

Decision 09-10-017 October 15, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for Approval of a Power Purchase Agreement
with Mariposa Energy, LLC. (U39E)

Application 09-04-001
(Filed April 1, 2009)

**DECISION ADOPTING ALL-PARTY SETTLEMENT AGREEMENT
REGARDING PACIFIC GAS AND ELECTRIC COMPANY'S REQUEST FOR
POWER PURCHASE AGREEMENT WITH MARIPOSA ENERGY, LLC**

1. Summary

In this decision, we adopt an all-party Settlement Agreement and approve the first long-term power purchase agreement to procure 184 megawatts of new generation resources resulting from Pacific Gas and Electric Company's 2008 Long-Term Request for Offers. We also adopt ratemaking mechanisms for the recovery of the reasonable costs of the approved power purchase agreement, as provided for in the proposed Settlement Agreement. We find that the Settlement Agreement is reasonable in light of the whole record, is consistent with the law, and is in the public interest.

2. Procedural Background

Pacific Gas and Electric Company (PG&E) filed this application on April 1, 2009, seeking an expedited order by November 2009 on the basis that delaying an order until after that time creates the risk that the Mariposa Energy Center will not be on line by the 2012. Protests were timely filed by Californians for Renewable Energy (CARE) and by the Division of Ratepayer Advocates (DRA). The assigned Administrative Law Judge (ALJ) convened a prehearing

conference (PHC) on June 23, 2009 and the Joint Scoping Memo Ruling of the assigned Commissioner and ALJ was issued on July 9, 2009.

As stated in the Scoping Memo Ruling, issues related to cost-effectiveness, reasonableness, compliance with the directives provided in Decision (D.) 07-12-052, including viability and rate recovery proposals, are within the scope of this proceeding. All issues related to the environmental review that will occur at the California Energy Commission or to the issuance of air quality permits are excluded from this proceeding.

Parties filed and served a Joint Case Management Statement on August 7, 2009. PG&E properly noticed and convened a settlement conference on August 28, 2009. PG&E, DRA, CARE, The Utility Reform Network (TURN), and California Unions for Reliable Energy (CURE) filed a motion for approval of a proposed all-party Settlement Agreement on September 3, 2009.¹

Because the proposed Settlement Agreement is uncontested, there is no need for comments on the Settlement Agreement. In addition, because this Settlement Agreement resolves all material disputed issues, there is no need to convene evidentiary hearings. Therefore, this proceeding is submitted upon filing of the motion to approve the Settlement Agreement.

3. Mariposa Power Purchase Agreement

D.07-12-052 adopted a long-term procurement plan for PG&E, Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) that provides direction on the procurement of resources over a

¹ PG&E also filed two additional motions on September 3, 2009: a motion to receive its public testimony into evidence and a motion to file its confidential testimony and appendices under seal. The assigned ALJ granted those motions by ruling on September 25, 2009.

10-year horizon, from 2007 through 2016. The Commission authorized PG&E to procure 800-1200 megawatts (MW) of new resources (including fossil fuel resources) by 2015 and provided specific instructions:

To support the types of needs we anticipate in a [greenhouse gas] GHG-constrained portfolio and to replace the aging units on which some of this authorization is based, we require PG&E to procure dispatchable ramping resources that can be used to adjust for the morning and evening ramps created by the intermittent types of renewable resources. Preference should be given to procurement that will encourage the retirement of aging plants, particularly inefficient facilities with once-through cooling, by providing, at minimum, qualitative preference to bids involving repowering of these units or bids for new facilities at locations in or near the load pockets in which these units are located. (Emphasis in original, footnote omitted.)²

The Mariposa Power Purchase Agreements (PPA) is a 10-year fuel conversion agreement³ for dispatchable energy and capacity from four combustion turbines. The anticipated initial delivery date is July 1, 2012. The Mariposa Energy Project is expected to be located in Alameda County near Byron, CA. It will be delivered to PG&E's Kelso 230 kilovolt (kV) substation and has a capacity of 184 MWs under peak July conditions. According to PG&E, the project received a high ranking in several areas, including market valuation, portfolio fit, credit, participant qualification, project viability, technical reliability,

² D.07-12-052 at 103. PG&E also has additional procurement authority related to prior solicitations, because two PPAs were terminated by the sellers. The Bullard Energy Center and the Eastshore Energy Center were terminated by sellers, and PG&E's authorization to procure the 312 MW that would have accrued to PG&E from these projects remains in place, pursuant to D.07-12-052.

