

Decision 07-03-042 March 15, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for Approval of Power Purchase Agreements
With Small Generating Facilities.

(U 39 E)

Application 06-10-003
(Filed October 3, 2006)

OPINION GRANTING APPLICATION

I. Summary

Pacific Gas and Electric Company (PG&E) filed this application seeking approval of power purchase agreements (PPAs) for energy with three separate entities. The PPAs will give PG&E the right to obtain energy and capacity from two hydroelectric projects, a cogeneration project and one biogas facility.

Several intervenors raised generic issues related to biogas facilities that use energy generated from cow manure. Those issues are beyond the scope of this proceeding, but may be raised in the Commission's Renewable Portfolio Standard (RPS) proceeding, Rulemaking (R.) 06-05-027, as described below. That said, we are encouraged by PG&E's efforts to acquire the energy produced from the methane byproduct of dairy operations. We believe that, at least at the conceptual level, such contracts could provide a strong incentive to dairy and other livestock facilities to capture their methane emissions. This approach may offer several potential benefits to California and California ratepayers by aligning the profit motive of these operations with the environmental and energy goals of the state, including the Renewables Portfolio Standard, the Governor's Executive

Order on biofuels and bioenergy (S-06-06) and the California Global Warming Solutions Act of 2006.

In addition, we require PG&E to work more closely with the Commission's Energy Division on future applications for RPS contracts. PG&E shall contact the Energy Division before filing any such application to ensure that it is 1) filing appropriate template information to enable the Commission to summarize contract terms in a standard way, 2) justifying contractual provisions adequately, and 3) using the Application or Advice Letter process appropriately.¹

Further, it may make sense to develop a standard contract for RPS contracts of 1 megawatt (MW) or smaller. Parties to this proceeding may raise this issue - and propose standard contract terms - in the RPS proceeding identified above. However, this decision does not authorize use of the contracts in this proceeding as standard contracts. If PG&E wishes to use these contracts for small RPS purchases in the future, it shall have to justify such use in the RPS proceeding.

We grant PG&E's application on the ground that PG&E's entry into the PPAs is reasonable. We authorize PG&E to recover in rates the cost of payments made pursuant to the PPAs subject to continuing Commission oversight of contract administration.

II. The Contracts

The contracts at issue are as follows:

¹ In addition, PG&E should consult with the Energy Division as to the appropriateness of filing applications for approval of different types of PPAs (e.g., cogeneration and RPS) separately.

1. Two PPAs with Tunnel Hill Hydro, LLC (Tunnel Hill) for hydroelectric facilities with nameplate ratings of 400 Kilowatts (kW) and 600 kW, respectively, located in El Dorado County and scheduled to become operational in 2007.

Generating Facility	Type	Term	kW	Online	Location
Tunnel Hill Hydroelectric Project	Hydroelectric	10 years	600	6/07	5605 Volcanoville Road, El Dorado County, CA
Buckeye Hydroelectric Project	Hydroelectric	10 years	400	6/07	2900 Fox Run Road, El Dorado County, CA

2. One PPA negotiated with J.R. Simplot (Simplot) to purchase power from a 4,000 kW, currently operational, cogeneration facility located in San Joaquin County. The facility's primary fuel is waste heat from sulfuric acid manufacturing.

Generating Facility	Type	Term	kW	Online	Location
Cogeneration-Simplot-waste heat from sulfuric acid manufacturing		10 years	4,000	1/07	16777 Howland Road, Lathrop, San Joaquin County, CA

3. One PPA negotiated with Jacob De Raadt, doing business as Eden Vale Dairy (Eden Vale²), an operational biogas facility with a nameplate rating of 150 kW, located in Kings County.

Generating Facility	Type	Term	kW	Online	Location
Eden Vale Dairy	Biogas	10 years	150	Already operational	6944-21-1/2 Avenue, Lemoore, Kings County, CA

On January 31, 2007, the ALJ sent a data request to PG&E seeking additional information about each contract. For the 3 contracts covered by the

² PG&E's initial application misidentified the dairy as "Eden Valley," but corrected this error in a December 15, 2006 supplement to its application.

RPS program (the Eden Vale Dairy, Tunnel Hill Hydro and Buckeye Hydro project), the Administrative Law Judge (ALJ) asked for standard information the Energy Division seeks for all RPS projects. This information fits a standard template the Commission's RPS team has developed so that all RPS projects are reported in standard fashion. Such standard reporting allows the Commission to compile data on the overall RPS program, and certain aspects of it, in standard form.

PG&E responded to the data request on February 8, 2007. In most aspects, its responses are adequate, but a few lack detail. For example, the pricing for each RPS contract (all but the Simplot contract) is 90% of the Market Price Referent (MPR) in effect on the date of contract execution. The January 31, 2007 ruling asked why the price was the same for each provider despite the difference in the means of generation. PG&E's response was simply that "[t]he MPR percentage (i.e. the discount from the MPR) was a result of negotiations conducted between PG&E and the counterparties."³ The MPR is one benchmark to be used in determining the reasonableness of these contracts. Given the small size of the contracts at issue, we find the pricing term in the contracts to be reasonable. However, PG&E shall be prepared to justify its pricing in greater detail in all future applications. For example, PG&E should demonstrate the contracting party's creditworthiness and experience with similar contracts; the contract's viability; what other similar providers are paid; and the considerations PG&E used to settle on a particular price. Nor shall the 90%-of-MPR pricing we

³ *Response of [PG&E] to Second Ruling Requesting Additional Information Regarding Application*, dated Feb. 8, 2007, Answer 3(a).

approve here serve as precedent for any future RPS contract, without such justification.

It may well be that standard contracts for RPS facilities of 1 MW or smaller are desirable. Nothing in this decision shall be interpreted as allowing the terms PG&E submitted here (other than the 4 standard RPS terms discussed in the section entitled "Required Contract Terms," below) to be part of such a standard contract without further justification.

III. Protests

The Merced Irrigation District and Modesto Irrigation District (collectively, MID) question whether the PPAs are consistent with PG&E's long term procurement plans, and ask the Commission to examine carefully whether the costs attributable to the PPAs are reasonable since those costs are borne in part by departing load (customers choosing to leave PG&E and take power from publicly owned utilities like MID). MID asked that at the very least, the issue of whether certain charges are recoverable be deferred to the Commission's procurement proceeding.

At the prehearing conference (PHC), the ALJ asked MID to furnish further information on the non-bypassable charge issue. On December 15, 2006, MID submitted information regarding three resolutions signed by the Commission at its December 14, 2006 business meeting. In those resolutions, E-4046, E-4047 and E-4055, the Commission approved power purchase and resource adequacy agreements, but found (with minor wording variations) that "PG&E's request for approval of a non-bypassable charge as a mechanism to recover stranded costs is not addressed in this resolution. However, PG&E may seek this approval in the Long Term Procurement Plan proceeding, R.06-02-013."

PG&E's counsel agreed at the PHC that it is appropriate to defer cost allocation issues to a more generic proceeding: "I don't think you need to decide the cost allocation issue here. I think your order simply says you may recover these in rates and we'll decide how that recovery takes place in another proceeding."⁴ Thus, we include the language from the foregoing resolutions in this decision.

IV. Required Contract Terms

For the contracts involving renewable energy (all but the Simplot contract), certain requirements of the RPS program apply. The Tunnel Hill and Eden Vale facilities qualify as "eligible renewable energy resources" within the meaning of Pub. Util. Code § 399.12.⁵ In the RPS proceeding, the Commission adopted standard contracts for renewable energy. (Decision [D.] 04-06-014, Appendix A, and D.06-10-019, mimeo., p. 33.) The latter decision, D.06-10-019, outlined four contractual terms from D.04-06-014 that were obligatory. Those terms relate to Definition and Ownership of RECs [Renewable Energy Credits], Eligibility, Assignment and Applicable law, as follows:

Decision 06-10-019: Ordering Paragraph 20

20. Any procurement contract on which any ESP [energy service provider] or CCA [community choice aggregator] relies for RPS compliance shall, until further notice, include the following non-modifiable terms and conditions set out in Appendix A to D.04-06-014:

⁴ PHC Transcript 16:19-22 (PG&E/Kurz).

⁵ The required contract language does not apply to the Simplot contract, since it is a cogeneration deal and the energy source is not renewable.

- Definition and ownership of RECS;
- Eligibility;
- Assignment;
- Applicable law.

(2) DEFINITION AND OWNERSHIP OF RECS (MAY NOT BE MODIFIED)⁶

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Unit(s), and its displacement of conventional energy generation. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on kWh basis and one Green

⁶ While D.07-02-011 modified this provision, the modification was not retroactive, and did not change provisions (such as the “zero net emissions” clause) discussed herein.

Tag represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Unit(s), (ii) production tax credits associated with the construction or operation of the energy projects and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Unit(s) for compliance with local, state, or federal operating and/or air quality permits. If Seller’s Unit(s) is a biomass or landfill gas facility and Seller receives any tradable Environmental Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Environmental Attributes to ensure that there are zero net emissions associated with the production of electricity from such facility.”

New Section 3.4 shall be added to the Agreement as follows:

“3.4 Environmental Attributes. Seller hereby provides and conveys all Environmental Attributes from the Unit(s) to Buyer as part of the Product being delivered, as such term is described in the applicable Transaction confirmation for the period set forth in such confirmation. Seller represents and warrants that Seller holds the rights to all Environmental Attributes from the Unit(s), and Seller agrees to convey and hereby conveys all such Environmental Attributes to Buyer as included in the delivery of the Product from the Unit(s).”

(6) ELIGIBILITY (MAY NOT BE MODIFIED)

“10.2(xiii) [Party __ or Seller], and, if applicable, its successors, represents and warrants throughout the term of the Delivery Term of each Transaction entered into under this Agreement that: (a) the Unit(s) qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (b) the Unit(s) output delivered to [Party __, or Buyer] qualifies under the requirements of the California Renewable Portfolio Standard.”

(16) ASSIGNMENT (MAY NOT BE MODIFIED)

“Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers and the financing provider(s) shall assume the payment and performance obligations provided under this Agreement with respect to the transferring Party provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.”

(17) APPLICABLE LAW (MAY NOT BE MODIFIED)

Section 10.6 of the EEI Master Agreement, “Governing Law,” shall be included in the Agreement and amended by deleting “NEW YORK” and inserting “CALIFORNIA” in place thereof.

In an October 17, 2006 ruling, the ALJ asked PG&E why the contracts did not at least contain the four contractual terms mandated for RPS contracts in

A.06-10-003 ALJ/SRT/eap

D.06-10-019. PG&E responded on October 31 , 2006, stating that it did not believe the four terms were required in the types of PPAs at issue here. At the PHC held on December 13, 2006, however, ALJ Thomas noted that it was her belief that D.06-10-019 required the four terms in the Tunnel Hill and Eden Vale contracts. PG&E agreed at the PHC to inquire whether the terms were

acceptable, and on January 5, 2007, supplemented its application with new versions of the Tunnel Hill and Eden Vale PPAs that include the four terms. Inclusion of these four standard terms is part of the basis for determining the contracts to be reasonable.

In a ruling dated January 31, 2007, the ALJ asked PG&E additional questions about the application, including one regarding the "Definition and ownership of RECs" standard contract term. The ALJ asked the following questions regarding the "zero net emissions" provision:

The RPS standard language PG&E submitted with its amended PPAs with Eden Vale (and Tunnel Hill Hydro) contains a requirement (under the contract term "Definition and Ownership of RECs") providing the following: "If Seller's Unit(s) is a biomass or landfill gas facility and Seller receives any tradable Environmental Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Environmental Attributes to ensure that there are zero net emissions associated with the production of electricity from such facility."

- a. Is Eden Vale aware of the expense that it could incur if required to purchase Environmental Attributes to ensure its operations produce zero net emissions?
- b. Has PG&E discussed the implications of this provision fully with Eden Vale?

PG&E responded that the term requiring "zero net emissions associated with the production of electricity from such facility" applies only to the "engine-generator set" Eden Vale uses to generate electricity it sells to PG&E: "tradable Environmental Attributes will be granted to PG&E only to offset CO2 emissions

(a GHG) of the engine-generator set, and only if Eden Vale receives such credits for the destruction of methane gas (another GHG) associated with dairy waste."⁷

The Commission has not yet interpreted the "zero net emissions" provision. It may be that a provider such as Eden Vale must make its entire operation – and not just the generator it uses to furnish power to an investor-owned utility – have zero net emissions. Such a requirement could require Eden Vale (or PG&E) to purchase offsets for operations at Eden Vale's dairy other than the generator from which it will sell energy to PG&E.

How to interpret a standard RPS contract term is beyond the scope of this proceeding, however, and better addressed generically in the RPS proceeding.⁸ Therefore, nothing in this decision resolves the issue one way or another. If the Commission interprets the "zero net emissions" provision to apply more broadly than PG&E and Eden Vale now interpret it – that is, to apply to Eden Vale's entire operation and not just a single engine-generator set – PG&E and Eden Vale will have to comply with such provision.

V. Other Biogas Issues

RCM Digesters and the Western United Dairywomen raised issues generic to biogas, because one of the contracts at issue is with a dairy (Eden Vale). At the PHC, ALJ Thomas made clear that those issues, while important, were beyond the scope of this proceeding, which relates only to a few small energy contracts.

⁷ *Response of [PG&E] to Second Ruling Requesting Additional Information Regarding Application*, dated Feb. 8, 2007, Answer 5(a).

⁸ On February 1, 2007, Southern California Edison Company/PG&E filed a Petition to Modify D.04-06-014, regarding the standard contract terms. To the extent presented in the Petition or responses to the Petition, the resolution of that Petition may also address how to interpret the terms.

The issues the parties raised (and the resolutions discussed at the PHC and incorporated into this decision) are as follows:

1. Whether digester project owners that have received Self Generation Incentive Program (SGIP) payments, applied for SGIP payments or intend to apply for SGIP payments in the future are (or are not) eligible to enter into a PPA with PG&E. (*Comments of RCM Digesters on A.06-10-003*, filed Nov. 13, 2006.) This decision does not resolve the issue one way or the other, and shall have no precedential weight on the issue.
2. What language future PPAs should contain regarding projects with dairies for biogas digester customer-generators. (*Comments of Western United Dairymen on A.06-10-003*, filed Nov. 13, 2006.) This decision does not require any specific contract language, except the 4 provisions outlined above from the RPS proceeding. Specifically, this decision does not mandate a certain contract term length; address whether a renewable energy seller retains renewable/environmental attributes after signing a contract for renewable energy with a utility; or address whether net-metering customers are also eligible to enter into PPAs.

The August 2006 scoping memo in the RPS proceeding, R.06-05-027, provides for a comment cycle for biomass issues, of which biogas issues are a subset. While we cannot guarantee that the Commission will grant a motion or address the issues the parties raise to their satisfaction, they may seek leave to raise the issues in R.06-05-027 by filing comments/replies late accompanied by a motion for late receipt, or a motion asking the ALJ handling R.06-05-027 to amend the Scoping Memo to address their issues. They may cite this decision in their motion and may ask that the Commission take official notice in R.06-05-027 of the relevant pleadings.⁹

⁹ The pleadings are: 1) Comments of Western United Dairymen on A.06-10-003, 2) Comments of RCM Digesters on A.06-10-003, and 3) Reply of PG&E to Protest and Comments.

VI. Conclusion

Based on the foregoing, we find that the PPAs at issue in this proceeding are reasonable, and that PG&E may recover their cost in rates, subject to reasonable contract administration. PG&E's request for approval of a non-bypassable charge as a mechanism to recover stranded costs associated with these contracts is not addressed in this decision. However, PG&E may seek this approval in the Long Term Procurement Plan proceeding, R.06-02-013.

Parties raising biogas issues that are beyond the scope of this proceeding may seek leave to address them in the RPS proceeding as discussed above.

VII. Comment 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) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

VIII. Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner and Sarah Thomas is the assigned ALJ in this proceeding.

Findings of Fact

1. The PPAs for renewable energy (two hydroelectric and one dairy PPA) each contain the four terms required to be in RPS contracts.
2. The contract terms are reasonable for the reasons stated herein.
3. The contract terms approved here shall not serve as precedent for any future PPA without justification in the RPS proceeding.

Conclusions of Law

1. The generic biogas issues the parties raised should be handled in a generic proceeding, and not here.

2. PG&E may seek approval of whether we should approve a non-bypassable charge as a mechanism to recover stranded costs associated with these contracts in the Commission's Long Term Procurement Plan proceeding.

3. PG&E shall more fully provide pricing detail in all future applications for approval of an RPS contract, as more fully discussed herein.

4. The PPAs at issue should be approved.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company's (PG&E) application for approval of the following four power purchase agreements (PPAs) is granted:

Generating Facility	Type	Term	kW	Online	Location
Tunnel Hill Hydroelectric Project	Hydroelectric	10 years	600	6/07	5605 Volcanoville Road, El Dorado County, CA
Buckeye Hydroelectric Project	Hydroelectric	10 years	400	6/07	2900 Fox Run Road, El Dorado County, CA
Cogeneration - Simplot- waste heat from sulfuric acid manufacturing		10 years	4,000	1/07	16777 Howland Road, Lathrop, San Joaquin County, CA
Eden Vale Dairy	Biogas	10 years	150	Already operational	6944-21-1/2 Avenue, Lemoore, Kings County, CA

2. PG&E may recover the cost of the PPAs in rates, subject to reasonable contract administration.

3. We require PG&E to work more closely with the Commission's Energy Division on future applications for Renewable Portfolio Standard (RPS) contracts. PG&E shall contact the Energy Division before filing any such application to ensure that it is 1) filing appropriate template information to

enable the Commission to summarize contract terms in a standard way, 2) justifying contractual provisions adequately, and 3) using the Application or Advice Letter process appropriately. In addition, PG&E should consult with the Energy Division as to the appropriateness of filing applications for approval of different types of PPAs (e.g., cogeneration and RPS) separately.

4. Application 06-10-003 is closed.

This order is effective today.

Dated March 15, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners