

Decision 11-06-029 June 23, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of Three Power Purchase Agreement Amendments With Existing Qualifying Facilities and Associated Cost Recovery (U39E).

Application 11-01-023
(Filed January 28, 2011)

DECISION APPROVING THREE POWER PURCHASE AGREEMENT AMENDMENTS WITH EXISTING QUALIFYING FACILITIES**1. Summary**

This decision approves three power purchase agreement amendments between Pacific Gas and Electric Company and three existing qualifying facilities, and cost recovery associated with these agreements, contingent on the “Qualifying Facility and Combined Heat and Power Program Settlement Agreement” becoming effective. This proceeding is closed.

2. Procedural Background

On January 28, 2011, Pacific Gas and Electric Company (PG&E) filed Application 11-01-023 seeking Commission approval of three power purchase agreement amendments (Amendments) between PG&E and three existing qualifying facilities (QFs). The Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN) timely filed a protest and response, respectively, on March 4, 2011. PG&E filed a reply on March 14, 2011. On March 21, 2011, PG&E filed an amended application revising down the anticipated customer savings over the ten remaining years of the contracts from \$26 million (or \$2.6 million per year) to \$14 million (or \$1.4 million per year). A

prehearing conference was held on April 6, 2011, during which parties agreed to continue working together to address outstanding concerns and provide a status update to the assigned Administrative Law Judge (ALJ) on April 13, 2011. On April 13, 2011, DRA timely filed a status report stating that all issues of concern had been sufficiently addressed through the discovery process, and DRA wished to withdraw its protest. On April 15, 2011, TURN sent an e-mail to the service list stating that it had no opposition to the application but would continue to monitor the proceeding should there be any developments or changes that warrant its participation.

On April 14, 2011, PG&E timely filed a response to the April 7, 2011 ALJ ruling requesting additional information along with a concurrent motion for leave to file the response under seal. On April 21, 2011, the assigned Commissioner and ALJ issued a scoping memo and ruling, which identified the issues to be determined and set a schedule for addressing those issues.

3. Description of the Proposed Amendments

The three QF facilities for which PG&E requests amendment approvals are Yuba City Cogen and Greenleaf 1, both located in Yuba City, California, and KES Kingsburg, which is located in Kingsburg, California. The Yuba City Cogen facility is a 49 megawatt (MW) natural gas fired facility currently operating under an existing interim Standard Offer 4 (ISO4) QF contract that was executed on April 16, 1985 and expires on April 16, 2021. Yuba City Cogen provides 46 MW of firm capacity, and the owner is paid energy prices at

Commission-determined short-run avoided cost¹ (SRAC) as well as Commission-determined firm and as-delivered capacity payments.

The Greenleaf 1 facility is a 49.5 MW natural gas fired facility currently operating under an existing ISO4 contract that was executed on December 12, 1984 and expires on March 10, 2019. The Greenleaf 1 facility provides 49.2 MW of firm capacity, and the owner is paid SRAC energy prices and firm capacity payments.

The KES Kingsburg facility is a 34.5 MW natural gas fired facility currently operating under an existing Standard Offer 2 contract that was executed on October 26, 1987 and expires on April 7, 2021. The KES Kingsburg facility provides 34.5 MW of firm capacity, and the owner is paid SRAC energy prices and firm capacity payments.

PG&E asserts that the Amendments are just and reasonable, in large part, because they provide PG&E with the contractual right to schedule these facilities as needed, rather than being required to accept energy at times that it may not be needed or cost-effective.² Both the Yuba City and KES Kingsburg facilities typically operate during the peak and partial peak hours of the month while the Greenleaf 1 facility typically operates in a baseload manner Monday through Friday. PG&E currently does not have scheduling rights under the existing

¹ See Decision (D.) 07-09-040 and Resolution E-4246 for a description of current SRAC prices. Modified SRAC prices will go into effect as stipulated in the Qualifying Facility and Combined Heat and Power Settlement Agreement (QF/CHP Settlement) approved in D.10-12-035.