³ In a fuel conversion agreement, PG&E pays for the fuel and arranges to make it available at the project. (PG&E Prepared Testimony at 3-12.)

environmental leadership, and conformance with PG&E's non-price terms and conditions.

4. All-Party Settlement Agreement

The proposed Settlement Agreement conforms to Rules 12.1 - 12.7 of the Commission's Rules of Practice and Procedure (Rules). In particular, we find that the proposed Settlement Agreement complies with Rule 12.1(d): it is reasonable in light of the whole record, is consistent with the law, and is in the public interest, as we discuss below. The Settlement Agreement is attached to this decision as Attachment A.

Parties had the opportunity to fully review PG&E's prepared testimony and DRA and TURN have participated in the Procurement Review Group (PRG) process. We are confident that parties have addressed concerns and found a reasonable compromise in the following provisions of the Settlement Agreement:

- a. The parties agree that the total need to be procured from the 2008 Long-Term Request for Offers (LTRFO) will be limited to 1,512 MWs under peak July conditions, inclusive of the 184 MWs included in the Mariposa PPA.
- b. The parties agree that the balance of PG&E's need authorization (1,328 MWs) will be met, but not exceeded, by one application for approval of additional agreements resulting from PG&E's 2008 LTRFO.
- c. PG&E will meet and confer with the parties in the event that Mariposa Energy requests a PPA amendment that seeks to increase the prices of the Mariposa PPA for capacity, fixed operations and maintenance rate, and variable operations and maintenance costs rate, as set forth in PG&E's confidential testimony. In the event of such an amendment, the prices will not exceed those delineated in the testimony unless the parties concur with the amendment to these prices or PG&E has conducted a Request for Offers (RFO),

evaluated market alternatives, and found the new prices proposed for the amendment to be competitive with the results of its RFO. The parties reserve the right to oppose any such amendment. PG&E will require as a condition for any amendment that Mariposa Energy reimburse PG&E for any Commission-awarded intervenor compensation, to the extent that there is intervenor participation in a Commission proceeding regarding the reasonableness of any amendment.

- d. PG&E shall recover the costs of all payments made pursuant to the Mariposa PPA through the Energy Resources Recovery Account (ERRA). PG&E shall recover any stranded costs associated with the Mariposa PPA from departing load throughout the term of the PPA as non-bypassable charges consistent with D.04-12-048 and D.08-09-012.

4.1. Settlement is Reasonable in Light of the Whole Record

As described in its testimony, PG&E conducted an open, competitive and fair solicitation and contract selection process. The LTRFO complies with the requirements of D.07-12-052, in that the LTRFO was open to new renewable resources, existing Qualifying Facilities (QF), distributed generation, and repowered and new conventional fossil-fired generation. PG&E describes its outreach process, which was widely publicized and open. PG&E worked closely with its PRG, its Cost Allocation Mechanism (CAM) Group, its Independent Evaluator, and Energy Division Staff in developing the LTRFO offer materials, the evaluation process, the short-listing process, and the selection of the winning

participants.⁴ PG&E received over 48 offers proposing approximately 13,000 MWs.

In addition, the Independent Evaluator was involved in all phases of the solicitation process, as required by D.07-12-052, as modified by D.08-11-008: “Independent Evaluators are to be used for all long-term solicitations that involve affiliate transactions or utility-turnkey offers and for all competitive RFOs seeking products two years or more in duration regardless of the bidders.”⁵ PG&E’s use of the Independent Evaluator conforms to the requirements set forth in D.07-12-052.

In working with these advisory groups, PG&E asserts that it specifically identified the required types of products and product requirements in order to conform to the requirements of D.07-12-052. PG&E applied a number of “lessons learned” from its 2004 solicitation and modified both the structure of the 2008 LTRFO and the evaluation attributes considered. For example, PG&E modified provisions that address development milestones, termination provisions, collateral, and damage calculations. PG&E explains that certain

⁴ The PRGs were first established in D.02-08-071 and the Commission has continued to approve these groups, whose purpose is to advise the major investor-owned energy utilities on procurement activities, most recently in D.07-12-052 ; Ordering Paragraph 7 at 300. DRA and TURN are members of PG&E’s, SCE’s, and SDG&E’s PRGs. The CAM Groups were established in D.07-12-052 and are to be called upon when an investor-owned utility (IOU) plans to procure new generation resources and recover the costs of those resources through the cost allocation mechanism established in D.06-07-029, which allows the IOUs to recover procurement costs for system reliability resources from all customers, bundled and unbundled. The CAM Groups are to consist of existing PRG members, Commission staff, one member representing community choice aggregator customers and two members representing direct access customers. D.07-12-052 at 129, 300.

⁵ D.08-11-008 at 39.

evaluation criteria appeared to overlap in the 2004 solicitation and PG&E has now divided those criteria into Project Viability, Technical Reliability, and Environmental Leadership criteria. PG&E also structured this solicitation to address greenhouse gas (GHG) emission responsibility by requiring offers to include two prices for scenarios in which either the seller or PG&E takes the cost responsibility for a resource's GHG emissions. We discuss these aspects below.

We previously established that there is a need for 800-1200 MWs of new generation in Northern California by 2015 and directed PG&E to initiate an all-source solicitation to secure these resources, as described above. D.07-12-052 requires PG&E to procure operationally flexible resources. Because the Mariposa Energy Project is a dispatchable peaking power plant with quick start and spinning reserve capabilities, this project has the requisite operational flexibility to provide "firming" for intermittent renewable resources.⁶

In its protest and PHC Statement, DRA stated its primary concern regarding the review of this contract; i.e., whether this particular PPA can be considered in isolation and whether it is an optimal complement to other resources PG&E will procure from the 2008 LTRFO solicitation. DRA contends that a holistic approach is required both to ensure that the Mariposa PPA is cost-effective and the best technical option for ratepayers, given the particular combination of resources PG&E intends to procure and to avoid procurement in excess of the authorized need. CARE also stated concerns with cost-effectiveness, as well as viability.

⁶ PG&E Prepared Testimony at 3-15.

We concur that the remaining need is 1,328 MWs under peak July conditions. It is reasonable that PG&E file one application for approval of additional agreements resulting from its 2008 LTRFO. This approach addresses DRA's concerns regarding a holistic review of the offers and ensures that parties have the ability to analyze the cost-effectiveness of the proposed agreements presented to the Commission for approval.

In addition, CARE and DRA have expressed significant concerns about project viability and wish to ensure that approved projects are ultimately approved and on line. PG&E states that it is cognizant of the issues raised by previous projects that did not come to fruition. PG&E explains that Mariposa Energy, LLC appears to have solid financial backing and that the company has engaged in community outreach to explain the project and to gain support. Mariposa has met with various interested parties in Contra Costa, Alameda, and San Joaquin counties. PG&E also states that Mariposa has entered into discussions with adjacent property owners and plans to hire a public relations firm to assist with additional community outreach efforts.

As discussed in Footnote 2, given that the Bullard and Eastshore facilities elected to terminate their PPAs with PG&E because of local opposition and difficulty in receiving timely siting permits, it is important for PG&E to work closely and proactively with Mariposa and other generators on the public outreach effort. We agree with parties that viability is an important issue in our consideration of approval of the Mariposa PPA and should be considered in our review of future agreements resulting from the 2008 LTRFO.

4.2. Settlement is Consistent with the Law

We find that the PPA and the proposed Settlement Agreement are consistent with the law and our prior decisions. In determining the need for new

resources in D.07-12-052, we considered forecasts of energy and peak demand, and compared these with available resources consistent with the preferred loading order, including energy efficiency (EE), demand response (DR), renewable energy, and distributed generation resources. As stated in D.07-12-052, the procurement authority granted by that decision “shall in no way be used by the IOUs to instead reduce or adversely impact procurement of EE, DR, renewables, or QF resources to the maximum extent feasible.”⁷ The proposed PPA is consistent with the requirements of D.07-12-052, including the preferred loading order, and the need for dispatchable ramping resources to firm the intermittent types of renewable resources.⁸ In its prepared testimony, PG&E has stated that it does not elect to have the Mariposa PPA placed in an energy auction per D.07-09-044. This approach is consistent with the settlement agreement adopted in D.07-09-044 and is therefore reasonable.

We concur with PG&E’s determination that the GHG Emissions Performance Standard (EPS) adopted in D.07-01-039 does not apply to this PPA. The EPS applies to contracts of five years duration or greater; contracts with all specified resources; and generating facilities designed and intended to provide electricity at an annualized capacity factor of 60 percent or greater.⁹ In conformance with the requirements of D.07-01-039, PG&E has demonstrated that the four combustion turbines that comprise the Mariposa Energy project are intended for use as peaking facilities and are anticipated to run at significantly

⁷ *Id.* at 101.

⁸ *Id.* at 276.

⁹ D.07-01-039, Conclusion of Law 11 at 265, 266 and Conclusions of Law 52 and 53 at 273.

less than 60 percent. We find that the GHG EPS does not apply to the Mariposa PPA.

PG&E must also demonstrate that this contract is consistent with its GHG reduction strategy, as specified in D.07-12-052. This PPA is structured as a tolling agreement, in which PG&E purchases and supplies the natural gas and schedules power from the facility. Because of the flexible operating nature of this project, PG&E explains that it has the flexibility to schedule power from the project when demand is high and other, lower carbon footprint resources are unavailable. Similarly, PG&E can reduce output when demand is low and cleaner, more cost-effective resources are available. We agree with the parties' conclusion that this PPA supports the flexibility required by D.07-12-052, that it is consistent with the overall GHG reduction approach, and will assist PG&E's efforts both to integrate renewable generation into its supply. PG&E will assume certain costs associated with GHG emissions.

In addition, the proposed Settlement Agreement's approach to cost recovery is consistent with prior Commission decisions. It is reasonable to allow PG&E to recover costs associated with the power purchase agreement approved in this decision, through the ERRA mechanism established pursuant to D.02-12-074. The ERRA was established to determine recovery of PG&E's power costs including PPAs. The proposed Settlement Agreement also provides for PG&E to recover any stranded costs associated with departing load related to this PPA through a non-bypassable charge. We concur that this approach is consistent with the recovery mechanism approved in D.04-12-048 and D.08-09-012. PG&E's cost recovery requests are reasonable and should be approved as part of the Settlement Agreement.

PG&E plans to interconnect the Mariposa Project at PG&E's Kelso Substation, located near Byron, CA. PG&E expects the relevant transmission study to be completed by the California Independent System Operator (CAISO) consistent with the Generation Interconnection Process Reform. This approach involves grouping the Mariposa Energy project with other generation interconnection proposals having similar impacts on the transmission system in one transmission study. PG&E states that preliminary results indicate that upgrades of its transmission system will be required and that Mariposa and other new generators in the group will share these costs. We make no finding on these assertions now, but when that information is available, we require PG&E to comply with the requirements of General Order 131-D.

The settlement also provides that PG&E will require reimbursement from Mariposa Energy, LLC, for any intervenor compensation we award for proceedings regarding the reasonableness of amendments to the Mariposa PPA with regard to capacity, the fixed operations and maintenance rate, and the variable operations and maintenance rate. This approach is between PG&E and Mariposa Energy, however, we do clarify that to the extent PG&E recovers such costs from Mariposa Energy, any such intervenor compensation awards cannot be recovered from ratepayers.

4.3. Settlement is in the Public Interest

We agree with parties that approval of the proposed Settlement Agreement is in the public interest. We evaluate the Settlement Agreement as a whole, and conclude that it serves the public interest by expeditiously resolving issues that would otherwise be litigated. Moreover, as discussed above, the Independent Evaluator determined that the PPA merits approval because the economics and general terms and conditions compare favorably to PPAs still

under negotiation in the LTRFO solicitation.¹⁰ We find that approval of the PPA is consistent with the Commission's goals in terms of PG&E's supply portfolio and assisting PG&E in dispatchability and management of its renewable resources.

5. Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2) and Rule 14.3(c)(2), the Commission may reduce or waive the otherwise applicable 30-day period for public review and comment. Here, we reduce the comment period to 10 days. The proposed decision of the ALJ in this matter was mailed to the parties on September 29, 2009, and PG&E timely filed and served comments. We have incorporated the recommended changes in the decision, as appropriate.

6. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Angela K. Minkin is the assigned ALJ in this proceeding.

Findings of Fact

1. PG&E, DRA, TURN, CARE, and CURE filed an all-party Settlement Agreement that resolves all disputes regarding the reasonableness of the Mariposa PPA and PG&E's cost recovery proposal.
2. PG&E conducted an open, competitive and fair solicitation and contract selection process.
3. The Mariposa PPA is a 10-year fuel conversion agreement for dispatchable energy and capacity from four combustion turbines.

¹⁰ PG&E Prepared Testimony, Appendix 5.1-C at 21-22.

4. The Mariposa PPA will be delivered to PG&E's Kelso 230 kV substation and has a capacity of 184 MWs under peak July conditions.

5. The 184 MWs represented by the Mariposa PPA reasonably contributes toward the range of need previously authorized in D.07-12-052.

6. The Mariposa Energy Project is a dispatchable peaking power plant with quick start and spinning reserve capabilities and therefore provides operational flexibility to provide "firming" for intermittent renewable resources.

7. We concur that PG&E's remaining need is 1,328 MWs under peak July conditions.

8. Because viability is an important consideration to ensure that projects provide the necessary energy and capacity, it is important for PG&E to work closely and proactively with Mariposa and other generators on the public outreach effort.

9. Parties have had the opportunity to fully review PG&E's prepared testimony and DRA and TURN have participated in the PRG process.

10. PG&E anticipates that upgrades of its transmission system will be required and that Mariposa Energy and other generators in the group evaluated by the CAISO will share these costs.

Conclusions of Law

1. As described in its testimony, PG&E's LTRFO complies with the requirements of D.07-12-052, in that the LTRFO was open to new renewable resources, existing QF, distributed generation, and repowered and new conventional fossil fired generation.

2. The Independent Evaluator was involved in all phases of the solicitation and review process, as required by D.07-12-052 as modified by D.08-11-008.

3. The Mariposa PPA is consistent with the requirements of D.07-12-052, including the preferred loading order, and the need for dispatchable ramping resources.

4. PG&E's has elected not to place the Mariposa PPA in an energy auction; this approach is consistent with the settlement agreement approved in D.07-09-044 and is therefore reasonable.

5. We concur with PG&E's determination that the GHG EPS adopted in D.07-01-039 does not apply to the Mariposa PPA because the capacity factor is less than 60 percent.

6. It is reasonable that PG&E file one application for approval of additional agreements resulting from its 2008 LTRFO, so that parties can more fully evaluate the cost-effectiveness of such agreements.

7. The cost recovery approach described in the proposed Settlement Agreement is consistent with prior Commission decisions, including recovery of costs through the ERRA, as established in D.02-12-074, and any stranded costs associated with the Mariposa PPA from departing load through a non-bypassable charge, as set forth in D.04-12-048 and D.08-09-012.

8. To the extent that transmission upgrades are required, PG&E should comply with the requirements of General Order 131-D.

9. PG&E may require reimbursement from Mariposa Energy, LLC for any intervenor compensation awarded for proceedings regarding the reasonableness of amendments to the Mariposa PPA, as outlined in the proposed Settlement Agreement, but we find that any such reimbursed awards cannot be recovered from ratepayers.

10. The all-party Settlement Agreement complies with Article 12 of the Commission's Rules of Practice and Procedure, and is reasonable in light of the whole record, consistent with the law, and is in the public interest.

11. Approval of the PPA is consistent with the Commission's goals in terms of PG&E's supply portfolio and assisting PG&E in dispatchability and management of its renewable resources.

12. The provisions of the Settlement Agreement (Attachment A) are reasonable and should be approved.

13. The Mariposa PPA should be approved as reasonable.

14. The designation of this proceeding should be changed so that hearings are no longer necessary.

15. An order in this proceeding should be effective immediately.

16. Application 09-04-001 should be closed.

O R D E R

IT IS ORDERED that:

1. The September 3, 2009 Joint Motion of Pacific Gas and Electric Company, the Division of Ratepayer Advocates, The Utility Reform Network, CALifornians for Renewable Energy, and California Unions for Reliable Energy for Approval of Settlement Agreement (attached to this decision as Attachment A) is approved without modification and includes the following key provisions:

- a. The total need to be procured from the 2008 Long-Term Request for Offers will be limited to 1,512 megawatts under peak July conditions, inclusive of the 184 megawatt included in the Mariposa Power Purchase Agreement.
- b. The balance of Pacific Gas and Electric Company's need authorization (1,328 megawatts) will be met, but not

exceeded, by one application for approval of additional agreements resulting from Pacific Gas and Electric Company's 2008 Long-Term Request for Offers.

- c. Pacific Gas and Electric Company will meet and confer with the parties in the event that Mariposa Energy requests a power purchase agreement amendment that seeks to increase the prices of the Mariposa Power Purchase Agreement for capacity, fixed operations and maintenance rate, and variable operations and maintenance costs rate, as set forth in Pacific Gas and Electric Company's confidential testimony. In the event of such an amendment, the prices will not exceed those delineated in the testimony unless the parties concur with the amendment to these prices or Pacific Gas and Electric Company has conducted a Request for Offers, evaluated market alternatives, and found the new prices proposed for the amendment to be competitive with the results of its Request for Offers. The parties reserve the right to oppose any such amendment. Pacific Gas and Electric Company will require as a condition for any amendment that Mariposa Energy reimburse Pacific Gas and Electric Company for any Commission-awarded intervenor compensation, to the extent that there is intervenor participation in a Commission proceeding regarding the reasonableness of any amendment.
- d. Pacific Gas and Electric Company shall recover the costs of all payments made pursuant to the Mariposa Power Purchase Agreement through the Energy Resources Recovery Account. Pacific Gas and Electric Company shall recover any stranded costs associated with the Mariposa Power Purchase Agreement from departing load throughout the term of the Power Purchase Agreement as non-bypassable charges consistent with Decision (D.) 04-12-048 and D.08-09-012.

2. Pacific Gas and Electric Company's power purchase agreement with Mariposa Energy, LLC is approved as reasonable.

3. To the extent that Pacific Gas and Electric Company requires reimbursement from Mariposa Energy, LLC for any intervenor compensation awarded for proceedings regarding the reasonableness of amendments to the Mariposa Power Purchase Agreement, outlined in Ordering Paragraph 1.c., any such reimbursed awards shall not be recovered from ratepayers.

4. Application 09-04-001 is closed.

This order is effective today.

Dated October 15, 2009, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners