

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

ENERGY DIVISION

I.D. #7567  
RESOLUTION E-4170  
May 15, 2008

**R E S O L U T I O N**

Resolution E-4170 Pacific Gas and Electric (PG&E) Company requests approval of a renewable resource procurement contract and an associated hedging strategy. This contract is rejected without prejudice.

By Advice Letter 3183-E filed on December 21, 2007.

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**SUMMARY**

**PG&E's renewable contract does not comply with the Renewables Portfolio Standard (RPS) procurement guidelines and is rejected without prejudice**

Pursuant to Public Utilities Code §399.16 and existing Commission rules for the RPS Program, PG&E's renewable contract does not comply with the Renewables Portfolio Standard (RPS) procurement guidelines. This contract is rejected without prejudice.

| <b>Seller/<br/>Generating<br/>Facility</b> | <b>Type</b> | <b>Term<br/>Years</b> | <b>MW<br/>Capacity</b> | <b>Annual<br/>Deliveries</b> | <b>PPA<br/>Effective<br/>Date<sup>1</sup></b> | <b>Facility<br/>Location</b>       |
|--|-------------|-----------------------|------------------------|------------------------------|---|------------------------------------|
| Klickitat<br>PUD No. 1/<br>White Creek     | Wind        | 3.25<br>years         | 50 MW <sup>2</sup>     | 147 GWh                      | January 1,<br>2008                            | Klickitat<br>County,<br>Washington |

**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-

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<sup>1</sup> The White Creek Wind facility achieved commercial operation on November 21, 2007. AL 3183-E, p. 4.

<sup>2</sup> The White Creek Wind facility has a total capacity of 204.7 MW. AL 3183-E, p. 2.

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>3</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>4</sup> This was reiterated again in the Order Instituting Rulemaking (R.04-04-026) issued on April 28, 2004,<sup>5</sup> which encouraged the utilities to procure cost-effective renewable generation in excess of their RPS annual procurement targets (APTs)<sup>6</sup>, in order to make progress towards the goal expressed in the EAP. On September 26, 2006, Governor Schwarzenegger signed Senate Bill (SB) 107,<sup>7</sup> which officially accelerates the State's RPS targets to 20 percent by 2010, subject to the Commission's rules on flexible compliance<sup>8</sup>.

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<sup>3</sup> Chapter 516, statutes of 2002, effective January 1, 2003 (SB 1078)

<sup>4</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>5</sup> [http://www.cpuc.ca.gov/Published/Final\\_decision/36206.htm](http://www.cpuc.ca.gov/Published/Final_decision/36206.htm)

<sup>6</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.

<sup>7</sup> Chapter 464, Statutes of 2006 (SB 107)

<sup>8</sup> Pub. Util. Code Section 399.14(a)(2)(C)

### **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>9</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>10</sup> Subsequent resolutions adopted MPR values for the 2005, 2006 and 2007 RPS Solicitations.<sup>11</sup> In addition, D.06-10-050, as modified by D.07-03-046, further refined the RPS reporting and compliance methodologies.<sup>12</sup> In this decision, the Commission established methodologies to calculate an LSE's initial baseline procurement amount, annual procurement target (APT) and incremental procurement amount (IPT).<sup>13</sup>

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<sup>9</sup> D.04-07-015

<sup>10</sup> [http://www.cpuc.ca.gov/word\\_pdf/FINAL\\_DECISION/52178.pdf](http://www.cpuc.ca.gov/word_pdf/FINAL_DECISION/52178.pdf)

<sup>11</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>12</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).

<sup>13</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.

**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>14</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.<sup>15</sup>

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>16</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>17</sup> However, in the interim, utilities' bilateral contracts can be evaluated prior to establishing formal evaluation criteria.

**CEC certifies out-of-state facilities for RPS compliance**

The CEC is responsible for certifying the RPS-eligibility of renewable facilities located out-of-state which have their first point of interconnection to the WECC transmission system. The CEC, through its *Renewables Portfolio Standard Eligibility Guidebook*<sup>18</sup> (Guidebook), has adopted guidelines for pre-certifying and certifying

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<sup>14</sup> [http://www.cpuc.ca.gov/PUBLISHED/FINAL\\_DECISION/27360.htm](http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/27360.htm)

<sup>15</sup> SB 107 (Public Resources Code section 25473(b)(1)(F)) provides that, to receive SEPs, a project must have resulted from a competitive solicitation; see also § 399.13(e).

<sup>16</sup> While SB 1036 (2007) reformed the SEP process, the restriction that eligible contracts must result from a competitive solicitation remains.

<sup>17</sup> D.06-10-019 pp. 31-32.

<sup>18</sup> Renewables Portfolio Standard Eligibility, third edition, page 21-28  
<http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF>

out-of-state facilities, as well as pre-approving contract delivery structures as RPS-eligible.<sup>19</sup>

### **PG&E requests approval of a renewable energy contract and an associated hedging strategy**

On December 21, 2007, PG&E filed Advice Letter (AL) 3183-E requesting Commission approval of a renewable procurement contract between PG&E and Public Utility District No. 1 of Klickitat County, Washington (Klickitat). The PPA, which results from bilateral negotiations, also includes an associated hedging strategy for which PG&E also seeks approval.

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

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 and the Hedging Strategy in their entirety, including payments to be made by PG&E pursuant to the PPA and Hedging Strategy, subject to the Commission’s review of PG&E’s administration of the PPA and Hedging Strategy.
2. Finds that any procurement pursuant to the PPA and the Hedging Strategy 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 all indirect costs, as provided by Public Utilities Code section 399.15(d), associated with the procurement under the PPA and under the Hedging Strategy shall be recovered in rates.
4. Adopts the following findings of fact and conclusions of law in support of CPUC Approval:

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<sup>19</sup> CEC staff submitted a letter to Energy Division which states that the contract structure described by AL 3183-E would meet CEC delivery requirements pursuant to its Guidebooks. See Appendix A. The diagram and transaction summary were provided by PG&E.

- a. The PPA and the Hedging Strategy are consistent with PG&E's approved 2007 Renewables Procurement Plan.
  - b. The terms of the PPA, including the price of delivered energy, are reasonable.
5. Adopts the following findings of fact and conclusions of cost recovery for the PPA and Hedging Strategy:
- a. The Utility's cost of procurement under the PPA and Hedging Strategy 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. Adopts the following findings with respect to resource compliance with the Emissions Performance Standard ("EPS") adopted in R.06-04-009.
- a. The PPA is not a long-term financial commitment subject to the EPS under Public utilities Code section 8340(j) because its term of contract is less than five years.

**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)<sup>20</sup>, 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 its proposed PPA with Klickitat and the associated hedging strategy. Members of the PRG did not object to PG&E's decision to execute the PPA presented with this Advice Letter. However, in general, several PRG members have cautioned PG&E about executing out-of-state contracts for generation that require firming and shaping with "system power", prior to a full implementation of Assembly Bill (AB) 32<sup>21</sup>.

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 3183-E was 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**

PG&E's AL 3183-E was timely protested on January 10, 2008 by the Division of Ratepayer Advocates (DRA). Specifically, DRA recommends the Commission reject PG&E's AL 3183-E without prejudice for the following reasons:

- a. PG&E's contract with Klickitat is a tradable REC transaction, which the Commission has yet to authorize for RPS compliance

DRA argues that PG&E's transaction is a tradable REC because, "...it results in the exchange of Green Attributes between PG&E and Klickitat without delivery of any power from the renewable energy resource".

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<sup>20</sup> Aglet is no longer a member of PG&E's PRG group, but was during the time PG&E negotiated its contract with Klickitat.

<sup>21</sup> AB 32 (Nunez), Stats. 2006, chapter 488.

- b. PG&E’s PPA would set a tradable REC price prior to the Commission adopting rules for tradable RECs

DRA argues that were the Commission to approve a REC price here, it, “...would set an ambiguous precedent and send distorted price signals to the industry because there are yet no rules for understanding which elements of the transaction may be driving that price.

