

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4310
January 21, 2010

REDACTED

R E S O L U T I O N

Resolution E-4310. Pacific Gas and Electric Company (PG&E).

PROPOSED OUTCOME: This Resolution approves cost recovery for a power purchase agreement (PPA) resulting from bilateral negotiations between PG&E and Woodland Biomass Power Ltd., pursuant to California’s renewables portfolio standard (RPS) program. The PPA is approved without modification.

ESTIMATED COST: Actual costs are confidential at this time.

By Advice Letter 3474-E filed on June 11, 2009.

SUMMARY

PG&E’s renewable contract complies with the Renewables Portfolio Standard (RPS) procurement guidelines and is approved.

PG&E filed Advice Letter (AL) 3474-E on June 11, 2009, requesting California Public Utilities Commission (Commission) review and approval of a PPA with Woodland Biomass Power Ltd. (Woodland). The PPA replaces an existing Standard Offer 4 Qualifying Facility contract, which expires in 2015. The 10-year PPA was negotiated bilaterally. PG&E’s request is granted without modification.

PG&E’s request is granted because the proposed PPA is consistent with PG&E’s 2008 RPS Procurement Plan, which the Commission approved in Decision (D.) 08-02-008, and because the cost of the PPA is reasonable. Payments made under the PPA between PG&E and Woodland are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E’s administration of the PPA.

The energy acquired pursuant to the PPA will count towards PG&E's RPS requirements.

The following table summarizes the agreement:¹

Generating Facility	Woodland
Technology	Biomass
Capacity (MW)	27.5 MW
Expected Deliveries (GWh/yr)	175 - 200 GWh/yr
Contract Term (Years)	10 years, commencing upon CPUC Approval
Commercial Operation Date	Currently operating
Project Location	Woodland County, CA

NOTICE

Notice of AL 3474-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section IV of General Order 96-B.

PROTESTS

Advice Letter 3474-E was not protested.

BACKGROUND

Overview of RPS Program

The California RPS Program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107 and SB 1036.² The RPS program is

¹ Megawatt (MW), gigawatt-hours per year (GWH/yr)

² SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007)

codified in Public Utilities Code Sections 399.11-399.20.³ The RPS program administered by the Commission requires each utility to increase its total procurement of eligible renewable energy resources by at least one percent of retail sales per year so that 20 percent of the utility's retail sales are procured from eligible renewable energy resources no later than December 31, 2010.⁴

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at <http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm> and <http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm>.

DISCUSSION

PG&E requests Commission approval of a renewable energy contract

On June 11, 2009, PG&E filed AL 3474-E requesting Commission approval to replace an existing Standard Offer 4 (SO4) Qualifying Facility (QF) contract set to expire in 2015 with a long-term RPS PPA. Pursuant to the bilaterally negotiated agreement, Woodland will generate up to 200 GWh annually towards PG&E's Annual Procurement Target (APT).

Woodland is an existing, operational biomass facility located in PG&E's service territory that delivers RPS-eligible energy to PG&E under an SO4 QF contract. The parties' original contractual agreement began in 1990. PG&E explains that the facility is operational and will update its interconnection agreements and permits, as necessary, per the agreement.

PG&E represents the benefits of the proposed PPA as (1) it will allow PG&E to retain an existing renewable resource in its portfolio for an additional five years and (2) it may provide incremental deliveries above what the existing QF

³ All further references to sections refer to Public Utilities Code unless otherwise specified.

⁴ See § 399.15(b)(1).

contract provides. PG&E states that the PPA price does not exceed the applicable market price referent.⁵

PG&E requests that the Commission issue a resolution containing the following findings:

1. Approves the PPA in its entirety, including payments to be made by PG&E pursuant to the PPA, subject to the Commission's review of PG&E's administration of the PPA.
2. Finds that any procurement pursuant to the PPA is procurement from an eligible renewable energy resource for purposes of determining PG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.) ("RPS"), Decision ("D.") 03-06-071 and D.06-10-050, or other applicable law.
3. Finds that all procurement and administrative costs, as provided by Public Utilities Code section 399.14(g), associated with the PPA shall be recovered in rates.
4. Adopts the following finding of fact and conclusion of law in support of CPUC Approval:
 - a. The PPA is consistent with PG&E's 2008 RPS procurement plan.
 - b. The terms of the PPA, including the price of delivered energy, are reasonable.
5. Adopts the following finding of fact and conclusion of law in support of cost recovery for the PPA:
 - a. The utility's costs under the PPA shall be recovered through PG&E's Energy Resource Recovery Account.
 - b. Any stranded costs that may arise from the PPA are subject to the provisions of D.04-12-048 that authorize recovery of stranded renewables procurement costs over the life of the contract. The

⁵ Based on a 2010 commercial online date for the facility, the levelized all-in price of the Woodland PPA does not exceed the 2008 MPR for a 10-year contract. See Resolution E-4214.

implementation of the D.04-12-048 stranded cost recovery mechanism is addressed in D.08-09-012.

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 pre-approved as meeting the EPS because it is for an existing biomass facility covered by Conclusion of Law 35(d) of D.07-01-039.

Energy Division review of the proposed PPA on multiple grounds:

Energy Division evaluated the PPA for the following criteria:

- Consistency with PG&E’s 2008 RPS Procurement Plan
- Consistency with RPS standard terms and conditions (STC)
- Consistency with bilateral contracting guidelines
- Compliance with the minimum quantity condition
- Consistency with the Interim Emissions Performance Standard
- Procurement Review Group (PRG) concerns
- Comparison to the results of PG&E’s 2008 solicitation
- Cost reasonableness

Consistency with PG&E’s 2008 RPS Procurement Plan

PG&E’s 2008 RPS procurement plan (Plan) was approved by D.08-02-008 on February 14, 2008. Pursuant to statute, PG&E’s Plan includes an assessment of supply and demand to determine the optimal mix of renewable generation resources, consideration of flexible compliance mechanisms established by the Commission, and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.⁶

PG&E states that it expects incremental deliveries from the PPA, above what would be received under the existing QF contract, which will help PG&E meet the resource needs identified in its Plan. In its Plan, PG&E’s goal was to procure

⁶ See § 399.14(a)(3)

approximately 800 to 1,600 GWh per year. PG&E's Plan also noted that near-term deliveries were more valuable to PG&E. Beginning in 2010, Woodland will annually deliver up to 200 GWh to PG&E. Incremental deliveries from the facility will contribute to PG&E's 20 percent RPS goal.

The PPA is consistent with PG&E's 2008 RPS Procurement Plan, including PG&E's RPS resource needs, approved by D.08-02-008.

Consistency with PG&E's Least-Cost Best-Fit (LCBF) requirements

The RPS statute requires that PG&E procure generation using least-cost, best-fit principles.⁷ The Commission's LCBF decision directs the utilities to use certain criteria in their bid ranking.⁸ The decision offers guidance regarding the process by which the utility ranks bids in order to select or "shortlist" the bids with which it will commence negotiations. PG&E's bid evaluation includes a quantitative and qualitative analysis, which focuses on four primary areas: 1) determination of a bid's market value; 2) calculation of transmission adders and integration costs; 3) evaluation of portfolio fit; and 4) consideration of non-price factors. The LCBF evaluation is generally used to establish a shortlist of proposals from PG&E's solicitation with whom PG&E will engage in contract negotiations.

PG&E explains that its LCBF evaluation was unique for the Woodland agreement because the PPA is a result of bilateral negotiations with an existing QF facility already in PG&E's portfolio. Specifically, PG&E evaluated the Woodland agreement for its market value and portfolio fit⁹ relative to offers PG&E received in its 2008 RPS solicitation and with other RPS procurement opportunities recently executed and under negotiation.

The PPA is consistent with least-cost, best-fit procurement principles.

⁷ See § 399.14(a)(2)(b)

⁸ D.04-07-029

⁹ Portfolio fit considers how well an offer's features, such as delivery profile, matches the utility's energy portfolio needs.

Consistency with RPS standard terms and conditions

The proposed PPA is based on PG&E's 2008 RPS pro forma which complies with D.08-04-009, as modified by D.08-08-028. As a result, the PPA contains the required non-modifiable standard terms and conditions.

The PPA includes the Commission adopted RPS standard terms and conditions, including those deemed "non modifiable".

Consistency with bilateral contracting guidelines

In D.09-06-050 the Commission determined that bilateral contracts should be reviewed according to the same processes and standards as contracts that come through a solicitation. However, AL 3474-E was submitted before that decision was effective. Thus, Energy Division conducted its review of the PPAs based on the four requirements identified in D.06-10-019.

1. The PPA will not be applied to PG&E's cost limitation.¹⁰
2. The PPA was submitted by advice letter.¹¹
3. The PPA is at least one month in duration.¹²
4. The PPA is reasonably priced.¹³

The PPA is consistent with the bilateral contracting guidelines established in D.06-10-019.

¹⁰ The PPA is ineligible for the cost limitation because it did not result from a competitive solicitation. Pub. Utils. Code §399.15(d)(2).

¹¹ "For now, utilities' bilateral RPS contracts, of any length, must be submitted for approval by advice letter." See D.06-10-019 at 31.

¹² "All RPS-obligated LSEs are also free to enter into bilateral contracts of any length with RPS-eligible generators, as long as the contracts are at least one month in duration, to enable the CEC to verify RPS procurement claims." See D.06-10-019 at 29.

¹³ The contract price of bilaterals must be deemed reasonable by the Commission. See D.06-10-019, at 31.

Contribution to minimum quantity requirement for long-term/new facility contracts

D.07-05-028 established a “minimum quantity” condition on the ability of utilities to count an eligible contract of less than 10 years duration for compliance with the RPS program.¹⁴ In the calendar year that a short-term contract with an existing facility is executed, the utility must also enter into long-term contracts or contracts with new facilities equivalent to at least 0.25% of the utility’s previous year’s retail sales.

As a new facility, delivering pursuant to a long-term contract, the PPA will contribute to PG&E’s minimum quantity requirement established in D.07-05-028.

Compliance with the Interim Greenhouse Gas Emissions Performance Standard (EPS)

California Pub. Utils. Code §§ 8340 and 8341 require that the Commission consider emissions costs associated with new long-term (five years or greater) power contracts procured on behalf of California ratepayers.

D.07-01-039 adopted an interim EPS that establishes an emission rate quota for obligated facilities to levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine power plant. The EPS applies to all energy contracts for baseload generation that are at least five years in duration.¹⁵

Renewable energy contracts are deemed compliant with the EPS except in cases where intermittent renewable energy is firmed and shaped with generation from non-renewable resources.

Because the Woodland facility will be fueled by biomass that would otherwise be disposed of by open burning, forest accumulation, landfill, spreading or composting, the PPA meets the conditions for EPS compliance established in D.07-01-039.¹⁶

¹⁴ For purposes of D.07-05-028, contracts of less than 10 years duration are considered “short-term” contracts and facilities that commenced commercial operations prior to January 1, 2005 are considered “existing”.

¹⁵ “Baseload generation” is electricity generation at a power plant “designed and intended to provide electricity at an annualized plant capacity factor of at least 60%.” Pub. Utils. Code § 8340 (a).

¹⁶ See D.07-01-039, COL 35.

The PPA complies with the EPS because it meets the conditions established in D.07-01-039.

Procurement Review Group (PRG) concerns

PG&E's PRG consists of: the California Department of Water Resources, the Union of Concerned Scientists, the Division of Ratepayer Advocates, the Coalition of California Utility Employees, The Utility Reform Network, Jan Reid as a PG&E ratepayer, and the Commission's Energy Division.

PG&E informed its PRG of the Woodland agreement on January 30, 2009. Although Energy Division is a member of the PRG, it reserved judgment on the contract until the AL was filed. Energy Division reviewed the transaction independently of the PRG, and allowed for a full protest period before concluding its analysis.

Pursuant to D.02-08-071, PG&E's Procurement Review Group (PRG) participated in the review of the PPA. The PRG feedback, as described in the AL's Confidential Appendix D, did not provide a basis for disapproval of the PPA.

Comparison to the results of PG&E's 2008 and 2009 Solicitation

PG&E determined that the PPA is favorable relative to proposals received in response to PG&E's 2008 solicitation because the PPA's market valuation is reasonable compared with other bids from its 2008 solicitation. Staff also compared the PPA to offers PG&E received in their 2009 solicitation and reached the same conclusion. The PPA also has value to PG&E's ratepayers relative to bids received in their 2008 and 2009 solicitation because the facility is operational.

The PPA compares favorably to the results of PG&E's 2008 and 2009 RPS solicitations.

Cost Reasonableness

The Commission's reasonableness review for RPS PPA prices includes a comparison of the proposed PPA to other proposed RPS projects from recent RPS solicitations and recent Commission approved projects. PG&E filed Confidential work papers with AL 3474-E comparing the Woodland's price to offers received in PG&E's 2008 RPS solicitation. Staff also compared the Woodland PPA price to other RPS PPAs recently approved by the Commission. Based on this analysis, the Commission determines that the Woodland PPA price is reasonable. Confidential Appendix A includes a detailed discussion of the contractual

pricing terms, including PG&E estimates of the total contract costs under the PPA.

The total all-in costs of the PPA are reasonable based on their relation to bids received in response to PG&E's 2008 solicitation.

Provided the generation is from an eligible renewable energy resource, or is otherwise compliant with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009 and included in this PPA, payments made by PG&E under the PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E's administration of the PPA.

RPS ELIGIBILITY AND CPUC APPROVAL

Pursuant to Pub. Utils. Code § 399.13, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS contract, the Commission has required standard and non-modifiable "eligibility" language in all RPS contracts. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an "Eligible Renewable Energy Resource," that the project's output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller use commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.¹⁷

The Commission requires a standard and non-modifiable clause in all RPS contracts that requires "CPUC Approval" of a PPA to include an explicit finding that "any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer'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.*), Decision 03-06-071, or other applicable law."¹⁸

¹⁷ See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

¹⁸ See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, nor can the Commission determine, prior to final CEC certification of a project, that “any procurement” pursuant to a specific contract will be “procurement from an eligible renewable energy resource.”

Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS eligible resource to count towards an RPS compliance obligation. Nor shall such a finding absolve any contracting party of its obligation to obtain CEC certification and/or to pursue remedies for breach of contract to ensure that only RPS-eligible generation is delivered and paid for under a Commission-approved contract. Such contract enforcement activities shall be reviewed pursuant to the Commission’s authority to review the administration of such contracts.

CONFIDENTIAL INFORMATION

The Commission, in implementing Pub. Utils. Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, such as price, is confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their affiliates, which are public.

The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

COMMENTS

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

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on December 23, 2009.

No comments were filed.

FINDINGS AND CONCLUSIONS

1. The PPA is consistent with PG&E's 2008 RPS Procurement Plan, approved by D.08-02-008.
2. The PPA is consistent with the resource needs identified in PG&E's 2008 Procurement Plan.
3. The PPA includes the Commission-adopted RPS standard terms and conditions including those deemed "non-modifiable".
4. The PPA will contribute to PG&E's minimum quantity requirement established in D.07-05-028.
5. The PPA complies with the EPS because it meets the conditions established in D.07-01-039.
6. Pursuant to D.02-08-071, PG&E's Procurement Review Group (PRG) participated in the review of the PPA.
7. The PRG feedback, as described in the confidential information provided with the advice letter, did not provide a basis for disapproval of the PPA.
8. The PPA compares favorably to the results of PG&E's 2008 solicitation.
9. The total all-in costs of the PPA are reasonable based on their relation to bids received in response to PG&E's 2008 solicitation.
10. The total all-in price of the PPA is less than or equal to the applicable 2008 market price referent adopted in Resolution E-4214.
11. Provided the generation is from an eligible renewable energy resource, or is otherwise compliant with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009 and included in this PPA, payments made by PG&E under the PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E's administration of the PPA.
12. Procurement pursuant to the PPA is procurement from eligible renewable energy resources 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.

13. The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource under the PPA to count towards an RPS compliance obligation. Nor shall that finding absolve PG&E of its obligation to enforce compliance with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009, and included in the PPA.
14. The confidential appendices, marked "[REDACTED]" in the public copy of this Resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.
15. AL 3474-E should be approved effective today without modifications.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company's Advice Letter 3474-E, requesting Commission review and approval of power purchase agreements with Woodland Biomass Power Ltd, is approved without modification.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on January 21, 2010; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON
PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
Commissioners

Confidential Appendix A

Summary of PPA terms and conditions

[REDACTED]