PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **RESOLUTION E-4058**
January 11, 2007

REDACTED

R E S O L U T I O N

Resolution E-4058. Pacific Gas & Electric (PG&E) Company requests approval of this settlement and amended Madera Power, LLC (Madera), Community Renewable Energy Services, Inc. (CRES), and Sierra Power Corporation (Sierra) renewable resource procurement contracts. This advice letter is approved with modification.

By Advice Letter 2911-E filed on October 6, 2006.

SUMMARY

PG&E's renewable contracts comply with the Renewable Portfolio Standard (RPS) interim solicitation guidelines and the Settlement and Amendments to the PPAs are approved, however, PG&E's request for a non-bypassable charge will not be addressed in this Resolution.

Generating facility	Type	Term Years	MW Capacity	GWh Energy	Online Date	Location
Madera	Biomass	2.5 years remaining on 5 year term	24.0	~160	October 16, 2003	Firebaugh, CA
CRES (Dinuba)	Biomass	Same as above	12.0	~90	October 16, 2003	Reedley (Dinuba), CA
Sierra	Biomass	Same as above	7.0	~75	October 16, 2003	Terra Bella, CA

The Commission approved the terms of these contracts in Resolution E-3853 on October 16, 2003, authorizing PG&E to enter into a Phase One contractual agreement with three renewable biomass energy contracts. Phase One initiated the Terms of the Agreement between PG&E and the Sellers on a year to year basis until PG&E attained an investment grade rating. The Commission

approved Resolution E-3877 on July 8, 2004, authorizing PG&E to enter into a Phase Two contractual agreement, amending the Original PPAs to a 5 year term agreement with the Sellers. On July 8, 2009, PG&E has a unilateral option to extend the agreements for an additional 5 years.

These Amendments are the result of a settlement of contract disputes between Madera Power, LLC (Madera), Community Renewable Energy Services, Inc. (CRES), and Sierra Power Corporation (Sierra) to be referred to as the "Sellers" and PG&E. The Amendments revise the Contract Price, clarify the Terms for Contract Capacity, allow the Sellers to retain the rights of federal Production Tax Credits (PTCs), and increases the Performance Security amount.

The energy acquired from these contracts counts towards PG&E's Renewable Portfolio Standard (RPS) requirements. In addition, the amended price for the contracts has been deemed reasonable by the Commission and fully recoverable in rates over the life of the contracts, subject to Commission review of PG&E's administration of the contracts.

Deliveries from the power purchase agreements (PPAs) do not require nor would they be eligible for Supplemental Energy Payments (SEPs) from the California Energy Commission (CEC). The energy delivered from these three projects contributes approximately 3.0% towards PG&E's 2006 RPS Annual Procurement Target (APT).

Confidential information about the contract should remain confidential.

This resolution finds that certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583, General Order (G.O.) 66-C and Decision (D.)06-06-066 should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations.

BACKGROUND

The RPS Program requires each utility to increase the amount of renewable energy in its portfolio.

The California Renewables Portfolio Standard (RPS) Program was established by Senate Bill 1078, effective January 1, 2003. It requires that a retail seller of electricity such as PG&E purchase a certain percentage of electricity generated by Eligible Renewable Energy Resources (ERR). The RPS program is set out at Public Utilities Code Section 399.11, et seq. Each utility is required to increase its

total procurement of ERRs by at least 1% of annual retail sales per year so that 20% of its retail sales are supplied by ERRs by 2017.

The State's Energy Action Plan (EAP) called for acceleration of the RPS goal to reach 20 percent by 2010. The Commission adopted this accelerated goal in the Order Instituting Rulemaking (R.04-04-026) issued on April 28, 2004.[1] On September 26, 2006, Governor Schwarzenegger signed Senate Bill 107[2], which officially accelerates the State's RPS targets to 20 percent by 2010. The bill takes effect on January 1, 2007.

In response to SB 1078, the Commission issued a series of decisions that established the regulatory and transactional parameters of the utility renewables procurement program. On June 19, 2003, the Commission issued its "Order Initiating Implementation of the Senate Bill 1078 Renewable Portfolio Standard Program," D.03-06-071.