- c. PG&E’s PPA violates Commission adopted Standard Terms and Conditions as set forth in D.07-05-025

DRA argues PG&E’s contract, which includes modified “non-modifiable” Standard Terms and Conditions, conflicts with Commission decisions because D.07-05-025 did not provide for exceptions to the Standard Terms and Conditions that the Commission determined should not be modified.

On January 17, 2008, PG&E responded to the protest from DRA. In response to DRA’s protest, PG&E argues that its PPA with Klickitat represents a bundled energy transaction and not a tradable REC. Furthermore, PG&E states that its transaction meets the definition of “delivery” pursuant to SB 107 and is consistent with the CEC’s delivery requirement for firm and shaped deliveries from out-of-state facilities. PG&E disagrees with DRA’s argument that approval of the transaction would set a precedent for REC pricing because the PPA’s pricing terms and conditions are confidential. Finally, PG&E argues that the modifications it made to non-modifiable STCs were reasonable and do not constitute material changes.

**DISCUSSION**

**Description of the project**

The following table summarizes the substantive features of the PPA and hedging strategy.

| <b>Seller/<br/>Generating<br/>Facility</b> | <b>Type</b> | <b>Term<br/>Years</b> | <b>MW<br/>Capacity</b> | <b>Annual<br/>Deliveries</b> | <b>PPA<br/>Effective<br/>Date</b> | <b>Facility<br/>Location</b>       |
|--|-------------|-----------------------|------------------------|------------------------------|-----------------------------------|------------------------------------|
| Klickitat<br>PUD No. 1/<br>White Creek     | Wind        | 3.25<br>years         | 50 MW                  | 147 GWh                      | January 1,<br>2008                | Klickitat<br>County,<br>Washington |

### **Contract Summary**

Through its PPA with Public Utility District No. 1 of Klickitat County, Washington (Klickitat), PG&E will purchase and resell Klickitat's share of generation from a RPS-eligible wind facility, White Creek Wind Project I (White Creek). That is, Klickitat is a buyer and seller in this transaction; White Creek is currently delivering to Klickitat a portion of its generation pursuant to a 20-year contract.<sup>22</sup>

Throughout the three and a quarter year contract term, PG&E will purchase a bundled energy product and "immediately and continuously sell the energy and capacity back to Klickitat"; PG&E will retain the Green Attributes.<sup>23</sup>

### **Commission has the authority to determine the extent to which unbundled RECs can be used for RPS compliance**

Pub. Util. Code §399.16 generally addresses guidelines for renewable energy credits (REC) in the RPS program. Publ. Util. Code §399.16(a) clearly states that the Commission has the authority to determine to what extent RECs can be used for RPS compliance:

The commission, by rule, may authorize the use of renewable energy credits to satisfy the requirements of the renewables portfolio standard established pursuant to this article, subject to the following conditions:

Indeed, one of the principle objectives of R.06-02-012 was to explore the *potential* use of unbundled and/or tradable RECs for compliance with RPS requirements.<sup>24</sup> While parties and Staff have undertaken considerable work towards this effort, the Commission has yet to authorize the use of unbundled or tradable RECs for RPS compliance.

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<sup>22</sup> The White Creek facility achieved commercial operation on November 21, 2007 and is delivering 100 percent of its generation to four buyers pursuant to a 20-year energy purchase agreement. Klickitat Public Utility District No. 1 receives 26 percent of the facilities output. [http://www.cowlitzpud.org/pdf/WC\\_Q&A\\_07.pdf](http://www.cowlitzpud.org/pdf/WC_Q&A_07.pdf)

<sup>23</sup> AL 3183-E, page 2.

<sup>24</sup> [http://docs.cpuc.ca.gov/word\\_pdf/FINAL\\_DECISION/53929.doc](http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/53929.doc)

The Commission's authority is further defined by Pub. Util Code §399.16(a)(7):

The commission may limit the quantity of renewable energy credits that may be procured unbundled from electricity generation by any retail seller, to meet the requirements of this article.

