PUBLIC VERSION

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **RESOLUTION E-3877**
JULY 8, 2004

R E S O L U T I O N

Resolution E-3877. Pacific Gas and Electric Company requests approval of phase two of previously approved renewable resource procurement contracts.

By Advice Letter 2506-E, Filed on May 10, 2004.

SUMMARY

Pacific Gas and Electric Company's (PG&E) request for approval of the extension of three previously Commission-approved biomass renewable energy contracts is granted.
The Commission approved Phase one of the subject contracts in Resolution E-3853, on October 16, 2003. The contracts, for which PG&E seeks Commission approval to initiate phase two, are bilateral agreements between PG&E and the selling parties.

Approval of the three biomass contracts are in the ratepayers' interest.
PG&E demonstrated that these contracts are in the ratepayer's interest because they meet PG&E's obligation to procure renewable resources at reasonable prices and contain features that protect ratepayers against undue future costs. The members of PG&E's Procurement Review Group (PRG) either supported or did not oppose the continuation of these contracts into Phase two. PG&E also demonstrated in its filing that the contracts remain mutually agreeable to the countersigning parties and that the evaluation methodology used to select the contracts remain unchanged

BACKGROUND

The Commission has issued guidelines and is currently developing procedures for implementation of the Renewable Portfolio Standard (RPS) program.

SB1078, chaptered on September 12, 2002[1], establishes the California Renewable Portfolio Standard Program, which requires an electrical corporation to increase its use of eligible renewable energy resources[2] to 20 percent of total retail sales no later than December 31, 2017[3]. The Energy Action Plan, a joint agency document adopted by the Commission in May 2003, states a policy preference for accelerating this goal to 2010.

In D.03-06-071, issued on June 19, 2003, the Commission approved key guidelines for implementing the RPS program. That decision also established a Commission review and approval process in the form of utility Advice Letter filings.

The Commission provided interim guidance to the utilities on procuring renewable energy resources prior to full implementation of the RPS program.

The Assigned Commissioner's Ruling (ACR), effective August 13, 2003, authorized any of the investor-owned utilities to enter into renewable energy contracts in the interim period prior to the first solicitation pursuant to the fully developed RPS.[4] The ACR established interim procurement requirements for both competitive solicitations and bilateral agreements for renewable energy products.

PG&E is seeking Commission approval to initiate the second phase of three biomass contracts previously approved by the Commission.

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1. [1] Statutes of 2002, Chapter 516

2. [2] Defined in PU Code section 399.12(a)

3. [3] PU Code Section 399.15(b)(1)

4. [4]The Commission recently adopted key program elements establishing the Market Price Referent methodology and Standard Contract Terms and Conditions (D.04-06-015 and D.04-06-014 respectively) for the RPS solicitation

Resolution E-3853, approved by the Commission on October 16, 2003, authorized PG&E to enter into three contracts with three different biomass generators under the requirements set forth in the above referenced ACR. After Commission authorization, PG&E signed contracts with the following third parties for the specified unit sizes (herein after referred to as "the contracts"):

Seller	**Facility Location**	**Capacity (MW)**
Madera Power, LLC	Firebaugh	25.0
Community Renewable Energy Services, Inc.	Reedley (Dinuba)	12.0
Sierra Power Corporation	Terra Bella	7.0

The initial contractual agreement authorized by the Commission in E-3853 represents the first phase. PG&E, now requests the Commission to authorize the continuation of these contracts into phase two after a showing that the above referenced contracts remain in the interest of ratepayers.

NOTICE

Notice of AL 2506-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 III-G of General Order 96-A.

PROTESTS

Advice Letter AL 2506-E was not protested.

DISCUSSION

The Commission should maintain confidentiality of contract pricing and term agreements between the contracting parties.

We have considered whether, and to what degree, to disclose information submitted to us under seal. It is incumbent upon this Commission to keep sensitive information confidential while still making plain to the public at large the bases for Commission decisions. In the final analysis, it is the Commission's responsibility to make decisions in the light of day, and we give that obligation great weight in determining whether commercial information is of such critical sensitivity as to override broader public concerns.

This resolution finds the specific pricing information and contract terms that remained redacted upon approval of the initial resolution E-3853, should remain redacted upon approval of this resolution. The unredacted version of this resolution will identify the portion of the resolution that will remain undisclosed with the text appearing in **[[underlined in double brackets]]**. Accordingly, text in this resolution marked "[REDACTED]" indicates where undisclosed information appears in the redacted version of this resolution. We wish to make clear that the decision to maintain confidentiality of specific pricing and contract term information is based on unique circumstances specific to these contracts, and we will adopt broadly applicable standards governing confidentiality within the broader RPS proceeding. We find that the public interest in disclosing the price and terms of these contracts is not outweighed by the public interest in confidentiality of this data at this time.

The Energy Division finds the contract extensions to be in the public interest and recommends their approval.

The Energy Division has reviewed PG&E's request for Commission authorization to initiate phase two of the three biomass contracts outlined in the "Background" section of this resolution. In Advice Letter 2506-E, PG&E has indicated that all supporting documents that were previously provided to the Commission with AL 2423-E, pursuant to PU Code Section 583 and the basis for Commission adoption of E-3853[5], are still valid as of the current filing.

PG&E performed due diligence in its contract evaluation and applied reasonable internal benchmarks. PG&E demonstrated that the recommended offers meet PG&E commercial and non-commercial provisions, and contribute toward PG&E's renewable procurement target. These renewable energy contracts, while providing ratepayer benefits, also continue to offer a price that is below the $53.7/MWh interim benchmark established by the Commission in Decision 02-08-071(D.) and approved in Resolution E-3853. PG&E maintains pricing and contract terms that were approved by the Commission in Resolution E-3853, and detailed below.

[[Power Purchase Agreement Pricing and Terms – REDACTED]]

5. [5] E-3853, approved by the Commission on October 16, 2003, authorized phase one of the three biomass contracts subject to this resolution.

PRG members does not opposed or remain neutral to extending the contracts. PG&E informed members of its procurement review group (PRG) that it planned to make this advice letter filing. Through informal discussions, PG&E's PRG members have been either supportive or neutral to PG&E's desire to extend these renewable energy contracts. PG&E's PRG is comprised of Aglet Consumer Alliance, California Energy Commission (CEC), California Utility Employees (CUE), Consumers Union (CU), Department of Water Resources (DWR), the Energy Division, the Office of Ratepayer Advocates (ORA), the Natural Resources Defense Council (NRDC), and The Utility Reform Network (TURN).

The Commission should approve the extension of the contracts into phase two. Due to continued benefits for ratepayers in the form of renewable procurement at a price below the interim benchmark Energy Division recommends Commission approval of phase two of the subject biomass contracts.

COMMENTS

All Parties Agree to Reduce the Comment Period:
"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.

"All parties in the proceeding have stipulated to reduce the 30-day waiting period required by PU Code section 31l(g)(1) to 15 days. Accordingly, this matter will be placed on the first Commission's agenda fifteen days following the mailing of this draft resolution. By stipulation of all parties, comments shall be filed no later than 10 days following the mailing of this draft resolution, reply comments shall be filed no later than 15 days following the mailing, of this draft resolution."

PG&E submitted comments on June 30, 2004 supporting the resolution as drafted, with the caveat that an additional ordering paragraph be added indicating all provisions of the initial resolution authorizing these three biomass

contracts (E-3853) remain in effect unless otherwise modified by this current resolution (E-3877).

The Energy Division finds this request to be reasonable and since the only modification being authorized by adoption of this resolution is the approval to enter into phase two of the contracts as specified in Resolution E-3853.

FINDINGS

1. Assigned Commissioner Ruling dated August 13, 2003, authorized the IOUs to conduct interim renewable energy procurement, prior to full RPS solicitations, subject to specific criteria. The Investor Owned Utilities (IOUs) shall file an Advice Letter to seek pre-approval of any contract for such interim procurement.

2. The Commission required each utility to establish a Procurement Review Group (PRG) to review the utilities' interim procurement needs and strategy, proposed procurement process, and selected contracts.

3. The PRG for PG&E is comprised of Aglet Consumer Alliance, the California Energy Commission (CEC), California Utility Employees (CUE), Consumers Union (CU), Department of Water Resources (DWR), the Energy Division, the Office of Ratepayer Advocates (ORA), the Natural Resources Defense Council (NRDC), and The Utility Reform Network (TURN).

4. The Commission approved Resolution E-3853 on October 16, 2003, authorizing PG&E to enter into a phase one contractual agreement with three renewable biomass energy contracts.

5. PG&E filed Advice Letter 2506-E on May 10, 2004, requesting Commission approval to initiate phase two for the three biomass renewable energy contracts referenced above and in the "Background" section of this resolution.

6. PG&E made a sufficient showing that these contracts remain mutually agreeable to the parties, the evaluation methodology reasonable, and the selected contracts continue to meet PG&E's renewable procurement

requirements set forth in the August 13th, 2003 Assigned Commissioner Ruling at a reasonable cost.

7. PG&E should continue to make Advice Letter filings when transitioning to additional phases of the subject contracts.

8. We do not establish a routine practice or new methodology in this resolution, as the approval of these contracts is not indicative of approval of any contracts or Advice Letters to be submitted in the future.

9. We do not prejudge any issues related to the Renewable Portfolio Standard Program (RPS) implementation in this resolution.

10. The confidential pricing and contract term information, which remained redacted upon approval of the initial phase one authorization in Resolution E-3853, should remain redacted upon approval of this resolution.

11. We should approve Advice Letter 2506-E, in its entirety, today.

THEREFORE IT IS ORDERED THAT:

1. PG&E's request, as filed in Advice Letter 2506-E, is approved.

2. PG&E will continue to make Advice Letter filings when transitioning to additional phases of the subject contracts.

3. All provisions of Resolution E-3853, unless specifically modified in Resolution E-3877, remain in effect for the term of these biomass contracts.

4. 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 July 8, 2004; the following Commissioners voting favorably thereon:

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WESLEY M. FRANKLIN
Deputy Executive Director

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

We dissent.
/s/ CARL W. WOOD
/s/ LORETTA M. LYNCH
Commissioners

I reserve the right to join Commissioner Lynch's dissent.
/s/ CARL W. WOOD
Commissioner

I reserve the right to file a dissent.
/s/ LORETTA M. LYNCH
Commissioner