PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **RESOLUTION E-4488**
April 19, 2012

R E D A C T E D

R E S O L U T I O N

Resolution E-4488. Pacific Gas and Electric Company requests approval of an amendment to an existing Qualifying Facility contract with Eel River Power, Inc. for delivery of Renewable Portfolio Standard-eligible power. The amendment consists of an initial three-year period, after which time PG&E would have the option to extend the amendment for an additional year and, subsequently, the option to extend the amendment for another six months.

PROPOSED OUTCOME: This Resolution approves the proposed amendment of the existing QF contract between Eel River Power, Inc. and PG&E without modification.

ESTIMATED COST: Actual costs are confidential at this time.

By Advice Letter 3944-E, filed on November 14, 2011.

SUMMARY

This Resolution approves the Fourth Amendment to an existing Qualifying Facility (QF) Power Purchase Agreement (PPA) between Pacific Gas and Electric Company (PG&E) and Eel River Power, Inc. (Eel River). Eel River operates a 28.8 MW (nameplate capacity) biomass generating facility (the Facility) in Humboldt County, CA. The Fourth Amendment provides the Facility with a higher price for delivered energy and capacity payments in exchange for stricter performance obligations and other beneficial terms and conditions. The Facility is expected to deliver approximately 97 gigawatt-hours (GWh) of RPS-eligible power to PG&E each year during the term of the amendment.

The Fourth Amendment took effect on October 1, 2011 and will, if approved, enable Eel River to continue to operate its Facility and provide RPS-eligible generation for a minimum of 3 years. The term of the Fourth Amendment can be extended twice at PG&E's option, first by one year, and second by six months or until March 31, 2016, which is the expiration date of the existing contract.

BACKGROUND

Recent Decisions related to the California QF Program

On December 16, 2010, the Commission adopted the Qualifying Facilities and Combined Heat and Power (QF/CHP) settlement with the issuance of Decision (D.)10-12-035. The settlement resolves a number of longstanding issues regarding the contractual obligations and procurement options for facilities operating under legacy and new QF contracts.

Among other things, D.10-12-035 updates methodologies and formulas for Short Run Avoided Cost (SRAC) energy price for QFs to be used in standard offer contracts for QFs under 20 megawatts (MW), Transition PPA, amendments to existing QF PPAs, and Optional As-Available PPAs. The SRAC methodology under the QF/CHP settlement includes:

(1) by January 1, 2015, transitioning SRAC pricing from a formula that is based in part on administratively-determined heat rates to a formula that solely uses market heat rates;

(2) investor-owned utility (IOU)-specific time-of-use (TOU) factors to be applied to energy prices to encourage energy deliveries during the times when the energy is most needed by customers;

(3) a locational adjustment based on California Independent System Operator (CAISO) nodal prices; and

(4) pricing options based on whether a cap-and-trade program or other form of greenhouse gas (GHG) regulation is developed in California or nationally.

Approval for QF contract changes was previously addressed in D.98-12-066, which authorized the advice letter process to be used for restructured QF contracts that are supported by the utility, the QF and the Division of Ratepayer Advocates (DRA), and the application process to be used for controversial QF contract restructurings. More recently, D.04-12-048 stipulated that contracts with greater than a five-year term require an application and D.06-12-009 clarifies that modifications and amendments of QF contracts with terms less than five years may be addressed through the filing of an advice letter (AL).[1]

Pursuant to these stipulations PG&E filed AL 3944-E seeking approval of a proposed Fourth Amendment to an existing QF contract.

Overview of the Eel River Power, Inc. Facility

Eel River Power, Inc. operates a 28.8 MW (nameplate capacity) biomass generating facility (the Facility) in Humboldt County, CA. Eel River is owned by Greenleaf Power, LLC (Greenleaf).

The existing power purchase agreement between Eel River and PG&E is a Standard Offer 1 (SO1) contract that delivers as-delivered capacity and RPS-eligible energy. Eel River and previous operators have delivered electricity generated by the Facility under the PPA since the facility began operations and stared delivering energy in 1986.

In 2007, PG&E and Eel River's predecessor, the Pacific Lumber Company, executed the Third Amendment to the PPA which set a fixed price for energy and eliminated the Seller's termination right until March 31, 2016 (the 2007 Amendment). The 2007 Amendment was filed with the commission on January 11, 2008 in Advice Letter (AL) 3193-E, and approved on November 21, 2008, by Resolution 4212-E.

[1] See D.06-12-009 at p.7.

Greenleaf acquired the Facility in November 2010 at which point Eel River and PG&E began discussions regarding an amendment to the PPA with pricing terms that would support the Facility's continued operation, as Eel River does not believe that continued operation of this Facility would occur in the absence of this amendment. As a result, PG&E and Eel River negotiated and executed the Fourth Amendment to the existing QF contract on September 21, 2011, which is the subject of this resolution.

NOTICE

Notice of AL 3944-E was made by publication in the Commission's Daily Calendar. Pacific Gas and Electric Company states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

Advice Letter 3944-E was not protested.

DISCUSSION

PG&E requests Commission approval of the Fourth Amendment to the existing Qualifying Facility PPA for procurement of eligible renewable energy resources from Eel River Power, Inc.

On November 14, 2011, PG&E filed Advice Letter 3944-E which seeks approval of the Fourth Amendment to an existing QF PPA between PG&E and Eel River.

The Fourth Amendment provides the Facility with a higher price for delivered energy and capacity payments in exchange for stricter performance obligations and other beneficial terms and conditions. Without such price increase, the Facility attests to be in jeopardy of shutting down. The Facility is expected to deliver approximately 97 gigawatt-hours (GWh) of RPS-eligible power to PG&E each year during the term of the amendment.

The Fourth Amendment took effect on October 1, 2011 and will, if approved, enable Eel River to continue to operate its Facility and provide RPS-eligible generation for a minimum of 3 years. The term of the Fourth Amendment can be extended twice at PG&E's option, first by one year, and second by six months or until March 31, 2016, which is the expiration date of the existing contract.

Specifically, PG&E request that the Commission:

1. Approves the Fourth Amendment without modifications as just and reasonable; and,

2. Determines that all costs associated with the Fourth Amendment may be recovered through PG&E's Energy Resource Recovery Account (ERRA).

Energy Division evaluated the Proposed PPA Amendment based on the following criteria:

- Consistency with D.07-09-040 and D.06-12-009
- Consistency with D.10-12-035 (QF/CHP Program Settlement)
- Consistency with RPS standard terms and conditions
- Consistency with RPS Resource Eligibility Guidelines
- Consistency with the RPS resource needs identified in PG&E's 2011 RPS Procurement Plan
- Consistency with D.02-08-071, which requires Procurement Review Group (PRG) participation
- Cost reasonableness
- Project viability
- Contract term reasonableness

In considering these factors, we also consider the analysis and recommendations of the Independent Evaluator.

Filing of the Fourth Amendment is consistent with Decision (D.) 07-09-040 and D.06-12-009 allowing modifications and amendment for QF contracts of less than five years in duration.

Filing of AL 3944-E is consistent with Commission procedures for contract changes to existing QF contracts. Approval for QF contract changes was previously addressed in D.98-12-066, which authorized the advice letter process to be used for restructured QF contracts that are supported by the utility, the QF and DRA, and the application process to be used for controversial QF contract restructurings. More recently, D.07-09-040 states, "We encourage any renewable resources to negotiate and bring before us applications for such five-year, fixed price amendments, wherever possible, and will consider such applications as we have other negotiated agreements in prior decisions, keeping in mind the direction provided by § 390.1"[2] As AL 3944-E is proposing a fixed energy price amendment to an existing QF contract, we find it is consistent with D.07-09-040.

Furthermore, D.04-12-048, which adopts the IOUs' long-term procurement plans, concludes that "contracts with duration five years or longer [shall] be submitted with an application to the Commission for preapproval."[3] D.06-12-009 clarifies that based on D.04-12-048, QF contract extensions for less than five years should be authorized through the advice letter process. Because the contractual changes embodied in the proposed Fourth Amendment would, at most, modify the existing contract for 4 years 6 months, we find that filing of the proposed Fourth Amendment via Advice Letter is consistent with D.06-12-009.

The Fourth Amendment is consistent with D. 10-12-035 (QF/CHP Program Settlement).

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[2] D.07-09-040, *mimeo*, p. 133.

[3] D.04-12.048 at p.108.

On December 16, 2010, the Commission adopted the QF/Combined Heat and Power (CHP) settlement (Settlement) with the issuance of D. 10-12-035. The Settlement became effective as of November 23, 2011. The Settlement resolves a number of longstanding issues regarding the contractual obligations and procurement options for facilities operating under legacy and new QF contracts. Among other things, it establishes methodologies and formulas for calculating SRAC to be used in QF PPAs. Furthermore, the Settlement allows for bilaterally negotiated contracts with QFs to determine alternative energy and capacity payments mutually agreeable by relevant parties and subject to CPUC approval. Finally, it establishes specific CHP procurement targets and greenhouse gas (GHG) reduction targets for each named utility.

The Settlement neither approves nor prohibits bilaterally negotiated changes to existing QF agreements. Thus, the amending to an existing QF contract with Eel River which is the subject of this resolution is consistent with the Settlement. Since the Eel River Facility is not a CHP resource, it does not count towards PG&E's megawatt and GHG reduction targets under the Settlement. Upon expiration of the fourth amendment to the Eel River contract, the energy price paid to the Facility will revert to SRAC, as defined by the Settlement or updated by the CPUC, for any remaining term of the contract.

The Fourth Amendment includes all relevant RPS non-modifiable standard terms and conditions.

The Commission adopted a set of standard terms and conditions (STCs) required in RPS contracts, four of which are considered "non-modifiable." The STCs were compiled in D.08-04-009 and subsequently amended in D.08-08-028. More recently in D.10-03-021, as modified by D.11-01-025, the Commission further refined these STCs.

While the Eel River facility is currently operating under a QF contract, and will continue to do so under the proposed Fourth Amendment, since the Facility is delivering RPS-eligible power, it is prudent to ensure the contract includes the most recent RPS non-modifiable terms and conditions. This will help ensure consistency in managing renewable power generated to meet the utility's RPS obligations.

Staff has reviewed the amendment and has concluded that it does include the Commission adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.

The Fourth Amendment appropriately includes contract provisions requiring a demonstration that the Facility meets the RPS Resource Eligibility Guidelines.

Pursuant to Pub. Util. Code § 399.25, 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 uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.[4]

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 as certified by the California Energy Commission 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."[5]

The Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, nor can the Commission determine prior to final

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[4] *See, e.g.* D. 08-04-009 at Appendix A, STC 6, Eligibility.

[5] See id. at Appendix A, STC 1, CPUC Approval.

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 finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract. Such contract enforcement activities shall be reviewed pursuant to the Commission's authority to review the utilities' administration of contracts.

The Fourth Amendment is consistent with the RPS resource needs identified in PG&E's 2011 RPS Procurement Plan.

Because the price under the Proposed Amendment is justified, in part, on the basis of the contribution that deliveries from the Facility will make toward PG&E's RPS goals, we evaluate the Proposed Amendment for consistency with PG&E's most recently approved RPS procurement plan, which in part, identifies PG&E's need for RPS-eligible energy.

PG&E's 2011 RPS Procurement Plan (Plan) was approved by D.11-04-030 on April 14, 2011. Pursuant to statute, PG&E's Plan includes an assessment of supply and demand to determine the optimal mix of renewable generation resources. While the Proposed Amendment relates to an existing QF contract negotiated bilaterally outside of the competitive RPS solicitation process, we find that it is consistent with the RPS resource needs identified in PG&E's Plan. The Eel River Facility will deliver approximately 97 GWh/year of RPS-eligible resources in the near-term, and the project is already delivering renewable energy under its existing contract. As described in the Confidential Appendix, the deliveries anticipated under this contract will help PG&E fulfill near term RPS obligations. However, beyond the initial three years of the proposed amendment, the need for the deliveries this project is anticipated to provide is less certain given the level of contracting PG&E has undertaken to date. For these reasons we believe the option to extend the amendment term is reasonable as it affords the opportunity to retain this facility and its output based on an assessment of need and value at that time, as opposed to committing PG&E, and

by extension ratepayers, to future procurement today that may prove unnecessary and/or costly relative to alternatives.

We also note that approval of the proposed Fourth Amendment supports California Executive Order S-06-06, establishing targets for the use and production of biofuels and biopower and directing state agencies to work together to advance biomass programs in California while providing environmental protection and mitigation.[6]

The Fourth Amendment is consistent with D.02-08-071 requiring review by PG&E's Procurement Review Group.

PG&E's Procurement Review Group (PRG) was notified of the proposed Amendment. PG&E discussed the proposed Fourth Amendment to the Eel River PPA with its PRG on July 12, 2011.

The costs in the Fourth Amendment are reasonable.

Greenleaf Power provided PG&E with historical financial information on the Eel River Facility and a projected financial forecast under the terms of the proposed amendment. Energy Division reviewed the results of the cash flow analysis and the Earnings Before Interest, Taxes and Depreciation analysis (EBITDA). Energy Division also reviewed an attestation by the Facility's President regarding the financial health of the Eel River Facility.

In addition to analyzing the cash flow model, Energy Division compared the price for capacity and energy under the Fourth Amendment against other recent biomass and RPS transactions and to bids in the 2011 RSP solicitation, as is standard in the Commission's reasonableness review of RPS PPA prices.

Finally, Energy Division considered the costs of the amendment against the enhanced contract terms and conditions also included in the contract.

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[6] Executive Order S-06-06 by the Governor of the State of California (April 2006). http://www.dot.ca.gov/hq/energy/Exec%20Order%20S-06-06.pdf

Considering the Fourth Amendment terms and using the comparison to RPS projects and the confidential cash flow analysis provided by PG&E in addition to the attestation from the Facility's owner, the Commission determines that the price under the Fourth Amendment is reasonable.

Details regarding Energy Division's review of the costs and contract terms under the Fourth Amendment are included in Confidential Appendix A to this Resolution.

The Facility is viable under the terms and price of the Fourth Amendment.

As an existing facility, the project faces no physical development and, with the price relief, is likely to be economically viable over the term of the Fourth Amendment. However, as explained in Confidential Appendix A, we do have concerns regarding the longer term operational viability of the project. These concerns do not rise to the level of rejecting the Fourth Amendment, but are important considerations.

The proposed term of the Fourth Amendment is reasonable.

We find that the term of the Fourth Amendment, starting October 1, 2011, for a minimum of three years is reasonable. The Fourth Amendment provides Seller with immediate relief so it can continue operating economically, and provides PG&E near-term deliveries of renewable energy at reasonable cost. PG&E will provide true-up payments to the Seller for energy delivered from October 1, 2011.

Although deliveries from the Facility will help fulfill PG&E's renewable mandates, the need for this energy is less clear given the amount of renewable contracting PG&E has done to date and future potential contracting activities. We agree with PG&E that it may be appropriate to extend the amendment terms for as much as one year and six months beyond the initial 3-year period, with the prudency of that decision depending on PG&E's compliance position at that time, and the state of the renewable energy market. In light of this we believe the option to extend the Fourth Amendment term is reasonable as it preserves the ability to retain this generation if it is needed.

More details of the contract term and request for extension are included in Confidential Appendix A.

The Fourth Amendment was reviewed by an Independent Evaluator.

Although it was not required, PG&E elected to have an Independent Evaluator (IE) review the amendment. Arroyo Seco Consulting evaluated the Fourth Amendment and concluded that the amendment merits CPUC approval. The IE noted some concerns which are reviewed in Confidential Appendix A to this Resolution. A public version of the IE report is available as Appendix E to the Advice Letter filing.

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. Specified 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 appendix, 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.

Staff issued a draft resolution on March 20, 2012 and received no formal comments on the draft resolution. There were non-substantive changes which

ultimately did not affect the outcome of the resolution, which approves the advice letter without modification.

FINDINGS AND CONCLUSIONS

1. Filing of the Fourth Amendment is consistent with Decision (D.) 07-09-040 and D.06-12-009 allowing modifications and amendment for QF contracts of less than five years in duration.

2. The Fourth Amendment is consistent with D. 10-12-035 (QF/CHP Program Settlement).

3. The Fourth Amendment includes all relevant RPS non-modifiable standard terms and conditions.

4. The Fourth Amendment appropriately includes contract provisions requiring a demonstration that the Facility meets the RPS Resource Eligibility Guidelines.

5. The Fourth Amendment is consistent with the RPS resource needs identified in PG&E's 2011 RPS Procurement Plan.

6. The Fourth Amendment is consistent with D.02-08-071 requiring review by PG&E's Procurement Review Group.

7. The costs in the Fourth Amendment are reasonable.

8. The Facility is viable under the terms and price of the Fourth Amendment.

9. The proposed term of the Fourth Amendment is reasonable.

10. The Fourth Amendment was reviewed by an Independent Evaluator.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company's Advice Letter 3944-E requesting Commission approval of a three year amendment to an existing Qualifying Facility contract and the option to extend the proposed amendment by one year, and subsequently, an additional six months, with Eel River Power, Inc., is approved. All costs associated with the Fourth Amendment may be recovered through PG&E's Energy Resource Recovery Account.

2. 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 April 19, 2012; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON
PAUL CLANON
Executive Director

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

Confidential Appendix A

Summary and Analysis of Fourth Amendment

[REDACTED]