**PG&E's PPA with Klickitat constitutes an unbundled REC transaction**

As described in AL 3183-E, PG&E would buy the energy and Green Attributes as a bundled product and then immediately sell the electricity and capacity back to Klickitat PUD and retain the Green Attributes. PG&E would then purchase system power and re-bundle it with the Klickitat RECs to match expected annual amounts of renewable generation from Klickitat.

We find that the transaction as structured constitutes an unbundled REC transaction. As discussed above, pursuant to § 399.16(a)(7), the Commission has the authority to limit unbundled REC transactions as necessary. We are currently considering whether and how unbundled RECs may be used for RPS compliance purposes. It would be premature to approve this advice letter until we have issued a decision in R.06-02-012.

**The Division of Ratepayer Advocates' protest is accepted in part**

DRA protested PG&E's AL 3183-E on three points (1) the PPA is a tradable REC transaction, which is not currently eligible for RPS compliance, (2) the PPA would set a price for tradable RECs, and (3) the PPA violates the Commission's rules for Standard Terms and Conditions in RPS contracts. We accept and clarify DRA's protest on item 1, and therefore, do not comment on items 2 and 3.

PG&E's AL and response to DRA's protest argues that the CEC pre-approved the type of transaction that is outlined in PG&E's PPA with Klickitat in the CEC's RPS Eligibility Guidebook. Although the CEC may have approved the type of arrangement contemplated by the PPA in this case, the Commission has not yet approved any type of unbundled REC transaction for RPS compliance similar to what PG&E appears to be requesting. At the very least, PG&E is asking the CPUC to approve a "de facto REC transaction" and its corresponding pricing scheme. If the CPUC were to approve this transaction, it would be pre-judging the "REC issue" that is currently before the Commission in proceeding R.06-02-012. Such a result would leave the Commission open to allegations that it had violated the due process rights of the parties in that proceeding.

As a result, we reject AL 3183-E without prejudice and request that PG&E resubmit it after the Commission's REC decision has been issued, if appropriate. We note that a rejection of PG&E's AL without prejudice will not result in an immediate reduction of renewable generation or future renewable energy project development.<sup>25</sup>

**The Commission withheld its evaluation of the PPA's terms and conditions, including the contract price and hedging strategy**

Because the Commission determined that PG&E's proposed PPA may not be approved at this time, we withhold any judgment of the PPA's terms and conditions, including price. The rejection of PG&E's AL without prejudice does not foreclose PG&E from resubmitting the PPA by advice letter in the future.

**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 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 this resolution has been reduced in accordance with the provisions of Rule 14.6 (b). Rule 14.6 (b) provides that the Commission may waive or reduce the comment period for a decision "where all the parties so stipulate." For the purposes of Rule 14.6(b), PG&E and DRA are the parties and

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<sup>25</sup> The White Creek facility achieved commercial operation on November 21, 2007 and is delivering 100 percent of its generation to four buyers pursuant to a 20-year energy purchase agreement. Klickitat Public Utility District No. 1 receives 26 percent of the facilities output. [http://www.cowlitzpud.org/pdf/WC\\_Q&A\\_07.pdf](http://www.cowlitzpud.org/pdf/WC_Q&A_07.pdf)

have agreed to a shortened comment period.

This matter will be placed on the first Commission agenda 23 days following the mailing of this draft resolution. Comments shall be filed no later than 13 days following the mailing of this draft resolution, reply comments shall be filed no later than 20 days following the mailing of this draft resolution.

### **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. The California Energy Commission is responsible for certifying the RPS-eligibility of renewable facilities that are located out-of-state and have their first point of interconnection to the WECC transmission system.
4. The California Energy Commission is responsible for verifying delivery from out-of-state facilities.
5. The Commission is responsible for determining the extent to which unbundled RECs can be used for RPS compliance.
6. The Commission determined that the agreement proposed in AL 3183-E would constitute an unbundled REC transaction, which has not been approved for RPS compliance.
7. PG&E filed Advice Letter 3183-E on December 21, 2007, requesting Commission review and approval of a renewable resource contract with Public Utility District No.1 of Klickitat County.
8. A protest to AL 3183-E was filed by the Division of Ratepayer Advocates on January 10, 2008 and PG&E responded to the protest on January 17, 2008.
9. 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.
10. PG&E briefed its Procurement Review Group regarding this contract on May 30, 2007.
11. D.07-05-028 established conditions for counting deliveries from contracts of less than 10 years' duration for RPS compliance.

12. The White Creek Wind Project I is operational and delivering under a long-term contract with parties other than PG&E.
13. The Commission has reviewed the proposed PPA and finds that it conflicts existing Commission rules.

### **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 California Energy Commission is responsible for certifying the RPS-eligibility of renewable facilities that are located out-of-state and have their first point of interconnection to the WECC transmission system.
4. The California Energy Commission is responsible for verifying delivery from out-of-state facilities.
5. The Commission is responsible for determining the extent to which unbundled RECs can be used for RPS compliance.
6. The Commission determined that the agreement proposed in AL 3183-E would constitute an unbundled REC transaction, which has not been approved for RPS compliance.
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. PG&E's proposed PPA conflicts with existing Commission rules for the RPS Program.
9. AL 3183-E should be rejected without prejudice.

### **THEREFORE IT IS ORDERED THAT:**

1. AL 3183-E is rejected without prejudice.
2. This Resolution is effective today.

Resolution E-4170  
PG&E AL 3183-E/SVN

May 15, 2008

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 May 15, 2008; the following Commissioners voting favorably thereon:

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

## Appendix A

# CEC Pre-Certification of Out-of-State Delivery

CALIFORNIA ENERGY COMMISSION

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



March 13, 2008

The California Energy Commission, through its staff, has reviewed the proposed contracting structure between Klickitat, White Creek Wind Project I, PG&E, and the third party seller, as identified in Advice Letter #3183-E and shown in Attachment A titled, 'Klickitat Transaction.'

The Energy Commission staff has determined that this structure would meet the delivery requirements according to the *Renewables Portfolio Standard Eligibility Guidebook, Third Edition* (CEC-300-2007-006-ED3, January 2008).

However, we remind parties to this agreement that all parties must use and be registered as account holders with WREGIS as part of RPS compliance, as outlined in the *RPS Eligibility Guidebook* (see Footnote 22, page 24). Until such time that this requirement is met, even though the delivery structure is RPS-eligible, the deliveries would not be RPS-eligible. A retail seller could not apply generation from the facility toward its RPS obligations until all parties to the transaction are account holders in WREGIS.

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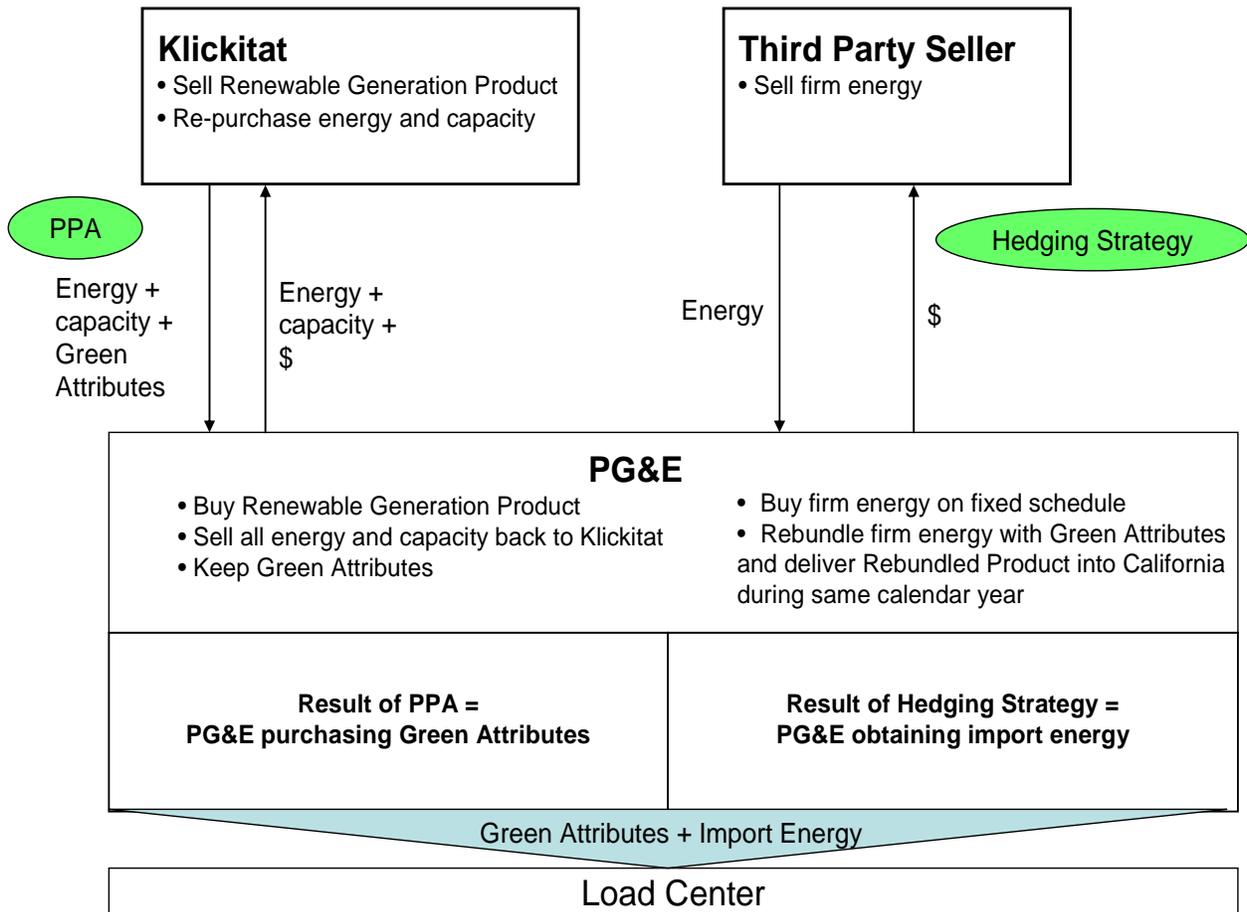
Attachments

**Klickitat Transaction**

|   |   |
|---|---|
| <b>Generator</b>                                      | White Creek Wind Project I (White Creek)  |
| <b>RPS Resource</b>                                   | Wind  |
| <b>Source of Delivered Energy</b>                     | Import energy from a third party seller at COB  |
| <b>Sink of Delivered Energy</b>                       | NP-15 (via COB)   |
| <b>Description of banking and shaping arrangement</b> | <ul style="list-style-type: none"> <li>○ PG&amp;E buys intermittent wind energy from Public Utility District No. 1 of Klickitat County, Washington (Klickitat) at the project bus bar, in volumes equal to Klickitat's share of White Creek's output (Renewable Generation Product).</li> <li>○ Title to the energy and capacity (without the Green Attributes) (Non-Renewable Generation Product) is immediately sold back to Klickitat.</li> <li>○ Pursuant to its Hedging Strategy, PG&amp;E purchases fixed price import energy from a third party seller at COB under a WSPP Schedule C fixed schedule (current wholesale market protocol) to match expected annual amounts of Renewable Generation Product.</li> <li>○ On a PG&amp;E portfolio basis, the lesser of the Renewable Generation Product metered at the project bus bar and the imported energy purchased from a third party seller during the same calendar year will count for RPS compliance.</li> </ul> |
| <b>Schematic diagram of banking/shaping</b>           | See Attachment A  |

**Attachment A**

**Klickitat Transaction**



I.D. #7567

**April 22, 2008**

**Draft Resolution E-4170**

**May 15 Commission Meeting**

TO: PARTIES TO DRAFT RESOLUTION E-4170

Enclosed is draft Resolution E-4170 of the Energy Division addressing PG&E's advice letter (AL) 3183-E. It will be on the agenda at the May 15, 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, May 5, 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

An electronic copy of the comments should be submitted to:

Sean Simon  
Energy Division  
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, May 12, 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.06-02-012, R.06-02-013 and R.06-05-027

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of Draft Resolution E-4170 on all parties in these filings or their attorneys as shown on the attached list.

Dated April 22, 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.