² Absent these amendments, the three QF generation facilities would remain must-take resources pursuant to the Public Utilities Regulatory Policy Act of 1978 (PURPA). Approval of these amendments would result in the facilities operating as "Utility Prescheduled Facilities" as defined in § 4.8 of the QF/CHP Settlement.

contracts and is required to take and pay for energy that is delivered, regardless of need or cost. Furthermore, PG&E receives limited scheduling information from these facilities, which makes scheduling into the California Independent System Operator (CAISO) markets difficult. PG&E anticipates significant customer savings resulting from the right to schedule the above facilities (\$14 million over the remaining terms of the contracts). Furthermore, PG&E asserts that these amendments are consistent with the QF/CHP Settlement approved in D.10-12-035³ and will provide customer benefits including operational benefits and possible greenhouse gas (GHG) emissions reductions towards the GHG targets under the QF/CHP Settlement⁴ by allowing PG&E to consider GHG emissions and costs when making dispatch decisions. The Amendments are conditioned on (1) Commission approval of the Amendments; and (2) the QF/CHP Settlement becoming effective.

4. Issues Before the Commission

The April 21, 2011 scoping memo and ruling of the assigned Commissioner and ALJ identified the following issues to be determined in this proceeding:

³ Rehearing Applications were timely filed by the City and County of San Francisco, the California Municipal Utilities Association, and jointly filed by the Marin Energy Authority, the Alliance for Retail Energy Market, and the Direct Access Customer Coalition. On March 24, 2011, the Commission issued D.11-03-051, the Order Modifying D.10-12-035 and Denying Rehearing of D.10-12-035.

⁴ See QF/CHP Settlement § 4.8.1.3 for GHG targets. GHG emissions reductions will ultimately be determined using the methodology described in § 7.3.1.3 for Utility Prescheduled Facilities. GHG costs will not be incurred by buyer or seller until Assembly Bill 32 (Stats. 2006, Ch. 488) is fully implemented.

1. Are the Amendments just and reasonable? In deciding this overarching issue, we will consider the following factors:
 - a. Will the Amendments reduce customer costs by providing better market value?
 - b. Will the negotiated heat rate result in customer savings?
 - c. Will the Amendments provide operational benefits?
2. Should GHG emissions resulting from the Amendments count towards PG&E's GHG Emissions Reduction Target in the QF/CHP Settlement?
3. Should PG&E be authorized to recover the costs of the Amendments through the Electric Revenue Recovery Account and allocate stranded costs, if any, consistent with Section 13.1 of the QF/CHP Settlement Term Sheet?

5. The Power Purchase Agreement Amendments are Just and Reasonable

As discussed below, we find that the Amendments between PG&E and Yuba City Cogen, Greenleaf 1, and KES Kingsburg are just and reasonable and should be approved. The Amendments result in customer savings, improved operational profiles, and likely GHG reductions.

5.1. Market Value and Customer Savings

Under the QF/CHP Settlement, a Utility Prescheduled Facility is defined as an Existing [Combined Heat and Power] facility that has changed operations to convert to a utility controlled scheduled dispatchable generation facility, including, but not limited to, an Exempt Wholesale Generator⁵. Existing combined heat and power (CHP) QFs that met the federal efficiency requirements for a qualifying cogeneration facility under 18 Code of Federal

⁵ QF/CHP Settlement at § 17.

Regulations (CFR) § 292.205 as of September 20, 2007 and convert to a Utility Prescheduled Facility may amend an existing power purchase agreement through bilateral negotiations.⁶

Under the Amendments in this application, the QF facilities will convert to Utility Prescheduled Facilities, allowing PG&E to schedule the resources only when it is economic to do so. As a result of this scheduling flexibility, the Amendments will provide approximately \$14 million⁷ in ratepayer cost savings over what would have been paid under the current must-take contracts. In its original protest, DRA raised concern about whether the negotiated heat rate would indeed result in ratepayer savings.⁸ We find that the negotiated heat rate is reasonable in light of heat rates in other peaking facility contracts,⁹ and the ability to schedule the facilities only when it is economic to do so will result in significant market value for ratepayers.

5.2. Operational Benefits

Absent the Amendments, the three QF generators operate as must-take resources, and PG&E is required to take and pay for energy that is delivered, regardless of need or cost. Furthermore, as mentioned earlier, PG&E currently

⁶ QF/CHP Settlement at § 4.8.1.1

⁷ In its April 14, 2011 response to the April 7, 2011 ALJ ruling, PG&E offered several reasons for the discrepancy in savings estimates between the original and amended applications. The explanations offered by PG&E are reasonable, and ratepayer savings will be achieved through approval of this application.

⁸ As noted earlier, DRA withdrew its protest on April 13, 2011.

⁹ A Utility Prescheduled Facility will most likely be operated in a similar fashion to other peaking plants on the utilities' systems.

does not have scheduling rights and receives limited scheduling information from these facilities.

The Amendments give PG&E the right to schedule the facilities to operate when energy is needed and when it is economic to do so. Furthermore, the Amendments include provisions that require the QF facilities to notify PG&E of available capacity, and changes in available capacity, so that PG&E is able to more accurately forecast and schedule the output of these facilities. The Commission noted these benefits of converting an existing QF to a Utility Prescheduled Facility in its recent decision approving the QF/CHP Settlement.¹⁰

Finally, if the QF facilities elect to operate as Exempt Wholesale Generators, they must comply with all applicable CAISO tariff requirements, including interconnection agreements. This requirement is consistent with the Commission's policy to better integrate QF resources into the CAISO tariffs and deliverability standards.¹¹ We find that the proposed Amendments will provide better operational benefits than could have been achieved under the existing contracts.

6. Consistency with QF/CHP Settlement and PG&E's Greenhouse Gas Emissions Reduction Target

As discussed earlier, the proposed Amendments were negotiated pursuant to the QF/CHP Settlement and do not become effective until the QF/CHP Settlement effective date. We find that the Amendments are consistent with the QF/CHP Settlement.

¹⁰ D.10-12-035 at 45-46.

¹¹ D.07-09-040 at 210-211.

6.1. Greenhouse Gas Emissions Reduction Target

Because the Amendments give PG&E the right to schedule the QF facilities, PG&E has the ability to schedule other resources that are more efficient and less GHG-intensive thus reducing GHG emissions and GHG compliance costs. This is consistent with Commission policy encouraging the utilities to consider GHG emissions and costs when making procurement and scheduling decisions.¹² It is also consistent with the Commission's recognition in D.10-12-035 of the benefits of converting an existing QF to a Utility Prescheduled Facility to reduce GHG emissions.

Section 4.8.3.1 of the QF/CHP Settlement provides that amendments to existing QF power purchase agreements that convert to a Utility Prescheduled Facility count towards each utility's GHG Emission Reduction Targets. Section 7.3.1.3. provides that CHP conversion to a Utility Prescheduled Facility counts as a GHG credit.¹³ As the Amendments change these QF facilities to Utility Prescheduled Facilities, they count towards PG&E's GHG reduction targets.

7. Cost Recovery

Section 13 of the QF/CHP Settlement governs cost recovery associated with contracts executed pursuant to the QF/CHP Settlement and specifically deals with recovery of stranded costs. PG&E's April 14, 2011 response to the April 7, 2011 ALJ request for information acknowledges that there may be

¹² D.07-12-052 at 243-245.

¹³ Emissions reductions are counted as the emissions from the baseline year (as defined in the QF/CHP Settlement), minus the projected power purchase agreement emissions associated with replacing one hundred percent (100%) of the decreased electric generation at a time differentiated heat rate (as defined in the QF/CHP Settlement).

stranded costs associated with the Amendments, but the stranded costs associated with QF contracts under consideration in this application are currently eligible for recovery through the Competition Transition Cost (CTC), pursuant to California Pub. Util. Code § 367(a)(2).¹⁴ PG&E further states that the QF contracts will continue to be eligible for the CTC after the amendments are effective. Section 367(a)(2) states:

Power purchase contract obligations shall continue for the duration of the contract. Costs associated with any buy-out, buy-down, or renegotiation of the contracts shall continue to be collected for the duration of any agreement governing the buy-out, buy-down, or renegotiated contract; provided, however, no power purchase contract shall be extended as a result of the buy-out, buy-down, or renegotiation.

A contract must have been executed prior to December 20, 1995 in order for § 367 to apply. All three of the QF contracts in this proceeding were executed prior to this date, and the Amendments do not extend beyond the expiration dates executed in the original agreements. We find that stranded costs associated with the QF contracts and Amendments will continue to be recovered according to the § 367.

Section 13.2.1 of the QF/CHP Settlement provides that the utilities shall recover the cost of all payments made pursuant to power purchase agreement and power purchase agreement amendments executed under the QF/CHP Settlement in their respective Energy Resources Recovery Accounts, subject only to their reasonable administration. Given that the Amendments were executed

¹⁴ Unless otherwise noted, all references to code sections shall refer to the California Public Utilities Code.

pursuant to the QF/CHP Settlement, PG&E should recover all costs associated with the Amendments in its Energy Resources Recovery Account.

8. Contingencies

Pursuant to Section 16.2 of the QF/CHP Settlement, it is not effective until and unless certain preconditions precedent have been met, including final, non-appealable approval by the Federal Energy Regulatory Commission of a waiver of the utilities' obligations under Section 210(m) of PURPA. As of this time, the conditions have not been met, and D.10-12-035 is the subject of a petition for modification and several applications for rehearing.¹⁵ PG&E states in its application that the Amendments are conditioned upon the QF/CHP Settlement becoming effective. It is appropriate, therefore, to make approval of this application contingent on the QF/CHP Settlement becoming effective. If the QF/CHP Settlement does not become effective, PG&E must reapply for approval of the Amendments if it chooses to pursue them outside of the QF/CHP Settlement.

9. Outstanding Motions

Concurrent with the filing of its April 14, 2011 response to the April 7, 2011 ALJ request for information and pursuant to Rule 11.4 of this Commission's Rules of Practice and Procedure and D.06-06-066 and D.08-04-023, PG&E submitted its Motion of Pacific Gas and Electric Company for Leave to File Confidential Material under Seal in Support of its Response to Administrative Law Judge's Ruling Requesting Additional Information Regarding Application

¹⁵ As stated in footnote 3 above, the Commission issued D.11-03-051 addressing most of the applications for rehearing.

for Approval of Three Power Purchase Agreement Amendments with Existing Qualifying Facilities (Motion). Specifically, PG&E requested confidential treatment of its responses to Questions 1-6 of the April 7, 2011 ALJ ruling.

The Commission received no objections to PG&E's motion, and the motion is granted. The affirmative ruling is memorialized in the ordering paragraphs of this decision.

10. Categorization and Need for Hearing

Resolution ALJ 176-3269 dated February 24, 2011 preliminarily determined that this is a ratesetting proceeding and that hearings are needed. The April 21, 2011 scoping memo and ruling of the assigned Commissioner and ALJ confirmed the Commission's preliminary determination that this is a ratesetting proceeding but determined that hearings might not be needed. This is an uncontested proceeding; therefore, there are no disputed issues of material fact requiring evidentiary hearings. We reverse the Commission's preliminary finding and determine that hearings are not needed in this proceeding.

11. Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

12. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Melissa K. Semcer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Application 11-01-023 is uncontested.

2. As a result of scheduling flexibility, the three power purchase agreement amendments between PG&E and Yuba City Cogen, Greenleaf 1, and KES Kingsburg will provide approximately \$14 million in greater market value than current must-take contract provisions.

3. The power purchase agreement amendments provide greater operational benefits than could be achieved under the existing contracts.

4. The power purchase agreement amendments may result in reduced greenhouse gas emissions as compared to the existing must-take contracts.

5. Procurement under the power purchase agreement amendments is consistent with the QF/CHP Settlement Agreement and qualifies to meet PG&E's GHG Emissions Reduction Targets.

6. The power purchase agreement amendments continue to meet the cost recovery eligibility requirements of Pub. Util. Code § 367(a)(2).

7. The power purchase agreement amendments are contingent upon the QF/CHP Program Settlement Agreement becoming effective.

8. PG&E's April 14, 2011 Motion for Leave to File Under Seal was unopposed and is reasonable.

Conclusions of Law

1. The power purchase agreement amendments are just and reasonable and should be approved contingent upon the QF/CHP Program Settlement Agreement becoming effective.

2. Procurement under the power purchase agreement should count towards PG&E's GHG reduction targets.

3. The stranded cost recovery mechanisms described in Pub. Util. Code § 367 should apply to the Amendments and underlying qualifying facility contracts in this application.

4. PG&E should recover all costs associated with the power purchase agreement amendments in its Energy Resources Recovery Account.
5. In the event the QF/CHP Program Settlement Agreement does not become effective, PG&E should reapply for approval of the power purchase agreement amendments if it chooses to pursue them outside of the settlement.
6. PG&E's April 14, 2011 Motion for Leave to File Under Seal should be granted pursuant to D.06-06-066, Appendix 1, Item VII.B
7. Application 11-01-023 should be closed.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company's power purchase agreement amendments with Yuba City Cogen, Greenleaf 1, and KES Kingsburg are approved contingent upon the Qualifying Facility and Combined Heat and Power Program Settlement Agreement becoming effective.
2. Procurement under Pacific Gas and Electric Company's power purchase agreement amendments with Yuba City Cogen, Greenleaf 1, and KES Kingsburg will count towards Pacific Gas and Electric Company's Greenhouse Gas Reduction Targets pursuant to the "Qualifying Facility and Combined Heat and Power Program Settlement Agreement" approved in Decision 10-12-035.
3. Stranded cost recovery associated with the power purchase agreement amendments and underlying qualifying facility contracts between Pacific Gas and Electric Company and Yuba City Cogen, Greenleaf 1 and KES Kingsburg shall be recovered through the Competition Transition Cost pursuant to Public Utilities Code § 367.

4. Pacific Gas and Electric Company shall recover all costs associated with the power purchase agreement amendments with Yuba City Cogen, Greenleaf 1, and KES Kingsburg in its Energy Resources Recovery Account.

5. In the event the Qualifying Facility and Combined Heat and Power Program Settlement Agreement does not become effective, Pacific Gas and Electric Company must reapply for approval of the power purchase agreement amendments if it chooses to pursue them outside of the settlement.

6. Pacific Gas and Electric Company's April 14, 2011 motion for leave to file confidential information under seal is granted as set forth below:

- a. The confidential information placed under seal pursuant to this ruling shall remain under seal for three years as provided in Decision 06-06-066, Appendix 1, Item VII.B. During this period, the confidential information shall not be made accessible or be disclosed to anyone except on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge, or the Administrative Law Judge then designated as Law and Motion Judge, which order shall be entered only after notice to Pacific Gas and Electric Company and an opportunity to be heard.
- b. The confidential information is: Pacific Gas and Electric Company's responses to questions 1-6 of the April 7, 2011 ALJ ruling.

7. Application 11-01-023 is closed.

This order is effective today.

Dated June 23, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners