Section 399.14(a)(2)(C)

<sup>7</sup> D.04-07-015

<sup>8</sup> [http://www.cpuc.ca.gov/word\\_pdf/FINAL\\_DECISION/52178.pdf](http://www.cpuc.ca.gov/word_pdf/FINAL_DECISION/52178.pdf)

<sup>9</sup> Respectively, Resolution E-3980:

[http://www.cpuc.ca.gov/WORD\\_PDF/FINAL\\_RESOLUTION/55465.DOC](http://www.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/55465.DOC),

Resolution E-4049:

[http://www.cpuc.ca.gov/word\\_pdf/FINAL\\_RESOLUTION/63132.doc](http://www.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/63132.doc), Resolution E-

4110: [http://www.cpuc.ca.gov/word\\_pdf/FINAL\\_RESOLUTION/73594.pdf](http://www.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/73594.pdf)

<sup>10</sup> D.06-10-050, Attachment A,

[http://www.cpuc.ca.gov/WORD\\_PDF/FINAL\\_DECISION/61025.PDF](http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/61025.PDF) as modified by D.07-03-046 [http://www.cpuc.ca.gov/WORD\\_PDF/FINAL\\_DECISION/65833.PDF](http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/65833.PDF).

amount, annual procurement target (APT) and incremental procurement amount (IPT).<sup>11</sup>

**Pursuant to legislation, the process for above-market cost recovery has been modified**

Pursuant to SB 1078 and SB 107, the California Energy Commission (CEC) was authorized to “allocate and award supplemental energy payments” to cover above-market costs<sup>12</sup> of long-term RPS-eligible contracts executed through a competitive solicitation.<sup>13</sup> The CEC required that developers seeking above-market costs apply to the CEC for supplemental energy payments (SEPs); however, the legislature determined that it was inefficient for developers to apply to the CEC for above-market costs while the CPUC reviewed RPS contracts for approval. Additionally, SEPs proved difficult to finance and therefore, SEPs became an impediment to project viability.

Consequently, on October 14, 2007, Governor Schwarzenegger signed SB 1036,<sup>14</sup> which authorizes the CPUC to provide above-market cost recovery through rates. The legislative intent of SB 1036 was to limit the RPS procurement costs above the MPR, beyond which the utilities cannot be required to procure. The cost limitation is equal to the amount of funds currently accrued in the CEC’s New Renewable Resources Account, and the portion of funds which would have been collected through January 1, 2012. Pursuant to SB 1036, the CEC is required to refund existing funds to the three large IOUs on March 1, 2008, and terminate the New Renewable Resources Account from Public Resources Code Section § 25751 by July 1, 2008.<sup>15</sup> Once implemented, it is expected that SB 1036 will further streamline RPS contract approval and facilitate financing for projects with above-market costs.

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<sup>11</sup> The 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.

<sup>12</sup> Note: “above-market costs” refers to the portion of the contract price that is greater than the appropriate market price referent (MPR).

<sup>13</sup> Former Pub. Util. Code 399.15(d) pursuant to SB 107 (2006)

<sup>14</sup> Chapter 685, Statutes of 2007 (SB 1036)

<sup>15</sup> <http://www.energy.ca.gov/2007publications/CEC-300-2007-002/CEC-300-2007-002-CMF.PDF>

The CEC and CPUC are working collaboratively to implement SB 1036, which became effective January 1, 2008. Prior to the CPUC's full implementation of SB 1036, the Commission may approve contracts with above-market costs and cost recovery will be approved through rates. Because PG&E's PPA resulted from bilateral negotiations, pursuant to SB 1036, the approved costs above the MPR may not be applied toward the cost limitation.<sup>16</sup>

**The Commission has established bilateral procurement guidelines for the RPS Program**

While the focus of the RPS program is procurement through competitive solicitations, D.03-06-071<sup>17</sup> allows for a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process. Specifically, D.03-06-071 states that bilateral contracts will only be allowed if they do not require Public Goods Charge (PGC) funds.

In D.06-10-019, the Commission interprets D.03-06-071, stating that bilaterals are not eligible for Supplemental Energy Payments (SEPs), and that bilateral contracts must be deemed reasonable.<sup>18</sup> Going forward, D.06-10-019 states that the Commission will look further at evaluation criteria for bilateral RPS contracts, including the issue of whether some RPS bilateral contracts should be eligible for SEPs, as SB 107 may allow.<sup>19</sup> However, in the interim, utilities' bilateral contracts can be evaluated prior to establishing formal evaluation criteria.

**Interim Greenhouse Gas Emissions Performance Standard (EPS) established guidelines for long-term electricity procurement by load-serving entities (LSE)**

A greenhouse gas emissions performance standard (EPS) was established by Senate Bill 1368<sup>20</sup>, which requires that the Commission consider emissions costs

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<sup>16</sup> Pub. Util. Code 399.15(d)(2)(A)

<sup>17</sup> [http://www.cpuc.ca.gov/PUBLISHED/FINAL\\_DECISION/27360.htm](http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/27360.htm)

<sup>18</sup> While SB 1036 (2007) reformed the SEP process, the restriction that eligible contracts must result from a competitive solicitation remains, see §399.15(d)(2)(A).

<sup>19</sup> D.06-10-019 pp. 31-32.

<sup>20</sup> Chapter 464, Statutes of 2006 (SB 1368)

associated with new long-term (five years or greater) power contracts procured on behalf of California ratepayers.

On January 25, 2007, the Commission approved D.07-01-039 which adopted an interim EPS that established emission rates for obligated facilities to levels no greater than the GHG emissions of a combined-cycle gas turbine (CCGT) power plant.<sup>21</sup> The EPS applies to all long-term energy contracts for “baseload generation,” which the statute defines as, “electricity generation from a powerplant that is designed and intended to provide electricity at an annualized plant capacity factor of at least 60%.”<sup>22</sup> Renewable facilities, which are operating under long-term contracts, are exempt from the EPS except in cases where intermittent renewable energy is shaped and firmed with generation from non-renewable resources.

### **PG&E requests approval of a renewable energy contract**

On October 29, 2007, PG&E filed Advice Letter (AL) 3143-E requesting Commission approval of a renewable procurement contract between PG&E and Shiloh II Wind Partners (Shiloh II). The PPA results from bilateral negotiations. The Commission’s approval of the PPA 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 statute.<sup>23</sup> On August 1, 2007, PG&E reported its IPT for 2006 as 767 GWh.<sup>24</sup> With the approval of this PPA, PG&E will have contracted for deliveries of up to approximately 70 percent of its 2006 IPT.

### **PG&E requests final “CPUC Approval” of Contract**

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<sup>21</sup> D.07-01-039 adopted an emission rate of 1,100 pounds of carbon dioxide per megawatt-hour for the proxy CCGT (section 1.2, page 8)  
[http://www.cpuc.ca.gov/WORD\\_PDF/FINAL\\_DECISION/64072.PDF](http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/64072.PDF)

<sup>22</sup> Pub. Util. Code 8340(a)

<sup>23</sup> California Pub. Util. 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.

<sup>24</sup> See PG&E’s Renewables Portfolio Standard Periodic Compliance Report, page 18, August 1, 2007 (R.06-05-027).

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

1. Approves the PPA in their entirety, including payments to be made by PG&E pursuant to the PPA, subject to the Commission's review of PG&E's administration of the PPA.
2. Finds that any procurement pursuant to the PPA is procurement from an eligible renewable energy resource for purposes of determining PG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.03-06-071 and D.06-10-050, or other applicable law.
3. Finds that any procurement pursuant to the PPA constitutes incremental procurement for baseline replenishment 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 RPS, D.03-06-071, or other applicable law.
4. Adopts the following findings of fact and conclusions of law in support of CPUC Approval:
  - a. The PPA is consistent with PG&E's approved 2006 Renewables Procurement Plan.
  - b. PG&E has attempted to maximize the likelihood of timely deliveries by requiring Seller to provide performance surety under terms that do not unduly increase the cost of procurement under the PPA.
  - c. The terms of the PPA, including the price of electricity, are reasonable.
5. Orders PG&E to recover its PPA procurement costs under the existing revenue recovery mechanism:
  - a. The utility's cost of procurement under the PPA shall be recovered through PG&E's Energy Resource Recovery Account.
  - b. Any stranded costs that may arise from the PPA are subject to the provisions of D.04-12-048 that authorize recovery of stranded renewable procurement costs over the life of the contract. The

implementation of D.04-12-048 stranded cost recovery mechanism is being addressed in Rulemaking ("R") 06-02-013.

6. Makes the following findings with respect to resource compliance with the Emissions Performance Standard (EPS) adopted in R.06-04-009:
  - a. Seller's renewable generating facility is an intermittent renewable energy resource, for purposes of compliance with the EPS adopted in R.06-04-009.
  - b. PG&E is exempt from the requirement to show that the net emissions rate of the project does not exceed 1,100 lbs CO<sub>2</sub> per MWh because Shiloh II is a wind generating facility.

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

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

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

The PRG for PG&E consists of: California Department of Water Resources (DWR), the Commission's Energy Division, Natural Resources Defense Council (NRDC), Union of Concerned Scientists (UCS), Division of Ratepayer Advocates (DRA), Aglet Consumer Alliance (Aglet), Coalition of California Utility Employees (CUE) and The Utility Reform Network (TURN).

On May 30, 2007, PG&E provided its PRG with a description of the Shiloh II project and contract price. Some PRG members questioned PG&E if the price of the contract was too high. In response, PG&E demonstrated the reasonable of Shiloh II's contract price in comparison with similar wind resource offers that bid into PG&E's 2006 and 2007 RPS solicitations.

Members of the PRG did not object to PG&E's decision to execute the PPA presented with this Advice Letter. Although Energy Division is a member of the PRG, it reserved its conclusions for review and recommendation on the PPA to the resolution process.

**NOTICE**

Notice of AL 3143-E and Supplemental AL 3143-E-A were made by publication in the Commission’s Daily Calendar. PG&E states that a copy of the Advice Letters were mailed and distributed in accordance with Section IV of General Order 96-B.

**PROTESTS**

Advice Letter 3143-E and Supplemental AL 3143-E-A were not protested.

**DISCUSSION**

**Description of the project**

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

<b>Generating Facility</b>	<b>Type</b>	<b>Term Years</b>	<b>MW Capacity</b>	<b>Annual Deliveries</b>	<b>Online Date</b>	<b>Project Location</b>
Shiloh II	Wind	20	150 MW	509 GWh	December 31, 2008	Solano County, California

**Energy Division examined the proposed Agreement on multiple grounds:**

- Consistency with PG&E’s CPUC approved 2006 RPS procurement plan
- Consistency with RPS bilateral guidelines
- Consistency with CPUC adopted Standard Terms and Conditions
- Assessment of project viability
- Reasonableness of the proposed Project’s contract price

**PPA is consistent with PG&E’s CPUC adopted 2006 RPS Plan**

California’s RPS statute requires the Commission to review the results of a renewable energy resource solicitation submitted for approval by a utility.<sup>25</sup>

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<sup>25</sup> Pub. Util. Code, Section §399.14

PG&E's 2006 RPS procurement plan (Plan) was approved by D.06-05-039 on May 25, 2006. Pursuant to statute, the 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.<sup>26</sup>

#### PPA fits with identified renewable resource needs

The stated goals of PG&E's 2006 Plan was to procure approximately 1-2 percent of retail sales volume or between 727 and 1,454 GWh per year, with delivery terms of 10, 15, or 20 years. Participants could submit offers for four specific products - as-available, baseload, peaking and/or dispatchable resources. The PPA is consistent with PG&E's goal of procuring energy from projects with deliveries expected to contribute towards 20% renewables in 2010. If approved, the 150 MW facility is expected to deliver, prior to 2010, approximately 70 percent of PG&E's IPT.

#### **PPA is consistent with RPS bilateral contracting guidelines**

The proposed PPA is consistent with Commission decisions regarding RPS bilateral contracts.<sup>27</sup> The PPA is not seeking funds to cover the portion of the contract price that is greater than the market price referent (MPR). The PPA is ineligible for such awards because it did not result from a competitive solicitation. Thus, the Commission must review and approve – or disapprove – recovery of the full contract costs, including those costs that are above the MPR.

In this case, the prices in the bilateral PPA exceed the 2006 MPR, albeit by a small margin. Under the RPS program, the Commission may consider contracts with prices above the MPR. Under these circumstances, we will approve this PPA for

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<sup>26</sup> Pub. Util. Code, Section §399.14(a)(3)

<sup>27</sup> “[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) Our direction in D.06-10-019 that bilateral contracts be submitted by advice letter did not address the possibility that such contracts would exceed the MPR. Since these PPAs demonstrate that utilities are negotiating bilateral contracts that exceed the MPR, we will reconsider our process in this regard.

the following reasons. First, the price is not substantially above the MPR. Second, pursuant to SB 1036, the Project does not meet eligibility criteria for above-market funds because it did not result from a competitive solicitation. Third, the project is viable and expected to contribute to the State's RPS goal of 20% renewables in 2010.

We do not mean to suggest by approval of this PPA that bilateral contract negotiation, rather than negotiations resulting from an RPS solicitation, should be viewed as a means to avoid the strictures of the MPR. The solicitation process is the strongly preferred method for acquiring RPS contracts.

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

## **Transmission and Scheduling**

### Consideration of Transmission Adders

The RPS statute requires the "least cost, best fit" eligible renewable resources to be procured. Under the RPS program, the potential customer cost to accept energy deliveries from a particular project must be considered when determining a project's value for bid ranking purposes. The RPS program uses annual transmission ranking cost reports (TRCR) to identify remaining available transmission capacity and upgrade costs for PG&E substations at which renewable resources are expected to interconnect. The \$/MWh TRCR values provided by the report are then used during the IOU's bid ranking process. Shiloh II was negotiated bilaterally; therefore, the TRCR value is not necessary. Furthermore, because Shiloh II has completed its interconnection studies, PG&E used the project specific studies in favor of the generic TRCR values. See confidential Appendix A.

### Transmission upgrades

All necessary interconnection studies have been completed. The Interconnection Agreement identified the following network upgrades, which will mitigate congestion, are scheduled to be completed in December 2008. See confidential Appendix A for a detailed description of the PPA terms and conditions related to transmission upgrades.

- Expansion of the Birds Landing switchyard to allow the looping in of the second 230 kV line and connection of Russell Substation.

- Looping in the line (Lambie-Contra Costa Substation)
- Reconnection of SMUD's Russell Substation into Birds Landing
- Reconductoring one circuit from Birds Landing to Contra Costa Substation

### Terms and conditions of delivery

Shiloh II or its agent will serve as the Scheduling Coordinator (SC) for the Project throughout the delivery term. The SC is responsible for accurately scheduling its daily generation. The point of delivery will be the Birds Landing switchyard, which is in NP-15. Following the implementation of the California Independent System Operator's (CAISO) Market Redesign Technology Upgrade (MRTU), the Project's delivery points become their interconnection point with the CAISO grid.<sup>28</sup>

### **Consistency with Adopted Standard Terms and Conditions**

The Commission set forth standard terms and conditions to be incorporated into RPS agreements in D.04-06-014, D.07-02-011 as modified by D.07-05-057,<sup>29</sup> and D.07-11-025<sup>30</sup>. Standard Terms and Conditions (STC) were identified in confidential Appendix B of D.04-06-014 as "may not be modified". On November 16, 2007, the Commission adopted D.07-11-025, which reduced the number of non-modifiable terms from nine to four, and refined the language of some of these terms in response to an amended petition for modification of D.04-06-014.<sup>31</sup> The remaining non-modifiable STCs include "CPUC Approval", "RECs and Green Attributes", "Eligibility" and "Applicable law". On February 8, 2008, PG&E filed Supplemental AL 3043-E-A, which brought the PPA into compliance with Attachment A of D.07-11-025.

### "May Not be Modified" Terms

The PPA does not deviate from the non-modifiable terms and conditions.

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<sup>28</sup> <http://www.caiso.com/docs/2001/12/21/2001122108490719681.html>

<sup>29</sup> D.07-05-057 Order Modifying Decision 07-02-011 Regarding Definition of Green Attributes  
[http://www.cpuc.ca.gov/word\\_pdf/FINAL\\_DECISION/68383.pdf](http://www.cpuc.ca.gov/word_pdf/FINAL_DECISION/68383.pdf)

<sup>30</sup> D.07-11-025, Attachment A  
[http://docs.cpuc.ca.gov/WORD\\_PDF/FINAL\\_DECISION/75354.PDF](http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/75354.PDF)

<sup>31</sup> On February 1, 2007, PG&E and SCE jointly filed a petition for modification of D.04-06-014. On May 22, 2007, a PD was filed and served. Prior to the PD being voted on by the Commission, PG&E and SCE filed an amended petition for modification of D.04-06-014.

“May be Modified” Terms

During the course of negotiations, the parties identified a need to modify some of the modifiable standard terms in order to reach agreement. These terms had all been designated as subject to modification upon request of the bidder in Appendix A of D.04-06-014 and in D.07-11-025.

**The Commission has approved a decision setting minimum quotas of RPS contracting from long-term contract or contracts with new facilities**

Pub. Util. Code 399.14(b)(2) states that before the Commission may approve an RPS contract of less than ten years’ duration, the Commission must establish “for each retail seller, 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.” On May 3, 2007, the Commission approved D.07-05-028<sup>32</sup> that established a minimum percentage of the prior year’s retail sales that must be contracted with contracts of at least 10 years’ duration or from new facilities commencing commercial operations on or after January 1, 2005. The Commission is thereby permitted to authorize renewable contracts of less than 10 years’ duration. If approved, deliveries from this contract will contribute to PG&E’s obligation pursuant to D.07-05-028.

**Contract Price is Reasonable**

While the levelized Contract Price exceeds the 2006 MPR,<sup>33</sup> Staff believes that the Contract Price is reasonable for the following reasons:

1. PG&E’s proposed project is viable
2. Project’s commercial online date is scheduled to occur prior to 2010
3. Price compares favorably to outstanding 2006 bids and 2007 wind bids

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<sup>32</sup> [http://www.cpuc.ca.gov/WORD\\_PDF/FINAL\\_DECISION/67490.PDF](http://www.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/67490.PDF)

<sup>33</sup> 2006 MPR Resolution E-4049  
[http://www.cpuc.ca.gov/word\\_pdf/FINAL\\_RESOLUTION/63132.pdf](http://www.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/63132.pdf)

Approval of this Contract will increase in-state renewable energy generation and provide greater resource diversity. The price reasonableness evaluation discussed in this resolution does not set precedence for Commission review of RPS contracts. Confidential Appendix A includes a detailed discussion of the PPA's pricing terms. Confidential Appendix B demonstrates that the net present value of the sum of payments to be made under the PPA is greater than the net present value of payments that would be made at the market price referent for the anticipated delivery.

### **PPA is a viable project**

PG&E believes the project is viable because:

#### Project Milestones

Shiloh II has executed its engineering, procurement and construction (EPC) contract and has purchased project materials including turbines, which indicates a high probability that Shiloh II will be able to meet its guaranteed construction start date. The PPA identifies the agreed upon commercial operation date as a guaranteed project milestones.

#### Financeability of resource

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

#### Sponsor's creditworthiness and experience

EnXco is a subsidiary of Advanced International Renewables of America, Inc., which is owned by Energies-Nouvelles, of which 50 percent is owned by Electricite de France (EDF).<sup>34</sup> Enxco has provided operation and maintenance services for wind farms since 1987. In 2006 and 2007, enXco developed five wind projects totaling more than 500 MW of new wind capacity.<sup>35</sup>

#### Technology

Wind is a proven resource and Solano County, California is a known wind resource area. Solano County designated the Collinsville-Montezuma Hills

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<sup>34</sup> <http://www.edf-en.com/>

<sup>35</sup> [http://www.enxco.com/company\\_current\\_projects.php](http://www.enxco.com/company_current_projects.php)

Wind Resource Area (WRA) for wind projects in 1987 because of its resource quality and suitability of land for project development.<sup>36</sup> The Project site is located adjacent to existing wind facilities with a history of delivering wind generation. The Seller has procured all turbines required to achieve full capacity.

### Permitting

The Project is expected to receive all required permits for commercial operation. Shiloh II is awaiting its approval of conditional use permit (CUP), which is necessary for project development. Travis Air Force Base (TAFB) protested Shiloh II's Environmental Impact Report (EIR), which prompted the Solano County Planning Commission to withhold approving Shiloh II's CUP. TAFB protested Shiloh II's EIR because of concerns that the Project's wind turbines may interfere with TAFB's radar image quality.

EnXco and the Air Force worked collaboratively to investigate TAFB's concerns and ultimately determined that it was reasonable to assume that the proposed Project would not compound TAFB's radar interference problems. On March 3, 2008, TAFB sent a letter to the Solano County Department of Resource Management formally withdrawing its protest of Shiloh II's EIR. PG&E expects final resolution of this issue at the March 20, 2008, Solano County Planning Meeting.

### Site Control

EnXco has 100% site control for its Shiloh II project.

### Production Tax Credit (PTC)

Shiloh II is eligible for the federal PTC currently set to expire on December 31, 2008, which coincides with Shiloh II's COD. Shiloh II has a no-fault termination right related to PTCs; however, resolution of the Travis Air Force Base radar issue will make this term moot.

### **Confidential information about the contracts should remain confidential**

Certain contract details were filed by PG&E under confidential seal. Energy Division recommends that certain material filed under seal pursuant to Public

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<sup>36</sup> Draft EIR, Introduction, p 2. <http://www.shilohii.ene.com/files/06%20-%20S01%20Introduction.pdf>

Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C, and considered for possible disclosure, should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations.

### **COMMENTS**

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

The 30-day comment period for the draft of this resolution was neither waived 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 OF FACT**

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. D.04-06-014 and D.07-11-025 set forth standard terms and conditions to be incorporated into RPS Power Purchase PPA.
3. D.07-01-039, which adopted an interim Greenhouse Gas Emissions Performance Standard for contracts greater than 5 years in length, included compliance guidelines for generation from baseload facilities with capacity factors of 60% or greater.
4. PG&E filed Advice Letter 3143-E on October 29, 2007, requesting Commission review and approval of a new renewable energy contract with Shiloh II Wind Partners, LLC. On February 8, 2008, PG&E filed Supplemental Advice Letter 3143-E-A.
5. D.06-05-039 directed the utilities to issue their 2006 renewable RFOs, consistent with their renewable procurement plans.
6. The Commission required each utility to establish a Procurement Review Group (PRG) to review the utilities' interim procurement needs and strategy, proposed procurement process, and selected contracts.

7. PG&E briefed its Procurement Review Group regarding this contract on May 30, 2007.
8. The proposed all-in contract price is above the 2006 MPR released in Resolution E-4049.
9. D.07-05-028 established conditions for counting deliveries from contracts of less than 10 years' duration for RPS compliance.
10. The Commission has reviewed the proposed PPA and finds it to be consistent with PG&E's approved 2006 renewable procurement plan.

### **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. D.04-06-014 and D.07-11-025 set forth standard terms and conditions to be incorporated into RPS PPAs.
3. The Commission has reviewed the proposed contract and finds it to be consistent with PG&E's approved 2006 renewable procurement plan.
4. D.07-01-039 determined that long-term contracts for generation from facilities with capacity factors of 60% or less, where the generation is not shaped and firmed with non-renewable resources, are deemed EPS-compliant.
5. The PPA is reasonable and should be approved in its entirety.
6. Although the price under the Contract exceeds the MPR, it is deemed 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.
7. 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.
8. Procurement pursuant to this 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.), D.03-06-071 and D.06-10-050, or other applicable law.

9. Procurement pursuant to this PPA constitutes incremental procurement or procurement for baseline replenishment 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, CPUC Decision 03-06-071, or other applicable law;
10. AL 3143-E and Supplemental AL 3143-E-A should be approved.

**THEREFORE IT IS ORDERED THAT:**

1. AL 3143-E and Supplemental AL 3143-E-A are approved.
2. The costs of the contracts between PG&E and Sellers are reasonable and in the public interest; accordingly, the payments to be made by PG&E are fully recoverable in rates over the life of the project, subject to CPUC review of PG&E's administration of the PPA.
3. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on April 10, 2008; the following Commissioners voting favorably thereon:

\_\_\_\_\_  
PAUL CLANON  
Executive Director

**REDACTED**

**Confidential Appendix A**

**Contract Summary**

**REDACTED**

**Confidential Appendix B**

**Shiloh II  
Contract Price Analysis**

**REDACTED**

**Confidential Appendix C**

**Contribution to RPS Goals**

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

**I.D. #7461****March 11, 2008****Draft Resolution E-4161****April 10 Commission Meeting****TO: PARTIES TO DRAFT RESOLUTION E-4161**

Enclosed is draft Resolution E-4161 of the Energy Division addressing PG&E's advice letter (AL) 3143-E and supplemental AL 3143-E-A. It will be on the agenda at the April 10, 2008 Commission meeting. The Commission may then vote on this Resolution or it may postpone a vote until later.

When the Commission votes on a draft Resolution, it may adopt all or part of it as written, amend, modify or set it aside and prepare a different Resolution. Only when the Commission acts does the Resolution become binding on the parties.

Parties may submit comments on the draft Resolution no later than Monday, March 31, 2008.

An original and two copies of the comments, with a certificate of service, should be submitted to:

Honesto Gatchalian  
Energy Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
fax: 415-703-2200  
email: [jnj@cpuc.ca.gov](mailto:jnj@cpuc.ca.gov)

An electronic copy of the comments should be submitted to:

Sean Simon  
Energy Division  
[svn@cpuc.ca.gov](mailto:svn@cpuc.ca.gov)

Those submitting comments and reply comments must serve a copy of their comments on 1) the entire service list attached to the draft Resolution, 2) all Commissioners, and 3) the Director of the Energy Division.

Comments may be submitted electronically.

Comments shall be limited to five pages in length plus a subject index listing the recommended changes to the draft Resolution and an appendix setting forth the proposed findings and ordering paragraphs.

Comments shall focus on factual, legal or technical errors in the proposed draft Resolution. Comments that merely reargue positions taken in the advice letter or protests will be accorded no weight and are not to be submitted.

Reply comments shall be served on parties and Energy Division no later than Monday, April 7, 2008 and may also be submitted electronically.

Late submitted comments or reply comments will not be considered.

Paul Douglas

**Project and Program Supervisor**

**Energy Division**

***Enclosures:***

Certificate of Service

Service List: R.06-05-027, R.01-10-024

## CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of Draft Resolution E-4161 on all parties in these filings or their attorneys as shown on the attached list.

Dated March 11, 2008 at San Francisco, California.

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Maria Salinas

## NOTICE

Parties should notify the Energy Division, Public Utilities Commission, 505 Van Ness Avenue, Room 4002 San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the Resolution number on the service list on which your name appears.