In D.03-06-071, the Commission established an annual procurement target (APT) for each utility, which consists of two separate components: the baseline, representing the amount of renewable generation a utility must retain in its portfolio to continue to satisfy its obligations under the RPS targets of previous years; and the incremental procurement target[3] (IPT), defined as at least one percent of the previous year's total retail electrical sales, including power sold to a utility's customers from its DWR contracts.

CPUC developed interim renewable procurement guidelines.

Prior to the approval of D.03-06-071, which established the processes for implementing the RPS program, the Commission authorized 2002 and 2003 interim RPS solicitations. In D.02-08-071[4] , the Commission adopted an interim reasonableness benchmark. Conclusion of Law 7 of this decision states that,

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[1] http://www.cpuc.ca.gov/Published/Final_decision/36206.htm
[2] SB 107, Chapter 464, Statutes of 2006
[3]IPT - The incremental procurement target (IPT) represents the amount of RPS-eligible procurement that the LSE must purchase, in a given year, over and above the total amount the LSE was required to procure in the prior year. An LSE's IPT equals at least 1% of the previous year's total retail electrical sales, including power sold to a utility's customers from its DWR contracts
[4] http://www.cpuc.ca.gov/word_pdf/FINAL_DECISION/18659.pdf

> "Renewables contracts that meet or exceed the provisional benchmark price of 5.37 cents per kWh should be deemed *per se* reasonable. Other renewables contracts may also be approved by the Commission through the advice letter process outlined in this decision."

On August 13, 2003, the Assigned Commissioner issued a ruling, "Assigned Commissioner's Ruling Specifying Criteria for Interim Renewable Energy Solicitations" ("ACR")[5], which established interim procurement requirements for both competitive solicitations and bilateral agreements for renewable energy products.

The ACR set forth general process requirements:

1. A utility must abide by the terms of the Commission's first RPS implementation decision (D.03-06-071).
2. Utilities may engage in bilateral negotiations or may issue a competitive solicitation (request for offer [RFO]) to receive bids.
3. Issuance of an interim RFO by a utility does not constitute filing of an RPS procurement plan under the terms of D.03-06-071.
4. The utilities are allowed to "roll over" any under-procurement in 2003 into the Annual Procurement Target (APT)[6] for 2004 without penalty. A decision not to issue an RFO prior to full RPS implementation will not waive this immunity. Conversely, any contract signed as a result of a bilateral negotiation or an RFO, and approved by the Commission, should count toward the APT.
5. Following PRG review of any proposed contracts, the utility may submit those contracts for Commission approval via Advice Letter.

The ACR also set forth criteria for interim procurement:

1. Any renewable procurement in the interim period must not anticipate the use of any Supplemental Energy Payments (SEPs) to be awarded by the California Energy Commission (CEC) pursuant to Public Utilities Code Sec. 383.5(d).
2. A solicitation must not anticipate the creation of the Market Price Referent (MPR) under development in the RPS process. Internal market benchmarks

[5] Rulemaking (R.) 01-10-024, http://www.cpuc.ca.gov/PUBLISHED/RULINGS/28681.htm
[6] The APT is the minimum amount of renewable generation the utility must procure each year to meet its RPS requirement, subject to the flexible compliance mechanisms authorized in D.03-06-071.

developed by the utility for bid evaluation are appropriate for preliminary evaluation, but should not be made public in the RFO or at any point in the solicitation process, and should not be referred to as the MPR.

3. Any internal benchmarks and details of their development should be provided to the Procurement Review Group (PRG) when the Preliminary Evaluation of submitted bids is performed, and to the Commission when any proposed contracts are ultimately submitted for approval.
4. Any RFO must clearly stipulate up front precisely how the utility will calculate adders for transmission upgrades and integration costs, and how the utility will assign capacity values and payments to as-available resources.

The Original PPA agreements were executed pursuant to the authority granted by the August 2003 ACR. Wherein, PG&E exercised bilateral negotiations, adopted $53.70/MWh as a price reasonable benchmark, and provided its PRG information during their evaluation process.

Governor Schwarzenegger's Executive Order encourages bioenergy development.

Governor Schwarzenegger's Executive Order S-06-06 encourages bioenergy development in California, stating that "sustained biomass development offers strategic energy, economic, social and environmental benefits to California, creating jobs through increased private investment within the state." The executive order encourages the Commission to "initiate a new proceeding or build upon an existing proceeding to encourage sustainable use of biomass and other renewable resources." The amended PPAs represent an opportunity for the Commission to promote existing biomass facilities in California.

PG&E requests approval of three amended renewable energy contracts.

PG&E's Original PPAs with Madera Power, LLC (Madera), Community Renewable Energy Services, Inc. (CRES), and Sierra Power Corporation (Sierra) were filed for Commission approval on September 18, 2003 in Advice 2423-E, and approved by the Commission on October 16, 2003 in Resolution E-3853. Once PG&E regained investment grade credit rating, the PPAs were eligible to change from a year to year contract to 5 year terms. PG&E requested Commission authorization of these terms on May 10, 2004 in Advice 2506-E, which the Commission approved on July 8, 2004 in Resolution E-3877.

Prior to signing PPAs with PG&E, the Sellers had contracts with DWR which expired in June, 2003. The Parties found it prudent to execute timely bilateral

agreements rather than wait for the 2004 RPS Solicitation to negotiate a contract. PG&E seized the opportunity to contract for roughly 40% of their 2004 APT for a baseload renewable resource, essentially giving them a 6 month jump on meeting its RPS requirement.

PG&E requests final "CPUC Approval" of PPAs

PG&E requests the Commission to issue a resolution containing the findings required by the definition of "CPUC Approval" in Appendix A of D.04-06-014. In addition, PG&E requests that the Commission issue a resolution that:

1. Approves the Amendments in their entirety, including payments to be made by PG&E, subject to CPUC review of PG&E's administration of the Agreements;

2. Finds that procurement pursuant to these amended Agreements constitutes 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.), Decision (D.)03-06-071, or other applicable law;

3. Finds that any procurement pursuant to these amended Agreements constitutes incremental procurement or procurement for baseline replenishment by PG&E from eligible renewable energy resources for purposes of determining PG&E's compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.03-06-071, or other applicable law;

4. Finds that payments made under the amended Agreements and any indirect costs of renewables procurement identified in Section 399.15(a)(2) shall be recovered in rates.

5. Finds that the costs associated with these contracts between PG&E and Sellers are reasonable and in the public interest, and that approved payments are eligible for recovery through a non-bypassable charge over the life of the contracts consistent with the provisions of D.04-12-048.

PG&E's Procurement Review Group participated in review of the contracts

In D.02-08-071, the Commission required each utility to establish a "Procurement Review Group" (PRG) whose members, subject to an appropriate non-disclosure agreement, would have the right to consult with the utilities and review the details of:

1. Overall transitional procurement strategy;
2. Proposed procurement processes including, but not limited to, RFO; and
3. Proposed procurement contracts before any of the contracts are submitted to the Commission for expedited review.

The PRG for PG&E consists of: California Department of Water Resources (DWR), California Energy Commission (CEC), the Commission's Energy Division, Natural Resources Defense Council (NRDC), Union of Concerned Scientists (UCS), Office of Ratepayer Advocates (ORA), and The Utility Reform Network (TURN)[7].

On July 2, 2003, PG&E told the PRG that they had begun contract negotiations with three biomass generators who had come off DWR contracts on June 30, 2003. The PRG agreed that PG&E should execute these contracts only if the price is at or below the $53.70/MWh interim solicitation price benchmark, and if the contracts meet Commission approval as an RPS eligible renewable resource.

On March 29, 2006, PG&E provided its PRG with a brief report on the status of discussions with several renewable entities PG&E had previously signed contracts with and that were requesting pricing adjustments to address project viability by those parties. Members of the PRG either supported or did not oppose pursuing an agreement with the Sellers.

NOTICE

Notices of AL 2911-E were made by publication in the Commission's Daily Calendar. PG&E states that copies of the Advice Letter were mailed and distributed in accordance with Section III-G of General Order 96-A.

[7] The California Energy Commission officially removed themselves from PG&E's Procurement Review Group in September, 2006

PROTESTS

Advice Letter 2911-E was not protested.

DISCUSSION

Description of the projects

The following table summarizes the substantive features of the PPAs. See confidential Appendix A for a detailed discussion of contract prices, amended terms, and conditions:

Generating facility	Type	Term Years	MW Capacity	GWh Energy	Online Date	Location
Madera	Biomass	2.5 years remaining on 5 year term	24.0	~160	October 16, 2003	Firebaugh, CA
CRES (Dinuba)	Biomass	Same as above	12.0	~90	October 16, 2003	Reedley (Dinuba), CA
Sierra	Biomass	Same as above	7.0	~75	October 16, 2003	Terra Bella, CA

On November 14, 2005, the Sellers formally requested mediation in accordance with their respective PPAs, to address disputes over the interpretation of the Commission's ruling on PTCs and the interpretation of the Sellers' right to reduce the Contract Capacity set forth in the PPAs. The Sellers also indicated during the settlement negotiations that changes in their fuel supply costs were such that, unless the PPA's pricing provisions were altered as a result of the settlement, the Sellers would continue to suffer operating losses. PG&E believed that if Sellers continued to sustain such losses they would not be able to perform under the PPAs.

To resolve their disputes, PG&E and the Sellers ultimately agreed to the Amendments submitted with this Advice Letter, which include a price that is reasonable and cost effective, and enable the projects to continue to be a source of renewable power for PG&E's customers. Parties signed the Amendment to the Master Power Purchase and Sale Agreements and the Settlement Agreement on September 15, 2006. These Amendments and the Settlement Agreement would:

1. Revise the contract Energy Price
2. Clarify the Sellers' obligation to deliver the Contract Capacity
3. Allow the Sellers to retain rights to any PTCs
4. Increase the Performance Security Amount
5. Make any breach of the Settlement Agreement a breach of the PPA.

Evaluation Methodology

Energy Division has reviewed the proposed Agreements based upon multiple grounds:

1. Reasonableness of the amended PPA pricing
2. Reasonableness of Seller's obligation to deliver the Contract Capacity
3. Proper handling of Production Tax Credits (PTCs)
4. Reasonableness of the amended Performance Security Amount

The PPAs' amended levelized price is reasonable.

The contract price in the Original PPAs was less than the benchmark price; however, renegotiations of the contract required the price to be modified. The Energy Division finds the Amended Price for the three PPAs reasonable based on the following considerations:

1. The Sellers operating costs have increased significantly. PG&E and Energy Division reviewed the Sellers' operation costs; see Confidential Appendix B for analysis.
2. The Sellers are currently receiving a subsidy through California Energy Commission's (CEC) Existing Renewable Facilities Program (ERFP).

   For the 12 months period, July 2005 to June 2006, all three facilities received the following approximate $/MWh monthly ERFP payments;

   - Madera: $9.50/MWh
   - CRES: $6.00/MWh[8]
   - Sierra : $9.00/MWh

[8] CRES received no funding in February, March or April in 2006.

New guidelines for the ERFP for years 2007 to 2011 are being finalized.[9] The Sellers' are eligible to apply for the subsidy and anticipate receiving the subsidy throughout the Contract Term.

3. While the Sellers anticipate being eligible for PTCs, which is reflected in the PPA price, the PPAs are not conditional on any PTC availability.
4. The Price Amendment being considered today is reasonable, based on a comparison with other biomass contracts bid to PG&E in 2004 and 2005; see Confidential Appendix B for price comparison.
5. Pursuant to the Amended Agreement the Sellers are not allowed to request any future increases in Price for Energy or Capacity.

Clarification Regarding Contract Capacity increases Project Viability.

The Amended PPAs resolve the dispute over interpretation of the Original PPAs, and clarifies the Sellers' obligation to deliver Contract Capacity over the life of the contract. This clarification allows Madera and Sierra some flexibility in their obligation to PG&E to account for variability in fuel supply and/or the size of their operations, while protecting ratepayers by ensuring a reasonable minimum capacity will be delivered over the life of the contract. When the Sellers found themselves operating under a PPA with a disadvantageous Price, they interpreted the Master PPA section on Contract Capacity as allowing them to reduce their Contract Capacity unconditionally. The Amended PPA includes the following terms; Madera may increase its Contract Capacity to a specified limit one time during the contract term, CRES may not increase or decrease its Contract Capacity at any time during the contract term, and Sierra may increase or decrease its Contract Capacity subject to limits specified in the contract.

The Settlement and Amendment Agreement properly handles the allocation of Production Tax Credits.

Prior to the execution of the Original PPAs, Assigned Commissioner Peevey issued an ACR that provided guidance and outlined the parameters of utility procurement of renewable resources prior to full Renewable Portfolio Standard (RPS) implementation[10]. The ACR required that any PTCs received by renewable

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9 http://www.energy.ca.gov/renewables/02-REN-1038/documents/2007-01-10_workshop/CEC-300-2006-020-SD.PDF.

This is a draft version of the Guidebook, a final will be made available on the CEC's website, www.energy.ca.gov, when finalized.

10 http://www.cpuc.ca.gov/word_pdf/RULINGS/28681.pdf

facilities be passed through entirely to customers. Although existing facilities such as Madera, CRES, and Sierra had not previously been eligible for PTCs, in compliance with the ACR, the original PPAs included the pass-through requirement in the event PTCs did become eligible for existing facilities.

On September 29, 2003, after the PPAs were submitted for approval, but before they were approved, Commissioner Peevey issued a Ruling Granting Motion for Reconsideration by The Independent Energy Producers Association (the Reconsideration Ruling)[11]. The Reconsideration Ruling modified the PTC pass-through requirement to instead require bidders to submit two price offers, one price to be used if the PTC program was extended by federal law, the other if the PTC program was not extended.

PG&E did not request the Sellers to provide two new bids after the Reconsideration Ruling because the PPAs were already executed and had been submitted for Commission approval, and because legislation extending PTCs to biomass facilities had not been enacted. On October 22, 2004, approximately one year after the PPAs were approved, the "American Jobs Creation Act of 2004" extended the PTCs to existing biomass facilities[12].

On May 17, 2005, the Sellers filed a Joint Motion asking Assigned Commissioner Peevey to confirm that the Reconsideration Ruling was intended to eliminate the PTC pass-through requirement. On June 1, 2005, PG&E filed a response to the Joint Motion contending the Reconsideration Ruling did not eliminate the PTC pass-through requirement as the Sellers had alleged, but modified the pass-through requirement to submit two price offers as discussed above. PG&E further requested that Commissioner Peevey deny the Sellers' motion and direct the Sellers to follow the dispute resolution procedures in the PPAs. The Utility Reform Network (TURN) filed its own response to the joint motion requesting that the Commission allow PG&E to resolve this dispute through bilateral negotiations. The Commission subsequently denied the Joint Motion on June 28, 2005, and directed PG&E to negotiate with the Sellers pursuant to the dispute resolution provisions included in the PPAs[13].

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[11] http://www.cpuc.ca.gov/word_pdf/RULINGS/30260.pdf
[12] http://www.dsireusa.org/documents/Incentives/US13Fb.htm
[13] http://www.cpuc.ca.gov/word_pdf/RULINGS/47449.pdf

The amended PPAs, in which the Sellers retain the rights to the PTCs, are consistent with State and Commission objectives. The generator is eligible to receive the tax incentive and the benefit of this Credit is passed through to the ratepayer, i.e., lower contract price.

Increased Performance Security Amount Ensures the Likelihood of Project Performance.

The amended PPAs increases the Performance Security Requirement to a level comparable to many of PG&E's other RPS contracts. This amount is deemed reasonable to ensure the Sellers meet the obligations of the Agreement without jeopardizing project viability.

PPAs are consistent with RPS Interim Solicitation guidelines.

The proposed PPAs are consistent with Commission decisions regarding RPS bilateral contracts[14] for the following reasons:

The PPAs are not seeking Supplemental Energy Payment (SEP) funding. They are ineligible for such awards because (1) they did not result from a competitive solicitation[15] and (2) they are preexisting facilities.

Pursuant to D.06-10-019, the PPAs were submitted by advice letter. The Commission intends to include more explicit standards and criteria for the reasonableness of RPS bilateral contracts in a decision in the near future. Until such decision is approved, the Commission will continue to consider the approval of RPS bilateral contracts on a case-by-case basis.

Standard Terms and Conditions

Because the Original PPAs were negotiated pursuant the 2003 interim solicitation, they do not contain the non-modifiable Standard Terms and

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[14] "[The CPUC]…will allow prudent bilateral contracts only when such contracts do not require any PGC funds" (D.03-06-071 p. 59, CoL 31, OP 29).
"For now, utilities' bilateral RPS contracts, of any length, must be submitted for approval by advice letter. Such contracts are not subject to the MPR, which applies to solicitations, but they must be reasonable (D.03-06-017, *mimeo*., p. 59)… No bilateral contracts are currently eligible for SEPs." (D.06-10-019, pp.31-32)

[15] "[The CPUC]…will allow prudent bilateral contracts only when such contracts do not require any PGC funds" (D.03-06-071 p. 59).
"Applicants for eligible renewable facilities must compete for NRFP funding [otherwise known as SEPs] by participating in competitive RPS solicitations held by PG&E, SCE and SDG&E." p. 3, CEC's New Renewable Facilities Program Guidebook, April 2006.

Conditions (STCs) set forth in D.04-06-014. Neither the 2003 ACR, nor any subsequent Commission decision, requires the utilities to include the STCs adopted in D.04-06-014 in the PPAs that were submitted under the 2003 interim solicitation guidelines. The 2003 ACR did, however, direct the utilities to abide by D.03-06-071, which did not adopt STCs, but rather allowed the utilities to further negotiate standard terms and conditions.

D.06-10-019 states that while the non-modifiable terms and conditions adopted in D.04-06-014 were done so to encourage statewide consistency and transparency of contracts resulting from utilities' solicitations for RPS procurement, these goals remain valid for bilateral contracts.[16] We have reviewed the terms and conditions in the amended and restated PPAs, and observe that the comparable terms and conditions identified as "May not be Modified" in D.04-06-014 are more or less equivalent to those in the Original PPAs which the CPUC approved. Having found the originally negotiated terms of the PPAs reasonable, and finding no substantial change in these same terms in the amended PPAs, we conclude that the amended PPAs are likewise reasonable. We wish to make clear, however, that while we do not require the Sellers' PPAs to comply with D.04-06-014, based on the facts of this case, we do not hereby set a precedent on the issue of including non-modifiable STCs in amended renewable procurement PPAs.

The PPAs are viable projects

PG&E believes that the projects are viable because:

Project Milestones

The PPAs are for existing facilities; there is no development necessary prior to delivery or any associated milestones.

Maturity of Technology and Fuel Availability

Biomass is a proven technology.

- Sierra's power plant converts wood waste produces into energy. The fuel used to run the facility is 25% sawmill residue and 75% agriculture waste.
- CRES and Madera operate waste to energy facilities using 30% agricultural fuel and 70% urban waste.

[16] D.06-10-019 page 32

No Transmission Upgrades Needed

All three facilities are existing and operational, requiring no transmission upgrades.

Financeability of Resource

The amendments to price and contract capacity were mutually agreed upon by the parties to restore the facilities economic viability. Unlike many renewable technologies, biomass is fuel intensive and direct fuel costs make up a significant amount of a facilities' operational cost. The Price increase allows the Sellers to operate in an economically viable manner; see Confidential Appendix B for the Operations Cost and Price Analysis. Also, the Sellers are eligible for up to a maximum $15/MWh in CEC subsidies as an Existing Renewable Facility.

Project Operation

Sierra may vary their Contract Capacity within a set bandwidth, one time each year, allowing the generator some operating flexibility in response to market conditions. Once over the Contract Term, Madera has the option to increase its' Contract Capacity to reflect their assessment of being able to support a higher operating level. The Amended PPAs protect ratepayers from losing attractively priced energy by an opportunistic generator operating under disadvantageous market conditions.

Production Tax Credit

The PPAs are not contingent upon the extension of federal production tax credits as provided in Section 45 of the Internal Revenue Code of 1986, as amended.

PG&E's request for a non-bypassable charge will not be addressed in this Resolution

D.04-12-048 describes the Commission's current policy on stranded cost recovery for a variety of different types of procurement. PG&E requests approval of the use of a non-bypassable charge to implement the Commission's stranded cost policy for procurement. Conclusion of Law 16 of this decision states:

"The utilities should be allowed to recover stranded costs for their non-RPS resource commitments from departing load over either the life of the contract or 10 years, whichever is less. The ten-year recovery period should also apply to any utility-owned generation acquired as a result of the procurement process, commencing once the resource begins commercial operation. Stranded costs arising from RPS procurement activities should be collected from all customers, including departing

load, over the life of the contract**.** The utilities should be allowed the opportunity to justify in their applications, on a case-by-case basis, the desirability of adopting a cost recovery period of longer than ten years for their non-RPS resource commitments. Cost recovery for that portion of a resource acquired by the utilities to meet local reliability needs should be recovered from all customers."

This resolution does not further interpret or develop Commission policy regarding the use of non-bypassable charges (NBCs) as a mechanism to recover stranded costs. While D.04-12-048 addressed the general policy of stranded cost recovery, it did not identify the implementation mechanism. If PG&E wishes to pursue the approval of NBCs for its procurement contracts, we recommend the issue be addressed through its Long-Term Procurement Plans in R.06-02-013. The Long-Term Procurement Proceeding is the appropriate procedural forum for addressing issues that apply to multiple contracts and multiple utilities. On December 11, 2006, the IOUs were required to file their Long-Term Procurement Plans in R.06-02-013. As part of those plans, the IOUs have been instructed to file plans that include procurement implementation plans, including any relevant cost recovery issues (Reference: See R.06-02-013, Phase 2 Scoping Memo, Issued September 25, 2006, Volume I, Attachment A, Section VII, page 21).

Confidential information about the contracts should remain confidential

Certain contract details were filed by PG&E under confidential seal. Energy Division recommends that certain material filed under seal pursuant to Public Utilities Code Section 583, General Order (G.O.) 66-C and Decision (D.)06-06-066, and considered for possible disclosure, should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations.

COMMENTS

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

FINDINGS OF FACT

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 IOUs shall file an Advice Letter to seek pre-approval of any contract for such interim procurement.

2. 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.
3. The Commission approved Resolution E-3877 on July 8, 2004, authorizing PG&E to enter into a phase two contractual agreement with three renewable biomass energy contracts.
4. PG&E filed Advice Letter 2911-E on October 6, 2006, requesting Commission review and approval of three amended renewable energy contracts with Madera Power, LLC (Madera), Community Renewable Energy Services, Inc. (CRES), and Sierra Power Corporation (Sierra).
5. PG&E briefed its Procurement Review Group regarding these amended contracts on March 29, 2006. The members of PG&E's PRG either supported or did not oppose the approval of these contracts.
6. PG&E made a sufficient showing that the contracts were mutually agreeable to the parties, the evaluation methodology was reasonable, and the selected contracts meet PG&E's renewables procurement requirements at reasonable cost.
7. 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 to be submitted in the future.

CONCLUSIONS OF LAW

1. The RPS Program requires each utility, including PG&E, to increase the amount of renewable energy in its portfolio to 20 percent by 2017, increasing by a minimum of one percent per year. The Energy Action Plan (EAP) called for acceleration of this goal to reach 20 percent by 2010. The 20% by 2010 target was reaffirmed in D.05-11-025.
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. Neither the 2003 ACR, nor any subsequent Commission decision, requires the utilities to include the standard terms and conditions adopted in D.04-06-014 in the PPAs that were submitted under the 2003 interim solicitation guidelines. The terms of the amended PPA, however, are reasonable because they are virtually the same as those found reasonable in the original PPA approved by the Commission.

4. The costs of the contracts between PG&E and Sellers are reasonable and in the public interest; accordingly, the payments to be made by PG&E are fully recoverable in rates over the life of the project, subject to CPUC review of PG&E's administration of the PPA.
5. Certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583, General Order (G.O.) 66-C and Decision (D.)06-06-066, and considered for possible disclosure, should not be disclosed. Accordingly, the confidential appendices, marked "**[REDACTED]**" in the redacted copy, should not be made public upon Commission approval of this resolution.
6. Any indirect costs of renewables procurement identified in Section 399.15(a)(2) shall be recovered in rates;
7. AL 2911-E should be approved with modifications effective today; PG&E's request for a non-bypassable charge may be addressed in R.06-02-013.

THEREFORE IT IS ORDERED THAT:

1. Advice Letter AL 2911-E is approved with modifications.
2. The costs of the contracts between PG&E and Sellers are reasonable and in the public interest; accordingly, the payments to be made by PG&E are fully recoverable in rates over the life of the project, subject to CPUC review of PG&E's administration of the PPA.
3. 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 11, 2007; the following Commissioners voting favorably thereon:

_____
STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

Confidential Appendix A

Contract Summaries

Confidential Appendix B

Operations Cost and Price Analysis

Confidential Appendix C

Illustrative Example of Energy Price to Contract Capacity Price Conversion & CPI Adjustment

Confidential Appendix D

Projects Contributions to RPS Goals